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

[redacted] 2016
Signature confirmation

Client: [redacted]
Request: 773919

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2016, the Department of Social Services' (the "Department") Connecticut Medical Assistance Drug Utilization Review Program notified [redacted] (the "Appellant") in writing that she would be restricted to using only one pharmacy when having her prescriptions filled using her Connecticut Medical Assistance card. The Connecticut Medical Assistance Drug Utilization Review Program is administered by Health Information Designs, Inc. ("HID").

On [redacted] 2016, the Appellant filed a request for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") to contest the decision.

On [redacted] 2016, the OLCRAH issued a notice scheduling the administrative hearing for [redacted] 2016. The Appellant did not appear for the administrative hearing, and the administrative hearing did not go forward on that date.

On [redacted] 2016, the OLCRAH held an administrative hearing, in accordance with sections 17b-60, 17b-61 and 4-176e to § 4-189, inclusive, of the Connecticut General Statutes. The following individuals attended the hearing:

[redacted], Appellant
Jason Gott, R.Ph., Department's representative
[redacted] HID's representative
Eva Tar, Hearing Officer

The administrative hearing record closed [redacted] 2016.

STATEMENT OF ISSUE

The issue to be decided is whether the Department's [redacted] 2016 action to restrict the Appellant to one pharmacy with respect to using her Connecticut Medical Assistance card for paying for prescriptions, effective [redacted] 2016, is supported by federal and state statute.

FINDINGS OF FACT

1. The Appellant's date of birth is [redacted] 1983. (HID's Exhibit A: [Drug/Diagnosis Profile], [redacted]/16)

2. The Appellant resides in [redacted]. (Appellant's testimony)

3. The Appellant is a Connecticut Medical Assistance program participant. (HID's Exhibit E: Correspondence, [redacted]/16)

4. The Appellant has a history of opioid dependence and opioid abuse. (HID's Exhibit A)

5. On [redacted] 2016, the Appellant received a diagnosis of major depressive disorder. (HID's Exhibit A)

6. HID is the Department's Retrospective Drug Utilization Review contractor with respect to the Connecticut Medical Assistance Drug Utilization Review Program. (HID's representative's testimony)(HID's Exhibit E)

7. The HID reviews the prescription usage of all Connecticut Medical Assistance program participants that meet a specific profile associated with type, usage, and frequency. (HID's representative's testimony)

8. In order for a patient's case to be flagged for a pharmacy restriction review, the patient has to have received 120 days' supply of controlled substances within a 90-day period. (HID's Exhibit G: *Findings Based on Drug Utilization Review,* references [redacted]16)

9. The Appellant received 282 days' supply of controlled substances in a 90-day period. (HID's Exhibit G)

10. The Appellant's case met the profile to be flagged for pharmacy restriction review. (HID's representative's testimony)

11. In [redacted] 2015, [redacted] 2015, and [redacted] 2016, HID reviewed the Appellant's prescription history. (Department's representative's testimony)(HID's Exhibit A)

12. On [redacted] 2015, HID issued the Appellant's prescribers a warning letter that the Appellant was using multiple prescribers and multiple pharmacies to fill controlled substances. (HID's Exhibit A)

13. HID reviewed the Appellant's prescription usage for the three-month period from [redacted] 2016 through [redacted] 2016 (the "sample period"). (HID's representative's testimony)

14. During the sample period, the Appellant utilized seven prescribers. (HID's Exhibit A)

15. The Appellant's seven prescribers included her primary physician, her pain management specialist, her pulmonologist, and several physicians located at Windham Hospital. (Appellant's testimony)

16. The Appellant believes that the Windham Hospital prescribers were associated with her emergency room visits to treat an ache in her hip and to treat vomiting, diarrhea, and dehydration. (Appellant's testimony)

