

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 # 823782

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2017, the Department of Social Services (the "Department"), through its Administrative Service Organization, Community Health Network of Connecticut ("CHNCT") sent ██████████ (the "Appellant"), a notice that her medical provider's request for prior authorization of transgender breast augmentation and buttock contouring surgery was denied.

On ██████████ 2017, the Appellant requested an administrative hearing to contest the Department's decision to deny her provider's request for the surgery.

On ██████████ 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice 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 Department held an administrative hearing. The following individuals were present at the hearing:

██████████, the Appellant
Robin Goss, CHNCT representative
Sybil Hardy, Hearing Officer

The hearing record remained open for the submission of additional evidence. The hearing officer did not receive any additional information. On [REDACTED] 2017, the hearing record closed.

STATEMENT OF THE ISSUE

The issue is whether CHNCT's denial of prior authorization for the Appellant's surgery as not medically necessary was correct.

FINDINGS OF FACT

1. The Appellant is 26 years old (D.O.B. [REDACTED]/90) and single. (Appellant's Testimony, Exhibit 1: Prior Authorization ["PA"] Request from [REDACTED] [REDACTED]/17)
2. The Appellant lives alone. (Exhibit 3: Additional PA Information, [REDACTED]/17)
3. The Appellant is five feet, seven inches tall, and weighs 182 pounds. (Exhibit 1).
4. The Appellant was born a male. Since 2009, she has identified as a female and has been cross dressing. (Exhibit 1)
5. In 2012, the Appellant began undergoing the transgender process, from male to female transition, and has received hormone therapy as part of the process. (Appellant's Testimony, Exhibit 5)
6. [REDACTED] (the "treating plastic surgeon"), is the Appellant's plastic surgeon. (Hearing Summary, Exhibit 1)
7. [REDACTED] Connecticut (the "treating endocrinologist"), is the Appellant's endocrinologist. (Hearing Summary, Exhibit 11)
8. [REDACTED] Connecticut (the "infectious disease provider") is the Appellant's medical provider on infectious disease. (Hearing Summary, Exhibit 13: Medical Record Request to [REDACTED] APRN, [REDACTED]/17, Exhibit 16: Medical Record Request to [REDACTED] [REDACTED]/17)
9. [REDACTED] Connecticut (the "treating mental health provider") is the Appellant's licensed therapist. (Appellant's Testimony, Exhibit 2: Additional PA information [REDACTED]/17)

10. [REDACTED] MA LPC, (the “treating mental health provider2”) is the Appellant’s licensed therapist. (Exhibit 14: Medical Record Request for [REDACTED] [REDACTED]/17, Exhibit 17: Letter of Medical Necessity from [REDACTED], received [REDACTED]/17)
11. On [REDACTED] 2013, the Appellant had bilateral orchiectomy surgery, which is the removal of both testicles. The Appellant tolerated the procedure adequately. (Exhibit 4: Additional PA Information, [REDACTED]/17)
12. After starting hormone treatment, the Appellant received a diagnosis of HIV and immediately began HIV medication to stabilize her condition. (Exhibit 17)
13. The Appellant takes the following daily medications: Atripla, Premarin. (Exhibit 5: Additional PA Information, [REDACTED]/17)
14. The Appellant’s hormone therapy consists of self-administered Estradiol valerate intramuscular solution injections. (Appellant’s testimony, Exhibit 5)
15. The Appellant’s doses of estrogen needed to be drastically reduced since there is no longer endogenous testosterone to override. (Exhibit 4)
16. The Appellant has developed breast tissue after starting hormone therapy to the extent that a full “B” cup brassiere is necessary. (Appellant’s Testimony, Exhibit 1, Exhibit 6: Medical Review, [REDACTED]/17)
17. The Appellant’s plastic surgeon indicated in his prior authorization that the Appellant is not comfortable with the amount of breast tissue she has developed and would like to be a “D” cup brassiere post-surgery because she has broad shoulders. (Appellant’s Testimony, Exhibit 1)
18. The Appellant’s left breast is slightly larger than the right breast. (Exhibit 1)
19. The Appellant’s plastic surgeon indicated in his prior authorization that the Appellant has concerns because she and her friends note that the depressions in the lateral buttock are consistent with a male pattern pelvis and contour. The Appellant would like a lateral flare of the hips and contour. (Exhibit 1)
20. The Appellant receives counseling services from a licensed mental health professional and attends once per week. (Appellant’s Testimony)
21. The Appellant’s mental health provider indicates that the Appellant is appropriate to circumstances and is pleasant and hopeful. She is alert, calm, coherent, and oriented. She does not exhibit signs of depression and denies any thoughts of harm to herself or others. (Exhibit 3)

