

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

██████████ 2017
Signature Confirmation

Client: ██████████
Request: 802338

NOTICE OF DECISION

PARTY

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██████████
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PROCEDURAL BACKGROUND

On ██████████ 2016, Community Health Network of Connecticut (“CHNCT”), sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) denying her provider’s request for prior authorization request for approval of a Tobii Dynavox I – 12 speech generating device with eye gaze.

On ██████████ 2016, ██████████, the Appellant’s mother and power of attorney (“POA”) requested an administrative hearing to contest CHNCT’s denial of her prior authorization request for approval of a Tobii Dynavox I-12 speech generating device with eye gaze.

On ██████████ 2017, the Office of Legal Counsel, Regulations and Administrative hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2017.

On ██████████ 2017, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals attended the administrative hearing:

██████████, the Appellant
██████████, the Appellant’s POA and mother
██████████, MS, ██████████, Speech-Language Pathologist
██████████, ██████████, Social Worker
Scott Zuckerman, Hearing Officer

STATEMENT OF ISSUE

The issue to be decided is whether CHNCT's denial of a prior authorization request of approval of Medicaid coverage for a Tobii Dynavox I-12 speech generating device ("SGD") with eye gaze as not medically necessary was correct in accordance with state statute and regulations.

FINDINGS OF FACT

1. The Appellant is a recipient of medical assistance under the Medicaid program. (Hearing Record)
2. CHNCT is the administrative services organization ("ASO") for the Department of Social Services (the "Department"). (Hearing Record)
3. The Appellant was born [REDACTED] 1977. (Hearing Record)
4. Sometime in [REDACTED] 2006, the Appellant was diagnosed with [REDACTED]. (Appellant's representative's testimony)
5. In [REDACTED] 2009, the Appellant was admitted to [REDACTED] Nursing Facility (the "facility") in [REDACTED], CT. (Appellant's representative's testimony)
6. The Appellant has no verbal communication secondary to her diagnosis of [REDACTED]. (Hearing record)
7. The Appellant is able to nod yes and no when asked a question. (Hearing Record, Testimony, Exhibit10: Physicians Notes, [REDACTED]/16)
8. The Appellant has minimal upper extremities movements. (Testimony, Exhibit 10: Physicians note dated [REDACTED] 2016)
9. The Appellant uses a blackberry phone to communicate utilizing one finger to type. (Appellant's representative's testimony)
10. The Appellant's typing can take time with many typing mistakes using one finger. (Testimony)
11. The Appellant is unable to communicate using communication boards or books because she cannot turn the pages or use a keyboard. (Exhibit 2: Speech Therapist's Medicare report dated [REDACTED] 2016)
12. On [REDACTED] 2016, a representative from the Tobii Dynavox company and the facility's speech pathologist trialed the Appellant on the Tobii DynaVox I-series I-12

SGD with eye gaze for one hour. (Exhibit 2: Speech Therapist's Medicare report dated [REDACTED] 2016, Speech Therapist Testimony)

13. The trial period for the Tobii Dynavox I-12 SGD with eye gaze is a four week period. (CHNCT's Testimony)
14. The monthly rental fee to trial the Tobii I-12 is \$1700.00. (SLP testimony)
15. Eye Gaze technology allows the individual to control the keyboard and bring up phrases utilizing eye movements. (Speech and Language pathologist testimony)
16. On [REDACTED] 2016, CHNCT received an Outpatient Prior Authorization request form from Tobii Dynavox, LLC, requesting a Tobii I-12 SGD/Closed, Gaze compatible communicator, Tobii Gaze Interaction for I12 and the Daessy Universal Mount. (Exhibit 2: Outpatient prior authorization request form)
17. On [REDACTED] 2016, CHNCT issued a notice of action to the Appellant stating that her providers request for authorization of a Tobii Dynavox I-12 speech generating devices with eye gaze for the reason that it was not medically necessary as defined by state statute. (Exhibit 4: Notice of Action, [REDACTED]/16)
18. On [REDACTED] 2016, [REDACTED], speech and language pathologist for [REDACTED], provided a letter in support of the SGD. The speech and language pathologist stated it would be necessary to have a reliable means of communication in order to have her basic needs met, participate in decision regarding medical care, convey changes in her medical status and participate in social activities in the facility and the community in order to maximize her quality of life. (Exhibit 12: Letter from [REDACTED], [REDACTED] Rehab, [REDACTED]/16)
19. On [REDACTED] 2016, [REDACTED], APRN, completed a letter of medical necessity, requesting the authorization of the speech generating device. (Exhibit 13: Letter from [REDACTED])
20. The APRN recommended approval of a speech generating device due to the Appellant's limited mobility and that it would enable her to express her needs and concerns to the staff that she is dependent on. (Exhibit 13)
21. The Tobii Dynavox I-12 SGD with eye gaze is durable medical equipment. (CHNCT's Exhibit 2)
22. The Tobi Dynavox I-12 SGD with eye gaze is a non-covered item for a resident of a skilled nursing facility. (CHNCT's representative's testimony, Exhibit 17: Letter dated [REDACTED] 2017)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes designates the Department of Social Services to be the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Conn. Gen. Stat. § 17b-260 in part authorizes the Commissioner of the Department of Social Services to take advantage of the medical assistance programs provided in Title XIX, entitled “grants to States for Medical Assistance Programs,” contained in the Social Security Amendments of 1965. The Commissioner may administer the same in accordance with the requirements listed therein.
3. Conn. Gen. Stat. § 17b-262 states in part that the Commissioner may make such regulations as are necessary to administer the Medical Assistance Program.
4. For the 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).
5. The Tobii DI-12 SGD with eye gaze is not medically necessary.
6. Sections 17b-262-672 through §17b-262-682 of the Regulations of Connecticut State Agencies set forth set forth the Department of Social Services requirements for the payment of durable medical equipment (“DME”) to providers, for clients who are determined eligible to receive services under Connecticut Medicaid pursuant to section 17b-262 of the Connecticut General Statutes.
7. For the purposes of sections 17b-272 through 17b-262-682 of the Regulations of Connecticut State Agencies, the following definitions apply:
“Client” means a person eligible for goods or services under the Medicaid

