

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

[REDACTED] 2019
Signature confirmation

Case: [REDACTED]
Client: [REDACTED]
Request: [REDACTED]

NOTICE OF DECISION

PARTY

[REDACTED]
re: [REDACTED], protected person
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED], 2018, the South Western Connecticut Area Agency on Aging, acting as a subcontractor associated with the Department of Social Services' (the "Department's") Community Options Unit, provided [REDACTED] (the "Appellant") a Community First Choice Individual Service Budget allotting her an annual budget of \$8,470.14 per year, associated with 8.75 hours per week of Personal Care Attendant ("PCA") services paid by the Community First Choice Option¹ ("Community First Choice").

On [REDACTED], the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received an administrative hearing request signed on [REDACTED] 2018 by [REDACTED], the Appellant's mother and plenary guardian, disputing the number of hours per week allotted. The request had been forwarded by the U.S. Postal Service marked as having been received in the "Loose-in-Mail" section of the Westchester Postal and Distribution Center.

On [REDACTED] 2019, the OLCRAH issued a notice scheduling the administrative hearing for [REDACTED] 2019.

On [REDACTED] 2019, 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 at the Appellant's home. The following individuals attended the hearing:

[REDACTED], Appellant's representative (plenary guardian)

¹ The Community First Choice Option (or "Community First Choice") is an optional amendment to a State plan to provide home- and community-based attendant services and supports, as authorized pursuant to Section 2401 of the Patient Protection and Affordable Care Act, P.L. 111-148.

██████████, Appellant's sister (acting as interpreter)
██████████, Appellant's sister (observer)
Christine Weston, Department's representative
Eva Tar, Hearing Officer

The close of the hearing record was extended for the submission of additional evidence by the Department and by the Department on the Appellant's behalf, with a corresponding comment period past the close of evidence.

The administrative hearing record closed ██████████ 2019.

STATEMENT OF ISSUE

The issue is whether the Department correctly determined that the Appellant's Community First Choice budget of 8.75 hours per week of PCA hours was appropriate to meet her level of need.

FINDINGS OF FACT

1. The Appellant's date of birth is ██████████ (Appellant's Exhibit A: p.1)
2. The Appellant resides with her mother, an adult sibling, and the Appellant's █-year-old son. (Appellant's representative's testimony)
3. The Appellant's mother is the Appellant's caregiver. (Appellant's representative's testimony)(Department's Exhibit's 2: p.2)
4. When she was █ years old, the Appellant received a ██████████ secondary to a car accident; she presented with a ██████████, and ██████████. (Appellant's Exhibit A: p. 2)
5. On ██████████ 2017, ██████████, M.A., Psy.D., diagnosed the Appellant with ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████. (Appellant's Exhibit A: p. 7)
6. The Appellant has an ██████████. (Department's Exhibit 3: p.1)(Appellant's Exhibit A: p.4)
7. The Appellant has significant issues with auditory and visual memory. (Appellant's Exhibit A: p.7)
8. On ██████████ 2018, Rachel Lalanne of the South Western Connecticut Agency on Aging completed an in-person review of the Appellant's level of need with respect to Community First Choice services. (Department's Exhibit 2)(Department's representative's testimony)

9. Ms. Lalanne assessed the Appellant's ability to perform independently the following activities of daily living ("ADLs"): bathing, dressing, toileting, transferring, and eating. (Department's Exhibit 2)
10. The Appellant is not consistent with taking her [REDACTED] medications. (Appellant's representative's testimony)
11. The Appellant can dress herself, but she will wear the same clothes for days without changing them. (Appellant's representative's testimony)
12. The Appellant does not regularly brush her teeth or shave. (Appellant's representative's testimony)
13. The Appellant conceals used feminine pads in her bureau; she does not clean her undergarments when she gets her period. (Appellant's representative's testimony)
14. The Appellant requires extensive assistance during bathing; she is at risk for falls due to [REDACTED] (Department's Exhibit 5: p.7)
15. The Appellant is able to physically move between surfaces, such as from a bed to a chair. (Department's Exhibit 2: p.3)
16. The Appellant is able to use the toilet independently, with some set up. (Department's Exhibit 2: p. 3)
17. The Appellant is able to feed herself, but she is unable to prepare herself a meal. (Appellant's representative's testimony)
18. CFC program pays for PCAs to provide help in an individual's home to an individual who requires significant physical hands-on intervention with ADLs; this hands-on care or service is similar to that provided to a patient in a nursing facility. (Department's representative's testimony)
19. On or after [REDACTED] 2018, the CFC program determined that the Appellant was eligible for 8.75 hours per week of PCA services, for a total annual budget of \$8,470.14 per year. (Department's Exhibit 5: p.1 and p.2)
20. The CFC program calculated the 8.75 hours per week of PCA services based on the Appellant requiring "extensive assistance" with the core ADL of bathing. The CFC program determined the Appellant to be "independent, setup help only" with respect to the ADLs of dressing, toilet use, transferring, and eating. (Department's Exhibit 2)
21. Connecticut General Statutes § 17b-61 (a) provides that a final decision be issued within 90 days of a request for an administrative hearing.

