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

[redacted] **2024**
Signature Confirmation

Case # [redacted]
Client ID# [redacted]
Request# 239096

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted], 2024, the Department of Social Services (the "Department") sent [redacted] (the "Appellant"), a Notice of Action ("NOA") stating that it reassessed his Community First Choice ("CFC") budget and found that he no longer qualifies for the program, effective [redacted] 2024.

On [redacted] 2024, the Appellant requested an administrative hearing to contest the discontinuance of his CFC program budget and PCA hours.

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 participated in the hearing:

[redacted], Appellant
[redacted], Appellant's Mother
[redacted], Appellant's Father
Randell Wilson, Program Manager, CFC
Janette Steward, RN, Nurse Consultant, CFC
Kristin Haggan, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department correctly discontinued the Appellant's CFC program budget and PCA hours based on an assessment of his level of need.

FINDINGS OF FACT

1. The Appellant is a recipient of the Medicaid program and in [redacted] 2020 was granted services under the CFC program to provide support for his Activities of Daily Living ("ADLs"), Instrumental Activities of Daily Living ("IADLs"), and health-related tasks. (*Hearing record, Department's Testimony*)

2. On [redacted] 2023, the Department approved the Appellant for an individual budget of $34,971.38 under the CFC program. (*Department's Testimony, Exhibit 1: NOA)*

3. The Appellant is [redacted] years old (DOB: [redacted]) and is legally blind. (*Hearing Record, Department's Testimony, Appellant's Testimony, Exhibit 6:* [redacted] *Letter*)

4. The Appellant and his [redacted]son reside with the Appellant's mother in her home. The Appellant's mother helps with his daily care. The Appellant's father also resides in the home as a live-in aide and takes care of the Appellant daily. (*Hearing Record, Department's Testimony, Appellant's Testimony*, *Mother's Testimony*, *Father's Testimony*, *Exhibit 7: HUD Live-In Aide Certification*)

5. The Appellant utilizes PCAs to assist with his daily activities such as preparing meals, getting in and out of the shower, moving around the house, completing housekeeping tasks, medication management, and transportation to appointments or activities outside of the home. His mother and father also assist with his daily care. (*Appellant's Testimony, Parents' Testimony*)

6. During the Public Health Emergency ("PHE") the Department performed minimal assessments on clients, and the clients retained the maximum hours of PCA care. The Appellant benefited from additional hours of PCA services during this time. (*Department's Testimony*)

7. In [redacted] 2023, the PHE ended, and the Department began performing assessments for CFC clients. (*Department's Testimony*)

8. The Agency on Aging of South Central Connecticut ("AOASCC") is the Department's contractor for the purpose of assessing the level of care and service needs for the CFC program. (*Department's Testimony*)

9. On [redacted], 2024, a social worker from AOASCC visited the Appellant's home and conducted a face-to-face assessment. The Appellant and his mother fully participated in the assessment and answered all questions. The social worker assessed ADLs, IADLs, physical status, mental status, functional status, living situation, transportation

needs, behavioral needs, and any changes to the Appellant's health, medications, and family supports. (*Hearing Summary, Department's Testimony, Exhibit 2: Universal Assessment*)

10. The Universal Assessment ("UA") outcome reflects that the Appellant is independent with bathing, toileting, transferring, and eating, and needs supervision or cueing with dressing. The number of ADLs considered "extensive assistance, max assistance, or total dependence" was determined as zero. (*Exhibit 2*)

11. The UA outcome reflects a Level of Need ("LON") score of 1 with no ADLs requiring extensive, maximum assistance, or total dependence. A LON 1 with no ADLs allows for 0 hours of in-home supports per week. (*Department's Testimony, Exhibit 4: CFC Budget Categories*)

12. "ICF" refers to intermediate care facilities and "IID" refers to individuals with intellectual disabilities. The LON 1 budget is only available for confirmed ICF/IID level of care ("LOC"). The Appellant is not considered ICF/IID LOC. (*Exhibit 2, Department's Testimony*)

13. On [redacted] 2024, the Department, under the CFC program, finalized the Appellant's annual UA which shows the Appellant received a LON score of 1, LOC is "not applicable", and determined a $0 cost allocation. (*Exhibit 2)*

14. There is no evidence that the Appellant requires additional hours of care based on medical necessity. (*Hearing Record*)

15. A clinical nurse at the Department reviewed the comprehensive assessment of needs, including the detailed assessment of core ADLs, and determined that the outcome was correct, that the Appellant does not meet nursing facility ("NF") LOC, and absent PCA care he would not be placed in a nursing facility. The Department determined that NFLOC is not medically necessary for the Appellant. (*Hearing Summary, Department's Testimony*)

16. On [redacted], 2024, the Department hand-delivered a Notice of Action to the Appellant indicating that it was discontinuing the Appellant's CFC individual budget and PCA hours because upon reassessment he no longer meets the LOC for CFC. (*Exhibit 1*)

17. The issuance of this decision is timely under section 17b-61(a) of Connecticut General Statutes, which requires that the Department issue a decision within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [redacted] 2024; therefore, this decision is due no later than [redacted], 2024. (Hearing Record)

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.") 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.

   Based on the Universal Assessment conducted by the Department on [redacted], 2024, the Department was correct to determine that the Appellant is independent with bathing, toileting, transferring, and eating and that he requires cueing and supervision with dressing.

5. 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.

6. 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.

7. 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.

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

8. Title 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 if in the absence of the home and community-based attendant services and supports provided by the CFC program, the Appellant would otherwise require the level of care furnished in a hospital, a nursing facility, or an intermediate 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 was correct when it determined that the Appellant's mother is a source of natural support for his ADLs and IADLs.

   The Appellant's father is a live-in aide and also provides support for the Appellant with his 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 the LON of 1 with no ICF IID level of care, the Department correctly determined that the services provided by the CFC program are not medically necessary or clinically appropriate for the Appellant.

    Based on the evidence provided, the Department correctly discontinued the Appellant's PCA hours and budget under the CFC Program.

DISCUSSION

When the Department conducted the universal assessment, only the Appellant's mother was found to be living with and helping the client daily with his ADLs and IADLs, however, the Appellant's father was present at the hearing and explained that he is a live-in aide who also cares for the Appellant daily.

At the hearing, the Appellant expressed that he relies on his parents more than he would like to. The Department suggested several programs in the community such as [redacted] and [redacted], and encouraged the Appellant to reach out to these programs as they may prove beneficial for increasing his independence.

DECISION

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

Kristin Haggan

Kristin Haggan
Fair Hearing Officer

CC: hearings.commops@ct.gov
Randell Wilson, Program Manager, Community First Choice
Cynthia M. Cartier, Esq., DSS, OLCRAH

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.