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

[redacted] 2019
SIGNATURE CONFIRMATION

HEARING REQUEST #145586

CASE ID #[redacted]
CLIENT ID [redacted]

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2019, the Department of Social Services (the "Department") sent [redacted] (the "Appellant") a Notice of Action/Service Budget Reduction stating that based on a reassessment of the Appellant's Level of Need, it was reducing the Appellant's annual Community First Choice ("CFC") Individual Budget from $70,143.75, or 72.5 hours per week to $43,750.35 , or 43.75 hours per week of Personal Care Attendant ("PCA") service, effective [redacted] 2019.

On [redacted] 2019, the Appellant's Representative, [redacted], requested an administrative hearing on behalf of the Appellant to contest the Department's reduction in the Appellant's annual CFC Individual Budget.

On [redacted] 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2019 @ 1:00 PM.

On [redacted] 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 to address the Department's reduction in the Appellant's annual CFC Individual Budget.

The following individuals were present at the hearing:

[redacted], Appellant's Representative/Father
Karri L. Filek, Representative for the Department
Randell Wilson, Representative for Connecticut Community Care
Hernold C. Linton, Hearing Officer

The closing of the record was extended for the submission of additional evidence from the Department and the Appellant's Representative. On [redacted] 2019, the Department provided additional evidence regarding a change in the Appellant's transportation to and from the Group Day Program, which was shared with the Appellant's Representative for review and comments by [redacted] 2019. The Appellant's Representative provided a statement regarding his varying work schedule and medical treatment received by his spouse that was shared with the Department for review and comments. No additional comment was received from the Department or the Appellant's Representative. The hearing record closed on [redacted] 2019.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly reduced the Appellant's CFC individual budget to 43.75 PCA service hours per week or a budget of $43,750.35 annually.

FINDINGS OF FACT

1. The Appellant is [redacted] years of age and diagnosed with Intellectual Disability, Cerebral Palsy, and Multiple Sclerosis. He resides at home with both parents. (Hearing Summary; Dept.'s Exhibit #1: DDS Level of Need Assessment)

2. The Appellant receives Medicaid long-term care supports and services provided under his CFC plan. (Hearing Summary)

3. The Appellant receives assistance under the Individual and Family Support Waiver ("IFS") Program administered by the Department of Developmental Services ("DDS"). (Hearing Summary)

4. The Appellant participates in a Medicaid funded Group Day Program through DDS, Monday through Friday for six hours per day (30 hours per week), where he has a full time aide to help facilitate his needs. This includes, but is not limited to, assistance with ADLs ("Activities of Daily Living") and IADLs ("Instrumental Activities of Daily Living"). (Hearing Summary)

5. The Appellant's transportation costs to and from the Group Day Program is included as part of the waiver supports and services provided by DDS. (Hearing Summary)

6. The Group Day program administered by DDS provides recipients with services and supports related to the acquisition, improvement and/or retention of skills and abilities to prepare and support an individual for work and/or community participation and/or meaningful socialization, leisure and retirement activities. Supports include the development, maintenance or enhancement of independent functioning skills including but not limited to sensory-motor, cognition, personal grooming, hygiene, toileting, assistance in developing and maintaining friendships of choice and skills to use in daily interactions; the

development of work skills; opportunities to earn money; and opportunities to participate in community activities. (Hearing Summary)

7. The Appellant's IADLs needs include assistance with taking medications, using the telephone, household chores, budgeting, shopping, and meal preparation. (Hearing Summary)

8. The Appellant receives voluntary informal family support (assistance with taking medications, using the telephone, household chores, budgeting, meal preparation, and shopping) to meet his care needs at home. (Hearing Summary)

9. On [redacted] 2018, the Department assessed the Appellant for CFC services and approved an annual service plan of $70,143.75, which allowed for 72.5 hours per week of Personal Care Assistant ("PCA") to meet his ADLs and hands-on care needs. (Hearing Summary; Dept.'s Exhibit #4: [redacted]/18 Notice of Action)

10. The Appellant is dependent for the completion of his core ADLs needs (Bathing, Dressing, Toileting, Transferring, and Eating). (Hearing Summary)

11. The Appellant's 2018 annual CFC Individual Budget of $70,143.75 did not reflect the support services that he is receiving under the DDS IFS waiver program. (Hearing Summary)

12. On [redacted] 2019, DDS completed an annual comprehensive assessment for Medicaid long-term care supports and services received by the Appellant from DDS. (Hearing Summary)

13. On [redacted] 2019, the Department conducted an annual assessment of the Appellant's level of care needs and determined that in addition to the support services received from the DDS Group Day Program and the voluntary informal family support, 43.75 hours per week of PCA would be an appropriate level of support to meet the Appellant's care needs at home. (Hearing Summary)

14. The Department's [redacted] 2019 annual assessment of the Appellant's care needs included a review of the annual comprehensive assessment completed by DDS and a face-to-face assessment completed by a Social Worker who meets the qualifications outlined in the State's Plan. (Hearing Summary)

15. The Department sent the Appellant a Notice of Action/Service Budget Reduction stating that based on a reassessment of his Level of Needs; the Department is reducing the Appellant's CFC Individual Budget from $70,143.75 annually to $43,750.75 or 43.75 PCA service hours per week, effective [redacted] 2019. (Hearing Summary; [redacted]19 Notice of Action)

