

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

██████████, 2024
SIGNATURE CONFIRMATION

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

NOTICE OF DECISION
PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2023, the Department of Social Services (the “Department”) issued a Notice of Action (“NOA”) to ██████████ ██████████ (the “Appellant”) denying her Home Accessibility Modification (“HAM”) request through the Community First Choice (“CFC”) program. The notice advised her that the requested service for ██████████ (the “Recipient”) was denied because the request did not maintain or increase the home accessibility under the CFC program.

On ██████████, 2024, the Appellant requested an administrative hearing to contest the denial of the HAM.

On ██████████, 2024, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ ██████████, 2024.

On ██████████, 2024, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-184, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The following individuals participated in the hearing:

██████████, Appellant
Janette Steward, RN, Nurse Consultant, Department of Social Services
Eric Bulewich, Social Worker, Community First Choice
Randall Wilson, Manager of Clinical Operations, CT Community Care
Attorney Cynthia Cartier, JD, LLM, Staff Counsel, Department of Social Services
Joseph Davey, Administrative Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department correctly denied the Recipient's HAM request under the CFC program.

FINDINGS OF FACT

1. The Recipient is ■ (■) years old (DOB ■■■■■) and a recipient of Medicaid. (Hearing Record)
2. The Recipient has a primary diagnosis of autism and needs extensive assistance with bathing, dressing, toileting, and eating. (Exhibit 2: Universal Assessment dated ■■■■■)
3. The Appellant is the Recipient's mother. (Hearing Record)
4. The Recipient lives with his family which includes the Appellant, the Recipient's father, older sister, and older brother. (Exhibit 3: Denial of HAM request dated ■■■■■, Hearing Record)
5. On ■■■■■, 2023, Connecticut Community Care, Inc. ("CCCI"), the Department's contractor for the assessment of level of care and service needs for CFC, conducted a Universal Assessment ("UA") and established a person-centered service plan for the Recipient. (Exhibit 2, Hearing Record)
6. On ■■■■■, 2023, CFC approved Personal Care Attendant ("PCA") services of 18 hours per week for the Recipient with a CFC budget of \$24,446.01 annually. (Exhibit 2, Hearing Record)
7. The Recipient lives in a residential area with an open backyard. There is a creek roughly one hundred and twenty (120) feet from the Recipient's house and a river "*within walking distance*". In addition, there are railroad tracks approximately 0.8 miles from the Recipient's house. (Exhibit 3, Appellant's Testimony)
8. The Recipient has repeatedly absconded to the backyard via the back door of the home without the knowledge of the Appellant or anyone in the household. (Exhibit 3, Appellant's testimony)
9. The Recipient can unlock the back door to access the backyard. The Appellant found it necessary to block the back door with a heavy container to keep the Recipient from escaping to the backyard without her knowledge. (Exhibit 3, Appellant's testimony)

10. In [REDACTED] 2023, the Appellant received a letter from Allied Community Resources with a list of home modifications and approved providers. The list included fencing and noted the company Keep Me Home, as one of the approved fencing providers. The Appellant believed a backyard fence would help keep the Recipient safe if he accessed the backyard without her knowledge. The Appellant called Keep Me Home to obtain more information on the fencing home modification and Keep Me Home explained that in order to apply for a fencing home modification, an initial home physical therapy evaluation must be completed for the Recipient. (Appellant's testimony)
11. On [REDACTED], 2023, [REDACTED], a physical therapist with [REDACTED], [REDACTED], completed an initial home evaluation of the Recipient at the request of the Appellant. The home evaluation noted that *"Having a fence to help maintain (the Recipient's) safety would help his family to teach him safety within the backyard, while having to worry less about the potential of him eloping to the backyard at any hour of the day or night."* (Exhibit 3)
12. On [REDACTED], 2023, the Appellant signed a CFC Assistive Technology and Home Accessibility Modification Request Form which listed the *"Modification(s) Needed"* as *"Home backyard fencing."* Included with the form was the initial home evaluation completed by [REDACTED], [REDACTED], as well as a homeowner letter signed by the Appellant and her spouse consenting to have backyard fencing installed on their property should it be approved by CFC. (Exhibit 3)
13. On [REDACTED], 2023, the Department received the Appellant's HAM request on behalf of the Recipient which was comprised of the Home Accessibility Modification Request Form, [REDACTED]'s initial home evaluation, and homeowner letter. (Exhibit 5: NOA dated [REDACTED], Mr. Bulewich's testimony, Hearing Record)
14. On [REDACTED], 2023, Janette Steward, a Nurse Consultant with the Department, completed her review of the Appellant's HAM request. Ms. Steward determined the Recipient was not eligible for a backyard fence under the CFC program and advised the Appellant of possible modifications that could be implemented to address the Recipient's elopement to the backyard. The possible modifications included alarms on the doors/windows and a camera near the back door. (Exhibit 3, Ms. Steward's testimony)
15. On [REDACTED], 2023, the Department issued a NOA denying the Appellant's HAM request for the Recipient. The reason listed for the denial was *"a fence is not a home accessibility modification and does not fall under the HAM policy to maintain or increase the 'home' accessibility. Furthermore, the addition of a fence would not prevent the consumer (the Recipient) from being institutionalized."* (Exhibit 5)
16. The issuance of this decision is timely under Connecticut General Statutes ("Conn. Gen. Stat.") 17b-61(a), which requires that a decision be issued within [REDACTED] days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED], 2024. Therefore, this decision is not due until [REDACTED], 2024.

