

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 ID # ██████████
Request # 811248

NOTICE OF DECISION

PARTY

C/O ██████████
████████
████████

PROCEDURAL BACKGROUND

On ████████ 2016, the Department of Social Services, through its Administrative Service Organization, Connecticut Behavioral Health Partnership ("CT BHP") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying a request for Medicaid coverage of Autism Spectrum Disorder ("ASD") Services.

On ████████ 2017, the Appellant requested an administrative hearing to contest CT BHP's decision to deny such benefits.

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, 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:

████████, the Appellant's mother and Plenary Co-Guardian
████████, the Appellant's sister and Stand by Guardian
Lakeisha Dennis, CT BHP representative
Marci Ostroski, Hearing Officer

The Hearing Record was held open for the submission of additional information. Exhibits were received from the Appellant and CT BHP and the record closed on [REDACTED] 2017.

STATEMENT OF THE ISSUE

The issue to be decided is whether the CT BHP's decision to deny Autism Spectrum Disorder Services for the Appellant is correct.

FINDINGS OF FACT

1. The Appellant is 30 years old (D.O.B. [REDACTED]/86) and has been diagnosed with Autism Spectrum Disorder ("ASD") and Seizure disorder. (Hearing Summary, Ex. 13: [REDACTED] Treatment Plan, Appellant's sister's testimony, Ex. 9: Letter from Dr. [REDACTED], [REDACTED]/17)
2. The Appellant has medical coverage through the HUSKY Medicaid program. (Hearing Record)
3. The Appellant needs assistance with all of his activities of daily living and requires constant 24 hour supervision. (Ex. 6: Letter from Dr. [REDACTED], [REDACTED]/17, Ex. 11: [REDACTED])
4. The Appellant lives with his parents and siblings. His family provides him significant assistance with his activities of daily living. (Hearing record, Appellant's sister's testimony)
5. The Appellant is non-verbal and has a history of oppositional behaviors. (Appellant's sister's testimony)
6. The Appellant received day services through [REDACTED] day program for approximately a year. [REDACTED] discharged the Appellant in early 2016 because they were unable to safely handle the Appellant's behavioral needs. (Appellant's sister's testimony, Ex. 10: Letter from [REDACTED] Director of Clinical Services, [REDACTED]/17)
7. In [REDACTED] 2016, the Appellant began receiving ASD services from [REDACTED]. (Ex. 13: [REDACTED] Treatment Plan)
8. On [REDACTED] 2016, [REDACTED] made a verbal request via telephone to CT BHP for Medicaid coverage of ASD Services for the Appellant. (Hearing Summary Addendum, Ex. A: Level of Care Review)

9. [REDACTED] is not enrolled in the Medicaid program as a provider. (Department's Summary, Ex. E: Level 1 Appeal Determination Letter from CT BHP, [REDACTED]/17)
10. On [REDACTED] 2016, CT BHP sent the Appellant and representatives a Notice of Action denying ASD Services for the Appellant. The Notice stated in part that based on information received "the member is over the age of twenty one and therefore not eligible to receive in home ASD treatment services under the Medicaid program". (Ex. B: Notice of Action, [REDACTED]/16)
11. On [REDACTED] 2017, the Appellant's representatives requested an appeal on the denial. (Ex. D: Medical Necessity Level 1 Appeal Acknowledgement Letter)
12. On [REDACTED] 2017, CT BHP sent the Appellant and representatives a Level 1 Appeal Determination denying the appeal. The denial stated in part "the treatment requested is not a covered service under the terms of Autism Spectrum Disorder Services Regulation Section 17b-262-1052, Definitions, (27) "Member" means and individual eligible to receive services under Medicaid who is under the age of twenty one...It is also noted that the requesting provider is not enrolled in the Connecticut Medicaid Assistance Program. (Ex. E: Level 1 Appeal Determination Letter from CT BHP, [REDACTED]/17)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes in part designates the Department as the state agency to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. The Commissioner may make such regulations as are necessary to administer the medical assistance program. Conn. Gen. Stat. § 17b-262.
3. Title 42 United States Code ("U.S.C") Sec § 1396d(a)(4)(B) provides for medical assistance coverage of; early and periodic screening, diagnostic, and treatment services (as defined in subsection (r) of this section) for individuals who are eligible under the plan and are under the age of 21.
4. Title 42 of the Code of Federal Regulations ("CFR") §440.345(a) provides the State must assure access to early and periodic screening, diagnostic and treatment (EPSDT) services through benchmark or benchmark-equivalent plan benefits or as additional benefits provided by the State for any child under 21 years of age eligible under the State plan in a category under section 1902(a)(10)(A) of the Act.

