STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3726

[redacted] **2018**
Signature Confirmation

Client ID # [redacted]
Request # [redacted]

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2018, the Department of Social Services (the "Department") issued a Notice of Action/Service Budget Reduction stating that it was reducing the Community First Choice ("CFC") budget for [redacted] (the "Recipient") from $38,209.37 to $16,652.76, effective [redacted], 2018.

On [redacted], 2018, [redacted], the Recipient's [redacted] (the "Appellant") requested an administrative hearing to contest the Department's decision to reduce such benefits.

On [redacted] 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing [redacted] 2018.

On [redacted], 2018, the Appellant requested to reschedule the hearing.

On [redacted] 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2018.

On [redacted], 2018, 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. The following individuals were present at the hearing:

[redacted], the Appellant, the [redacted]
[redacted],
Deborah Fox, Community Nurse Coordinator for the Department
Diermalys Sepulveda, Assistant Director, Agency on Aging of South Central
Shelley Starr, Hearing Officer

The hearing record remained open until [redacted], 2018, for the submission of additional evidence from the Department and to allow time for the Appellant to review and respond. The additional evidence was received from the Department. No response was received from the Appellant. The hearing record closed on [redacted], 2018.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly reduced the Recipient's CFC service budget based on a reduction in the Appellant's level of need.

FINDINGS OF FACT

1. The Recipient is [redacted] years old, [redacted], with a diagnosis of Down Syndrome and intellectual disability since early development. (Hearing Summary; Department's Testimony)

2. The Recipient receives Medicaid services through the State of Connecticut Department of Social Services CFC plan and the Department of Developmental Services ("DDS"). (Hearing Summary; Exhibit 7: DDS Level of Need Assessment)

3. On [redacted], 2017, the Recipient was assessed for the CFC services and was approved for a total allocation for services plan of $38,209.37. This allowed 43.75 hours per week of Personal Care Attendant ("PCA") support based on comprehensive assessments related to ADLs, IADLs and health related tasks. (Hearing Summary; Department's Testimony; Hearing Record)

4. The Department redesigned the eligibility for CFC services to meet new federal guidelines and to implement a revised Universal Assessment using the clinical criteria to determine the level of care and service needs budgets. (Hearing Record; Department's Testimony)

5. On [redacted] 2018, the Department conducted a reassessment of the Appellant's level of need and service plan, and determined that the Appellant needed maximum assistance with bathing and toileting, limited assistance with dressing and eating,

and was independent with transferring. (Hearing Summary; Exhibit 8: CFC 2018 Plan)

6. Since the last assessment, the Appellant began participating in a Medicaid funded Group Day Program through DDS of fourteen (14) hours per week with an approved budget of $15,053.00 per year. This includes but is not limited to assistance with ADLs and IADLs. (Hearing Summary; Department's Testimony; Hearing Record)

7. The Recipient participates in a Group Day program provided through her DDS services, which are services and supports to individuals related to acquisition, improvement and/or retention of skills and abilities to prepare and support an individual for work and/or community participation and/or meaningful retirement activities, or for an individuals who has their own business, and could not do so without this direct support. (Hearing Summary)

8. The Department determined based on their review of the Recipient's medical condition and needs for support, that the current allocation for PCA support would be reduced to $16,552.76 or 17.5 hours per week, effective [redacted], 2018, in addition to informal family support and the DDS Group Day Program. (Hearing Summary; Exhibit 8: CFC 2018 plan)

9. The Appellant refused to sign the new CFC care plan as he did not agree with the decrease in hours of the Recipient's care plan. (Hearing Record; Exhibit 8: Revised CFC Budget)

10. On [redacted], 2018, the Department issued a Notice of Action to the Appellant informing him that based on the reassessment of the Recipient's level of need the personal care assistance budget would be reduced to $16,653.76 equal to 17.5 hours of PCA per week, effective [redacted] 2018. (Exhibit 8: Revised CFC Individual Budget and Universal Assessment)

11. The Recipient lives with her parents and her adult brother. ([redacted] Testimony; Exhibit 8: Universal Assessment)

12. The Recipient is alert and oriented. (Exhibit 8: Universal Assessment; [redacted] Testimony)

13. The Recipient has no behavioral concerns. (Exhibit 8: Universal Assessment)

14. The Recipient needs medication supports beyond set-up and reminders. (Exhibit 8: Universal Assessment; [redacted] Testimony)

15. The Recipient needs maximum assistance with bathing for her safety and because [redacted] does not always bathe herself completely. ([redacted] Testimony; Exhibit 8: Universal Assessment.)

