

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

██████████, 2018
Signature Confirmation

██████████
Request #115974

NOTICE OF DECISION
PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

██████████, 2018, Community Health Network of Connecticut (“CHNCT”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) denying ██████████ (the “child”) care provider request for an out of network authorization for a lymphatic intervention and cardiac evaluation and treatment with Dr. Yoav, in Philadelphia, PA.

██████████, 2018, the Appellant requested an administrative hearing to contest CHNCT’s decision to deny out-of-network services.

██████████, 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling an administrative hearing for ██████████ 2018.

██████████, 2018, 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:

██████████, Appellant’s Representative
Fabiola Goin, RN, CHNCT Appeals and Grivance Analyst
Veronica King, Hearing Officer

The hearing record was left open for submission of additional evidence. The record closed on [REDACTED], 2018.

STATEMENT OF THE ISSUE

The issue to be decided is whether CHNCT'S decision to deny the Appellant's request for out-of-network services is correct.

FINDINGS OF FACT

1. The child is a participant in the Medicaid Husky A program as administrated by the Department of Social Services (the "Department"). (Hearing Record)
2. CHNCT is the Department's medical Administrative Services Organization. CHNCT's responsibilities include review of medical requests for prior authorization for out of network services. (Hearing Record)
3. The child's is [REDACTED] years old (DOB [REDACTED]). (Hearing Record)
4. The child had four (4) heart surgeries in the past. Her medical history/diagnosis include, corrected transposition of the great vessel (rare heart defect), a huge VSD (ventricular septal defect). She has a single ventricle and three (3) chambers in her heart, Palliative Fontan procedure in the past, developed heart block from the Fontan procedure, reoccurring pleural effusions, two (2) pace makers, develop Protein Losing Enteropathy (PLE) and enlarge liver. (Exhibit 1: Outpatient Prior Authorization Form, Exhibit 9: Dr. Robert Elder MD's letter and Exhibit 10: Medical Review request)
5. PLE is the loss of serum proteins from the digestive tract. This causes an abnormally low level of albumin (a protein made by the liver) and other proteins in the blood stream and can lead to edema (retention of fluid in tissue) and ascites (retention of fluid in the stomach). PLE has several potential causes, including previous surgical repair of single ventricle heart condition. (Exhibit 1)
6. Dr. Erin Rice is the child's pediatrician. Dr. Robert Elder is the child' congenital heart disease specialist. (Hearing Record)
7. The child was first diagnosed with PLE on or about 2010. She was aggressively medically managed and had some improvement. On or about April 2017, she had a flare of her PLE and not responded to Dr. Elder's initial attempts to treat. She was admitted after an episode of eleven (11)

