STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

[redacted], 2020
Signature Confirmation

Case # [redacted]
Client # [redacted]
Request # 150371

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2019, the Department of Social Services (the "Department") issued a Notice of Action ("NOA") to [redacted] (the "Appellant") granting the Community First Choice ("CFC") Individual Budget in the amount of $46,250.40 per year, based on an assessment of the Appellant's level of need.

On [redacted], 2019, the Appellant requested an administrative hearing to contest the amount of the Individual Budget.

On [redacted] 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2020.

On [redacted], 2020, the Appellant requested to reschedule the administrative hearing as a telephone hearing.

On [redacted] 2020, OLCRAH issued a notice rescheduling the telephone administrative hearing for [redacted] 2020.

On [redacted] 2020, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing.

The following individuals were present at the hearing via telephone:

[redacted], Appellant
Christina Fitzpatrick, CFC Supervisor, Western Connecticut Area Agency on Aging
Marci Ostroski, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly calculated the Appellant's CFC service budget based on an assessment of the Appellant's level of need.

FINDINGS OF FACT

1. The Appellant is a Medicaid recipient. (Hearing Record, Appellant's testimony)

2. The Appellant is [redacted] (DOB [redacted] years old. (Ex. 1: Universal Assessment, [redacted]/19; Hearing Summary)

3. The Appellant has a diagnosis of Bipolar disorder. The Appellant also reported during her assessment; anxiety, delusional/paranoid disorder, depression, personality disorder, psychotic disorder, and schizoaffective disorder. (Ex. 1: Universal Assessment, [redacted]/19)

4. The Appellant has been prescribed the following medications: Clonopin, Prozac, and Xanax. (Ex. 1: Universal Assessment, [redacted]19)

5. On [redacted], 2019, the Appellant participated in a face to face comprehensive assessment of her needs related to her core Activities of Daily Living ("ADLs") , Instrumental Activities of Daily Living ("IADLs") and health-related tasks for CFC services. The assessment was conducted by a Social Worker from Western Connecticut Area Agency on Aging ("WCAAA"). (Hearing Summary, Ex. 1: Universal Assessment, [redacted]/19)

6. WCAAA is the Department's contractor for the purpose of assessing the level of care and service needs for CFC. (Hearing Record)

7. The ADLs include bathing, dressing, toileting, transferring and eating. (Ex. 2: Universal Assessment Outcome Form, [redacted]/19; Hearing Summary)

8. At the time of the evaluation, the Appellant lived with her boyfriend and her children. (Appellant's Testimony, Hearing Summary, Ex. 1: Universal Assessment, [redacted]/19)

9. At the time of the evaluation, the Appellant's boyfriend was her primary caregiver. (Appellant's Testimony, Hearing Summary, Ex. 1: Universal Assessment, [redacted]/19)

10. The assessment determined that the Appellant requires extensive assistance with dressing and toileting, limited assistance with transferring, and cueing and supervision with bathing and eating. (Exhibit 2: Universal Assessment Outcome Form, [redacted]/19; Hearing Summary)

11. At the time of the assessment, the Appellant's boyfriend provided hands on assistance for the Appellant with dressing. The boyfriend put on the Appellant's bra, socks, underwear, and pants, he completed buttons and zippers for her and set up her shirt and prompted her to dress. The Appellant was in agreement with the Department's determination that she required extensive assistance with dressing. (Ex. 1: Universal Assessment, [redacted]/19; Appellant's testimony)

12. At the time of the assessment, the Appellant's boyfriend provided hands on assistance for the Appellant with toileting. The boyfriend cleaned her after using the bathroom and would assist her on and off the toilet. The Appellant is frequently incontinent of bladder and infrequently incontinent of bowel. The Appellant reported incontinence at night and her mental health debilitated her from getting up to clean herself or change. The Appellant was in agreement with the Department's determination that she required extensive assistance with toileting. (Ex. 1: Universal Assessment, [redacted]/19; Appellant's testimony)

