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

Client #
Requeté

NOTICE OF DECISION

PARTY

PROCEDURAL BACKGROUND

On 2018, the Department of Social Services (the "Department") issued a Notice of Action ("NOA") to (the "Appellant") stating that the Appellant's Community First Choice ("CFC") Individual Budget amount would be reduced from $40,718.24 to $27,158.11 per year, or from 44 hours per week of Personal Care Assistance ("PCA") to 32.25 hours per week of PCA, effective , based on a reassessment of the Appellant's level of need.

On , 2018, the Appellant requested an administrative hearing to contest the Department's reduction in her level of need.

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

On 2018, the Appellant requested a continuance, which OLCRAH granted.

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:

, Appellant

Christine Weston, Department's Community First Choice Representative
Thomas Monahan, Hearing Officer

The hearing record remained open for the submission of additional evidence including a new universal assessment from the Department. The Department supplied a new assessment which was sent to the Appellant for comment. No comment was received from the Appellant. The record closed [redacted], 2018.

STATEMENT OF THE ISSUE

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

FINDINGS OF FACT

1. On [redacted], Department conducted an assessment of the Appellant's level of need and determined that the Appellant needs 44 hours per week PCA assistance with her activities of daily living ("ADLs") and her instrumental activities of daily living ("IADLs"). (Hearing record)

2. On [redacted], Department conducted a reassessment of the Appellant's level of need and determined that the Appellant needs 32.25 hours per week PCA assistance with her activities of daily living ("ADLs") and her instrumental activities of daily living ("IADLs"). (Hearing record)

3. On [redacted] 2018, the Department reassessed the Appellant and determined that the Appellant needs 36.00 hours per week PCA assistance with her activities of daily living ("ADLs") and her instrumental activities of daily living ("IADLs"). (Exhibit 9: Revised CFC budget, [redacted]/18)

4. The Appellant is a 49 year old female with diagnosis' of myalgia, myopathy, neuropathy, asthma, coronary heart disease, hypertension, type 2 diabetes, hypothyroid, GERD gastro esophageal disease, history of cervical cancer, anxiety, Post-Traumatic Stress Disorder, and Bipolar disorder and degenerative disc disease. (Hearing record, Exhibit 5: Universal Assessment, [redacted]/18, Appellant's Exhibit B: Medical records)

5. On [redacted] 2018, the Department conducted a reassessment of the Appellant's level of need and service plan, and determined that the Appellant needs maximum assistance with bathing and limited assistance with dressing, toileting and transferring. (Exhibit 8 Universal Assessment Outcome Form, [redacted]/18)

6. The Appellant has difficulty at times with her memory due to PTSD, and bi-polar disorder. (Exhibit 5: Universal Assessment, [redacted]18)

7. The Appellant can be left alone all day and night, but someone needs to check on

her every day. (Exhibit 5: Universal Assessment, ████8)

8. The Appellant needs prompting or monitoring to transition from one activity to another. (Exhibit 5: Universal Assessment, ██/18)

9. The Appellant is often sad or depressed and exhibits anger and anxiety. (Exhibit 5: Universal Assessment, ██/18)

10. The Appellant needs maximal assistance when bathing. She needs weight bearing support, including assistance in lifting limbs. (Exhibit 5: Universal Assessment, ██/18)

11. The Appellant needs limited assistance with personal hygiene. She needs guided assistance with maneuvering of limbs. (Exhibit 5: Universal Assessment, ██/18)

12. The Appellant needs limited assistance with dressing. She needs guided assistance with maneuvering of limbs. (Exhibit 5: Universal Assessment, ██/18)

13. The Appellant needs limited assistance with toileting. She needs guided assistance with maneuvering of limbs. (Exhibit 5: Universal Assessment, ██/18)

14. The Appellant needs limited assistance with transferring. She needs guided assistance with maneuvering of limbs. (Exhibit 5: Universal Assessment, ██/18)

15. The Appellant is independent with walking and eating. She needs a setup only when eating. (Exhibit 5: Universal Assessment, ██/18)

16. The Appellant needs assistance with managing her medications. She is unable to open bottles but knows what to take and how to take her medications. (Exhibit 5: Universal Assessment, ██/18)

17. The Appellant requires assistance in meal preparation. She does not cook. She gets take-out food daily. She receives limited assistance in eating, which includes cutting her food. (Hearing record, Exhibit 5: Universal Assessment, ███18)

18. Housework is done by an informal helper. (Exhibit 5: Universal Assessment, ██/18)

19. The Appellant is able to use the telephone independently. (Exhibit 5: Universal Assessment, ██/18)

20. The Appellant is dependent on others in performing her shopping for food and household items. (Exhibit 5: Universal Assessment, ██/18)

21. The Appellant is currently on a Medicaid spenddown and is eligible for CFC services only after meeting the spenddown. (Exhibit 10: Department emails)

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. 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 address 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 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.

The Department correctly determined that the Appellant needs extensive assistance with bathing and limited assistance with dressing, toileting and transferring.

The Department correctly determined that the Appellant needs assistance, supervision and cueing for her IADL's.

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 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.

8. State Plan Under Title XIX of The Social Security Act states: Community First Choice State Plan Option Pursuant to Section 191S(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 I 902(a)(IO)(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.

The Department correctly determined that in addition to her level of need, the Appellant must meet her spenddown to meet the eligibility requirements for CFC Services.

Based on the evidence provided, there is no evidence that the reduction in the Appellant's weekly PCA hours from 44 hours per week to 36 hours per week is not adequate to meet the Appellant's functional needs with regards to her medical condition and overall health.

Based on the evidence provided, there is no medical evidence that the reduction in the Appellant's weekly PCA hours and budget service plan places the Appellant at immediate risk of institutionalization.

The Department correctly determined that the Appellant is eligible for 36 hours per week of CFC services.

DECISION

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

Thomas Monahan
Hearing Officer

C: Christine Weston, DSS, Central Office
Sallie Kolreg, DSS, Central Office
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.