

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 # 804309

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
 Robin Goss, RN, CHNCT Representative
 Fabiola Goin, 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 43 years old. (Appellant's parents' testimony; Exhibit 1: prior authorization request)
2. The Appellant's diagnosis includes Microcephaly (rare neurological condition in which the brain does not develop properly resulting in a smaller than normal head.) Cerebral Palsy, Epilepsy, Contracture Seizure Disorder, Idiopathic Scoliosis (rods in back), Hiatal Hernia, Chronic Constipation/Obstipation, Transient Ileus (disruption of the normal propulsive ability of the gastrointestinal tract.), Gastroparesis (paralysis of the muscles of the stomach, it results in delayed emptying of food from the stomach into the small intestine), Feeding Problem, Swallowing Problem, Severe Intellectual Disability, GERD (Gastroesophageal reflux disease is a digestive disorder that affects the lower esophageal sphincter), History of fecal and urinary incontinence and History of loss of skin integrity (Exhibit 1, Hearing Summary and Exhibit A: List of Appellant's Diagnosis and Medications)
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. With Diagnosis of spastic cerebral palsy, microcephaly, epilepsy, contracture, and idiopathic scoliosis, the Appellant is unable to use the standard shower

chair as it does not provide safe and adequate support during showering and toileting. (Exhibit 1, Exhibit 13: Letter from Mary Bade, Therapy Supervisor)

6. The Appellant's body is severely deformed and curved. He has many bars and wires placed throughout his body to straighten it. Without his bars, braces/support his heart and lungs will likely collapse. It is very critical for him to be comfortable in order to move his bowels. When he is not able to empty his bowels, it builds up and comes up as vomit. He has been hospitalized five times in the last four months due to his inability to empty his bowels. (Appellant's parents' Testimony and Exhibit A)
7. The Appellant is on extreme diet plan. He is given six 4oz meals and fluids each day and he is on strict vomiting/bowel movement protocol. He takes five different medications a day to move his bowels. It is very crucial for him to be in a comfortable and safe chair to sit and evacuate. (Group Home Manger's testimony)
8. The Appellant tested the tilt-in-space shower/commode chair. He has excellent support and positioning in this chair, it will fit over his toilet to allow him with some toileting time. (Exhibit 1)
9. The Appellant is at increased risk for falls during shower and toileting with an added potential for injury due to the possible development of pressure areas and behavioral issues that may arise as a result of the length of the time required to sit in a less supportive and uncomfortable shower chair. (Exhibit 13 and Group Home Manager's Testimony)
10. The Appellant only weighs 73 pounds, due to his small stature, he requires child size seat with extra padding, but an adult sized chair. Due to additional intestinal/bowel diagnosis, he requires long periods of time on the seat for toileting. (Exhibit 13)
11. The Appellant requires a Visco foam seat with front opening for proper hygiene and prevention of skin breakdown and possible infection, Adjust back assembly with locking armrest for extremity support, calf panel to prevent sliding his lower extremities from falling behind the footrests when tilted, pelvic belt to prevent sliding forward in the seat, lateral supports to prevent lateral leaning, and heel loops to prevent falling off the footplates. (Exhibit 13 and Hearing Summary)
12. The Appellant has PVC shower/commode chair, complex customized wheelchair, air mattress overlay, barrier free lift, and hospital bed with side rails. (Group Home Manager's Testimony)
13. The Appellant is a participant in the Medicaid program, as administered by the Department. (Hearing Record)

14. CHNCT is the Department's contractor for reviewing requests for prior authorization of medical treatment and durable medical equipment (DME). (Hearing Record)
15. On [REDACTED] 2016, 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).
16. On [REDACTED] 2016, 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, while a shower chair with tilt In space is medically necessary for this member, level of supply that was requested is not medically necessary as compared to an array of commercially available shower chairs. 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).
17. 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.
18. 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, and his physical therapist. (Exhibit 7-9: Medical Records Request)
19. 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 his 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. 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 17: CHNCT's Notice of Denial of Appeal Review)
20. Consideration can be given to several alternative tilt-in-space shower/commode chairs available in smaller sizes with positioning components for safety from other manufactures for pediatric or adult tilt-in-space chair for value of \$1200 to \$2500. (Exhibit 17 and Hearing Summary)

21. 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, adjusted back assembly, armrest kit, bodypoint aeromesh calf panel, bodypoint aeromesh pelvic belt, left and right lateral supports, heel loops and other positioning components. The alternative commercial tilt-in-space chair in smaller size is not suitable for the Appellant; he needs a child size seat but an adult sized chair with numerous modifications. (Group Home Manager's testimony)
22. 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. (Group Home Manager's testimony)
23. The Appellant requires a customized tilt-in-space shower/commode chair which is adaptable to many positioning, safety and support components to accommodate the change in his body. (Group Home Manager's Testimony)
24. The Appellant has a PVC chair and it has been replaced four times in past three and half years and has received numerous repairs which in not cost effective at all.(Group Home Manager's testimony)
25. 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. (Group Home Manager's Testimony)
26. The Appellant's Therapist considered the Alternative shower chairs and determined they were unsuitable and unsafe due to lack of adequate support offered and with not being a proper fit for specific showering space provided in the bathroom in the Appellant's place of residence. (Exhibit 10)
27. 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 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 chair is medically necessary for the Appellant.
8. CHNCT incorrectly denied the Appellant's prior authorization request for the purchase of a RAZ AT 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 RAZ AT 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 his providers as to what other less costly alternatives are currently available.

CHNCT recommended that the evaluating therapist can collaborate with assistive technology professional to obtain other options. The Appellant's physical therapist along with Group Home Manager provided sufficient evidence that the RAZ AT tilt-in-space shower/commode chair is best suited for the Appellant's complex medical needs to keep him safe during showering and toileting tasks. Other brands which can provide adequate support are of the same price range.

DECISION

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

ORDER

1. CHNCT shall approve the Appellant's request for prior authorization for the RAZ AT 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.