- times vomiting and diarrhea. She was dehydrated and tachycardia as well hypoxia. She lost weight and her PLE is ongoing. (Exhibit 1 and Exhibit 10)
8. On or about August 2017, after the child was admitted at Yale Hospital, Dr. Robert Elder reach out to Dr. Goldberg at the Children Hospital of Philadelphia (“CHOP”). Dr. Robert Elder express that he would like to refer the child for possible lymphatic intervention. (Exhibit 1)
 9. CHOP offers Lymphatic Imaging and Interventions as a possible treatment of PLE. When lymphatic imaging is able to identify the source of the leak that’s causing protein-losing enteropathy, it can potentially be sealed during an embolization procedure. (Exhibit 1 and Hearing Record)
 10. Dr. Yoav Dori is a pediatric cardiologist and Director of Pediatric Lymphatic Imaging and Interventions and Lymphatic Research at CHOP. Dr. Dori and colleagues have been doing pioneering work to understand the background risk of lymphatic abnormalities in single ventricle patients. CHOP have had some initial success in diagnosing an ultimately treating these patients and staving off heart transplantation. (Exhibit 9 and Hearing Record)
 11. Dr. Yoav Dori is not enrolled in the Connecticut Medical Assistance Program (CM AP). (Hearing Record)
 12. [REDACTED], 2018, CHNCT received a prior authorization request from The Children’s Hospital of Philadelphia for a Lymphatic Intervention and Cardiac Evaluation and Treatment with Dr. Yoav Dori in Philadelphia, PA for the diagnosis of malabsorption due to intolerance. Dr. Yoav Dori is not enrolled in the CM AP therefore, making Dr. Yoav Dori an out of network provider. (Exhibit 1 and Hearing Record)
 13. [REDACTED], 2018, CHNCT’s medical reviewer reviewed the medical information submitted and denied the request. The doctor commented: While the medical information submitted substantiates the medical necessity of Cardiology/Interventionale Radiology Consultation it is not medically necessary for these services to be accessed outside the CMAP network. The services can be provided by CMAP enrolled providers(s) such as Dr. Shaikh, Dr. Chaudry and or Dr. Almomari all affiliated at Children’s Hospital of Boston. (Exhibit 2: Medical Review and Hearing Record)
 14. [REDACTED], 2018, CHNCT issued a Notice of Action denying the request for authorization for a Lymphatic Intervention and Cardiac Evaluation and Treatment with Dr. Yoav Dori in Philadelphia, PA, because it is not the right site of care for the child. The NOA indicated that the

provider is not in the CHNT network and that there were network providers who can provide the needed service. (Exhibit 3:NOA, [REDACTED]/18 and Hearing Record)

15. [REDACTED] 2018, CHNCT received and expedited administrative hearing request. The expedited request was reviewed by the medical director and determined that the appeal will be processed as a standard appeal. CHNCT notified the Appellant. (Exhibit 4: Hearing request and Exhibit 5: Non-Expedited letter, [REDACTED]/18)
16. At the hearing request the Appellant stated "This procedure will cure Protein Losing Enteropathy, which will prolong or illuminate heart transplant. The procedure is only offered at CHOP. I can provide documentation proving CHOP is the only hospital". (Exhibit 4)
17. [REDACTED], 2018, CHNCT attempted to contact the Appellant and left two voice messages requesting a call back. (Hearing Record)

[REDACTED] 2018, CHNCT attempted to contact the Appellant and left two voice messages requesting a call back. CHNCT notified Dr. Robert Elder of the Appellant's hearing request and requested additional information. The Additional information request stated: Additional information needed to validated medical necessity would include, but no limited to:

* Clinical documentation supporting why Dr. Shaikh, Dr. Chaudry and Dr. Alomari (Interventional Radiologists), Dr. Porras and Dr. Callahan (Pediatric Cardiologists) affiliated with Boston Children's Hospital in Boston, MA (CMAP Providers) are unable to provide the medically necessary services for this member and why Dr. Yoav Dore (Non-CMAP provider) in Philadelphia, PA is the only option for this member to provide the request services.

* Letter of Medical Necessity supporting that Dr. Yoav Dori (Non-CMAP Prvider) in Philadelphia, PA is the ony option to provide the medically needed services for this member rather than Dr. Shaikh, Dr. Chaudry and Dr. Alomari (Interventional Radiologist), Dr. Porras and Dr. Callahan (Pediatric Cardiologist) affiliated with Boston Children Hospital in Boston, MA (CMAP provider)
(Exhibit 6: Medical records request, [REDACTED]/18)

19. [REDACTED] 2018, CHNCT attempted to contact the Appellant and left two voice messages requesting a call back. CHNCT sent a get in touch letter to the Appellant. (Exhibit 7: CHNCT's letter, [REDACTED]/18 and Hearing Record)
20. [REDACTED], 2018, notified CHOP of the Appellant's appeal and confirmed no additional information will be provided for the appeal. (Hearing Record)

