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

[redacted] 2024
Signature Confirmation

Client ID [redacted]
Case ID [redacted]
Request # 235687

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2024, the Department of Social Services (the "Department") issued [redacted] (the "Appellant") a Notice of Action ("NOA) denying her request to increase Personal Care Assistant ("PCA") hours for her son [redacted] (the "minor child") from twenty-five (25) per week to forty (40) hours per week under the Community First Choice ("CFC") Program.

On [redacted] 2024, the Appellant requested an administrative hearing to contest the Department's decision to deny her request to increase PCA hours under the CFC program for the minor child.

On [redacted] 2024, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2024.

On [redacted] 2024, in accordance with sections 17b-60, 17b-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:

[redacted] Appellant
Eric Bulewich, Department Representative
Cynthia Cartier, JD, LLM, Department Staff Counsel, participated by phone.
Lisa Nyren, Fair Hearing Officer

The hearing record remained open for the submission of additional evidence from the Appellant and the Department. No additional information was submitted by the Department. The Appellant submitted additional medical documentation. The hearing record closed on [redacted] 2024.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny the Appellant's request to increase PCA service hours from 25 hours per week to 40 hours per week for the minor child under the CFC program was correct.

FINDINGS OF FACT

1. The minor child is a recipient of Medicaid under the Husky A program as administered by the Department. (Appellant Testimony)

2. The minor child is [redacted] years old born on [redacted]. The minor child's diagnoses include TBCK syndrome, hypotonia, plagiocephaly, seizure disorder, respiratory disorder and astigmatism. (Hearing Record)

3. The minor child meets the eligibility criteria under the CFC program. Under the CFC program, the Department authorized 25 service hours per week under the PCA program for the minor child. (Stipulated)

4. The Appellant is the minor child's mother and designated representative. The Appellant is employed full time. (Hearing Record)

5. The minor child lives at home with his family. (Hearing Record)

6. The minor child is completely dependent on his caregivers. The minor child requires hands on assistance with all Activities of Daily Living ("ADL's") which include bathing, dressing, eating, hygiene, mobility, transfers, and toileting. (Stipulated)

7. The minor child is nonspeaking and visually impaired. The minor child is not mobile. The minor child is incontinent of both bowel and bladder. (Exhibit 1: Care Plan Assessment and Appellant's Testimony)

8. The minor child is fed through a gastrostomy tube ("g-tube") every 3 ½ hours daily as he is having a difficult time gaining weight and tolerating the feeds. The minor child gets five (5) feeds of Nourish formula daily. The minor child weighs approximately thirty-six pounds (36 lbs.). Each feeding can take 1-2 hours with an additional one-half hour for digestion because the minor child is having a difficult time tolerating the feedings.

Sometimes the feedings are broken down into smaller feedings to ensure he is tolerating the formula. The minor child is at risk for aspirating and choking during feeding. All medications are given through the g-tube. The Appellant and the minor child's caregivers prep his food for the g-tube which takes approximately 20-30 minutes prior to each feeding. The Appellant cleans his g-tube site regularly. (Appellant Testimony, Exhibit 4: Universal Assessment Outcome, and Exhibit B: [redacted] Letter of Medical Necessity)

9. Prior to the minor child's first feeding which begins between 2:00 am and 3:00 am, the Appellant ensures his chest airway is clear and administers the minor child's inhaler and Albuterol which can take up to 35 minutes. The minor child has a tracheostomy tube which the Appellant and his caregivers assist with its care. (Appellant Testimony and Exhibit 4: Universal Assessment Outcome)

10. The Appellant bathes the minor child daily, up to two times per day. The minor child sits in a medical bath chair and requires hands on support at bath time. The minor child's caregivers provide the hands-on assistance needed to undress and dress him and transport him to the bath. (Appellant Testimony, Exhibit 1: Care Plan Assessment, and Exhibit 4: Universal Assessment Outcome)