17. From [redacted] 2016 through [redacted] 2016, the Appellant filled the following prescriptions: hydrocodone (20 days); prednisone (30 days); azithromycin (10 days); benzonatate (5 days); promethazine (45 days); oxycodone-acetaminophen (116 days); oxymorphone (56 days); lyrica (90 days); pantoprazole sodium (60 days); lamotrigine (30 days); proair HFA (36 days); ibuprofen (30 days); advair (60 days); clotrimazole-betamethason (14days); gabapentin (60 days); vitamin D2 (56 days); montelukast sodium (30 days); nasonex (30 days); vitafol-one (30 days); and sertraline HCL (30 days). (HID's Exhibit A)

18. The Appellant consistently receives 150 Morphine Milligram Equivalents (MME)[1] daily. (HID's Exhibit G)(HID's representative's testimony)

19. While there is no specific ceiling dose for opiates as patients with chronic conditions grow tolerant of lesser dosages, there can still be adverse medical reactions based on the higher dosages and interaction of different medications. (HID's representative's testimony)

20. Dosages equal to or in excess of 50 MME/day increases overdose risk without necessarily adding benefits for pain control or function; opioid dosages should not be increased to equal to or in excess of 90 MME/day without careful justification based on diagnosis and individual assessments of risk. (HID's Exhibit G)

21. Adverse medical reactions include increase in sedation, respiratory depression, overdose, and death. (HID's representative's testimony)

22. HID's review of the Appellant's prescription usage considered her diagnoses of major depressive disorder and history of opiate abuse and opiate dependence. (HID's Exhibit G)

23. In its drug utilization review, HID made the following recommendations: 1) the Appellant be restricted to a single pharmacy; 2) if the Appellant's pharmacy is temporarily out of a medication she needs, to change the pharmacy location for a one-day period to a pharmacy that has the medication in stock; and 3) recommend Appellant enter into a provider contract with one prescriber who can provide prescriptions for all controlled

[1] The MME is a tool used to convert the pharmacological effect of a particular dose of an opioid controlled substance into the same pharmacological effect that morphine would produce.

drugs, while attempting to decrease the MME daily dose to under 50 MME/day. (HID's Exhibit G)

24. On [redacted] 2016, HID notified the Appellant that a Connecticut Medical Assistance Drug Utilization Review Program review had concluded that she may be over-using, and/or unnecessarily or inappropriately using prescription services. (HID's Exhibit E)

25. On [redacted] 2016, HID notified the Appellant that she would be restricted to using only one pharmacy when having her prescriptions filled under the Connecticut Medical Assistance program. (HID's Exhibit E)

26. The Appellant selected Walgreen's of [redacted] CT as her first choice; she designated a second pharmacy, in the event that her first choice could not take her at that time. (HID's Exhibit F: Pharmacy Selection, undated)

27. HID received the Appellant's *Pharmacy Selection* form after its 10-day deadline. (HID's Exhibit F)

28. On [redacted] 2016, HID restricted the Appellant to using her first choice of pharmacy, effective [redacted] 2016. (HID's Exhibit F)(HID's Exhibit K: screen print, [redacted]/16)

29. On [redacted] 2016, the Appellant filed a request for an administrative hearing. (Hearing record)

30. The Appellant works as a patient care assistant with [redacted]. (Appellant's testimony)

31. The Appellant currently has only one client. (Appellant's testimony)

32. The Appellant assists her client in the course of her client's employment. (Appellant's testimony)

33. Her client's office hours are between noon and 2:30 p.m. (Appellant's testimony)

34. Approximately twice a month in the summer, and between four and five times a month in the fall and winter months, the Appellant travels with her client to attend her client's meetings in different parts of Connecticut. (Appellant's testimony)

35. The Appellant sometimes has two days' notice for her travel dates; sometimes the travel dates are scheduled months in advance. (Appellant's testimony)

36. The Appellant is concerned that due to her travel dates, she may be unable to reach her chosen pharmacy to fill a prescription on the date the prescription is due to be filled. (Appellant's testimony)

37. The Appellant is concerned that if she is restricted to one pharmacy, that pharmacy may have insufficient pills available to fill her prescriptions. (Appellant's testimony)

