

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 # 804300

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2016, Community Health Network of Connecticut (“CHNCT”), on behalf of the Department of Social Services (the “Department”) sent a Notice of Action (“NOA”) to ██████████ (the “Appellant”) in which it denied a request of prior authorization of a RAZ AT tilt-in-space shower/commode chair (tilt-in shower/commode chair).

On ██████████ 2016, ██████████ the Appellant’s mother requested an administrative hearing to contest the denial of prior authorization to purchase the tilt-in-space shower/commode chair.

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

On ██████████ 2017, ██████████ Tri-County Arc, Group Home Supervisor and the Appellant’s Authorized Representative (“AREP”) requested for hearing to be held at the Group Home.

On ██████████ 2017, OLCRAH reissued a notice rescheduling the administrative hearing for ██████████ 2017, at the residence of the Appellant.

On [REDACTED] 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:

[REDACTED], Appellant
[REDACTED], Appellant's Father
[REDACTED] Appellant's Mother
[REDACTED] Group Home Manager and Appellant's AREP
[REDACTED] National Seating & Mobility
Fabiola Goin, RN, CHNCT Representative
Robin Goss, RN, CHNCT Representative
Swati Sehgal, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the CHNCT's decision to deny the Appellant's request for a prior authorization to purchase tilt-in shower/commode chair was correct.

FINDINGS OF FACT

1. The Appellant is 40 years old. (Appellant's parents' testimony; Exhibit 1: prior authorization request)
2. The Appellant has cerebral palsy, Rett's Syndrome, Contracture (permanent shortening of a muscle or joint) and Profound Intellectual Disabilities. (Exhibit 1, Hearing Summary and Group Home Manager's Testimony)
3. The Appellant resides in a Group Home. (Hearing Summary)
4. The Appellant requires full assistance with activities of daily living. (Group Home Manager's Testimony)
5. The Appellant has marked scoliosis, unable to walk or follow command. It is necessary for her to have tilt-in shower/commode chair for safety during her personal hygiene. (Exhibit 1, Exhibit 13: Letter from Dr [REDACTED])
6. The Appellant is unable to safely continue to use the standard shower chair as it does not provide safe and adequate support during showering. (Exhibit 10: letter from [REDACTED] Therapy Supervisor)

7. The Appellant is at increased risk for falls during shower with an added potential for injury due to the possible development of pressure areas. (Exhibit 10)
8. The Appellant has lost and will continue to lose more and more muscle control over her upper body. The left and right lateral support, pelvic belt and the tilt in space are now required to ensure her safety while being able to properly cleanse and reach all areas of her body. (Exhibit 10)
9. The Appellant has barrier free lift for all the transfers, hospital bed with side rails, PVC shower/commode chair, complex wheelchair and stander with torso brace. (Group Home Manager's Testimony)
10. The Appellant is a participant in the Medicaid program, as administered by the Department. (Hearing Record)
11. CHNCT is the Department's contractor for reviewing requests for prior authorization of medical treatment and durable medical equipment (DME). (Hearing Record)
12. On [REDACTED] 2016, the CHNCT received a prior authorization request from National Seating and Mobility, a DME vendor, ("DME" vendor) for the tilt-in shower/commode chair. (Hearing Summary and Exhibit 1).
13. On [REDACTED] 2016, the CHNCT sent an NOA to the Appellant denying the request for the tilt-in-space shower/commode chair as not medically necessary, per Connecticut law, Connecticut General Statutes (not medically necessary based on an assessment of the individual and his or her medical condition). The NOA stated that, due to the Appellant's unspecified scoliosis and inability to sit unsupported the medically needs for the specific type of shower chair and its positional components are not validated as medically necessary. Consideration can be given to other shower chairs with tilt-in space, a conforming back and a wide chest strap for hygiene safety. The evaluating therapist can collaborate with an assistive technology professional to obtain other shower chair options. (Exhibit 2: Medical review, Exhibit 3: NOA dated [REDACTED]/16).
14. On [REDACTED] 2016, the Appellant requested an administrative hearing to contest CHNCT's denial of prior authorization to purchase the tilt-in-space shower/commode chair.
15. Following the Appellant's request for a hearing, CHNCT requested additional information from the Appellant's DME provider, National Seating and Mobility, and from her referring provider, physical therapist. (Exhibit 7-9: Medical Records Request)

