

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

[REDACTED]  
Signature Confirmation

Client ID # [REDACTED]  
Request # [REDACTED]

NOTICE OF DECISION

PARTY

[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED], 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 \$33,862.00 to \$16,651.32 effective [REDACTED].

On [REDACTED], the Recipient's Father and Legal Guardian (the "Appellant") requested an administrative hearing to contest the Department's decision to reduce such benefits.

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

On [REDACTED], the hearing was rescheduled as a home visit hearing.

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

On [REDACTED], the Appellant requested to reschedule the hearing.

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

On [REDACTED], 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 Recipient's Father and Legal Guardian  
[REDACTED], Step-Mother of Recipient  
[REDACTED], Recipient  
Christine Weston, DSS, Community First Choice  
Shelley Starr, Hearing Officer

The hearing record remained open for the submission of additional evidence from the Department and for the review of the Appellant's additional documentation and rebuttal statements submitted at the hearing. The Department did not provide the requested evidence. The Department provided a Department response to the additional documentation and rebuttal statements provided by the Appellant. No comment was received from the Appellant. The hearing record was scheduled to close on [REDACTED]  
[REDACTED]

On [REDACTED], the hearing record was held open to enter the Department's Exhibit 7 into the hearing record and to allow time for the Appellant to comment. No comment was received by the Appellant. On [REDACTED], the hearing record closed.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department was correct to reduce the Appellant's CFC budget to 17.50 hours per week.

### **FINDINGS OF FACT**

1. The Recipient is [REDACTED] [REDACTED] years old, ([REDACTED]), with a diagnosis of [REDACTED] and [REDACTED] (Hearing Summary; Appellant'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") waiver program. (Hearing Summary; Exhibit 7: DDS Level of Need Assessment; dated [REDACTED])
3. The Recipient was assessed for CFC services and was initially approved for a total allocation for services plan of \$33,862.00. This allowed 27.50 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; Exhibit 7: Hearing Record)

4. The Recipient participates at [REDACTED] a Medicaid funded Group Day Program through the Department of Developmental Services ("DDS"), Monday through Friday from 9:00 AM to 3:30 PM where she has a full time Aide to help facilitate her needs on a 1 to 1 ratio; with an approved budget of \$31,954.00 per year. This includes but is not limited to assistance with ADLs and IADLs. (Hearing Summary; Department's Testimony; Hearing Record)
5. The Group Day program provided to the recipient through her DDS services, are services and supports related to the acquisition, improvement and/or retention of skills and abilities to prepare and support an individual for work and/or community participation and/or meaningful socialization, leisure and retirement activities. Supports include the development, maintenance or enhancement of independent functioning skills including but not limited to sensory-motor, cognition, personal grooming, hygiene, toileting, assistance in developing and maintaining friendships of choice and skills to use in daily interactions; the development of work skills; opportunities to earn money; opportunities to participate in community activities. (Hearing Summary; Hearing Record)
6. On [REDACTED], 2017, DDS completed an annual comprehensive assessment for Medicaid long term supports and services received from DDS. (Hearing Summary; Exhibit 4: DDS Level of Need Assessment and Screening Tool; Hearing Record)
7. DSS acknowledges the DDS assessment and level of need determination as a comprehensive assessment. DSS uses the DDS comprehensive assessment plus the five ADL functional assessment for determination of eligibility and budgeting CFC services. (Hearing Record)
8. 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)
9. On [REDACTED], 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, extensive assistance with toileting, cueing supervision when eating and was independent with dressing and transferring. (Hearing Summary; Exhibit 8: [REDACTED] plan)
10. The Recipient's reassessed CFC services have been approved for 2.5 hours per day for bathing and toileting, which equals 17.50 hours of services (2.5 x 7) per week. (Hearing Summary; Revised CFC budget)
11. On [REDACTED], 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 \$16,651.32 or 17.50 hours per week, effective [REDACTED], in addition to informal family support and the DDS Group Day Program. (Hearing Summary; Exhibit 7: CFC 2018 Budget)

