

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

██████████ 2018
Signature Confirmation

Case ID # ██████████
CL ID # ██████████
Request ID # ██████████

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (the "Department") issued a Notice of Action ("NOA") on the behalf of ██████████ (the "Appellant") to the Appellant's Authorized Representative, ██████████ (the "AREP") indicating that the Appellant's Community First Choice ("CFC") Individual Budget amount would be reduced from \$19,866.14 to \$8,326.38 per year, due to a reduction in Personal Care Assistance ("PCA") service hours to 8.75 hours per week effective ██████████ 2018, based on a reassessment of the Appellant's level of need.

On ██████████ 2018, the Appellant's AREP requested an administrative hearing to contest the Department's to take such action.

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

On ██████████ 2018, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

[REDACTED], Appellant
 [REDACTED], Appellant's AREP and mother
 [REDACTED], Appellant's Witness
 Dawn Lambert, Department's Representative
 Sybil Hardy, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department correctly reduced the Appellant's CFC service budget based on the Appellant's current level of need.

FINDINGS OF FACT

1. On [REDACTED] 2017, the Department conducted an assessment of the Appellant's level of need and determined that the Appellant required assistance with his activities of daily living ("ADLs") and his instrumental activities of daily living ("IADLs"). (Hearing Summary, Exhibit 2: CT DDS Level of Need Assessment and Screening Tool, [REDACTED] 017)
2. On [REDACTED] 2017, the Department approved the Appellant's service plan of \$19,866.17 allowing him to receive PCA services. (Hearing Summary, Exhibit 2)
3. The Appellant's initial budget was approved at a flat rate with no specific amount of hours indicated for the hearing record. (Department's Testimony)
4. Under the original budget, the Appellant was receiving funding that allowed him to participate in social activities. (AREP's Testimony, Department Representative's Testimony)
5. The Appellant's DSS budget includes home delivered meals. The Appellant brings his lunch to his day program. The Appellant's PCA and AREP prepare his other meals. (Ex. 7: Revised CFC Individual Budget, not dated)
6. The Department redesigned the eligibility for CFC services to meet new federal guidelines and to implement a revised Universal Assessment. The Department contracted with the [REDACTED] to determine level of care needs and service plan budgets. (Hearing Record, Exhibit 3: Disclosure Information, [REDACTED]/18)
7. The Department's revised Universal Assessment guidelines standardized the assessment process by linking clinical responses to assessment questions and using clinical criteria to determine the level of care and service needs budgets. (Hearing Summary)
8. On [REDACTED] 2018, the [REDACTED] conducted a reassessment of the Appellant's level of need and service plan, and

determined that the Appellant needs extensive assistance with bathing and is independent with dressing, toileting, transferring and eating. (Exhibit 8: Universal Assessment Outcome Form, [REDACTED]/18)

9. The Appellant's Level of Need was scored at 2 and because of his intellectual disability and eligibility for the waiver program he was determined categorically eligible for the CFC program. (Department Representative's Testimony, Exhibit 8)
10. The Department determined that the AREP provides all of the Appellant's needs; therefore, he does not need the extra services for his IADLs. (Department's Representative's Testimony)
11. On [REDACTED] 2018, the Department of Developmental Services ("DDS"), completed a reassessment for their program and determined that the Appellant is independent of the following ADLs: dressing, eating, mobility and toileting. (Exhibit 3 CT DDS Level of Need Assessment and Screening Tool, [REDACTED] 18)
12. On [REDACTED] 2018, DDS determined in their reassessment that the Appellant requires assistance with bathing, medication management, using the telephone, household chores, shopping and meal planning, meal preparation and cooking, budgeting and money management and transitioning to and from activities. (Exhibit 3)
13. The Appellant is 49 years of age [REDACTED] (Exhibit 2)
14. The Appellant has a medical diagnosis of Down Syndrome, GERD (acid reflux or reflux esophagitis), gout, and irritable bowel syndrome, a heart condition with a pacemaker, high cholesterol, hyperthyroid, intellectual disability and varicose veins. (Appellant's Testimony, Exhibit 3)
15. The Appellant's cognitive status is alert and oriented. (Exhibit 8)
16. The Appellant has no behavioral concerns. (Exhibit 8)
17. The Appellant cannot do anything without supervision. (AREP's Testimony)
18. The Appellant lives with the AREP in an apartment. (AREP's Testimony)
19. The AREP is 75 years old. (AREP's Testimony)
20. The AREP has medical conditions that make it difficult to do everything for the Appellant. She has a heart condition and difficulty with bending. (AREP's Testimony)
21. The AREP works 4 hours on Tuesdays. (AREP's Testimony)
22. The Appellant and his AREP do not have a vehicle. They rely on the PCA to take them grocery shopping and any other activities outside the home. (AREP's Testimony)