5. Title 42 CFR §440.40(b) provides the definition for *EPSDT*. “Early and periodic screening and diagnosis and treatment” means-(1) Screening and diagnostic services to determine physical or mental defects in beneficiaries under age 21; and (2) Health care, treatment, and other measures to correct or ameliorate any defects and chronic conditions discovered.
6. Connecticut General Statutes (“CGS”) § 17b-10 provides The Department of Social Services shall prepare and routinely update state medical services and public assistance manuals. The pages of such manuals shall be consecutively numbered and indexed, containing all departmental policy regulations and substantive procedure, written in clear and concise language. Said manuals shall be published online by the department and linked to the eRegulations System. All policy manuals of the department, as they exist on May 23, 1984, including the supporting bulletins but not including statements concerning only the internal management of the department and not affecting private rights or procedures available to the public, shall be construed to have been adopted as regulations in accordance with the provisions of chapter 54. After May 23, 1984, any policy issued by the department, except a policy necessary to conform to a requirement of a federal or joint federal and state program administered by the department, including, but not limited to, the state supplement program to the Supplemental Security Income Program, shall be adopted as a regulation in accordance with the provisions of chapter 54.
7. Section 17b-262-1051 of the Regulations of Connecticut State Agencies (“Conn Agencies Regs”) provides Sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies, set forth the Department of Social Services requirements governing payment for autism spectrum disorder services provided to Medicaid members under age twenty-one.
8. Section 17b-262-1052(24) Conn Agencies Regs. provides for the definition of member; “Member” means an individual eligible to receive services under Medicaid who is under age twenty-one.
9. The Department correctly determined that the Appellant was not under the age of 21.
10. Section 17b-262-524(a) Conn. Agencies Regs. provides To enroll in the Medical Assistance Program and receive payment from the department for the provision of goods or services to Medical Assistance Program clients, providers shall: (1) Meet and maintain all applicable licensing, accreditation and certification requirements;(2) meet and maintain all departmental enrollment requirements including the timely submission of a completed provider enrollment or reenrollment form and submission of all enrollment

information and such affidavits as the department may require; and (3) have a valid provider agreement on file which is signed by the provider and the department. This agreement, which shall be periodically updated, shall continue to be in effect for the duration specified in the agreement. The provider agreement specifies conditions and terms that govern the program and to which the provider is mandated to adhere in order to participate in the program.

11. CT BHP correctly determined that [REDACTED] was not eligible for Medicaid reimbursement for services provided as it was not an enrolled Medicaid provider.
12. CT BHP correctly denied the Appellant's request for Medicaid coverage of ASD services pursuant to EPSDT.

DISCUSSION

The Appellant's family advocated very strongly for the Appellant and is clearly invested in his best interests. They provided credible testimony and evidence to support the significant needs of the Appellant. While the Appellant may benefit from ASD services, the federal and state statutes and regulations simply do not provide for Medicaid coverage of those services for an individual over the age of 21.

The Appellant's sister submitted that ASD services would be covered under private insurance and provided the regulations that govern group private insurance. Medicaid however, is not a group private insurance and is has its own statutes and regulations which the State of Connecticut is required to adhere to in its administration. CT BHP's denial of ASD services for the Appellant was in line with the federal and state laws and the action is upheld.

DECISION

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

Marci Ostroski
Marci Ostroski,
Hearing Officer

CC:

- William Halsey, DSS Central Office
- Jessica Deflumer-Trapp, DMHAS
- Alyse Chin, DMHAS,
- Lois Berkowitz, DCF
- Lynne Ringer, Value Options,
- Ann Phelan, Value Options,
- Joseph Tritschler, Value Options,
- Nardia Stephens, Quality Mgmt Coordinator, Value Options

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.

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.