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

[redacted]
Request # 146924

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted], 2019, the Department of Social Services (the "Department") issued a Notice of Action ("NOA") to [redacted] (the "Appellant") denying her Assistive Technology Request ("ATR") through Community First Choice ("CFC") services. The notice advised her that the requested service for [redacted] (the "Recipient") was denied because the request did not meet the requirements of CFC.

On [redacted] 2019, the Appellant requested an administrative hearing to denial of the ATR.

On [redacted], 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("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. The following individuals were present at the hearing:

[redacted], Appellant and Recipient's mother
[redacted], Appellant's mother
Paul Ford, Department's Representative

Marybeth Mark, Department's Observer
Carla Hardy, Hearing Officer

The hearing record was held open for the submission of additional evidence by the Appellant. The hearing record closed on [redacted] 2019.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly denied the Appellant's ATR in accordance with State statutes and regulations.

A separate hearing decision will be issued regarding the denial of the environmental accessability modification request.

FINDINGS OF FACT

1. The Recipient is receiving Medicaid. (Hearing Record)

2. The Recipient is 20 years (DOB [redacted]99) of age. (Exhibit 1: Universal Assessment, [redacted]19)

3. The Appellant is the Recipient's mother and legal guardian. (Appellant's Testimony)

4. The Recipient lives with his family. (Exhibit 1: Universal Assessment, [redacted]19)

5. On [redacted] 2019, the Recipient participated in an annual assessment for CFC services. He was approved for a CFC budget of $51,195.46 annually. (Exhibit 2: CFC Toolkit, [redacted]19; Hearing Summary)

6. The assessment was conducted by Connecticut Community Care. ("CCC"). (Hearing Summary)

7. CCC is the Department's contractor for the purpose of assessing the level of care and service needs for CFC. (Hearing Record)

8. The assessment included a performance rating on five activities of daily living ("ADLs"). The Recipient requires extensive assistance with bathing, dressing, and toileting. He is independent with transferring and eating. The Recipient's first goal is to have assistance with his ADLs and instrumental activities of daily living, especially cooking. His second goal is access to community and socialization, to communicate better with assistive technology and better accessibility to the family home. (Exhibit 2; Hearing Summary)

9. The Recipient has a diagnosis of intellectual disability, muscular dystrophy, schizencephaly, cerebral palsy, optic nerve damage, hemiplegia, seizure disorder, anxiety, depression, and a speech impediment. He has no peripheral vision, he is legally blind. (Exhibit 1: Universal Assessment; Exhibit 2; Appellant's Testimony)

10. The Recipient takes the following medications: Trileptal, Pristiq, Fiber, Calcium, and Nature Boost. (Exhibit 1)

11. The Recipient was approved for 52 hours of service per week to meet his ADL hands-on care needs. (Exhibit 2; Hearing Summary)

12. On [redacted] 2019, the Appellant submitted an Assistive Technology Home Modification Request Form. ("ATHMRF"). (Exhibit 3: ATHMRF)

13. The Appellant requested Assistive Technology for an iPhone 8 Plus for the Recipient. (Appellant's Testimony)

14. The iPhone 8 Plus has a larger screen than the iPhone 6S that the Recipient currently has. He will be able to download more assistive apps for self-help and reminders. The Recipient has a speech impediment. He uses SIRI to practice his speech patterns. If SIRI is unable to understand him, then that is an indicator that others may not be able to understand him. (Exhibit 3; Exhibit 4: Letter from the Appellant and spouse, [redacted]/19; Appellant's Testimony)

15. The Recipient's iPhone 6S is old and he is unable to increase the font. (Appellant's Testimony)

16. The Appellant submitted an Annual Education Report from the [redacted] The report is dated [redacted] 2002, and indicates that the Recipient has a decreased visual field on the right side due to poor vision in the right eye. (Exhibit 6A: [redacted] Annual Education Report, [redacted]/02)

17. The Appellant submitted a letter from [redacted] indicating the Recipient's visual acuity in the right eye is 20/100 and 20/40 in the left. The physician recommended larger print material. The letter from [redacted] is dated [redacted] 2007. (Exhibit 6B: Letter from CEC, [redacted]/07)

18. The Appellant submitted a letter from [redacted] indicating the Recipient had been diagnosed with schizencephaly and nystagmus. The letter from [redacted] is dated [redacted] 2000. (Exhibit 6C: Letter from PAON, [redacted]/00)

19. On [redacted] 2019, the Appellant submitted a letter of medical necessity ("LMN") from [redacted] MD who recommended a phone with adaptive technology to help the Recipient with GPS tracking, paying bills, calculating tips, medication and appointment reminders, calendar events, and talk to text. (Appellant's Exhibit A: Dr. [redacted] LMN, [redacted]/19)

20. On [redacted] 2019, the Appellant submitted an LMN from [redacted] MD, the Recipient's pediatrician who commented, "I agree with his mother [redacted], that his phone is utilized as an assistive device…" (Appellant's Exhibit B: LMN fro Dr. [redacted]/19)

21. On [redacted] 2019, the Appellant's LMNs were forwarded to the Department for review. (Hearing Record)

22. On [redacted] 2019, the Department determined the LMNs did not change its decision to dened the request for assistive technology. (Exhibit 11: Email from the [redacted]/19)

23. 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. However, the close of the hearing record, which had been anticipated to close on [redacted], 2019, did not close for the admission of evidence until [redacted] 2019. Because of this 7-day delay in the close of the hearing record arose from the Appellant's request, this final decision was not due until [redacted] 2020, 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") 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.
   (b) At the State's option, the State may provide permissible services and supports that are linked to an assessed need or goal in the individual's person-centered service plan. Permissible services and supports may include, but are not limited to, the following:
      (1) Expenditures for transition costs such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities linked to an assessed need for an individual to transition from a nursing facility, institution for mental diseases, or intermediate care facility for Individuals with Intellectual Disabilities to a home and community-based setting where the individual resides;
      (2) Expenditures relating to a need identified in an individual's person-centered service plan that increases an individual's independence or substitutes for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

7. Title 42 CFR § 441.525 provides for excluded services. Community First Choice may not include the following:
   (a) Room and board costs for the individual, except for allowable transition services described in § 441.520(b)(1) of this subpart.
   (b) Special education and related services provided under the Individuals with Disabilities Education Act that are related to education only, and vocational rehabilitation services provided under the Rehabilitation Act of 1973.
   (c) Assistive devices and assistive technology services, other than those defined in § 441.520(a)(3) of this subpart, or those that meet the requirements at §441.520(b)(2) of this subpart.
   (d) Medical supplies and medical equipment, other than those that meet the requirements at §441.520(b)(2) of this subpart.
   (e) Home modifications, other than those that meet the requirements at §

441.520(b) of this subpart.

8. 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).

The evidence provided does not establish that expenditures would be required for human assistance without the assistive device, the iPhone 8 Plus.

The Department correctly determined that the assistive device, the iPhone 8 Plus is not medically necessary to ensure the welfare and safety of the Recipient.

The Department correctly determined that the assistive device is prohibited under the service definition for CFC.

The Department correctly denied the Appellant's request for the iPhone 8 Plus.

DECISION

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

Carla Hardy
Hearing Officer

Pc: hearings.commops@ct.gov

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.