The OLCRAH received the Appellant's plenary guardian's hearing request on [REDACTED] [REDACTED] 2018. The close of the hearing record was delayed for the admission of additional evidence as well as for comment. As the delay to the close of the hearing record beyond [REDACTED] [REDACTED] 2019 arose from the Appellant's request that a [REDACTED] [REDACTED] 2017

██████████ exam be included into the hearing record as an exhibit, this final decision was not due until ██████████ 2019. This decision therefore is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes in part authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.

Section 17b-263c (b)(2)(H) of the Connecticut General Statutes provides in part that the commissioner may pursue optional initiatives or policies authorized pursuant to the Patient Protection and Affordable Care Act, P.L. 111-148, and the Health Care and Education Reconciliation Act of 2010, including, but not limited, to the establishment of a “Community First Choice Option.”

The Department has the statutory authority to implement policies and procedures regarding establishing the criteria, such as level of care requirements, individuals must meet in order to participate in Community First Option.

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.

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;
 - (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. 42 C.F.R. § 441.510.

The Department correctly determined that, as a condition of eligibility to participate in the Community First Choice program, the Appellant is subject to a review for the purpose of determining whether, in the absence of the home- and community-based attendant services and supports provided through participation in Community First Choice, the Appellant would otherwise require the level of care furnished in a hospital or a nursing facility.

- 7. 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. 42 C.F.R. § 441.500 (b).

42 C.F.R. § 441.505 in part provides the following definitions:

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.

The Department correctly determined that the Appellant required extensive, hands-on care with respect to the ADL of bathing.

The Department correctly determined that the Appellant did not require extensive, hands-on care with respect to the ADLs of dressing, toileting, transferring, and eating.

- 7. “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." Conn. Gen. Stat. §17b-259b (a).

"Clinical policies, medical policies, clinical criteria or any other generally accepted clinical practice guidelines used to assist in evaluating the medical necessity of a requested health service shall be used solely as guidelines and shall not be the basis for a final determination of medical necessity." Conn. Gen. Stat. § 17b-259b (b).

The Department correctly determined that 8.75 hours per week of PCA services provided through Community First Choice are medically necessary to prevent the Appellant from being institutionalized in a hospital or a nursing facility.

The Department correctly determined that the Appellant's Community First Choice budget of 8.75 hours per week of PCA hours was appropriate to meet her level of need.

DISCUSSION

The purpose of Community First Choice is to prevent or delay institutionalization of individuals residing in the community. Eligible participants must demonstrate, at least annually, that in the absence of the home and community-based attendant services and supports provided through Community First Choice, the participants otherwise medically would require in-patient hospitalization or the level of care furnished by a skilled nursing facility.

The Appellant's representative provided credible testimony as to her daughter's difficulties with maintaining personal hygiene, i.e., wearing the same clothes for days, hiding used feminine products, and neglecting to brush her teeth. However, the Appellant's inattentive hygiene habits do not require the Appellant to be admitted for an in-patient hospitalization at the level of care furnished by a skilled nursing facility.

The Appellant did not establish that her physical or mental condition was such that she required in excess of 8.75 per week of hands-on care provided by a PCA.

DECISION

The Appellant's appeal is DENIED.

Eva Tar - electronic signature
Eva Tar
Hearing Officer

Cc: Christine Weston, DSS-CO
Sallie Kolreg, DSS-CO
Dawn Lambert, 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 Legal Counsel, Regulations, and Administrative Hearings, 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, 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 his 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.