16. Based on the 2019 assessment, the Department determined that the current supports and services provided to the Appellant through DDS, 43.75 PCA service hours per week through CFC, and the voluntary informal family supports

are adequate to meet his care needs. It also determined he does not require any additional assistance beyond the 43.75 hours per week of PCA, as it would not be medically necessary to meet his ADLs, IADLs, and other health related needs. (Hearing Summary)

17. The Appellant receives a combined total of 73.75 (DDS's 30 hours; plus CFC's 43.75 hours) hours per week of long-term care services and supports in addition to the voluntary informal family supports provided by his parents to meet his care needs. (See Facts #13 to 17)

18. On [redacted] 2019, the Appellant's Representative completed an application for self-hire with DDS to receive payment for transporting the Appellant to and from the Group Day Program. (Dept.'s Exhibit #8: [redacted]19 Email; Dept.'s Exhibit #9: Case Notes)

19. The hearing record was held open for the Appellant's Representative and the Department to provide additional evidence. The Department did provide an email and case notes to establish that the Appellant's Representative signed an agreement with DDS to receive payment to transport the Appellant to and from the Group Day Program, and consequently, DDS removed the cost of transportation from the Appellant's waiver budget. (Dept.'s Exhibit #8; Dept.'s Exhibit #9)

20. The Appellant's Representative has varying work schedule on some days, and his spouse received treatment for her left elbow and trigger finger in [redacted] 2017, but they are still able to provide the Appellant with voluntary informal family support to meet his care needs. (Appellant's Exhibit A: Statement from Appellant's Representative; Appellant's Exhibit B: [redacted]17 Statement from Dr. [redacted]

21. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that the Hearing Officer issues a decision within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [redacted] 2019. The hearing record was closed on [redacted] 2019, with 19 delay days due to the additional submissions. Therefore, this decision is due no later than [redacted], 2019.

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 ("C.F.R.") § 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. 42 C.F.R. § 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 (ADL's), instrumental activities of daily living (IADLs), and health-related tasks through hands-on assistance, supervision, or cueing.

4. 42 C.F.R. § 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. 42 C.F.R. § 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.

6. 42 C.F.R. § 441.520 (a) provides for included services and states that 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 and 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.

The Department correctly determined the Appellant as dependent for the completion of his core ADLs, such as bathing, dressing, toileting, transferring, and eating.

The Department correctly determined that the Appellant's needs relating to his IADLs include the need for assistance with taking medications, using the telephone, household chores, budgeting, meal preparation, and shopping.

7. 42 C.F.R. § 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 services 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.

   The Department correctly completed a functional needs assessment, including its review of a prior DDS's assessment, to determine the Appellant's service plan and budget.

8. 42 C.F.R. § 441.540(b)(5) provides for the person centered service plan. 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.

   Connecticut State Plan Amendment ("SPA") no 15-012, pursuant to section1915(k) of the Social Security Act, (5)(A) provides for included 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.

The Department correctly determined that the Appellant receives voluntary informal family supports with his ADLs and his IADLs from his parents, with whom he resides.

9. Title 42 CFR § 441.510(d) & (e) provides that (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)(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**.**

   The Department correctly determined that the DDS waiver program provides the Appellant with services and supports for the improvement and retention of his IADLs in an employment or community environment, including assistance with his ADLs, when he attends the Group Day Program.

   The Department incorrectly determined that the Appellant is not permitted to receive duplication of the supports and services provided under the waiver program as the CFR provides that individuals receiving support services through the CFC program are not precluded from receiving other home and community-based long-term care services and supports through other Medicaid State plan, waiver, grant or demonstration authorities (i.e., DDS).

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

Based on a comprehensive assessment of the Appellant's physical, mental, and functional needs and supports, including the voluntary informal family supports, and the hours per week in support services provided to the Appellant by DDS, under the waiver program when he attends the Group Day Program, the Department correctly determined that 43.75 hours per week of PCA services under the CFC program are adequate to meet the Appellant's at-home care needs.

The evidence established that the Appellant does not require additional PCA service hours at home beyond the approved 43.75 hours per week provided under the CFC program, as he receives additional hours per week of support services under the DDS waiver program to the attend the Group Day Program, for a combined total of 73.75 hours (43.75 CFC hours; plus 30 DDS hours) hours week of support services, more than what he had been receiving prior to the reduction in his CFC hours.

There is no medical evidence that the reduction from 72.5 hours per week of in-home PCA support services to 43.75 hours per week places the Appellant at immediate risk of institutionalization, as he receives an additional 30 hours per week of support services under the DDS waiver program, as well as the voluntary informal family supports from his parents.

The Department correctly determined that the 43.75 hours per week of CFC support services is medically necessary to meet the Appellant needs pursuant to Section § 17b- 259b(a)(2) of the Connecticut General Statutes.

DECISION

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

[redacted]

Hernold C. Linton
Hearing Officer

Pc: **Sallie Kolreg**, DSS, CO

Dawn Lambert, DSS, CO

Christine Weston, 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 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.