

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3726

██████████ 2019
Signature Confirmation

Case ID # ██████████
Client ID # ██████████
Request #144543

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the "Department") notified ██████████ the Applicant's mother and representative, (the "Appellant") that it was revising the Community First Choice ("CFC") budget for the ██████████ (the "Applicant") from 43 hours per week to 26.25 hours per week of Personal Care Assistance.

On ██████████ 2019, the Appellant requested an administrative hearing to contest the Department's determination to reduce the hours of Personal Care Assistance per week.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2019.

On ██████████ 2019, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals were present at the hearing:

██████████, the Applicant
██████████ the Appellant, the Applicant's mother, and representative
██████████ the Applicant's father
Kari Filek, Public Assistance Consultant, DSS, Community First Choice

Randall Wilson, Manager Community First Choice, Connecticut Community Care
Swati Sehgal, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's proposed CFC budget of 26.25 hours of care per week is sufficient to meet the Applicant's needs.

FINDINGS OF FACT

1. The Applicant is [REDACTED] years old ([REDACTED]) and has diagnoses of Down Syndrome and Intellectual Disability. He is a recipient of Medicaid through the Department. (Hearing Summary, Exhibit 4: Universal Assessment Outcome Form, Appellant's testimony, Department's testimony)
2. The Applicant also receives services through the State of Connecticut Department of Developmental Disabilities ("DDS"). (Exhibit 1: DDS Individual Plan)
3. The Applicant lives with his parents. The Applicant's mother works from home and his father works outside the home. (Appellant's testimony)
4. The Applicant attends the Group Day program at [REDACTED], six hours a day and five days a week. Transportation to and from home is provided through DDS. (Appellant's testimony, Haring Summary, and Exhibit 1)
5. The CFC program determines eligibility and level of need for budgeting purposes by a universal assessment to assess the functional status of ADL's conducted by area agencies. CFC also uses a comprehensive assessment that was conducted by DDS. (Exhibits 4, Exhibit 2: DDS Level Of Need Assessment, Department's summary, and Department representative's testimony)
6. The Applicant has been granted services to provide support with his activities of daily living ("ADL's"). (Appellant's testimony, Hearing Record)
7. In 2018, CFC allocated 47 hours per week of Personal Care Assistant ("PCA") services with an annual budget of \$47,337.32 under the CFC program. (Appellant's testimony, Exhibit 5: CFC Care Plan for 2018)
8. On [REDACTED] 2019, CFC conducted an in-person assessment at the Applicant's home; the Applicant was approved for 26.25 hours weekly of PCA services within an annual budget of \$26,250.21 under the CFC program. (Exhibit 4: CFC Care Plan for 2019 Including Universal Assessment Outcome Form; Revised CFC Individual Budget)
9. The Department determined the Applicant requires maximum assistance with three out of five ADL's. He requires assistance with bathing, dressing, and toileting. He

requires setups and cuing for eating, and he is independent of transferring. (Exhibit 4, Hearing summary, Appellant's and her Spouse's testimony,)

10. The Applicant also needs assistance with, household chores and laundry, (Appellant's testimony)
11. The Applicant has been using the CFC services to hire PCA's from 4:00 pm to 8:00 pm three to four times a week, one 24 hours shift from Friday to Saturday and 8:00 am to 3:00 pm on Sunday. (Appellant's testimony)
12. The Appellant provides assistance with the Applicant's ADLs and IADLs needs from the hours of 6:00 am through 8:00 am and 2:30 pm through 4:00 pm from Monday through Friday and 3:00 pm through 9:00 pm on Sunday. (Appellant's testimony)
13. The reduction in hours will make it difficult for the Applicant to be independent. (Appellant's testimony)
14. The issuance of this decision is timely under Connecticut General Statutes § 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED] 2019. Therefore, this decision was due not later than [REDACTED] 2019, and is therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Title 42 of the Code of Federal Regulations ("CFR") § 441.500(a) provides that this subpart implements section 1915(k) of the Act, referred to as the Community First Choice option (hereafter Community First Choice), to provide home and community-based attendant services and supports through a State plan.
3. Title 42 CFR § 441.510 provides in part that to receive Community First Choice services under this section, an individual must meet the following requirements: (a) Be eligible for medical assistance under the State plan; (b) as determined annually: (1) Be in an eligibility group under the State plan that includes nursing facility services; or(2) if in an eligibility group under the State plan that does not include such nursing facility services, have an income that is at or below 150 percent of the Federal poverty level (FPL). In determining whether the 150 percent of the FPL requirement is met, States must apply the same methodologies as would apply under their Medicaid State plan, including the same income disregards in accordance with section 1902(r)(2) of the Act; and(c) Receive a determination, at least annually, that in the absence of the home and community-based attendant services and supports provided under this subpart, the individual would otherwise require the level of care furnished in a hospital, a nursing facility, an intermediate care facility for individuals with intellectual disabilities, an

institution providing psychiatric services for individuals under age 21, or an institution for mental diseases for individuals age 65 or over, if the cost could be reimbursed under the State plan.

