STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3730

[REDACTED] 2017
Signature Confirmation

Client ID # [REDACTED]
Request # 828822

NOTICE OF DECISION

PARTY

[REDACTED] for [REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2017, the Community Health Network of Connecticut ("CHNCT") sent [REDACTED] (the "Appellant") a Notice of Action ("NOA") denying her prior authorization request for 40 hours of private duty nursing services, also known as complex nursing services, under the Medicaid program.

On [REDACTED] 2017, [REDACTED], [REDACTED] sister and conservator of person, (the "Conservator") requested an administrative hearing to contest the Department's decision to deny such benefits.

On [REDACTED] 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [REDACTED] 2017.

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], Conservator of Person for the Appellant, [REDACTED]
Robin Goss, R. N., BSN, Appeals & Grievances Analyst, CHNCT
Maureen Foley-Roy, Hearing Officer

The hearing record remained open for the submission of additional evidence. No additional evidence was received and on [redacted] 2017, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny 40 hours of complex nursing services was correct.

FINDINGS OF FACT

1. Since 2016, the Appellant received services through the Money Follows the Person program. These services included nursing services, which has decreased gradually since 2016, currently down to 35 hours per week. (Conservator's testimony)

2. The Appellant is a recipient of Medicaid with Community Health Network, Inc. ("CHNCT") as the selected managed care organization. (Hearing Record)

3. The Appellant's diagnoses include chronic hepatic failure, autistic disorder, alcoholic hepatitis with ascites, uncomplicated alcohol abuse and unspecified jaundice. (Exhibit 1: Prior Authorization Request Form)

4. The Appellant is a very poor reporter of her medical condition and changes in her condition. (Conservator's Testimony)

5. It is essential for the Appellant's hepatic encephalopathy to be assessed daily, for her fluid load to be assessed and diuretics adjusted as needed, for her bowel movements to be monitored and her lactulose adjusted depending on the bowel movements and/or her level of confusion, for her vital signs to be monitored and medication administered. (Exhibit 2: Letter from Dr. Jakab)

6. The Appellant is medically complex due to her diagnoses, combined with the autism disorder. Adverse events lead to the Appellant decompensating very quickly. (Conservator's testimony)

7. The Appellant's routine care presently includes the following: monitoring of vital signs, physical assessment to check for edema, worsening of ascites, and symptoms of bleeding or respiratory symptoms, monitoring of I/O, assessment of stool output, adjustments to lactulose, and monitoring for fatigue and confusion. (Exhibit 3: [redacted] PDN Timeline)

8. Presently, care for the Appellant also includes assisting and directing with personal care, such as teeth brushing, exercise, perform therapeutic foot exercises, walks and assistance with meals. (Exhibit 1 and Exhibit 16: All Pointe Home Care nursing notes.)

9. The Appellant does not use a ventilator or feeding tube and she does not require suctioning. She does not take medication intravenously. (Conservator's testimony)

10. The Appellant is independent with all of her activities of daily living ("ADL"): eating, bathing, dressing, toileting, and transferring. (Exhibit 1: Prior Authorization Request, p.15)

11. The Appellant's family provides care for her at night and on the weekends. (Conservator's testimony)

12. The Appellant's family does not believe that the Appellant needs 40 hours of nursing care per week. They would like the nursing hours to be gradually reduced. (Conservator's testimony)

13. The Appellant's gastroenterologist believes that the Appellant's hours of nursing care can gradually be reduced safely. (Exhibit 2)

14. On ████ ███ 2017, the Department received a request for prior authorization of forty hours per week of complex nursing services for the Appellant from All Pointe Home Care (the "Provider"). (Exhibit 1 : Home Health Certification and Plan of Care)

15. On ████████ 2017, CHNCT denied the request for forty hours of complex nursing services because they found it was not medically necessary based upon the Appellant's condition. (Exhibit 5: Notice of Action dated ████████ 2017)