CONCLUSIONS OF LAW

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

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.

42 C.F.R. § 441.500(b) provides that 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.

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.

42 C.F.R. § 441.535 provides that 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.

CCCI, as the Department's provider, correctly conducted a UA that identified the Recipient's needs, strengths, preferences, and goals for the services and supports provided under Community First Choice and supported the development of a person-centered service plan.

2. 42 C.F.R. § 441.510 provides that 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.

The Department correctly determined the Recipient is eligible for CFC services.

3. 42 C.F.R. § 441.520(a) 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.

42 C.F.R. § 441.540(b) provides for the person-centered service plan. 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: (1) Reflect that the setting in which the individual resides is chosen by the individual. (2) Reflect the individual's strengths and preferences. (3) Reflect clinical and support needs as identified through an assessment of functional need. (4) Include individually identified goals and desired outcomes. (5) 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. (6) Reflect risk factors and measures in place to minimize them, including individualized backup plans. (7) Be understandable to the individual receiving services and supports, and the individuals important in supporting him or her. (8) Identify the individual and/or entity responsible for monitoring the plan. (9) Be finalized and agreed to in writing by the individual and signed by all individuals and providers responsible for its implementation. (10) Be distributed to the individual and other people involved in the plan. (11) Incorporate the service plan requirements for the self-directed model with service budget at § 441.550, when applicable. (12) Prevent the provision of unnecessary or inappropriate care. (13) Other requirements as determined by the Secretary.

The Department correctly established a person-centered service plan for the Recipient.

4. 42 C.F.R. § 441.520(b)(2) provides that at the State's option, the State may provide permissible services and supports that are linked to an assessed need or goal in the individual's person-centered service plan. Permissible services and supports may include, but are not limited to, the following: (2) Expenditures relating to a need identified in an individual's person-centered service plan that increases an individual's independence or substitutes for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

Community First Choice State Plan Option Pursuant to Section 1915(k) of the Social Security Act, No. 15-012, provides in pertinent part under Section 5 as follows: Included Services (Required Services & Permissible Purchases) A. Assistance with Activities of Daily Living (ADLs), or Instrumental Activities of Daily Living (IADLs) and health-related tasks through hands-on assistance, supervision, and/or cueing. Environmental Accessibility Adaptations Service Definition: Those physical adaptations to the home, required by the individual's plan of care, which are necessary to ensure the health, welfare, and safety of the individual, or which enable the individual to function with greater independence in the home, and

without which, the individual would require institutionalization. Adaptations meet the requirement under 42 CFR §441.520(b)(2) which provides for "expenditures relating to a need identified in an individual's person-centered service plan that increases an individual's independence or substitutes for human assistance, to the extent that expenditures would otherwise be made for the human assistance." Such adaptations may include, but are not limited to, the installation of ramps and grab bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual. Excluded are those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual. Adaptations that add to the total square footage of the home are excluded from this benefit. All services shall be provided in accordance with applicable State or local building codes. Limit on amount and scope: The maximum benefit per individual over a 5 year period is \$15,000. This benefit is in addition to the individual budget calculated by the need grouping.

42 C.F.R. § 441.525(e) provides for excluded services. Community First Choice may not include the following: (e) Home modifications, other than those that meet the requirements at § 441.520(b) of this subpart.

CFC correctly denied the Appellant's HAM request for a backyard fence on behalf of the Recipient as it is not necessary to ensure the health, welfare, and safety of the Recipient, would not enable the Recipient to function with greater independence in the home, and would not prohibit the Recipient from being institutionalized.

DECISION

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



Joseph Davey
Administrative Hearing Officer

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Cynthia Cartier, Staff Counsel, OLCRAH, Hartford CO
Sallie Kolreg, DSS, Hartford CO
Orenthia Channer, Community Nurse Coordinator, Comm Ops, Hartford CO

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.