4. Title 42 CFR § 441.520 (a) provides that If a State elects to provide Community First Choice, the State must provide all of the following services: assistance with ADLs, IADLs, and health-related tasks through hands-on assistance, supervision, and/or cueing, acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health-related tasks, backup systems or mechanisms to ensure continuity of services and supports, as defined in § 441.505 of this subpart and voluntary training on how to select, manage and dismiss attendants.
5. Title 42 CFR § 441.505 provides for the definition of the Activities of Daily Living (“ADLs”) and states that ADLs means basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring.
6. The Department was correct when it determined that the Applicant needed extensive assistance with ADL’s; bathing, dressing, and toileting.
7. Title 42 CFR§ 441.505 also provides for the definition of Instrumental Activities of Daily Living (“IADLs”) and states that IADLs means activities related to living independently in the community, including but not limited to, meal planning and preparation, managing finances, shopping for food, clothing and other essential items, performing essential household chores, communicating by phone or other median and traveling around and participating in the community.
8. The Department was correct when it determined that the Applicant needed assistance with his IADL’s.
9. Title 42 CFR § 441.540 (b)(5) provides that the person-centered service plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports. Commensurate with the level of need of the individual, and the scope of services and supports available under Community First Choice, the plan must reflect the services and supports (paid and unpaid) that will assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports. Natural supports cannot supplant needed paid services unless the natural supports are unpaid supports that are provided voluntarily to the individual in lieu of an attendant.
10. Connecticut State Plan Amendment (“SPA”) no.15-012, pursuant to section 1915(k) of the Social Security Act, 5 A provides for limits on amount, duration or scope of included services. It states that the Department assigns an overall budget based on need grouping that is determined by algorithm and that natural supports are based on the individual’s functional assessment, which will take into consideration the

availability of natural supports. Natural supports are identified during the person centered service planning process and utilized when available to the individual. Natural supports are defined as voluntary unpaid care provided on a regular and consistent basis by a parent, spouse or other person.

11. The Department was correct when it determined that the Applicant's parents are a source of natural support for his ADLs and IADLs.
12. For purposes of the administration of the medical assistance programs by the Department of Social Services, "medically necessary" and "medical necessity" mean those health services required to prevent, identify, diagnose, treat, rehabilitate or ameliorate an individual's medical condition, including mental illness, or its effects, in order to attain or maintain the individual's achievable health and independent functioning provided such services are: (1) Consistent with generally-accepted standards of medical practice that are defined as standards that are based on (A) credible scientific evidence published in peer-reviewed medical literature that is generally recognized by the relevant medical community, (B) recommendations of a physician-specialty society, (C) the views of physicians practicing in relevant clinical areas, and (D) any other relevant factors; (2) clinically appropriate in terms of type, frequency, timing, site, extent and duration and considered effective for the individual's illness, injury or disease; (3) not primarily for the convenience of the individual, the individual's health care provider or other health care providers; (4) not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the individual's illness, injury or disease; and (5) based on an assessment of the individual and his or her medical condition. Conn. Gen. Stat. § 17b- 259b (a).
13. The Department was correct when it determined that the Applicant has been awarded assistance from DDS to provide socialization and prepare the Applicant for work activities and other IADL's. The day program provided through DDS, along with the 26.25 hours weekly approved for CFC services, and the natural supports from his family do not place the Applicant at risk of institutionalization
14. Based on the evidence provided, the Applicant's weekly PCA hours of 26.25 per week is adequate to meet the Applicant's functional needs with regards to his medical condition and overall health; therefore, the Department was correct when it determined that additional hours of PCA through CFC services are not medically necessary because the type, frequency, and duration of such services are not clinically appropriate, at this time, given the natural supports that are currently in place.

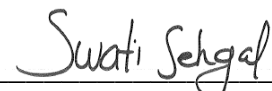
DISCUSSION

Community First Choice is a benefit available to Medicaid recipients under the State Plan to provide services in-home to individuals who would otherwise require institutionalization as determined by state standards. The hearing summary and testimony at the hearing

indicated that additional benefits (in hours) are not medically necessary because the Applicant receives necessary services through DDS waiver and natural supports from his parents. CFC's decision that 26.25 hours of Community First Choice Personal Care Attendant services in addition to DDS services, and natural supports that he has in place provide the care he needs is correct.

DECISION

The Appellant's appeal is **DENIED**.



Swati Sehgal
Hearing Officer

CC: Sallie Kolreg, DSS, Community First Choice
Kari Filek, DSS, Community First Choice

RIGHT TO REQUEST RECONSIDERATION

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue, Hartford, CT 06105-3730.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45 day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or the Commissioner's designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.