13. At the time of the assessment, the Appellant's boyfriend provided assistance for the Appellant with transferring. The boyfriend held her hand when transferring as she would experience dizziness and lightheadedness when standing. The Department determined that she required limited assistance with transferring. (Ex. 1: Universal Assessment, [redacted]19, Appellant's testimony)

14. At the time of the assessment, the Appellant's boyfriend provided assistance for the Appellant with eating. The boyfriend provided prompting with eating. The Appellant is able to feed herself, she can bring the food to her mouth but will not eat unless reminded or prompted. The Department determined that the Appellant required supervision and cueing with eating. (Ex. 1: Universal Assessment, [redacted]/19, Appellant's testimony)

15. At the time of the assessment, the Appellant's boyfriend provided assistance for the Appellant with bathing. The boyfriend assisted with washing her hair. The Appellant was able to step in and out of the shower, the boyfriend put soap on the washcloth and prompted her and reminded her of each step to take. (Ex. 1: Universal Assessment, [redacted]19, Appellant's testimony)

16. At the time of the assessment, the Department determined that the Appellant required extensive assistance with medication management. The boyfriend prefilled her medication box and gave her the appropriate dosage. (Ex. 1: Universal Assessment, [redacted]/19, Appellant's testimony)

17. At the time of the assessment, the Department determined that the Appellant was totally dependent with meal preparation. The boyfriend prepared all the meals for the Appellant. (Ex. 1: Universal Assessment, [redacted]/19, Appellant's testimony)

18. At the time of the assessment, the Department determined that the Appellant was totally dependent with housework. The boyfriend completed all housework for the Appellant. (Ex. 1: Universal Assessment, [redacted]/19, Appellant's testimony)

19. At the time of the assessment, the Department determined that the Appellant was totally dependent with financial management. The boyfriend managed the Appellant's finances. (Ex. 1: Universal Assessment, [redacted]/19, Appellant's testimony)

20. On [redacted], 2019, the Department issued an Individual Services Budget to the Appellant indicating the CFC budget was granted in the amount of $46,250.40 per year equaling 46.25 hours of PCA services per week. (Ex. 4: Community First Choice Individual Services Budget)

21. On [redacted] 2020, a clinical nurse with the Department reviewed the universal assessment and proposed care form and approved the 46.25 hours per week. The Department determined that additional hours beyond the 46.25 plus the informal support the Appellant received were not medically necessary. (Hearing Summary)

22. After the assessment, the Appellant moved out of her home. She is no longer with her boyfriend and is now residing with her mother. (Appellant's testimony)

23. 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 is not due until [redacted] 2020. The hearing, however, which was originally scheduled for [redacted], 2020, was rescheduled for [redacted] 2020, at the request of the Appellant, which caused a 27-day delay Because this 27-day delay resulted from the Appellant's request, this decision is not due until [redacted] 2020, and is therefore timely. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes ("Conn. Gen. Stat.") authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.

2. Title 42 of the Code of Federal Regulations ("C.F.R.") Section 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 C.F.R. § 441.500(b) provides Community First Choice is designated to make available home and community-based attendant services and supports to eligible individuals, as needed, to assist in accomplishing activities of daily living (ADLs), instrumental activities of daily living (IADLs), and health-related tasks through hands-on assistance, supervision, or cueing.

4. Title 42 C.F.R. § 441.505 provides for definitions and states in part that Activities of daily living (ADLs) means basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring. Instrumental activities of daily living (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 media, and traveling around and participating in the community.

5. The Department was correct when it calculated the Appellant's hours based on the determination that the Appellant requires extensive assistance with dressing and toileting, limited assistance with transferring, and cueing and supervision with bathing, and eating.