11. The Appellant and caregivers provide time to the minor child for play, and movement therapy to keep the minor child's muscles from tightening up and build bone strength. The minor child must be repositioned regularly to avoid skin breakdown because he is unable to do this on his own. (Appellant Testimony, Exhibit 1: Care Plan Assessment, and Exhibit 4: Universal Assessment Outcome)

12. The minor child is enrolled in public school and receives special education services. However, the minor child remains home during the heightened respiratory season because he is immunocompromised. The minor child has been hospitalized in the past due to respiratory illnesses. (Appellant Testimony, Exhibit 1: Care Plan Assessment, Exhibit 5: Revised CFC Individual Budget)

13. Participants under the CFC program are assessed annually and at any time when there is a change in their medical condition for which the participants can request a change in CFC hours. (Department Representative Testimony)

14. An access agency, such as Agency on Aging of South-Central Connecticut, completes the Universal Care Assessment with the participant and/or caregivers. The Universal Care Assessment is a standardized and systemic tool designed by the University of Connecticut

which calculates a level of need based on the data collected. The Department calculates the number of hours authorized under the CFC program by the outcome of a completed Universal Care Assessment. (Department Representative Testimony)

15. Under the CFC program, funding for ADL's and IADL's is determined using a standardized allocation chart. There are three different budget categories: CFC only - Budget A; CFC combined with Department of Developmental Services and Department of Mental Health and Addiction Services - Budget C; and Children - Budget D. The CFC program assumes student needs related to IADL's are being met by the student's school district for CFC recipients enrolled in public school and therefore not available though the CFC program. Budget D for children 17 years or younger accesses a percentage of the ADL budget allocation only, not the IADL budget since these services can be accessed through special education services. An adult who requires extensive hands on for 5 ADL's qualify for 43.75 hours of PCA per week under Budget A, whereas a child aged 5 – 10 years who requires extensive hands on for 5 ADL's qualifies for 22.50 hours of PCA per week under Budget D. (Exhibit 2: Budget Categories and Staff Attorney Testimony)

16. On August 23, 2023, [redacted] [redacted] ("UCM"), Universal Case Manager with Agency on Aging of South Central Connecticut conducted a reassessment of the minor child's services under the CFC program with the Appellant in her home. This included a functional assessment, budget tool kits, risk assessment and back up plan. The UCM determined the minor child's level of need ("LON") as a six (6), the highest possible, and the level of care ("LOC") as sub-acute. The minor child ratings for ADL's that included bathing, dressing, toileting, transferring, and eating as total dependence for all five (5) ADL's. The UCM noted not alert under cognitive status, not oriented, and needs medication supports beyond set ups for need factor results. Behavioral concerns include "hits self in head." (Exhibit 4: Universal Assessment Outcome Form)

17. Based on the Universal Care Assessment and CFC budgeting options, the UCM calculated the minor child's budget as $30,557.52 for 22.5 the maximum allowed under the CFC Budget D category for a child who requires extensive hands on assistance with 5 ADL's. 22.5 PCA hours x $26.32 standard PCA rate set by Connecticut x 4.3 weeks x 12 months = $30,557.52. (Exhibit 4: Universal Assessment Outcome Form, Exhibit 5: Revised CFC Individual Budget, Department Representative Testimony and Staff Attorney Testimony)

18. Based on the minor child's needs and the Appellant's request for additional hours under the PCA program, the UCM determined 25 hours per week the minor child currently receives is not sufficient to ensure the

health and safety of the minor child and requested an increase in the minor child's PCA budget from 22.5 hours $30,557.52 to $54,324.48 with 40 hours of PCA services beginning [redacted] 2023. 40 PCA hours x $26.32 standard PCA rate set by Connecticut x 4.3 weeks x 12 months = $54,324.48. (Exhibit 4: Universal Assessment Outcome Form, Exhibit 5: Revised CFC Individual Budget, Department Representative Testimony and Staff Attorney Testimony)