16. On ████ ███ 2017, the Appellant's home care provider submitted additional nursing notes. (Exhibit 16)

17. On ███████ 2017, CHNCT again reviewed the prior authorization request for 40 hours of nursing services with the additional information. The medical reviewer again denied the request for 40 hours per week of complex nursing services as not medically necessary for the Appellant. CHNCT determined that the Appellant's needs could be met with a lower level of service, such as skilled nursing visits and home health aides. (Exhibit 21: Letter upholding denial)

18. In order for CHNCT to approve a lower level of services, the Appellant's medical provider would need to submit a prior authorization request for the other level of service. (CHNCT's representative'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. The Commissioner may make such regulations as are necessary to administer the medical assistance program. Conn. Gen. Stat. § 17b-262.

3. The statutory definition of "medical necessity" is binding on the Department, its medical providers, and its contractors.

4. 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)

5. The Department shall pay for medically necessary and medically appropriate home health care services provided by home health care agencies that are directly related to the client's diagnosis, symptoms or medical history. These services include nursing care services limited to physical nursing care or the teaching of nursing care, including but not limited to direct services such as enemas, irrigations, dressing changes, treatments and administration and supervision of medication. Conn. Agencies Regs. §17b-262-728 (a)(1)(A).

6. The commissioner shall adopt, and revise as necessary, a homemaker-home health aide training program of not less than seventy-five (75) hours and competency evaluation program for homemaker-home health aides. The standard curriculum of the training program shall include the following elements which shall be presented in both lecture and clinical settings:
   - (i) Communication skills;
   - (ii) Observation, reporting and documentation of patient status and the care or services furnished;
   - (iii) Reading and recording temperature, pulse and respiration;
   - (iv) Basic infection control procedures;
   - (v) Basic elements of body function and changes in body function that must be reported to an aide's supervisor;
   - (vi) Maintenance of a clean, safe and healthy environment;
   - (vii) Recognizing emergencies and knowledge of emergency procedures;
   - (viii) The physical, emotional and developmental needs of and ways to work with the populations served by the home health care agency, including the need for respect for the patient , his or her privacy and his or her property;
   - (ix) Appropriate and safe techniques in personal hygiene and grooming that include: bath (bed, sponge, tub and shower), shampoo, (sink, tub or bed), nail and skin care, oral hygiene, toileting, elimination;
   - (x) Safe transfer techniques and ambulation;
   - (xi) Normal range of motion and positioning;
   - (xii) Adequate nutrition and fluid intake;
   - (xiii) Any other task that the home health care agency may choose to have the homemaker-home health aide perform. Conn. Gen. Stat. § Sec. 19-13-D83(d)(A).

7. Since the Appellant is independent with all of her ADLs, CHNCT was correct when it determined that many of the tasks in the Appellant's current care plan do not require the skill level of a nurse and could be performed by a home health aide.

8. CHNCT was correct when it determined that forty hours of complex nursing services per week is not medically necessary given the Appellant's circumstances and medical condition at this time.

9. CHNCT was correct when it denied the Appellant's provider's request for forty hours of complex nursing services per week as they are not medically necessary for the Appellant.

DISCUSSION

There is no question that the Appellant is medically compromised with complicated diagnoses. However, CHNCT is correct that 40 hours of complex nursing services is not medically necessary for the Appellant. She is currently receiving 35 hours a week of nursing services and there was no evidence presented that an increase in the hours is needed. Her family does not believe that she needs 40 hours of complex nursing services weekly. In addition, the nurses are performing some tasks that could be accomplished with a home health aide. The Appellant's family and medical provider may consider submitting a new request for a combination of skilled nursing visits and home health aide services based on the Appellant's condition and needs at this time.

DECISION

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

Maureen Foley-Roy

Maureen Foley-Roy,
Hearing Officer

Robert Zavoski, MD, DSS Medical Director
Robin Goss, 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 Administrative Hearings and Appeals, 55 Farmington Avenue, Hartford, CT 06105-3730.

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.