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

PROCEDURAL BACKGROUND

On , 2024, the Department of Social Service's (the "Department") sent ("Appellant's parent/Conservator") a Notice of Action ("NOA") stating that it reassessed the Appellant's Community First Choice ("CFC") budget to be $47,533.92 annually, with a decrease in her Personal Care Assistant ("PCA") hours from thirty-five hours and two overnight hours per week to thirty-five hours per week, effective 2024.

On , 2024, the Appellant's parent/Conservator requested an administrative hearing to contest the reduction of approved PCA hours.

On 2024, the Office of Legal Counsel, Regulations, and Administrative Hearings (the "OLCRAH") issued a notice scheduling an administrative hearing to be held on , 2024 via video connection with the Department's Regional Office located in CT.

On , 2024, 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 with the participation of the following individuals:

, Appellant's parent/Conservator
Cynthia Cartier Esq., DSS Staff Counsel, OLCRAH
Janette Steward, Community First Choice, Nurse Consultant

Eric Bulewich, DDS, Community First Choice, Social Worker
Clarissa James, Universal Assessor, Connecticut Community Care
Joseph Alexander, Administrative Hearing Officer, DSS OLCRAH

The Appellant was not present and did not participate in the hearing as her interests were represented by her parent/Conservator.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly revised the Appellant's CFC service budget of $47,533.92 annually and PCA hours of thirty-five per week.

FINDINGS OF FACT

1. The Appellant is a recipient of the Medicaid program who accesses her CFC services through the Department of Developmental Services ("DDS"). These services provide support for her Activities of Daily Living ("ADLs"), and Instrumental Activities of Daily Living ("IADLs") tasks. (Hearing record)

2. The Appellant has been diagnosed with Cerebral Palsy and Intellectual Disability. (Hearing Record)

3. The Appellant is [redacted] years old (DOB [redacted]) and resides in the community with her mother, [redacted], in a single-family home. (Hearing Record)

4. During the Public Health Emergency ("PHE") the Department performed minimal assessments on clients, thus, many clients were not subject to a decrease of their CFC annual budget or PCA hours. (Hearing Record)

5. Connecticut Community Care ("CCC") is the Department's contractor for the purpose of assessing the level of care and service needs for the CFC program. (Hearing Record)

6. During the PHE, the Appellant's yearly budget was calculated to be $71,262.69. (Exhibit 1: CFC Revised Budget)

7. On [redacted] 2024, the Department, under the CFC program, finalized an annual assessment to evaluate the Appellant's core ADL and IADLS needs. A Social Worker from CCC performed an in-person assessment at the Appellant's home with assistance from the Appellant's mother. The assessment concluded the Appellant requires maximum assistance with bathing, dressing, toileting and transferring (ADLs) and the is independent with eating (IADL). (Hearing Record, Exhibit 1: Universal Assessment Outcome Form)

8. The Universal Assessment Outcome Form reflects a level of need ("LON") score of 4 with ADLS's requiring maximum assistance. One ADL translates into 8.75 hours totaling 35 hours per week (4 x 8.75). (Hearing Summary, Exhibit 1: Universal Assessment Outcome Form)

9. A Clinical Nurse at the Department reviewed the Universal Assessment and determined the appropriate level of support for the Appellant is thirty-five hours per week to maintain her residing in the community. (Hearing Record)

10. On [redacted], 2024, the Department issued a NOA to the Appellant's parent/Conservator informing her the Appellant's revised CFC annual budget would be $47,533.92 equating to 35 hours per week which can be used "as needed.". (Exhibit 1: NOA dated [redacted])

11. The Appellant's parent/Conservator is seeking an increase to the PCA hours to include the two overnight hours per week the Appellant was receiving prior to the [redacted], 2024, reduction. (Appellant parent/Conservator Testimony)

12. The Appellant is receiving additional support through DDS; therefore, DDS can provide additional services to cover the Appellant's need for overnight care services. (Department Testimony)

13. The issuance of this decision is timely under Connecticut General Statutes Section 17b-61(a), which requires that the agency issue a decision within [redacted] days of the request for an administrative hearing. The Appellant's parent/Conservator requested an administrative hearing on [redacted], 2024, making this decision due no later than [redacted], 2024.

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 ("C.F.R") § 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. 42 C.F.C § 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. 42 C.F.R. § 441.505 provides for definitions and states in part that activities of daily living (ADLs) mean 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.

   The Department correctly reviewed the Appellant's ability to perform ADLs and IADLs.

   The Department correctly determined the Appellant requires maximum assistance with bathing, dressing, toileting and transferring (ADLs).

   The Department correctly determined the Appellant does not require assistance with eating (IADL).

5. 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.

6. 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 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.

7. 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.

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

8. 42 C.F.R. § 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.

   42 C.F.R. § 441.540(c) provides for reviewing the person-centered service plan. The person-centered service plan must be reviewed, and revised upon reassessment of functional need, at least every 12 months, when the individual's circumstances or needs change significantly, and at the request of the individual.

The Department correctly determined the Appellant is subject to an annual review to determine that, in the absence of home and community-based attendant services and supports provided by the CFC program, the Appellant would otherwise require the level of care provided in a hospital, nursing home, or immediate care facility for individuals with intellectual disabilities.

9. 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.

   The Department correctly determined the Appellant's mother is a source of natural support for her ADLs and IADLs.

10. 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).

    Based on a LON of four, the Department correctly determined that thirty-five weekly hours of PCA services provided through CFC, with the natural supports

provided by the Appellant's mother, do not place the Appellant at risk of institutionalization.

The Department correctly determined that additional PCA hours (two overnight hours) provided through CFC are not medically necessary as the Appellant and her parent/Conservator have access to hours/services through DDS which can be used to cover the overnight hours.

Based on the evidence and testimony provided, the Appellant's yearly budget of $47,533.92 is sufficient to meet her needs.

DISCUSSION

During the COVID-19 PHE the Appellant's yearly budget was calculated to be $71,262.69. During the PHE, the Department was not authorized to reassess and revise the Appellant's weekly PCA hours until the PHE ended in [redacted] 2023. The Department did not reassess the Appellant's case until [redacted], 2024, and the PCA hours decreased effective [redacted] 2024. The Appellant received an additional [redacted] months ([redacted] 2023-[redacted]2024) of extra (two overnight hours) PCA hours after the PHE ended.

The Appellant's parent/Conservator can use hours provided by DDS to meet the Appellant's need for two overnight hours.

DECISION

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

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Joseph Alexander
Administrative Hearing Officer

CC: hearings.commops@ct.gov
Eric Bulewich, DDS, Community First Choice Social Worker
Cynthia Cartier, Esq., DSS, OLCRAH
Janette Steward, Community First Choice, Nurse Consultant
Clarissa James, Universal Assessor, Connecticut Community Care
[redacted], Conservator

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 §4-1181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, 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 with **45** days of the mailing of this decision, or **45** days after the agency denies 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 fooled 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 06105-3725. 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 her 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.