19. On [redacted] 2023, the UCM completed a Revised CFC Individual Budget form, signed by the UCM and Appellant, and a Budget Exception form requesting to increase the minor child's budget for PCA services from 25 hours per week (current allocation) to 40 hours per week under the CFC program and forwarded this to the Department for a clinical review. The increase in hours is requested to ensure the health and safety of the minor child. The UCM's justification for the increase in hours includes: the minor child is totally dependent in bathing, dressing, toileting, transfers, and eating. The minor child needs constant supervision due to an increase in seizures; the minor child is on oxygen and gets suctioned 5 times per day. The minor child is fed every 3-4 hours, repositioned every 30-45 minutes due to the development of red patches quickly, is undergoing testing for bone disease, medication management through a g-tube, and increased respiratory infections. (Exhibit 5: Revised CFC Individual Budget)

20. Clinical staff at the Department review all budget requests under the CFC program. (Department Representative Testimony)

21. CFC hours above the budgeting options may be increased if a participant under the program has extenuating circumstances which are supported by medical documentation. (Department Representative Testimony)

22. On [redacted] 2024, the Department determined the minor child remains eligible for 25 hours of PCA services under the CFC program which is 2.5 hours above the maximum allowed of 22.5 hours under the CFC Budget D for a [redacted] year old child. The Department denied the request for 40 service hours under the PCA program. (Hearing Record)

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] 2024. However, the close of the hearing record, which had been anticipated to close on [redacted] 2024, did not close for the admission of evidence until [redacted] 2024 at the Appellant's request. Because this [redacted]-day delay in the close of the hearing record arose from the Appellant's request, this final decision was not due until [redacted] 2024, and is therefore timely.

CONCLUSIONS OF LAW

1. Connecticut General Statute ("Conn. Gen. Stats.") § 17b-2(6) provides as follows:

   The Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

2. Title 42 of the Code of Federal Regulations ("C.F.R.") § 441.500(a) provides as follows:

   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.

   Federal regulation provides as follows:

   Community First choice is designed 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. § 441.500(b)

   Federal regulation provides as follows:

   In a manner that provides such services and supports in the most integrated setting appropriate to the individual's needs, and without regard to the individual's age, type or nature of disability, severity of disability, or the form of home and community-based attendant services and supports that the individual requires to lead an independent life.

   42 .F.R. § 441.515(b)

   The Department has the authority to administer the CFC program under the Connecticut State Plan Amendment No 15-012 as approved by Centers for Medicare and Medicaid Services ("CMS").

3. Federal regulation provides as follows:

   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 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.

42 C.F.R. § 441.535(a)-(d)

Connecticut State Plan Amendment ("SPA") Transmittal No 15-012 effective July 1, 2015 Attachment 3.1-K § 1(B) provides as follows:

The State determines initially, and at least annually, that individuals require the level of care provided in a hospital, nursing facility, an intermediate care facility for individuals with intellectual disabilities (ICF/IID), an institution providing psychiatric services for individuals under 21, or an institution for mental diseases for individuals aged 65 and older. The institutional level of care screen is completed by staff of the Department of Social Services on each individual referred to the program. Once an individual successfully completes the screen, the Department refers the individual to contracted entities for assessment. Staff at contracted entities completes the universal assessment for each individual. The universal assessment confirms institutional level of care and individual level of need.

SPA No 15-012 § 1(C) provides as follows:

The Universal Assessment (UA) is a comprehensive and person-centered assessment, surveying the –individual's physical, cognitive, and psychosocial functioning, and identifying risk factors, individual choices, and preferences, and the status of service needs. The UA identifies

needs that are met utilizing voluntary natural supports, and state plan and waiver services, thus allowing for a comprehensive assessment, including need for social supports, and services plan. The UA documents each individual's level of need and calculates that individual's budget allocation. Individuals are actively involved in the assessment process and have the opportunity to identify goals, strengths, and needs. Individuals affirm if they would like to identify anyone to participate in the planning process.