12. On [REDACTED], the Department completed an unaddressed Notice of Action that states that based on the reassessment of the Recipient's level of need, the personal care assistance budget would be reduced to \$16,651.32 equal to 17.50 hours of PCA per week, effective [REDACTED]. The Appellant does not recall receiving the notice at the time of the [REDACTED], reassessment. (Exhibit 7: Universal Assessment Outcome Form; Notice of Action dated [REDACTED])
13. The revised CFC budget, CFC My Choice for in-home support services document, Rights And Responsibilities document and Participant Risk Agreement are not signed by the Recipient's Legal Representative or the Department Representative. (Exhibit 7: CFC Budget)
14. The Recipient lives with her [REDACTED]. The Recipient's [REDACTED] is her primary care provider. (Hearing Summary; Appellant's Testimony; Hearing Record)
15. The Recipient is alert but not oriented. (Exhibit 7: Universal Assessment Outcome Form dated [REDACTED]; Hearing Record)
16. The Recipient requires one to one due to behaviors. She has behavioral concerns including disruptive behaviors, self injurious behaviors, bolting, wandering and sexually inappropriate behaviors. Recently she has been found to be combative and hitting by the Appellant. ( Exhibit 4: DDS Assessment dated [REDACTED]; Exhibit 7: Universal Assessment Outcome Form [REDACTED]; Prat Assessment dated [REDACTED]; Appellant's Testimony)
17. The Recipient needs medication supports beyond set-up and reminders. (Hearing Summary; Exhibit 8: Universal Assessment Outcome Form dated [REDACTED]; Mother's Testimony)
18. The Recipient needs maximum assistance with bathing. (Hearing Summary; Exhibit 7: Universal Assessment Outcome dated [REDACTED])
- [REDACTED] The Recipient needs extensive assistance with toileting. (Exhibit 7: Universal Assessment Outcome Form dated [REDACTED])
20. The Recipient needs cueing and supervision with eating and meal preparation. She needs reminders, prompting and encouragement. She has dehydration concerns. (Hearing Summary; Appellant's Testimony; Hearing Record)
21. The Recipient is noted by the Department as not having seizures, however the Appellant is reporting that the Recipient has seizures approximately less than once

a month and has been hospitalized. (Appellant's Testimony; Appellant's Exhibit B annotated documents)

22. The Recipient has safety concerns as she is unable to avoid being taken advantage of financially and sexually. (Exhibit 5: [REDACTED]; Hearing Record)
23. The Recipient has a high level of need and cannot be left alone as she requires continual supervision to live safely at home. (Appellant's Testimony; Hearing Record)
24. The Appellant does not agree with the Department's assessment in many aspects including that the Recipient is independent with dressing and requires cueing when eating. He believes the appropriate ADL need category is that she requires limited assistance. (Appellant's Exhibit B)
25. The hearing record was held open for the Department to provide additional evidence. The Department did not provide any of the requested evidence. The Department provided a response pertaining to socialization to the Appellant's additional documents and rebuttal statements; upholding their decision to reduce the CFC hours. (Hearing Record)
26. "The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED]. Therefore, this decision is due not later than [REDACTED]." "However, the hearing which was originally scheduled for [REDACTED], was rescheduled for [REDACTED], which caused a [REDACTED] day delay, resulted from the Appellant's request to reschedule. In addition, the hearing record was held open an additional [REDACTED] days to allow the submission of additional evidence, Department review and Appellant's comment. The total [REDACTED] day delay resulted in the decision not due until [REDACTED], and is therefore timely."

### **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, Extensive Assistance with toileting, Cueing/Supervision when eating; and is independent with Dressing and Transferring.**

**The Department correctly determined that her needs related to IADLS include the need for assistance with taking medications, using the telephone, household chores, budgeting, meal preparation and shopping.**

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 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 section 1915(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 primarily from her [REDACTED] with her ADLs and her IADLs.**

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 her 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 Extensive Assistance with toileting. It failed to consider the Recipient's need for cueing/supervision when eating in her home, including assistance with medications beyond set up and IADLs, 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 10.00 hours per week that were eliminated from the CFC budget (27.50 – 17.50 = 10.00), 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 10.00 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 five days per week attendance at the [REDACTED] with one to one Aide assistance and informal family support, in accordance with the assessment guidelines.

The Recipient's [REDACTED] is the Recipient's [REDACTED]. According to DDS, the Recipient requires one to one support; either arms length or in constant line of sight and cannot be safely left alone. The only explanation of the Department's CFC budget calculation is the Appellant's two ADLS pertaining to Bathing and Toileting. It approved 2.5 hours of care per day for 17.50 hours per week for the bathing and toileting, but failed to approve hours to cover the Recipient's needs with eating, medication support, IADLs and weekend hours. The hours initially approved for all the

Recipient's needs were 27.50 hours per week. There is no evidence to support a decrease in her CFC budget to less than 27.50 hours per week to provide for her needs outside of the day program. In fact, the evidence and testimony provides that some of the Recipient's behavioral and medical issues have worsened.

It should be noted, at the time of the hearing, the Recipient was due for an annual DDS review.

### **DECISION**

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

### **ORDER**

1. The Department shall rescind its notice to reduce the Recipient's CFC budget and continue the budget of 27.5 hours per week, effective [REDACTED].
2. Proof of compliance is due to the undersigned by [REDACTED], by submission of a revised budget and notice of action.

  
Shelle Starr,  
Hearing Officer

Pc: Sallie Kolreg, DSS, CO  
Dawn Lambert, 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.