16. The Recipient needs maximum assistance when toileting as she needs assistance with the process and hygiene. ([redacted] Testimony; Exhibit 8: Universal Assessment)

17. CFC services have been approved for 2.5 hours per day for bathing and toileting, which equals 17.50 hours of services. (Hearing Summary)

18. The Recipient needs limited assistance with eating as [redacted] can feed herself; however, she needs direction with meal preparation and food proportions. [redacted] Testimony; Exhibit 8: Universal Assessment)

19. The Recipient needs limited assistance with dressing as she can dress herself; however, she needs supervision with the proper placement of the clothing and coordinating of her clothing. [redacted] Testimony; Universal Assessment)

20. The Recipient is independent with transferring and requires no mobility assistance. ([redacted]s Testimony; Exhibit 8: Universal Assessment)

21. The Recipient cannot be left alone as she requires continual supervision to live safely at home. (Appellant's Testimony; [redacted])

22. The Recipient is generally healthy and has no recent hospitalizations. ([redacted] Testimony)

23. The Recipient has a gym membership that [redacted]requently utilizes with her mother. ([redacted] Testimony)

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 ("CFR") § 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 CFR § 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 (ADL's), instrumental activities of daily living (IADLs), and health-related tasks through hands-on assistance, supervision, or cueing.

4. 42 CFR § 441.505 provides for definitions and states in part that Activities of daily living (ADLs) means basic personal everyday activities including, but not limited to tasks such as eating, toileting, grooming, dressing, bathing, and transferring. Instrumental activities of daily living (IADLs) means activities related to living independently in the community, including but not limited to, meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone or other media, and traveling around and participating in the community.

5. 42 CFR § 441.510 provides in part that to receive Community First Choice services 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.

6. Title 42 CFR § 441.520 (a) provides for included services and states that 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 and 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.

   The Department correctly determined that the Recipient needs maximum assistance with bathing and toileting, limited assistance with dressing and eating and is independent with transferring.

7. 42 CFR § 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 telemedicaine.
(b) Assessment information supports the determination that an individual requires Community First Choice and also supports the development of the person-centered services 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 functional needs assessment, including its DDS contractor's assessment, to determine the Recipient's service plan and budget.

8. Title 42 CFR § 441.540(b)(5) 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: 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.

9. Connecticut State Plan Amendment ("SPA") no 15-012, pursuant to section1915(k) of the Social Security Act, (5)(A) provides for included limits on amount, duration or scope of included services and states that 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.

The Department correctly determined that the Recipient receives natural supports from [redacted]

10. Title 42 CFR § 441.510(d) & (e) provides that (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)(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 that the Recipient's DDS waiver provides services and support for improvement and retention of her IADLs in an employment or community environment, including assistance with [redacted] ADLs, while in the day program.

    The Department incorrectly determined that the Recipient is not permitted to receive duplication of services through waiver supports.

11. Section § 17b-259b of the Connecticut General Statutes provides that: (a) 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. [Emphasis added]

    Based on the CFC services review of the Recipient's physical, mental and functional assessment and supports, including informal supports, the Department incorrectly determined that the Recipient required only 17.50 hours of CFC services per week or 2.5 hours per day, for maximum assistance with bathing and toileting. It failed to consider the Recipient's need for limited assistance with dressing and eating in her home, including assistance with medications beyond set up, not related to the DDS services provided at the day program.

The Department did not provide sufficient evidence that the Recipient does not require the remaining 12.25 hours per week that were eliminated from the CFC budget (43.75 – 14.00 – 17.5 = 12.25) and that were not being provided by informal supports or the DDS waiver services. There is no evidence that there has been a decrease in the Recipient's needs since the DDS Waiver services began.

The Department incorrectly determined that the remaining 12.25 hours per week of CFC services are not medically necessary pursuant to Section § 17b-259b(a)(2) of the Connecticut General Statutes.

DISCUSSION

Community First Choice is a benefit available to Medicaid recipients to provide services in home to individuals who would otherwise require institutionalization as determined by state standards.

Based on the testimony and evidence provided, CFC correctly determined that the Recipient remains eligible for services based on their assessment of the Recipient's level of need. The evidence demonstrates however, that CFC incorrectly reduced the Recipient's PCA hours in review of past and present documentation, including a recent home visit, approval through DDS for two days per week (14 hours) participation in a Group Day Program, including informal family support, in accordance with the new Universal Assessment guidelines. It approved 2.5 hours of care per day for 17.50 per week for bathing and toileting, but failed to approve hours to cover the Recipient's needs with eating, dressing and medication support. The additional hours initially approved for all the Recipient's needs were 43.75 hours per week. Since the Recipient receives 14 hours per week from the DDS waiver, there is no evidence to support a decrease in her CFC budget to less than 29.75 hours per week to provide for her needs outside of the day program.

At the hearing, the Recipient's [redacted] advised that they have noticed a recent decline in their [redacted] abilities which has not been reported to DDS. They are encouraged to report their observations for further assessment.

DECISION

The Appellant's appeal is **GRANTED IN PART AND DENIED IN PART.**

ORDER

1. The Department shall allow the Recipient an additional 12.25 hours of PCA under her CFC plan, effective [redacted].

2. Proof of compliance is due to the undersigned by [redacted], by submission of a revised budget and notice of action.

Shelley Starr,
Hearing Officer

Pc: Dawn Lambert, DSS, CO
Sallie Kolreg, DSS, CO
Lisa Bonetti, DSS, CO
Christine Weston, DSS, 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 06105-3730.

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.