The assessors at contracted agencies who complete the universal assessment and confirm level of care assess the individual's service needs and level of care at least annually. The individual may be assessed more frequently if his or her functional needs change or if he or she or an authorized representative of the individual so requires. The assessment must include the date of review and the signature of the person documenting the assessment, indicating that the review has been completed and that the individual continues to meet the Level of Care (LOC) criteria. The assessor must also place a case note regarding this assessment in the individual's case management file. The assessor who conducts the assessments and provides ongoing monitoring is either a registered nurse (RN) licenses in Connecticut or a social worker who is a graduate of an accredited four -year college or university. The nurse or social services worker has a minimum of two years of experience in health care or human services, but may substitute a bachelor's degree in nursing, health, social work, gerontology or a related field for one year of experience.

SPA No 15-012 § 7 provides in pertinent part as follows:

Confirmation of a participant's level of care is determined by information gathered by assessors at contracted entities during initial assessment and annual re-assessment via face-to-face interviews utilizing the Universal Assessment (UA). Both assessment and re-assessment include a thorough evaluation of the client's individual circumstances.

The UA is based on the InterRAI tool. The UA is a validation tool used to confirm level of care and calculate a level of need based on the identified needs of the Appellant. The UA assesses a Appellant's Activities of Daily living (ADLs), and Instrumental Activities of Daily Living (IADLs) needs as well as taking into account their health, rehabilitation needs, and their natural supports.

The UCM correctly conducted a re-assessment of the minor child's level of care and level of need using the Universal Care Assessment tool as supported by federal regulation and the state plan approved by CMS.

4. State statute provides as follows:

   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-259(b)(a)

   “Clinical policies, medical policies, clinical criteria or any other generally accepted clinical practice guidelines used to assist in evaluating the medical necessity of a requested health service shall be used solely as guidelines and shall not be the basis for a final determination of medical necessity.” Conn. Gen. Stat. § 17b-259b(b)

5. Federal regulation provides as follows:

   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. § 441.520(a)

Federal regulation provides for the following definitions under the Community First Choice Option:

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) mean 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.

Health-related tasks means specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health-care professionals under State law to be performed by an attendant.

42 C.F.R. § 441.505

SPA 15-012 § 5(A) provides as follows:

Included Services: 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.

Attendant Care: Services Definition: The State will cover Attendant Care services, which are supports related to core activities of daily living including; physical assistance and/or verbal assistance to the individual in accomplishing any Activities of Daily Living (ADLs), or Instrumental Activities of Daily Living (IADLs). ADLs may include, but not limited to, bathing, dressing, toileting, transferring, and feeding. 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 to participate in the community. In accordance with section 20-101 of the Connecticut General Statute, attendants may complete health maintenance tasks. These tasks may include, but are not limited to, medication administration, wound care, and vital signs under the supervision of the CFC participant.

…

Limits on amount, duration or scope: The Department assigns an overall budget based on need grouping that is determined by algorithm. 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.

Federal regulation provides as follows:

Community First Choice may not include the following: Special education and related services provided under the Individuals with Disabilities Education Act that are related to education only, and vocational rehabilitation services provided under the Rehabilitation Act of 1973.

42 C.F.R. § 441.525(b)

SPA 15-012 § 5(B) provides as follows:

Included Services: For the Acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health related tasks.

Service Definition: Services to support the acquisition, maintenance, and enhancement of skill in order for the individual to accomplish ADLs, IADLs and health related tasks.

Providers for acquisition, maintenance, and enhancement of skill in order for the individual to accomplish ADLs, IADLs: Attendants

Providers for acquisition, maintenance, and enhancement of skill in order for the individual to accomplish health related tasks: Registered Nurses, Occupational Therapists, Physical Therapists, and Speech Therapists provide maintenance, and enhancement of skill in order for the individual to accomplish health related tasks. These services provide teaching strategies and educational opportunities for individuals to become more independent in their health-related task. These services are provided by licenses staff at home health agencies. Staff are required to complete a certification in person-centered planning.