program.

“Customized equipment” means devices or equipment prescribed by a licensed practitioner which is specifically manufactured to meet the special medical, physical, and psychosocial needs of the client. The equipment shall be individualized to preclude its use by any other person except the client for whom it was originally developed.

“Department” means the Department of Social Services or its agent.

“Durable Medical Equipment” or “DME” means equipment that meets all of the following requirements: (A) can withstand repeated use; (B) is primarily and customarily used to serve a medical purpose; (C) generally is not useful to a person in the absence of an illness or injury; and (D) is nondisposable.

“Home” means the client’s place of residence which includes a boarding home, community living arrangement, or residential care home. Home does not include facilities such as hospitals, chronic disease hospitals, nursing facilities, intermediate care facilities for the mentally retarded (ICFs/MR), or other facilities that are paid an all inclusive rate directly by Medicaid for the care of the client.

“Medicaid” means the program operated by the Department of Social Services, pursuant to section 17b-260 of the Connecticut General Statutes and authorized by Title XIX of the Social Security Act.

“Nursing facility” or “NF” means an institution as defined in 42 USC 1396r (A).

“Prior authorization” or “PA” means approval for the service or the delivery of goods from the department before the provider actually provides the service or delivers the goods.

“Provider” means the vendor or supplier of durable medical equipment who is enrolled with the Department as a medical equipment, devices, and supplies supplier.

8. The Tobii I-12 SGD with eye gaze is “durable medical equipment” or “DME,” as “durable medical equipment” or “DME” is defined in state regulations governing the administration of the Medicaid program.
9. The Department shall pay for the purchase or rental and the repair of DME, except as limited by sections 17b-262-672 to 17b-262-682, inclusive, of the Regulations of Connecticut State Agencies, that conforms to accepted methods of diagnosis and treatment and is medically necessary and medically appropriate. Conn. Agencies Regs. § 17b-262-676 (a)(1).
10. Conn. Agencies Regs. § 17b-262-678 addresses prior authorization requirements.
11. The Department shall not pay for anything of an unproven, experimental or research nature or for services in excess of those deemed medically necessary by the department to treat the recipient’s condition or for services not directly related to the recipient’s diagnosis, symptoms, or medical history. Conn. Agencies Regs. §17b-262-676 (b)(1).

12. DME services are available to all clients who live at home. Additionally, the department shall pay for ventilators, customized wheelchairs, and Group 2 Pressure Reducing Support Surfaces for residents of nursing facilities and ICFs/MR. Conn. Agencies Regs. § 17b-262-676 (a)(2).
13. The Appellant resides in a nursing facility.
14. The Appellant currently does not live at "home," as "home" is defined in state regulations governing the administration of the Medicaid program.
15. The Tobi Dynavox I-12 SGD is not a ventilator, customized wheelchair, or Group 2 Pressure Reducing Support Surface.
16. The Tobi Dynavox I-12 SGD does not meet one of the three exceptions for Medicaid approval of durable medical equipment for a resident of a nursing facility.
17. CHNCT correctly determined that the Appellant was not eligible for prior authorization for a Tobii Dynavox I-12 SGD through the Medicaid program.

DECISION

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


Scott Zuckerman
Hearing Officer

cc: CHNCT
Fatmata Williams, DSS

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.