6. Title 42 C.F.R. § 441.510 addresses eligibility for the program as follows:
   To receive Community First Choice services and supports 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. The

State administering agency may permanently waive the annual recertification requirement for an individual if:

(1) It is determined that there is no reasonable expectation of improvement or significant change in the individual's condition because of the severity of a chronic condition or the degree of impairment of functional capacity; and

(2) The State administering agency, or designee, retains documentation of the reason for waiving the annual recertification requirement.

(d) For purposes of meeting the criterion under paragraph (b) of this section, individuals who qualify for medical assistance under the special home and community-based waiver eligibility group defined at section 1902(a)(10)(A)(ii)(VI) of the Act must meet all section 1915(c) requirements and receive at least one home and community-based waiver service per month.

(e) Individuals receiving services through Community First Choice will not be precluded from receiving other home and community-based long-term care services and supports through other Medicaid State plan, waiver, grant or demonstration authorities.

7. Title 42 C.F.R. § 441.520 provides for included services as follows:

(a) If a State elects to provide Community First Choice, the State must provide all of the following services:

(1) Assistance with ADLs, IADLs, and health-related tasks through hands-on assistance, supervision, and/or cueing.

(2) Acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health-related tasks.

(3) Backup systems or mechanisms to ensure continuity of services and supports, as defined in § 441.505 of this subpart.

(4) Voluntary training on how to select, manage and dismiss attendants.

8. Title 42 C.F.R. § 441.535 provides for Assessment of functional need. States must conduct a face-to-face assessment of the individual's needs, strengths, preferences, and goals for the services and supports provided under Community First Choice in accordance with the following:

(a) States may use one or more processes and techniques to obtain information, including telemedicine, or other information technology medium, in lieu of a face-to-face assessment if the following conditions apply:

(1) The health care professional(s) performing the assessment meet the provider qualifications defined by the State,

including any additional qualifications or training requirements for the operation of required information technology;

(2) The individual receives appropriate support during the assessment, including the use of any necessary on-site support-staff; and

(3) The individual is provided the opportunity for an in-person assessment in lieu of one performed via telemedicine.

b) Assessment information supports the determination that an individual requires Community First Choice and also supports the development of the person-centered service plan and, if applicable, service budget.

(c) The assessment of functional need must be conducted at least every 12 months, as needed when the individual's support needs or circumstances change significantly necessitating revisions to the person-centered service plan, and at the request of the individual.

(d) Other requirements as determined by the Secretary.

9. The Department correctly completed a face-to-face assessment of the Appellant's needs, strengths, preferences, and goals.

10. 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.

11. Connecticut State Plan Amendment ("SPA") no.15-012 (5)(A), pursuant to section 1915(k) of the Social Security Act, 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.

12. The Department was correct at the time of the evaluation when it determined that the Appellant's boyfriend was a source of natural support for her ADLs and IADLs.

13. 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. Connecticut General Statutes § 17b-259b(a).

14. The Department correctly determined that the 46.25 weekly hours of services provided through CFC with the natural supports provided by the Appellant's boyfriend would not place the Appellant at risk of institutionalization.

15. Based on the evidence provided, the calculation of the Appellant's weekly PCA benefit of 46.25 hours per week is adequate to meet the Appellant's functional needs with regards to her 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 for the Appellant because the type, frequency, and duration of such services are not clinically appropriate, at the time of the evaluation, given the natural supports that were 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) above the 46.25 granted were not medically necessary at the time of the evaluation.

At the administrative hearing, the Appellant reported a change in her circumstances namely that she was no longer living with or receiving informal supports from her boyfriend. This hearing addresses the calculation of hours at the time of the evaluation when the boyfriend was providing services, which is now moot. At the administrative hearing, WCAAA stated that the change in the Appellant's circumstances warranted a case status change and possibly a reevaluation. The Appellant is encouraged to pursue the revaluation with the Department to determine what her current CFC needs will be.

DECISION

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

Marci Ostroski
Hearing Officer

Pc: hearings.commops@ct.gov

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 06105-3725.

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.