Limit on amount and scope of services to support the acquisition, maintenance, and enhancement of skill in order for the individual to accomplish ADLs, IADLs and health-related tasks. Services associated with skill acquisition, maintenance and enhancement are on a per person basis. Support is time-limited and may not exceed 25 hours per three-month period. It is available only when there is a reasonable expectation that the individual will acquire the skills necessary to perform the task

within the time period. Services exceeding this limit may be re-authorized by the Department if significant progress has been made, or if services are determined to be medically necessary and there is a reasonable expectation that services will support skill acquisition.

The Department correctly determined the minor child relies on the Appellant and his caregivers to provide hands-on assistance for all ADL's including bathing, dressing, toileting, transferring, feeding, hygiene, and mobility qualifying him for services under the PCA program to support core activities of daily living.

The Department incorrectly failed to consider PCA services to support those core activities of IADL's. The Department's assumption that the Boards of Education are the provider of all IADL services and supports for school age children is not supported by federal regulation or the State Plan Amendment. Federal regulation states Community First Choice may not include special education and related services provided under the Individuals with Disabilities Education Act (IDEA) <u>that are related to education only</u>. Special education services such as transportation to and from school, physical therapy, occupational therapy, speech and language services, development of motor skills, therapeutic recreation services, special education instruction in classrooms or at home, or vocational education are examples of services which may be provided through special education to a child with a disability and not under the CFC program. However, based on the minor child's functional status as supported by the 2022 and 2023 Universal Assessment Outcome Forms, the 2022 and 2023 Revised CFC Individual Budget forms, 2022 and 2023 Budget Exception forms, and Appellant testimony, the minor child requires total assistance with IADL's such as medication management, food preparation, or transportation to and from medical appointments whether at school or at home and these core activities are supported under the CFC PCA program. The undersigned recognizes such activities for any [redacted] year old would be provided by a parent (natural support), however the minor child's diagnoses, the health risks surrounding his care, and his extenuating circumstances allow for additional supports under the CFC program.

6. "A State may choose one or more of the following as the service delivery model to provide self-directed home and community-based attendant services and supports: States have the option of proposing other service delivery models. Such models are defined by the State and approved by CMS." 42 C.F.R. § 441.545(c)

SPA No 15-012 § 3 provides in pertinent part:

The State chose other service delivery model.

The State has an Other Service Delivery Model that largely aligns with the self-directed model with service budget. The individual has a service plan and an individual service budget based on the person-centered assessment of need. The individual has the opportunity to hire, supervise, and train their own staff as well as the opportunity to manage their own budget, either on their own or with support from someone of their choosing, but not the individual's spouse of legally liable family member.

Individual service budgets are based on need grouping categories. Need grouping categories reflect expected resource utilization based on functional needs and risk. There are 8 different categories of need based on the algorithm. Risks identified within the various domains are weighted to determine a score. Domain scores are compiled to determine a total score. Scores are grouped within the 8 categories. The state utilizes the applicable CFC rate as set forth in Attachment 4.19-B in developing individual service budgets.

SPA No 15-012 Attachment 4.19-B provides in pertinent part that CFC services are paid pursuant to the current fee schedule for CFC which was set as of July 1, 2015, and is effective for services provided on or after that date.

Federal regulation provides as follows:

For the self-directed model with a service budget, a service budget must be developed and approved by the State based on the assessment of functional need and person-centered service plan and must include all of the following requirements:

1. The specific dollar amount an individual may use for Community First Choice services and supports.
2. The procedures for informing an individual of the amount of the service budget before the person-centered service plan is finalized.
3. The procedures for how an individual may adjust the budget including the following:
    i. The procedures for an individual to freely adjust amounts allocated to specific services and supports within the approved service budget.
    ii. The circumstances, if any, that may require prior approval by the State before a budget adjustment is made.
4. The circumstances, if any, that may require a change in the person-centered service plan.
5. The procedures that govern the determination of transition costs and other permissible services and supports as defined at § 441.520(b).

