

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 # 145440

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the "Department") issued a notice of action to ██████████ ██████████ (the "Applicant") that it was revising her Community First Choice ("CFC") budget from \$61,678.13 per year to \$26,250.21 per year equaling 26.25 hours of Personal Care Assistant ("PCA") per week effective ██████████, 2019.

On ██████████ 2019, the Applicant's mother and conservator ██████████ (the "Appellant") requested an administrative hearing to contest the Department's determination of the 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, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The following individuals were present at the hearing:

██████████, Applicant  
██████████, Appellant and Applicant's mother  
██████████, Applicant's father  
Kari Filek, Department's Representative

Randall Wilson, CT Community Care, Manager  
Saya Miyokoshi, Department's Observer  
Marci Ostroski, Hearing Officer

The hearing record remained open in order to give the Department additional time to complete another assessment. On [REDACTED] 2019, the hearing record closed.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department correctly reduced the Applicant's CFC service budget to \$26,250.21 per year and 26.25 hours per week based on an assessment of her level of need.

### **FINDINGS OF FACT**

1. The Applicant is a recipient of the Medicaid program and has been granted services under the Community First Choice ("CFC") program to provide support for her Activities of Daily Living ("ADLs") Instrumental Activities of Daily Living ("IADLs") and health related tasks. (Hearing Summary, Department's testimony)
2. Effective [REDACTED] 2018, the Department approved the Applicant for an annual budget of \$61,678.13 equaling 63.75 hours per week of PCA services under the CFC program. (Ex. 3: Notice of Action, [REDACTED]/18).
3. The Applicant was 22 years old (D.O.B. [REDACTED] at the time of the Department's assessment and has diagnoses of intellectual disability and seizures. The Applicant's seizure activity has been measured and documented as much as 19 seizures per hour. (Ex. 1: CT DDS Level of Need Assessment and Screening Tool, [REDACTED]/19, Appellant's testimony)
4. The Applicant lives with both her mother and her father and they are her primary caregivers. They are both employed full time outside of the home. (Appellant's Testimony, Ex. 1: CT DDS Level of Need Assessment and Screening Tool, [REDACTED]/19)
5. The Applicant cannot be safely left alone for any period of time and must always be in a constant line of sight during all waking hours. The Applicant has had multiple falls with injuries. (Ex. 1: CT DDS Level of Need Assessment and Screening Tool, [REDACTED]/19, Appellant's testimony)
6. The Applicant attends a DDS day program with [REDACTED] between the hours of 7:15/7:30 am and 2:45/3:00pm Monday through Friday. (Appellant's testimony, Hearing Summary)

7. The Applicant utilizes Personal Care Assistants (“PCAs”) to assist with her ADLs, IADLs, and health related tasks from 2:45/3:00pm to 7:00/7:30pm Monday through Friday and approximately 15 additional hours on Saturdays and Sundays. The Applicant’s parents provide her hands on assistance with her ADLs, IADLs, and health related tasks at all other times. (Appellant’s testimony)
8. On [REDACTED], 2019, the Applicant’s Level of Need was reevaluated by the Department of Developmental Services (“DDS”) as a Medicaid operating partner under a Memo of Understanding with the Department of Social Services. The assessment reflects an evaluation of physical status, mental status, and a functional assessment of all ADLs, IADLs, and health related tasks. (Ex. 1: CT DDS Level of Need Assessment and Screening Tool, [REDACTED]/19, Hearing Summary)
9. The DDS Level of Need Assessment reflects that the Applicant requires hands on assistance with eating; putting food on utensil(s) or requires hand over hand feeding. (Ex. 1: CT DDS Level of Need Assessment and Screening Tool, [REDACTED]/19)
10. The DDS Level of Need Assessment reflects that the Applicant requires hands on assistance to transfer. (Ex. 1: CT DDS Level of Need Assessment and Screening Tool, [REDACTED]/19)
11. Because of the Applicant’s seizure activity and her history of falls, while at her day program, she always utilizes a gait belt and a personal assist for transfers and mobility. At home, she is fully assisted with transfers and mobility by her parents or PCA’s; they lock arms with her to move from place to place. (Appellant’s testimony)
12. The DDS Level of Need Assessment reflects that the Applicant requires hands on assistance with dressing and undressing. (Ex. 1: CT DDS Level of Need Assessment and Screening Tool, [REDACTED]/19)
13. The DDS Level of Need Assessment reflects that the Applicant requires hands on assistance with bathing or showering; to wash self and or to get in or out of the tub/shower. (Ex. 1: CT DDS Level of Need Assessment and Screening Tool, [REDACTED]/19)
14. The DDS Level of Need Assessment reflects that the Applicant requires hands on assistance with toileting. (Ex. 1: CT DDS Level of Need Assessment and Screening Tool, [REDACTED]/19)
15. On [REDACTED] 2019, the Department under the CFC program completed an annual assessment to evaluate the Applicant’s ADL needs as a supplement to the DDS comprehensive assessment. (Hearing Summary)
16. The assessment was conducted face-to-face by a social worker with Connecticut Community Care, the Department’s contractor for the purpose of assessing level of care and service needs for CFC services. (Hearing Summary)