16. On [REDACTED] 2017, CHNCT, after reviewing the additional information from the Appellant's medical provider, DME provider and physical therapist again notified the Appellant that her appeal of the denial of authorization for purchase of the tilt-in space shower/commode chair was denied because it cannot be confirmed as medically necessary as compared to less costly tilt-in-space shower chair. It is determined that the Appellant requires a tilt-in-space shower chair, however consideration can be given to less costly aluminum or PVC shower chair that provide a tilt-in-space feature, a padded seat and other positioning and strapping components for safety. The denial is based on 17b-259b(a)(4)- more costly than an alternative service or treatment of individual's illness, injury or disease. The reasons cited in this notification were basically the same as those noted in the NOA. (Exhibit 16: CHNCT's Notice of Denial of Appeal Review)
17. For the Appellant's safety and hygiene, it is important for the Appellant to have a tilt-in-space shower/commode chair with lateral support, padded seating with custom cut-out, all the safety and positioning components. (Group Home Manager's testimony)
18. Tilt-in-space shower/commode chair will provide improvement in the Appellant's safety and comfort. It will increase her time in shower and toilet as she needs to use the toilet for longer period of time due to her history of UTI and medications she takes. It has three inches of foam padded seat which provides skin protection. (Group home Manager's testimony)
19. The Appellant requires a tilt-in-space shower/commode chair with the complex components of wheelchair. PVC and Aluminum shower chairs are not as well built, the cast wheels on these chairs have tendency to get rusted, are not adaptable to many positioning components. They require frequent maintenance which is not cost effective and the consumer has to wait for weeks while the DME vendor orders and receives the needed part to repair the chair. (DME vendor's testimony)
20. The Appellant has a PVC chair and it has been replaced three times in past six years and has received numerous repairs which in not cost effective at all. (Group Home Manager's testimony)
21. There are two other brands which can accommodate the Appellant's need but both are at same price as tilt-in-space shower/commode chair, on the other hand PVC/ Aluminum tilt-in-space chair would require the complex wheelchair components added to it to provide adequate positioning as chest strap is acceptable for safety but not for positioning. However it still would not be durable as wheelchairs are not built for showers. Tilt-in-space shower/commode chair has all the complexity of wheelchair components, positioning and durability and is medical necessary for the Appellant. Also PVC tilt-in shower/commode chair is about 54 inches long; such a large

footprint of equipment is not adequate for the Appellant's place of residence. (DME Vendor's Testimony)

22. The Alternative shower chairs were considered, but determined unsuitable and unsafe due to lack of adequate support offered and with not being proper fit for specific showering space provided in the bathroom in the Appellant's place of residence. (Exhibit 10)
23. CHNCT did not provide any information or guidance regarding less costly alternative to the Appellant's group home, medical provider or the DME vendor. Tilt-in- space shower/commode chair is the best equipment that they are familiar with and have knowledge of which can provide safety and needed adequate support to the Appellant during showering and toileting. (group home and DME vendor's testimony)

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. For the purposes of the administration of the medical assistance programs by the Department, "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).

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)]

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. [Conn. Gen. Stat. 17b-259b (c)]

3. Payment for DME and related equipment is available for Medicaid clients who have a medical need for equipment that meets the department's definition of DME when the item is prescribed by a licensed practitioner, subject to the conditions and limitations set forth in sections 17b-262-672 to 17b-262-682, inclusive, of the Regulations of Connecticut State Agencies. Conn Agencies Regs. § 17b-262-675
4. 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;
 - (D) is nondisposable
 Conn Agencies Regs. § 17b-262-673(8)
5. The department shall pay for the purchase of rental and 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)
6. The Tilt-in space shower/commode chair requested by the Appellant in the prior authorization request is DME.
7. CHNCT correctly determined that a tilt-in space shower/commode type of chair is medically necessary for the Appellant.
8. CHNCT incorrectly denied the Appellant's prior authorization request for purchase of tilt-in space shower/commode chair.

DISCUSSION

Medical documentation from the Appellant's medical provider, Group home and DME vendor supports the medical necessity of the tilt-in space shower/commode chair. CHNCT acknowledges that the Appellant requires a tilt-in space shower/commode chair with head support for use in a roll-in shower. CHNCT denied the request of prior authorization for tilt-in-space shower/commode chair because a customized stainless steel tilt-in-space shower chair cannot be confirmed as medically necessary as compared to less costly tilt-in-space chair with gravitational forces and which can accept positioning components.

CHNCT failed to provide any information or guidance to the Appellant and her providers as to what other less costly alternatives are there that it is referring to. CHNCT recommended that evaluating therapist can collaborate with assistive technology professional to obtain other shower options. DME vendor and the Appellant's physical therapist along with Group Home Manager provided sufficient evidence that tilt-in-space shower/commode chair is best suited for the Appellant's complex needs to keep her safe during showering and toileting tasks. Other brands which can provide adequate support are of same price range, The DME vendor demonstrated how PVC/Aluminum tilt-in-space shower/commode chair is not cost effective due to its maintenance requirement and poor adaptation of positioning components.

DECISION

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

ORDER

1. CHNCT shall approve the Appellant's request for prior authorization for a tilt-in-space shower/commode chair
2. Compliance with this order is due to the undersigned by [REDACTED] 2017, and shall consist of documentation that CHNCT has approved the request for prior authorization and send such approval to the Appellant and notify the DME provider.

Swati Sehgal

Swati Sehgal
Hearing Officer

cc: CHNCT Appeals
Fatima Williams

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.