38. There is a procedure in place that would allow the Appellant to change to a different pharmacy, should she call HID's toll-free number and fax a signed request to change the pharmacy. (Department's representative's testimony)

39. The Appellant did not report to the Department or HID that she had undergone difficulty filling her prescriptions at her chosen pharmacy effective [redacted] 2016.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes provides in part that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

2. Social Security Act § 1927 (g)(1)(A) PAYMENT FOR COVERED OUTPATIENT DRUGS. In order to meet the requirement of section 1903(i)(10)(B), a State shall provide, by not later than January 1, 1993, for a drug use review program described in paragraph (2) for covered outpatient drugs in order to assure that prescriptions (i) are appropriate, (ii) are medically necessary, and (iii) are not likely to result in adverse medical results. The program shall be designed to educate physicians and pharmacists to identify and reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists, and patients, or associated with specific drugs or groups of drugs, as well as potential and actual severe adverse reactions to drugs including education on therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse.

3. Social Security Act § 1927 (g)(2)(B) RETROSPECTIVE DRUG USE REVIEW.—The program shall provide, through its mechanized drug claims processing and information retrieval systems (approved by the Secretary under section 1903(r)) or otherwise, for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists and individuals receiving benefits under this title, or associated with specific drugs or groups of drugs.

4. The Department is required to implement a drug use review program with respect to the administration of the Connecticut Medical Assistance program, or Medicaid program.

5. The Department did not exceed its authority when it reviewed the Appellant's prescription usage.

6. 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. Conn. Gen. Stat. § 17b-259b (a).

7. 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. Conn. Gen. Stat. § 17b-259b (b).

8. **Physician and pharmacy lock-in procedure.** The Commissioner of Social Services shall implement, not later than October 1, 1984, a physician and pharmacy lock-in procedure to restrict the use of the health care delivery system by medical assistance recipients who are determined by the commissioner to have utilized medical services or items at a frequency or amount that is not medically necessary. The commissioner shall establish criteria and a case review system in order to make such determination. The commissioner shall require such recipients for a reasonable period of time to obtain medical services or items only from designated providers provided (1) the department gives the recipient notice and an opportunity for a hearing, in accordance with procedures established by the department, before such restrictions are imposed and (2) the department assures that the recipient has reasonable access, taking into account geographic location and reasonable travel time, to medical services of adequate quality. Conn. Gen. Stat. § 17b-275.

9. HID's [redacted] 2016 correspondence gave the Appellant notice, but did not give the Appellant an opportunity for a hearing before the restrictions were imposed.

10. HID's [redacted] 2016 oversight with respect to failing to give the Appellant an opportunity for a hearing before the restrictions were imposed was harmless.

11. HID's [redacted] 2016 correspondence assured the Appellant had reasonable access, taking into account geographic location and reasonable travel time, to pharmaceutical services of adequate quality.

12. The Department correctly determined that the Appellant was subject to the pharmacy lock-in procedure described in section 17b-275 of the Connecticut General Statutes.

13. The Department's [redacted] 2016 action to restrict the Appellant to one pharmacy with respect to filling her Medicaid-covered prescriptions, effective [redacted] 2016, is supported by federal and state statute.

DISCUSSION

The Appellant testified that she requires flexibility in filling her prescriptions at multiple pharmacies around the state due to travel associated with her employment. The Appellant expressed concern that her restricted pharmacy may not have sufficient pills or cough syrup in stock to fill her prescriptions, leaving her lacking necessary medication.

The Appellant may identify a different pharmacy to be restricted into, should she decide that her current pharmacy does not meet her needs as to its hours of operation or available medication in stock. At the administrative hearing, the Department's representative explained the procedures in place to allow the Appellant to change her chosen pharmacy.

DECISION

The Appellant's appeal is DENIED.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

cc: Jason Gott, Medical Care Administration, DSS-CO
Herman Kranc, Medical Care Administration, 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 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.