17. Connecticut Community Care assessed the Applicant as requiring maximum assistance with bathing, dressing, and toileting and requiring limited assistance with transferring and eating. (Hearing Summary, Department's testimony)
18. The Department determined that the Applicant was eligible to receive 8.75 hours per week per ADL for her needs with bathing, dressing, and toileting totaling 26.25 hours. The Department did not allow hours for transferring or eating. (CT Community Care testimony)
19. On [REDACTED] 2019, the Department hand delivered a Notice of Action to the Applicant reducing her CFC individual budget from \$61,678.13 to \$26,250.21 representing 26.25 hours per week of PCA services effective [REDACTED], 2019. (Ex. 2: Notice of Action [REDACTED]/19)
20. At the administrative hearing, based on the Appellant's testimony and the DDS Level of Need Assessment reflecting the Applicant's need for maximum or extensive assistance with transferring and eating, the Department agreed its determination of her level of need for transferring and eating was faulty and that hours should have been allocated for those ADLs. The Department requested to reassess the Applicant within 10 days. (Hearing Record)
21. As of the date of this decision, the Department has not provided evidence of a reassessment. (Hearing record)
22. The issuance of this decision is timely under section 17b-61(a) of Connecticut General Statutes, 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. This decision, therefore, was due no later than [REDACTED] 2019, and is therefore timely. (Hearing Record)

### **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") 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.
3. Title 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 (ADLs), instrumental activities of daily living (IADLs), and health-related tasks through

hands-on assistance, supervision, or cueing.

4. Title 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. Title 42 CFR § 441.510 address eligibility for the program as follows:  
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. 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; and

- (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.
6. Title 42 CFR § 441.520 provides for included services as follows:
  - (a) 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, 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.
7. Title 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 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.
8. The Department correctly accepted the DDS assessment of functional need but incorrectly applied the results of the assessment to its calculation of hours.
9. 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. Connecticut General Statutes § 17b-259b(a).
10. Based on the evidence provided, the Department's reduction CFC hours is not supported under medical necessity.

### **DISCUSSION**

The Appellant provided additional testimony indicating the Applicant requires hands-on assistance with transferring and eating. The Department's Exhibit 1, DDS Level of Need Assessment, in fact, supports the Appellant's testimony regarding her additional needs. The Department agreed that a reassessment was warranted. The hearing record was held open for the new assessment and as of the date of this decision, this Hearing Officer has not received a new assessment. The


Department's reduction in hours is not supported by the evidence in the hearing record

**DECISION**

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

**ORDER**

1. The Department shall rescind its [REDACTED] 2019 Notice of Action reducing the Applicant's CFC budget and hours.
2. Compliance with this order shall be forwarded to the undersigned no later than [REDACTED] 2019.

  
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Marci Ostroski  
Hearing Officer

Pc: Community Options, Department of Social Services, Central Office  
Karri Filek, Department of Social Services, 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.