

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

██████████ 2017
Signature confirmation

Client: ██████████
Request: 804390

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, Community Health Network of Connecticut (“CHNCT”) issued ██████████ (the “Appellant”) a notice stating that it had denied his medical provider’s request for prior authorization of a Permobil F5 custom power wheelchair.

On ██████████ 2016, ██████████, in her capacity as the Appellant’s conservator, filed a request for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) to contest CHNCT’s action.

On ██████████ 2017, the OLCRAH issued a notice to the Appellant scheduling an 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, the OLCRAH held an administrative hearing. These individuals participated in the proceeding:

██████████, Appellant’s conservator (mother)
Rosa Maurizio, RN, CHNCT’s representative
Eva Tar, Hearing Officer

The administrative hearing record closed ██████████ 2017.

STATEMENT OF ISSUE

The issue to be decided is whether CHNCT correctly denied prior authorization for payment through the Medicaid program for Permobil F5 custom power wheelchair for the Appellant.

FINDINGS OF FACT

1. The Appellant is 31 years old. (Appellant's conservator's testimony)
2. The Appellant is 5'9" tall and weighs 255 pounds. (CHNCT's Exhibit 1: Prior Authorization Request, [REDACTED]/16)
3. The Appellant has medical coverage through the Medicare and Medicaid programs. (Appellant's conservator's testimony)
4. CHNCT is the Medicaid program's medical reviewer with respect to assessing requests for prior authorization of medical equipment for program participants. (CHNCT's representative's testimony)
5. In 2008, the Appellant sustained a traumatic brain injury in a car accident. (Appellant's conservator's testimony)
6. The Appellant's traumatic brain injury resulted in kyphosis (curvature of the spine), lower extremity weakness, limited range of motion and strength in his arms, tremors, and cognitive deficits associated with speech (dysarthria). (CHNCT's Exhibit 1)(Appellant's conservator's testimony)
7. The Appellant has metal pins in both legs; the pin in the right leg was placed due to injuries he sustained in the 2008 car accident. (Appellant's conservator's testimony)
8. The Appellant's left elbow is fused at 90 degrees due to calcification; his right wrist is limited to 45 degree extension with the elbow at 20 degree extension. (CHNCT's Exhibit 1)(Appellant's conservator's testimony)
9. The Appellant currently suffers from decubitus ulcers, heterotrophic ossification, pain, spasticity and depression as a result from his traumatic brain injury. (Appellant's Exhibit C: Correspondence, [REDACTED] 17)
10. The Appellant is restricted to a power wheelchair for personal mobility; he cannot use a walker, a scooter, or a group 2 power wheelchair that does not allow for multiple seat power functions. (CHNCT's Exhibit 1)
11. The Appellant's significant behavioral outbursts occurred in 2008 after he awoke from a multi-month coma subsequent to his car accident. (Appellant's conservator's testimony)
12. In October 2010, a pin was placed in the Appellant's left leg after he slipped from his wheelchair at the rehabilitation hospital. (Appellant's conservator's testimony)
13. The Appellant spent approximately three years in the rehabilitation hospital before he was able to be discharged to his family home on [REDACTED] 2011. (Appellant's conservator's testimony)
14. In 2011, the Appellant received a custom power wheelchair. (Appellant's conservator's testimony)

15. The Appellant's 2011 custom power wheelchair was able to tilt, recline, and elevate the foot rests. (CHNCT's Exhibit 9: Member Appeal, █████/17)
16. The Appellant was able to operate his 2011 custom power wheelchair independently; he showed his mother how to use it as she didn't know anything about wheelchairs. (Appellant's conservator's testimony)
17. The Appellant's 2011 custom power wheelchair requires replacement due to its significant disrepair. It is worn and unsafe. (CHNCT's Exhibit 1)(Appellant's Exhibit C)
18. For the last five weeks, the Appellant has been using a "loaner" wheelchair that is not customized to him. It is not optimal as he slips in the seat. (Appellant's conservator's testimony)(Appellant's Exhibit C)
19. The Appellant has prescriptions for Depakote, Adderall XR, and Nuvigil. (CHNCT's Exhibit 1)
20. The Appellant always has someone with him at home or when he operates his wheelchair in the neighborhood or at the mall. He has his assistants, medical personnel, or family members with him 24/7. (Appellant's conservator's testimony)
21. With the help of two assistants, he can be safely transferred to a stander via a Hoyer lift; with only one assistant, the process places the assistant at significant risk. (Appellant's Exhibit C)
22. The Appellant uses a stander in his home for two hours per day, five days per week. (Appellant's conservator's testimony)
23. It takes the Appellant significant time with help of his assistant to transfer from his wheelchair to the standing frame and from the standing frame to his wheelchair. If he gets impatient or bored, he resists the transfer. (Appellant's conservator's testimony)(Appellant's Exhibit B: Correspondence, █████/17)
24. By using a wheelchair that converts to a stander, the Appellant is much more likely to get the critical weight bearing time he needs without having negative behaviors. (Appellant's Exhibit B)
25. Thomas Miller, MD, (the "physiatrist") of Rehabilitation Medicine Associates, is the Appellant's physiatrist. (Appellant's Exhibit B)
26. Joan M. Karpuk, PT, ATP, NCS¹ (the "physical therapist") of Mount Sinai Rehabilitation Hospital is a physical therapist. (CHNCT's Exhibit 8: Clinical Information, █████/16)
27. The Appellant's physical therapist visits him in the Appellant's family home twice per month. (Appellant's conservator's testimony)