22. The Appellant is a participant in the Medicaid program as administered by CHNCT and the Department. (Hearing record)
23. CHNCT is the Department's contractor for reviewing medical requests for prior authorization of medical services under the Medicaid program. (Hearing Record)
24. On [REDACTED] 2017, CHNCT received an Outpatient Prior Authorization Request form and a letter from the Appellant's plastic surgeon. The letter states that the Appellant has broad shoulders and would like to be a "D" cup post-surgery. She would also desire a more mature upper pole of the breast. (Exhibit 1)
25. On [REDACTED] 2017, CHNCT made a determination that the Appellant's requested procedures are primarily cosmetic in nature. The bilateral breast augmentation surgery or the buttock contouring surgery, based on documentation submitted for review, would not improve or restore any physical function issue and is, therefore, not medically necessary. (Exhibit 6)
26. On [REDACTED] 2017, CHNCT sent the Appellant a Notice of Action denying authorization for the surgery because the service requested is not medically necessary based upon the assessment of the Appellant's medical condition per section 17b-259b(a)(5) of the Connecticut General Statutes. The notice states: the documentation from your doctor does not show the medical need for the requested procedures. The hormone replacement you have been taking since 2011 has produced breast tissue. Therefore, breast augmentation is not medically necessary. Also, fat grafting to the buttocks is not medically necessary as the procedure will not improve or restore function. (Exhibit 7: Notice of Action letter, [REDACTED]/17)
27. On [REDACTED] 2017, CHNCT received a verbal appeal from the Appellant. (Hearing Summary)
28. On [REDACTED] 2017, the Appellant appealed the denial of prior authorization for the surgery. (Exhibit 8: Verbal Appeal, Exhibit 9: Acknowledgement Letter, [REDACTED]/17)
29. On [REDACTED] 2017, CHNCT sent letters to the Appellant's endocrinologist and plastic surgeon requesting additional information to support the medical necessity of the Appellant's request for prior authorization of the surgery. (Hearing Summary, Exhibit 10: Letter to [REDACTED] [REDACTED]/17 Exhibit 11: Letter to Dr. [REDACTED] [REDACTED]/17)
30. On [REDACTED] 2017, the Appellant's plastic surgeon responded to CHNCT's request for additional information for the Appellant's appeal. The

plastic surgeon submitted the same documents provided for the prior authorization submitted on [REDACTED] 2017. (Exhibit 12: Medical Records from Dr. [REDACTED] MD, [REDACTED]/17)

31. On [REDACTED] 2017, CHNCT sent another request for additional medical information to the Appellant's infectious disease provider. (Hearing Summary, Exhibit 13: Medical Information Request, [REDACTED]/17)
32. On [REDACTED] 2017, the Appellant informed CHNCT that the infectious disease provider would not submit any additional information for her appeal. (Hearing Summary)
33. The Appellant's medical providers did not document that hormone therapy designed to enhance breast tissue has been unsuccessful. (Hearing Record)
34. Neither the Appellant's plastic surgeon nor the Appellant's hormone therapy medical provider elaborated upon or gave examples of how the surgery was medically necessary for or would benefit the Appellant's health. (Hearing Record)
35. On [REDACTED] 2017, CHNCT completed its review and upheld its earlier denial of prior authorization for the surgery because the Appellant has achieved some growth of the breast tissue since initiating the process in 2011. Growth of breast size has not achieved a size that the member feels comfortable with and her plastic surgeon has proposed augmentation. The member expressed a desire for larger breasts. Buttocks contour is minimally depressed but overall not deformed or abnormal in appearance. The requested procedures are deemed fundamentally cosmetic in nature.
36. On [REDACTED] 2017, CHNCT upheld its prior denial of prior authorization for the surgery and sent the Appellant a NOA indicating that prior authorization for breast augmentation surgery and buttocks contouring are denied because the information provided indicates that the Appellant has achieved some growth of breast tissue since initiating hormonal therapy; therefore, the surgery was not medically necessary per section 17b-259b(a)(5). (Exhibit 19: Determination Letter, [REDACTED]/17)

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; Conn. Gen. Stat. §17b-262]

2. Medicaid pays for Medicaid-covered services that are medically necessary. Conn. Agencies Regs. 17b-262-531.
3. For purposes of administering the Department's medical programs, the terms "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)]

4. CHNCT correctly determined there is inadequate evidence in the record to establish that the hormonal therapy, resulting in the Appellant having a brassiere size of a full "B" cup is not sufficient for the Appellant to feel comfortable in her social gender role.
5. CHNCT correctly determined there is unsubstantial evidence submitted by the Appellant and her medical providers to show that these surgical procedures

would improve or restore any physical function; therefore, the procedures are not medically necessary.

6. CHNCT correctly determined that the requested procedures are primarily cosmetic in nature; therefore, the procedures are not medically necessary.
7. CHNCT was correct to deny prior authorization of the surgery because there is inadequate evidence in the record to support its medical necessity at this time.

DISCUSSION

The Appellant developed a significant amount of breast tissue as a result of the hormone therapy. The Appellant testified that the sizes of her breast are not in proportion to the size of her body. She would like to have a more feminine shape.

The information provided shows some growth of breast tissue since initiating hormonal therapy and the photos provided show bilateral breast tissue without any deformity and a minimally depressed buttock contouring without any deformity or abnormality in appearance. The Appellant is disappointed by her current results and would like surgery to assist with larger sized breast and buttock contouring. The requested procedures are considered primarily cosmetic in nature and are not medically necessary.

DECISION

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


Sybil Hardy
Hearing Officer

Pc: appeals@chnct.org

Fatmata Williams, Department of Social Services, Central Office

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.

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.