

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT06105-3725

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

Client ID # ██████████
Request # 816354

NOTICE OF DECISION
PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2017, Community Health Network of Connecticut (“CHNCT”) sent ██████████ (the “Appellant”) a notice of action denying a request for prior authorization of custom foot orthotics for her child, ██████████

On ██████████ 2017, the Appellant requested an administrative hearing to contest the denial of custom foot orthotics.

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 were present at the hearing:

██████████, Appellant
Rosa Maurizio, Clinical Quality Analyst, CHNCT’s Representative
Roberta Gould, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether CHNCT’s decision to deny custom foot orthotics is correct.

FINDINGS OF FACT

1. The Appellant and her child, ██████████, are recipients of the Husky A Medicaid program. (Hearing record)
2. ██████ is 4 years old and has a diagnosis of bilateral Pes Planus, excessive ankle pronation and early heel off during gait. (Exhibit 1: Prior Authorization request with progress notes)
3. ██████ suffers from heel pain, arch pain and pain while walking and wearing shoes. (Exhibit 1, Exhibit 2: Medical progress notes and Appellant's testimony)
4. ██████ has normal muscle strength in both feet, normal range of motion, a normal arm swing in both arms and normal reflexes. (Exhibit 1 and Exhibit 2)
5. Dr. ██████████ is ██████ podiatrist ("the treating physician"). (Exhibit 1 and Hearing summary)
6. ██████ has used over-the-counter insoles as well as icing and stretching of the feet to alleviate discomfort when ambulating. (Exhibit 2 and Exhibit 3: Medical review dated ██████/2017)
7. ██████ has not used prefabricated custom molded foot orthotics with longitudinal arch support and supportive above-the-ankle footwear that includes space allowance for the foot orthoses to treat his medical condition. (Exhibit 2 and Appellant's testimony)
8. ██████ has no functional impairments. (Appellant's testimony)
9. On ██████████ 2017, the treating physician requested prior authorization for custom foot orthotics for ██████ diagnoses of bilateral pes planus and excessive ankle pronation. (Exhibit 1 and Hearing summary)
10. On ██████████ ██████ 2017, CHNCT's medical director reviewed the medical information submitted by ██████ physician and determined that the request for custom foot orthotics was denied because although the use of foot orthotics is considered medically necessary, the medical necessity for custom foot orthotics cannot be justified for him as he presents with normal muscle strength, bilateral upper extremities swing, and reflexes. The medical director stated that custom foot orthotics are not medically necessary to address this mild, flexible orthopedic deformity. (Exhibit 2 and Hearing summary)
11. On ██████████ 2017, CHNCT sent the Appellant a *Notice of Action for Denied Services or Goods* denying the request for custom foot orthotics because it is more costly than an alternative service that may produce equal results as to the

treatment of her child's illness, injury or disease. (Exhibit 3: Notice of Action and Hearing summary)

12. On [REDACTED] 2017, the Appellant requested an appeal and administrative hearing to contest the denial of custom foot orthotics for [REDACTED] because it is a hereditary condition that orthotics can help to optimize and he does not stand, walk or run stably. (Exhibit 4: Administrative hearing request)
13. On [REDACTED] 2017, CHNCT sent a medical record request to Dr. [REDACTED] requesting additional information regarding [REDACTED] medical condition. (Exhibit 6: Medical documentation request and Hearing summary)
14. On [REDACTED] 2017, CHNCT received more clinical information for [REDACTED] from his treating physician indicating that he is in need of semi-rigid orthotic stabilizers in order to stabilize his feet and prevent further dysfunction. (Exhibit 7: Clinical medical information dated [REDACTED]/17)
15. On [REDACTED] 2017, CHNCT requested more medical information regarding the consideration of prefabricated foot orthotics for [REDACTED] (Exhibit 8: Medical records request dated [REDACTED]/2017 and Hearing summary)
16. On [REDACTED] 2017, CHNCT received clinical information regarding [REDACTED] from the treating physician recommending custom foot orthotics to control abnormal foot biomechanics and to help with his pain. (Exhibit 10: Clinical medical information dated [REDACTED]/17 and Hearing summary)
17. On [REDACTED] 2017, CHNCT received clinical information regarding [REDACTED] from Dr. Avi Weiner, the child's orthopedic physician, indicating that he sustained a fractured arm the previous year and that his mother attributes this to issues with his feet. Dr. Weiner stated that [REDACTED] was able to participate in physical exercise with no limitations at this time. (Exhibit 11: Clinical medical information dated [REDACTED]/17 and Hearing summary)
18. On [REDACTED] 2017, CHNCT sent a medical record request to Stamford Hospital requesting additional information regarding [REDACTED] medical condition. (Exhibit 12: Medical records request dated [REDACTED]/2017 and Hearing summary)
19. On [REDACTED] 2017, CHNCT reviewed the Appellant's medical documents and determined that the request for custom foot orthotics was upheld because although the use of foot orthotics is medically necessary, the medical necessity for custom foot orthotics could not be justified for a child who presents with normal muscle strength, normal range of motion, normal reciprocal bilateral upper extremities swing and normal reflexes. CHNCT found that although it is medically necessary for this child to use foot orthotics and above the ankle supportive footwear, the request for custom "molded foot orthotics" is not justified as compared to other alternatives. Consideration can be given to "prefabricated