23. The PCA takes the Appellant to social activities with her own family. She is not paid during this time. (AREP's Testimony)
24. The Appellant requires medication supports beyond set-up and this is done by his AREP. (Department Representative's Testimony, Exhibit 8)
25. The Appellant attends an [REDACTED] sponsored day program Seals in [REDACTED] four days per week from 7:15 to 3:30 pm. This program includes employment one day per week at the [REDACTED] in [REDACTED] where he [REDACTED]. [REDACTED] Transportation and a job coach are provided by [REDACTED] for this activity. (Appellant's Testimony, Appellant's Witness' Testimony, AREP's Testimony)
26. The Appellant's PCA assist the Appellant with extensive bathing once a week because he has a pacemaker which cannot get wet and he does not like to get water in his eyes. (AREP's Testimony; Hearing Request, letter dated [REDACTED] 2018)
27. The Appellant's PCA assists the Appellant with dressing by laying out his clothes. The Appellant does not understand appropriate clothing choices based on weather conditions due to his intellectual disability. (AREP's Testimony; Hearing Request, letter dated [REDACTED] 2018)
28. The Appellant's PCA takes the Appellant grocery shopping once a week which can take up to 2-3 hours because the Appellant assists with the shopping. (. (AREP's Testimony; Hearing Request, letter dated [REDACTED] 2018)
29. The Appellant's PCA performs light housework for the Appellant in his room and cleans the bathroom. (AREP's Testimony; Hearing Request, letter [REDACTED] 2018)
30. The PCA cooks and prepares the Appellant's meals because of his medical condition (GERD, Irritable Bowel Syndrome) and does his laundry twice a week, one day for whites and one day for darks. (AREP'S Testimony)
31. The Appellant is supervised by the AREP or the PCA if he is out in the community. (AREP's Testimony)
32. The AREP has agreed to alleviate and assume any risks identified in the Appellant's plan. (Exhibit 10: Participant Risk Agreement)
33. On [REDACTED] 2018, the Department issued a NOA to the Appellant informing him that the revised funding appropriate to his level of need was \$8,326.38 per year, effective May 19, 2018, because his PCA hours were reduced to 8.75 hours per week. (Exhibit 11: NOA, [REDACTED]/18)

CONCLUSIONS OF LAW

1. The Department is the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act. The Commissioner may make such regulations as are necessary to administer the medical assistance program. [Conn. Gen. Stat. § 17b-2; Conn. Gen. Stat. § 17b-3]
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 (ADLs), instrumental activities of daily living (IADLs), and health-related tasks through hands-on assistance, supervision, or cueing.
4. Title 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 the 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. 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.
5. State Plan Under Title XIX of The Social Security Act states: Community First Choice State Plan Option Pursuant to Section 1915(k) of the Social Security Act provides that:

1. Eligibility

- A. The State determines eligibility for Community First Choice (CFC) services in the manner prescribed under 42CFR § 441.510. To receive CFC services and supports under this section, an individual must be eligible for medical assistance under the State plan and must be in an eligibility group that includes nursing facility services or must have income below 150% of the Federal Poverty Level (FPL) if they are in an eligibility group that does not include Nursing Facility services.

Individuals who are receiving 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 continue to meet all 1915(c) requirements and must receive at least one home and community-based waiver service per month. Individuals receiving services through CFC will not be precluded from receiving other home and community-based long-term services and supports through the Medicaid State plan, waiver, grant or demonstration but will not be allowed to receive duplicative services as between CFC and any other available source of Medicaid coverage for home and community-based services.

6. 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 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 assessment through its contractor to determine the Appellant's service plan and service budget.

7. 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.

The Department correctly determined that the Appellant's needs extensive assistance with bathing (ADL).

The Department incorrectly determined that the Appellant requires no assistance with dressing. The Appellant requires supervision and cuing with dressing (ADL).

The Department correctly determined that the Appellant requires assistance with taking medications, household chores, meal preparation and shopping and other IADLs.

The Department incorrectly determined that the Appellant does not require assistance with traveling around and participating in the community. The Appellant's PCA provides some assistance with these activities as an informal support.

8. Title 42 CFR § 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 that are provided voluntarily to the individual in

lieu of an attendant.

9. Connecticut State Plan Amendment (“SPA”) no. 15-012, pursuant to section 1915(k) of the Social Security Act, 5 A 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 that the Appellant’s family is a source of natural support for his ADLs and IADLs.

The Department incorrectly determined that the Appellant’s ADLs and IADLs are totally met by his family support (AREP). The AREP is not able to provide all the support due to her own medical conditions.

10.42 CFR § 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.

Based on the evidence provided, the reduction in the Appellant’s weekly PCA hours to 8.75 hours per week is inadequate to meet the Appellant’s functional needs with regards to his medical condition and overall health. The Appellant requires more than assistance with bathing. He requires supervision and cuing for dressing. This supervision is not always provided by the Appellant’s informal family support.

The Appellant requires assistance in the home with the following IADLs that are not provided by the DDS program and his informal family supports: meal

preparation, grocery shopping, household chores, and taking his medication.

The Department failed to show that the Appellant no longer requires the additional hours of support due to change in his medical condition or other supports.

The Department incorrectly reduced the Appellant's budget to 8.75 hours per week without providing evidence to support the reduction in the budget. The Department did not provide evidence to show that without the additional services to meet the Appellant's needs for his IADLs that he would not be at risk of institutionalization.

DECISION

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

ORDER

1. The Department is ordered to restore the Appellant's budget to \$19,866.17.
2. Compliance with this order is due by September [REDACTED]

Sybil Hardy
Hearing Officer

Pc: Dawn Lambert, DSS, Central Office

RIGHT TO REQUEST RECONSIDERATION

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue, Hartford, CT 06105-3725.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45 day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or the Commissioner's designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.