¹ ATP = Assistive Technology Practitioner
NCS = Neurologic Clinic Specialist

28. On [REDACTED] 2016, CHNCT received an *Outpatient Prior Authorization Request* signed by the Appellant's physical therapist and the Appellant's physiatrist, requesting prior authorization for approval of a Permobil F5 custom power wheelchair for the Appellant. (CHNCT's Exhibit 1)
29. The Permobil F5 custom power wheelchair has all the capabilities as the Appellant's 2011 custom power wheelchair but has an additional stander function. (CHNCT's Exhibit 9)
30. Using the Permobil F5 custom power wheelchair will improve the Appellant's homeostasis, allow the Appellant to achieve the appropriate posture for maximal benefit, and improve weight bearing through his lower extremities. (Appellant's Exhibit C)
31. A wheelchair that converts to a stander will significantly enhance the Appellant's overall rehabilitation, as he would receive critical weight bearing time that he does not currently receive with his separate stander. (Appellant's Exhibit B)
32. The Appellant's emotional state, calcification of bone, digestive and respiratory tracts, and skin integrity and comfort levels will benefit from use of this wheelchair with a stander option. (Appellant's Exhibit C)
33. The stander option provided by the Permobil F5 custom power wheelchair will allow for Appellant's tone management in standing due to spasticity, will elongate the Appellant's spine and will help with digestion. (CHNCT's Exhibit 1)
34. CHNCT is open to replacing the Appellant's 2011 custom power wheelchair with one that has the same capabilities. (CHNCT's representative's testimony)(CHNCT's Exhibit 6: Correspondence, [REDACTED]/16)(CHNCT's Exhibit 3: Medical review [REDACTED]/16)
35. CHNCT is concerned that the Appellant would not utilize the additional stander function of the Permobil F5 custom power wheelchair safely, due to his cognitive or behavioral issues. (CHNCT's representative's testimony)(CHNCT's Exhibit 6)(CHNCT's Exhibit 3)
36. In making its assessment as to the Appellant's potential ability to operate the Permobil F5 custom power wheelchair, CHNCT based its opinion on the Appellant's past medical history. The opinion is not based on contemporaneous information with respect to the [REDACTED] 2016 request for prior authorization of the Permobil F5 custom power wheelchair. (CHNCT's representative's testimony)
37. Currently, the Appellant gets no more angry or frustrated than anyone else when he is not understood or is unable to find the correct words in a conversation. (Appellant's conservator's testimony)
38. The Appellant's speech deficits have improved significantly in the last few years; it is his area of greatest improvement. (Appellant's conservator's testimony)
39. The Appellant does not participate in self-harming behaviors. (Appellant's conservator's testimony)