foot orthotics” with longitudinal arch support and supportive above-the-ankle footwear that includes space allowance for the foot orthoses. There is also opportunity for modifications by way of heat molding, adjusting to the member’s specific foot shape and size and by adding any functional modifications such as scaphoid pads, metatarsal bars and heel wedging or posting. (Exhibit 13: Medical review dated [REDACTED] 2017 and Hearing summary)

20. On [REDACTED] 2017, CHNCT sent the Appellant notification that CHNCT’s denial of authorization for custom foot orthotics for [REDACTED] had been upheld after further review because medical information provided does not support the medical necessity for the custom foot orthotics. (Exhibit 15: Determination Letter and Hearing summary)
21. On [REDACTED] 2017, CHNCT received clinical information regarding [REDACTED] fractured arm from Stamford Hospital. (Exhibit 16: Stamford Health Emergency Department records dated [REDACTED]/2016 and Hearing summary)
22. On [REDACTED] 2017, CHNCT sent the additional information for a Reconsideration Review. (Exhibit 17: Reconsideration review request and Hearing summary)
23. On [REDACTED] 2017, CHNCT reviewed the Stamford Hospital medical documents and determined that the request for custom foot orthotics was upheld because [REDACTED] was not deemed to be at any increased risk of fall during his assessment on [REDACTED] 2016, after the fracture of his arm. (Exhibit 18: Reconsideration review and Hearing summary)

CONCLUSIONS OF LAW

1. Section §17b-2(8) of the Connecticut General Statutes provides that the Department of Social Services is the designated state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Section §17b-262 of the Connecticut General Statutes provides that the Department may make such regulations as are necessary to administer the medical assistance program.
3. Section §17b-259b(a) of the Connecticut General Statutes provides that 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.

Section §17b-259b(b) of the Connecticut General Statutes provides that clinical policies, medical policies, clinical criteria or any other generally accepted clinical practice guidelines used to assist in evaluating the medical necessity of a requested health service shall be used solely as guidelines and shall not be the basis for a final determination of medical necessity.

Section §17b-259b(c) of the Connecticut General Statutes provides that upon denial of a request for authorization of services based on medical necessity, the individual shall be notified that, upon request, the Department of Social Services shall provide a copy of the specific guideline or criteria, or portion thereof, other than the medical necessity definition provided in subsection (a) of this section, that was considered by the department or an entity acting on behalf of the department in making the determination of medical necessity.

Section §17b-259b(d) of the Connecticut General Statutes provides that the Department of Social Services shall amend or repeal any definitions in the regulations of Connecticut state agencies that are inconsistent with the definition of medical necessity provided in subsection (a) of this section, including the definitions of medical appropriateness and medically appropriate, that are used in administering the department's medical assistance program. The commissioner shall implement policies and procedures to carry out the provisions of this section while in the process of adopting such policies and procedures in regulation form, provided notice of intent to adopt the regulations is published in the Connecticut

Law Journal not later than twenty days after implementation. Such policies and procedures shall be valid until the time the final regulations are adopted.

4. CHNCT was correct to find that custom foot orthotics are not justified as compared to other alternatives that have not yet been tried.
5. CHNCT was correct to deny prior authorization for custom foot orthotics because they are not medically necessary to address the child's mild, flexible orthopedic deformity and, as such, would not be a covered service, in accordance with state statutes and regulations.

DISCUSSION

State regulations provide that health services covered under the Medicaid program must be considered medically necessary or required to prevent, identify, diagnose, treat, rehabilitate or ameliorate an individual's medical condition in order to attain or maintain the individual's achievable health and independent functioning and are 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. The Appellant stated that she has not yet tried prefabricated foot orthotics for [REDACTED] and the child has demonstrated with normal muscle strength, bilateral upper extremities swing and reflexes.

The Appellant did not provide any other evidence of a substantial nature to indicate that the presence of foot pain, heel pain, arch pain for [REDACTED] cannot be treated with prefabricated foot orthotics. It is reasonable to conclude that custom foot orthotics would not be medically necessary and that prefabricated foot orthotics with longitudinal arch support and supportive above-the-ankle footwear should be tried first.

The undersigned hearing officer finds that the request for custom foot orthotics does not meet the requirement of not being 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.

DECISION

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



Roberta Gould
Hearing Officer

Pc: Fatmata Williams, DSS Central Office
CHNCT

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 Legal Counsel, Regulations, and Administrative Hearings, 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 his 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.