6. The procedures for an individual to request a fair hearing under Subpart E of this title if an individual's request for a budget adjustment is denied or the amount of the budget is reduced.

42 C.F.R. § 441.560(a)

Federal regulation provides as follows:

The budget methodology set forth by the State to determine an individual's service budget amount must:
1. Be objective and evidence-based utilizing valid, reliable cost data.
2. Be applied consistently to individuals.
3. Be included in the State plan.
4. Income a calculation of the expected cost of community first Choice services and supports, if those services and supports are not self-directed.
5. Have a process in place that described the following:
   i. Any limits the State places on Community First Choice services and supports, and the basis for the limits.
   ii. Any adjustments that are allowed and the basis for the adjustments.

42 C.F.R. § 441.560(b)

"The State must have procedures in place that will provide safeguards to individuals when the budgeted service amount is insufficient to meet the individual's needs." 42 C.F.R. § 441.560(c)

"The budget may not restrict access to other medically necessary care and services furnished under the State plan and approved by the State but which are not included in the budget 42 C.F.R. § 441.560(e)

"The State must have a procedure to adjust a budget when a reassessment indicates a change in an individual's medical condition, functional status, or living situation." 42 C.F.R. § 441.560(f)

The Department incorrectly determined 25 PCA hours were sufficient to meet the minor child's needs and denied the Appellant's request for 40 hours of PCA services under the CFC. Although the 8 different categories of need for which the algorithm uses to establish the level of need cannot be determined by the hearing record, the Department scored the minor child's level of need as 6 out of 6, the highest level of need under the CFC program. The SPA states, "the individual has a service plan and an individual service budget based on the person-centered assessment of need. The minor child's needs were assessed at the highest level and the CFC Budget D of 22.5 hours

cannot ensure the health and safety of the minor child due to his complex diagnosis and the high levels of support needed in his daily life.

The minor child's educational support services through special education should not preclude him from receiving services for both ADL's and IADL's under the CFC program while at home. The UCM who completed the Universal Care Assessment with the family supported the outcome as 40 hours of PCA services by submitting the Budget Exception Form to the Department requesting the additional hours. The minor child is not able to perform essential tasks such as bathing, dressing, toileting, transferring, hygiene, and feeding without hands on assistance from caregivers. The time spent by the Appellant and caregivers bathing, dressing, transferring, personal hygiene, and feeding the minor child daily, substantiate a large portion of time seven days a week. The inability to perform essential activities of daily living can lead to unsafe environmental conditions, risk of injury, poor nutrition, dehydration, further muscle and bone weakness, skin deterioration and/or hospitalizations. Additionally, the minor child is unable to prepare and administer his feedings, manage his medications, or manage his medical appointments without the assistance from the Appellant and his caregivers. Even with the natural supports provided by the Appellant and special education services, the increase in PCA hours from 25 hours to 40 hours is medically necessary and clinically appropriate for the minor child to attain and maintain his achievable health. His life is completely dependent on his caregivers.

The correct budget for the minor child under the CFC equals $54,324.48.

40 PCA Hours/week x 4.3 weeks x 12 months x $26.32 CFC pay rate = $54,324.48.

DECISION

The Appellant's appeal is granted.

ORDER

1. The Department must rescind their [redacted] 2024 denial to increase the minor child's PCA services hours from 25 hours to 40 hours per week under the CFC program.

2. The Department must approve 40 PCA service hours under the CFC program for the minor child and adjust the minor child's individualized budget under the CFC program from 25 PCA service hours per week to 40 PCA services hours per week.

3. The Department must issue a new Notice of Action to support the 40 hours of PCA services authorized under the CFC program for the minor child.

4. The Department must implement the increase in PCA service hours within 14 days of the date of this decision.

5. Compliance is due 14 days from the date of this hearing decision.

Lisa A. Nyren
Lisa A. Nyren
Fair Hearing Officer

CC: Cynthia Cartier, JD LLM, Staff Counsel
Eric Bulewich, SW, Community Options
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.

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, 165 Capitol Avenue, 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.