40. The Appellant has not used his wheelchair in a way to self-injure or harm others. (Appellant's conservator's testimony)
41. The Appellant uses orthotic supports (leg and foot braces) while in his wheelchair. He does not use them when he is positioned in the stander. (Appellant's conservator's testimony)(Appellant's Exhibit A: Photos, undated)
42. The Appellant completed a trial of the Permobil F5 custom power wheelchair in the presence of his physical therapist, the vendor, and the manufacturer. (CHNCT's Exhibit 1)(Appellant's Exhibit A)
43. The Appellant demonstrated safe operation of the Permobil F5 custom power wheelchair; he was able to independently tilt, recline, elevate his legs, and enter a standing position. (CHNCT's Exhibit 1)
44. The Appellant is able to operate a custom power wheelchair independently in his home and with supervision in the community. He is able to operate the custom power wheelchair's multiple seating functions. (CHNCT's Exhibit 8)
45. Using the Permobil F5 custom power wheelchair resulted in a reduction of the Appellant's back pain and discomfort during the trial. (CHNCT's Exhibit 1)
46. On [REDACTED] 2016, CHNCT reviewed the Appellant's medical providers' request for prior authorization of the Permobil F5 custom power wheelchair. (CHNCT's Exhibit 3)
47. On [REDACTED] 2016, CHNCT denied the Appellant's medical providers' request for prior authorization of the Permobil F5 custom power wheelchair, stating that it was not medically necessary as the Appellant's bones were weak, they did not heal well, and that he had thinking and behavioral problems as well as trouble with his eyesight. (CHNCT's Exhibit 4: *Notice of Action*, [REDACTED]/16)
48. CHNCT's [REDACTED] 2016 review incorporated historical information that was not current as to the Appellant's medical condition; it reflects fractures that occurred in the 2008 car accident and the 2010 slip from his wheelchair. (Appellant's conservator's testimony)
49. The Appellant wears glasses. (Appellant's Exhibit A)
50. The Appellant has learned to compensate for his cognitive and visual defects and adequately manage the use of his 2011 custom power wheelchair for several years. (CHNCT's Exhibit 8)
51. On [REDACTED] 2016, CHNCT acknowledged that the Appellant had requested reconsideration of its [REDACTED] 2016 decision to deny prior authorization of the Permobil F5 custom power wheelchair. (CHNCT's Exhibit 6)

CONCLUSIONS OF LAW

1. The Department is the designated state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act and may make such regulations as are necessary to administer the medical assistance program. Conn. Gen. Stat. §§ 17b-2 and 17b-262.
2. Customized wheelchairs shall be covered under the Medicaid program only when a standard wheelchair does not meet an individual's needs as determined by the Department of Social Services. Wheelchair repairs and parts replacements may be subject to review and approval by the department. Refurbished wheelchairs, parts and components shall be utilized whenever practicable. The Department of Social Services may designate categories of durable medical equipment in addition to customized wheelchairs for which reused equipment, parts and components shall be utilized whenever practicable. Conn. Gen. Stat. § 17b-281i (a).
3. A standard wheelchair does not meet the Appellant's needs.
4. The Commissioner of Social Services shall extend the procedure in effect on October 1, 1998, for the preauthorization of the purchase or rental of new durable medical equipment and modification or repair of existing equipment to include services provided to Medicaid recipients who are also recipients of Medicare. The commissioner may enter into any necessary agreements with the Centers for Medicare and Medicaid Services to ensure the coordination of authorization and payment for durable medical equipment for such recipients. Conn. Gen. Stat. § 17b-281a (a).
5. The department shall pay for the purchase or rental and the 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. Access to such procedure shall not be denied to a recipient on the basis that a Medicare coverage determination has not been made prior to the submission of a request for preauthorization to the commissioner. The commissioner shall not make payment for an item to a supplier of durable medical equipment on behalf of a Medicare recipient until the commissioner has received documentation establishing that a claim has been filed with, and a coverage and reimbursement decision has been rendered under, the Medicare program. Conn. Gen. Stat. § 17b-281a (b).
7. 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).

8. 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).
9. 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).
10. Sections 17b-262-672 through 17b-262-682, inclusive, of the Regulations of Connecticut State Agencies addresses the requirements for payment of durable medical equipment.
11. Payment for DME and related equipment is available for Medicaid clients who have a medical need for such equipment which 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.
12. "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; and (D) is non-disposable. Conn Agencies Regs. § 17b-262-673.
13. A Permobil F5 custom power wheelchair is durable medical equipment.
14. The department shall not pay for anything of an unproven, experimental or research nature or for services in excess of those deemed medically necessary by the department to treat the recipient's condition or for services not directly related to the recipient's diagnosis, symptoms, or medical history. Conn. Agencies Regs. § 17b-262-676 (b)(1).
15. The Permobil F5 custom power wheelchair would accommodate the Appellant's needs for positioning, mobility, and support, as directly related to his diagnosis and symptoms associated with kyphosis and traumatic brain injury.

16. The Permobil F5 custom power wheelchair would be beneficial in treating the Appellant's condition as related to his need for mobility, adjustment of incline, and physical therapy requirements to be regularly held in an upright position more frequently than his current 10-hour per week regimen of using a Hoyer lift to transfer to a separate stander.
17. CHNCT incorrectly determined that the Permobil F5 custom power wheelchair is not medically necessary for the Appellant.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. CHNCT will approve the Appellant's medical providers' [REDACTED] 2016 request for prior authorization to purchase a Permobil F5 custom power wheelchair.
2. Within 21 calendar days of the date of this decision, or [REDACTED] 2017, documentation of compliance with this order is due to the undersigned.

Eva Tar - electronic signature
Eva Tar
Hearing Officer

Cc: [REDACTED]
Rosa Maurizio, CHNCT
CHNCT Appeals

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.