

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3725

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

Client ID # ██████████  
Request # 142063

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████, 2019, the Department of Social Services, (the "Department"), issued a Universal Assessment Outcome form to ██████████ (the "Appellant") granting Community First Choice ("CFC") benefits for her daughter, ██████████ (the "child"), budgeted as 13.50 hours per week for a Personal Care Attendant ("PCA").

On ██████████ 2019, the Appellant requested a hearing to contest the amount of CFC weekly 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:

[REDACTED], the Appellant, the child's mother  
 Karri Filek, Department's Representative  
 [REDACTED], CFC Assessor, Western Connecticut Area on Aging  
 Danette Rodriguez, Interpreter  
 Thomas Monahan, Hearing Officer

**Usted recibirá una copia de esta decisión por separado en español.**

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department was correct to grant the Appellant 13.50 hours per week of PCA services for the child through the CFC program.

### **FINDINGS OF FACT**

1. The Appellant's child is a [REDACTED] Medicaid recipient. (Hearing record)
2. On [REDACTED], the child was admitted to [REDACTED] Hospital. (Hearing record)
3. On [REDACTED], 2019, the child was discharged from [REDACTED] Hospital and admitted to [REDACTED] psychiatric unit. (Hearing record)
4. The Appellant's child has diagnoses of epilepsy, behavior disorder, anxiety, Attention Deficit Disorder, Oppositional Defiant Disorder, and asthma. (Hearing record, Appellant's Exhibit A: [REDACTED] letter)
5. On [REDACTED], 2019, a representative from Connecticut Community Care completed a universal assessment of the child for the Money Follows the Person program while the child was hospitalized. (Exhibit 1: Universal Assessment form)
6. On [REDACTED], 2019, the child was discharged home, where she lives with her mother, the Appellant. (Hearing record)
7. On [REDACTED], 2019, an assessor from the [REDACTED] visited the Appellant's home and assessed the child's needs specifically related to core Activities of Daily Living ("ADL's"), which included bathing, toileting, transferring, eating and dressing. The assessment was based on the visit to the home and the previously completed universal assessment completed at the hospital by a social worker from Connecticut Community Care. (Hearing record, Exhibit 2: Universal Assessment Outcome form)

8. The information from the universal assessment and the home visit are used to determine the eligibility and the appropriate number of support hours for the child under the CFC program. (Hearing record)
9. The assessor determined that the child's ADL needs are: extensive assistance with bathing, dressing and toileting and limited assistance with eating. She is independent with transferring. (Hearing Summary, Exhibit 2: Universal assessment outcome form)
10. The Appellant is the only informal support available for the child. The Appellant works [REDACTED] hours per day, [REDACTED] days a week. She reduced her hours to [REDACTED] hours per week because she did not have anyone to help care for the child. (Appellant's testimony)
11. The child's behavior problems include hitting and scratching herself, refusing to eat, locking herself in closets, and not listening to rules. All dangerous items must be put out of the child's reach. She poses a threat to herself. (Appellant's testimony, Exhibit 1: Universal Assessment)
12. The child is in outpatient treatment receiving psychotherapy services and medication management services. (Appellant's Exhibit A: [REDACTED] letter)
13. The child takes medications for her mental health diagnosis, to control seizures, congestion, and asthma. (Appellant's testimony, Exhibit 1: Universal assessment)
14. The child is not able to address emergency situations. The child cannot leave home, even with someone else, because her behavior becomes confused or agitated during outings and she engages in inappropriate and aggressive behavior. (Exhibit 1: Universal assessment)
15. The child requires an adult at her location at all times but she only needs to be checked on occasionally. (Exhibit 1: Universal assessment)
16. Based on the visit to the home and the previously completed universal assessment; the child was approved for 13.50 hours of PCA services per week with an annual budget of \$13,291.13 under the CFC program. (Hearing record, Exhibit 2: Universal Assessment Outcome form)
17. On [REDACTED], 2019, the assessor and the Appellant signed an agreement form for 13.50 hours per week for personal care attendants for the Appellant's child. (Exhibit 2: Universal Assessment outcome form.)
18. The child attends school but does not receive any health related services. (Appellant's testimony)

## 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. "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."  
Title 42 of the Code of Federal Regulations ("CFR") § 441.500(a)
3. Title 42 CFR § 441.510, provides in pertinent part, as follows:

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.

42 CFR § 441.510

4. Title 42 CFR § 441.535, provides in pertinent part, as follows:

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.

42 CFR § 441.535

**The Department correctly completed an assessment of the Appellant's child's needs.**

5. Title 42 CFR § 441.520 (a) provides, in pertinent part, as follows:

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 and (2) acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health-related tasks.

Title 42 CFR § 441.520 (a)

6. "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 CFR § 441.500(b)

7. 42 CFR § 441.505 provides for definitions, in pertinent part, as follows:

*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.

42 CFR § 441.505

**The Department considered the child’s core ADL needs in determining her CFC budget. Her IADL’s are managed by natural supports as she is only seven years old and cannot be expected to be in an independent community situation.**

8. Connecticut State Plan Amendment (“SPA”) No 15-012, pursuant to section 1915(k) of the Social Security Act, (5)(A) provides, in pertinent part, as follows:

For 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.

Connecticut State Plan Amendment (“SPA”) No 15-012, pursuant to section 1915(k) of the Social Security Act, (5)(A)

**There is no evidence to support that the 13.50 hours per week approved for CFC services are insufficient for the child’s needs and would otherwise place the child at risk.**


**The Department correctly determined that 13.50 hours are adequate to meet the child’s functional needs in regards to her ADL’s.**

### **DISCUSSION**

Community First Choice is a benefit available to Medicaid recipients under the State Plan to provide services in-home to individuals who would otherwise require institutionalization as determined by state standards. The Appellant meets the institutional level of care standard. The child needs supervision and extensive assistance with bathing and toileting and dressing. The Department's CFC budget allowed for 13.5 hours weekly. The Appellant is the child's mother and provides natural supports for the child. She works [REDACTED] a week [REDACTED] a day. The assessment states that someone needs to be with the child at all times but only to check on her. The evidence does not indicate that the child needs continuous care for her ADL's. The child attends school and is currently not receiving any additional assistance from the school.

### **DECISION**

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

  
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Thomas Monahan  
Hearing Officer

C: Karri Filek, DSS – Central Office  
Sallie Kolreg, 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.