

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

██████████, 2019
Signature Confirmation

Client ID # ██████████
Request # 141395

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the “Department”) notified ██████████ ██████████ (“the Applicant”) and ██████████, the Applicant’s mother and representative, (“the Appellant”) that it was revising the Community First Choice (“CFC”) budget for the Applicant from 56 hours per week to 60.75 hours per week of attendant care.

On ██████████, 2019, the Appellant requested an administrative hearing to contest the Department’s determination of amount of benefits.

On ██████████, 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2019.

On ██████████ 2019, 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:

- ██████████, the Applicant
- ██████████, the Appellant, the Applicant’s mother and representative
- Kari Filek, Public Assistance Consultant, DSS, Community First Choice
- Randall Wilson, Manager Community First Choice, Connecticut Community Care
- Marci Ostroski, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's proposed CFC budget of 60.75 hours of care per week is sufficient to meet the Applicant's needs.

FINDINGS OF FACT

1. The Applicant is thirty eight years old (D.O.B. [REDACTED]) and has diagnoses of Cerebral Palsy, Asthma, and Lymphedema. The Applicant also has a cardiac condition that is managed by medication. She is a recipient of Medicaid through the Department. (Hearing Summary, Ex. 2: Universal Assessment Outcome Form, Appellant's testimony, Department's testimony)
2. The Applicant lives independently in her own apartment and her mother spends a significant amount of time there with her. The Applicant also spends a significant amount of time at her mother's home. (Applicant's testimony, Appellant's testimony)
3. The Applicant has been receiving services through CFC for two years. She had been granted services to provide support for her activities of daily living ("ADL's"), instrumental activities of daily living ("IADL's") and health related tasks for a total of 40 hours of Personal Care Assistant ("PCA") services. (Applicant's testimony, Hearing Record)
4. In 2018, the Applicant's CFC services were increased to 58 hours of per week. (Applicant's testimony, Connecticut Community Care testimony)
5. On [REDACTED], 2019, an in person assessment was conducted at the Applicant's home; the Applicant was approved for 60.75 hours weekly of PCA services within an annual budget of \$59,810.08 under the CFC program. (Ex. 2: Universal Assessment Outcome Form; Revised CFC Individual Budget)
6. The Department determined the Applicant requires maximum assistance with four out of five ADL's. She requires assistance with bathing, dressing, toileting, and transferring. She requires set ups only for eating. (Ex. 2: Universal Assessment Outcome Form, Hearing summary, Applicant's testimony, Appellant's testimony)
7. The Applicant also needs assistance with taking her medication, household chores, laundry, shopping, meal preparation and assistance with attending doctor's appointments and participating in the community. (Applicant's testimony, Appellant's testimony)
8. The Applicant has been using the CFC services to hire PCA's from 8:00am to 5:00pm and 5:00pm to 8:00pm Monday through Friday. (Applicant's testimony, Appellant's testimony)

9. The Applicant currently does not receive CFC services on Saturdays and Sundays. She is seeking an increase in the CFC budget to hire PCA's for the weekends. (Applicant's testimony, Appellant's testimony)
10. The Appellant provides maximum assistance with all of the Applicant's ADL and IADL needs from the hours of 8:00pm through 8:00am Monday through Friday and 24 hours a day on the weekends. The Appellant is always available to care for the Applicant. (Appellant's testimony, Applicant's testimony)
11. 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] 2019. Therefore, this decision was due not later than [REDACTED] 2019, 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. 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 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.
4. Title 42 CFR § 441.520 (a) provides that If a State elects to provide Community First Choice, the State must provide all of the following services: assistance with ADLs, IADLs, and health-related tasks through hands-on assistance, supervision, and/or cueing, acquisition, maintenance, and enhancement of skills necessary for the

individual to accomplish ADLs, IADLs, and health-related tasks, backup systems or mechanisms to ensure continuity of services and supports, as defined in § 441.505 of this subpart and voluntary training on how to select, manage and dismiss attendants.

5. Title 42 CFR § 441.505 provides for the definition of the Activities of Daily Living (“ADLs”) and states that ADLs means basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring.
6. The Department was correct when it determined that the Applicant needed maximum assistance with ADL’s; bathing, dressing, toileting, grooming, and transferring.
7. Title 42 CFR§ 441.505 also provides for the definition of Instrumental Activities of Daily Living (“IADLs”) and states that 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 median and traveling around and participating in the community.
8. The Department was correct when it determined that the Applicant requires assistance with all of her IADL’s.
9. 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 are unpaid supports that are provided voluntarily to the individual in lieu of an attendant.
10. 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.
11. The Department was correct when it determined that the Appellant, the Applicant’s mother, is a source of natural support for her ADLs and IADLs.

12. 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).
13. The Department was correct when it determined that the 60.75 hours approved for CFC services, and the natural supports from her mother do not place the Applicant at risk of institutionalization.
14. Based on the evidence provided, the increase in the Applicant’s weekly PCA hours to 60.75 hours per week is adequate to meet the Applicant’s functional needs with regards to her medical condition and overall health; therefore, the Department was correct when it determined that additional hours of PCA through CFC services are not medically necessary because the type, frequency and duration of such services are not clinically appropriate, at this time, given the natural supports that are currently in place.

DISCUSSION

Community First Choice is a benefit available to Medicaid recipients under the State Plan to provide services in home to individuals who would be otherwise require institutionalization as determined by state standards. The hearing summary and testimony at the hearing indicated that additional benefits (in hours) are not medically necessary because the Applicant receives necessary services through natural supports from her mother. CFC’s decision that 60.75 hours of services to assist with ADL’s and IADL’s is medically necessary for the Applicant is correct given the natural supports that she has in place at this time.

DECISION

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



Marci Ostroski
Hearing Officer

CC: Sallie Kolreg, DSS, Community First Choice
Kari Filek, DSS, Community First Choice
[REDACTED], Authorized Representative

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.