

**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: 138604

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2019, the Department of Social Services (the "Department"), through its contractor, Connecticut Community Care, Inc., provided [REDACTED] [REDACTED] (the "Appellant") with a revised individual budget increasing the Appellant's services grant from \$41,263.49 to \$51,195.46 per year, resulting in an increase in funding from 49 hours per week to 52 hours per week of Personal Care Attendant ("PCA") services through the Community First Choice program.

On [REDACTED] 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received the Appellant's faxed administrative hearing request. The Appellant sought an increase in her PCA hours beyond 52 hours per week.

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 request, this hearing was conducted at the Appellant's home. The following individuals attended the hearing:

[REDACTED], Appellant

[REDACTED] Appellant's witness

Christine Weston, Community Options Unit, Department's representative

Randal Wilson, Connecticut Community Care, Inc., Department's witness

Eva Tar, Hearing Officer

The administrative hearing record closed [REDACTED] 2019.

STATEMENT OF ISSUE

The issue is whether it is medically necessary for the Appellant to have in excess of 52 hours per week of PCA services.

FINDINGS OF FACT

1. The Appellant's date of birth is [REDACTED]. (Department's Exhibit 3)
2. The Appellant has a diagnosis of [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Department's Exhibit 3: p.43)(Appellant's Exhibit 1)
3. The Appellant has undiagnosed blackouts. (Appellant's testimony)
4. The following are activities of daily living ("ADLs"): bathing, dressing, toileting, transferring, and eating. (Department's Exhibit 4)
5. The Appellant has no difficulty walking up and down the stairs in her apartment. (Department's representative's testimony)
6. The Appellant is able to sit, stand, and move to and from a sofa without help. (Appellant's testimony)
7. The Appellant does not use a wheelchair, walker, or cane. (Appellant's testimony)
8. The Appellant needs help putting on a shirt over one shoulder; she needs more help at night to take off her clothes. (Appellant's testimony)
9. The Appellant is able to use the toilet by herself; she does not need help getting on or off it. (Appellant's testimony)
10. The Appellant's bathtub has grips in case the Appellant gets dizzy. (Appellant's testimony)
11. The Appellant's testimony that her full-time PCA bathes her every day is not credible.
12. The Appellant drives when she can, but she sometimes needs help getting into and out of the vehicle. (Appellant's testimony)
13. To receive Community First Choice funding, the individual must require significant physical intervention by the PCA to perform ADLs; this level of hands-on care or service is similar to that provided to a patient in a nursing facility, such as carrying 50

percent or more of the individual's weight when transferring. (Department's representative's testimony)

14. The Department has authorized payment through Community First Choice for two PCAs for the Appellant: 1) a full-time PCA for Mondays through Fridays from 9:00 a.m. to 5:00 p.m. at 40 hours per week; and 2) a part-time PCA for Saturdays and Sundays from 11:00 a.m. to 5:00 p.m. (Department's Exhibit 5)
15. The Appellant has designated her adult son with whom the Appellant resides as her full-time PCA. (Appellant's testimony)(Department's Exhibit 5)
16. The full-time PCA's timesheets as to his daily (eight hours) assignments with the Appellant identify a significant number of tasks that are not identified on the part-time PCA's timesheets as to that PCA's daily (six hours) assignments on the weekends. (Department's Exhibit 5)
17. On the weekends, the Appellant's part-time PCA walks the Appellant's dog, makes some of the Appellant's meals, and is available to take the Appellant to the hospital should she have a blackout. (Appellant's witness' testimony)
18. The Community First Options program cannot clinically approve PCA hours to walk an individual's dog. (Department's representative's testimony)
19. Community First Choice does not pay for "what ifs," such as paying for a PCA to stay with an individual in case the individual has a blackout. (Department's representative's testimony)
20. The Community First Options program defines "extensive assistance" with ADLs as hands-on assistance requiring a helper to support or carry 50 percent or more of the weight of the patient to help the patient complete the ADL. (Department's representative's testimony)
21. On [REDACTED] 2019, a Connecticut Community Care, Inc. caseworker completed a Universal Assessment form to identify the Appellant's level of need. (Department's Exhibit 3)
22. The Connecticut Community Care, Inc. caseworker who completed the [REDACTED] 2019 Universal Assessment form does not have a medical degree or licensing. (Department's witness' testimony)
23. On [REDACTED] 2019, the Department granted the Appellant authorization for 52 hours per week of PCA services, for a total annual budget of \$51,195.46 per year, paid by the Community First Choice. (Department's Exhibit 4)
24. The Department's [REDACTED] 2019 authorization for 52 hours per week of PCA services was based on the belief that the Appellant required "extensive assistance"

with the following three ADLs: bathing, dressing, and transferring. (Department's Exhibit 4)

25. On [REDACTED], 2019, the Appellant's physician recommended 40 hours per week for the Appellant in PCA services. (Appellant's Exhibit 1)
26. On [REDACTED], 2019, the Appellant's full-time PCA was not in the Appellant's home during his scheduled PCA hours. (Department's representative's testimony)(Appellant's testimony)
27. 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 hearing request by fax on [REDACTED] 2019. This hearing decision was due by [REDACTED] 2019. This final decision 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.

"The commissioner may implement policies and procedures necessary to ... (2) 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: ... (H) to [sic] the establishment of a "Community First Choice Option...." Conn. Gen. Stat. § 17b-263c (b)(2)(H).

The Department has the authority to implement policies and procedures as to the criteria that individuals must meet in order to participate in Community First Choice.

2. Title 42, Code of Federal Regulations ("C.F.R."), Section 441.500 (a) notes that "[t]his 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."

Title 42, Code of Federal Regulations, Section § 441.510 (a) through (c) provides in part:

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....

42 C.F.R. § 441.510 (a) through (c).

As a condition of eligibility to participate in the Community First Choice program, the Appellant is subject to annual review as to 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 in a nursing facility.

- 3 “Community First Choice is designed 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).

“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.” 42 C.F.R. § 441.505.

- 4. Section 17b-259b (a) of the Connecticut General Statutes provides:
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

timesheets, the part-time PCA's timesheets in the same period indicated that no hands-on care was performed as to the Appellant's bathing and mobility.

As of [REDACTED] 2019, the Appellant had been approved 52 hours per week of PCA services. The approved 52 hours per week exceeds the Appellant's personal physician's subsequent [REDACTED] 2019 recommendation of 40 hours per week of PCA services. (Appellant's Exhibit 1)

The Appellant has not established that it is medically necessary for her to have additional PCA service hours to prevent institutionalization.

DECISION

The Appellant's appeal is DENIED.

Eva Tar. - electronic signature
Eva Tar
Hearing Officer

Cc: Christine Weston, DSS-CO
Sallie Kolreg, DSS-CO
Karri Filek, 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.