21. [REDACTED], 2018, CHNCT contacted Boston's Children Hospital and was informed that they would need to review the child's chart first prior to confirming if this is a procedure that they do on the child. (Exhibit 10 and Hearing Record)
22. [REDACTED], 2018, CHNCT received a Letter of Medical Necessity form Dr. Robert Elder. The letter stress the importance of Dr. Yaov Dori's pioneering work and cited the 2017 Journal of the American College of Cardiology scholarly article "Protein-Losing Enteropathy in Patients with Congenital Heart Disease". (Exhibit 9)
23. [REDACTED], 2018, CHNCT sent the appeal for a Medical Review. The Medical Review was complete and the denial was upheld. CHNCT sent a determination letter to the Appellant. The letter stated that the principal reason to uphold the denial is that there is no documentation or evidence that Boston Children's Hospital, who is a facility within CMAP network, was consulted to confirm the requested services could not be provided at their facility. (Exhibit 11: Medical Review Results and Exhibit 12: Determination letter, [REDACTED]/18)
24. The Appellant contacted Boston Children's Hospital through emails. The emails show communication between the Appellant, Cindy Kerry and Elizabeth Slowinski from radiology. (Appellant's Exhibit A: Fax form [REDACTED] [REDACTED] 18 and emails)
25. There is no evidence that Cindy Kerry and Elizabeth Slowinski work directly with Dr. Shaikh, Dr. Chaudry or Dr. Alomari. (Appellant's Exhibit A and Hearing Record)
26. The emails are dated from March 2018 and [REDACTED] 2018. On [REDACTED], 2018, the Appellant wrote in part: "I'm just wondering if you have had a chance to speak with any the physicians regarding my daughter [REDACTED] [REDACTED] I am happy to provide any records or take a trip to Boston-" (Appellant's Exhibit A)
27. There is no evidence that the Appellant made an appointment for her child with Dr. Shaikh, Dr. Chaudry or Dr. Alomari. (Appellant's Exhibit A and Hearing Record)
28. Boston Children's Hospital had not confirmed that they cannot perform the requested medical services. (Appellant's Exhibit A and Hearing Record)
29. The child has not been evaluated or treated by the in-network providers referred by CHNCT. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes (CGS) authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Section 17b-260 of the CGS authorizes the Commissioner of the Department of Social Services to take advantage of the medical assistance programs provided in Title XIX.
3. Section 17b-261 of the CGS allows for the provision of medical assistance for eligible persons.
4. Section 17b-259b(a) of the CGS provides for the definition of medically necessary and states that 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.
 - (b) 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.
 - (c) 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.

5. Title 42 of the Code of Federal Regulations Section (“CFR”) § 438.206(b)(4) provides that If the network is unable to provide necessary services, covered under the contract, to a particular enrollee, the MCO, PIHP, or PAHP must adequately and timely cover these services out of network for the enrollee, for as long as the MCO, PIHP, or PAHP is unable to provide them.
6. There is no evidence that in-network providers cannot provide the required medical services.
7. State regulation addresses the requirements of prior authorization Subsection (a) provides that prior authorization shall be required as a condition of payment for certain Medical Assistance Program goods or services as set forth in the regulations governing specific provider types and specialties. Conn. Agencies Regs. § 17b-262-528
8. The child’s provider requested prior authorization for services at CHOP.
9. CHNCT correctly determined that there is no documentation or evidence that the network is unable to provide necessary services.
10. [REDACTED], 2018, CHNCT correctly denied the Appellant’s request for out-of-network services because the information provided does not support that the requested services could not be provide at a facility within the CMAP network.

DISCUSSION

There is no questing that the child is an individual with many medical challenges. Past records and evidence presented at this hearing supports the medical necessity for the requested services. The child’s doctors provided evidence that Dr. Yoav Dori and his colleagues at the Children Hospital of Philadelphia have been doing pioneering work with patients and that at Dr. Robert Elder’s professional opinion as a cardiologist , none of the in-network providers listed by CHNCT would match D. Dori an colleagues. He wrote “If I had a child with this condition that is where I would go as well.

There is no questioning regarding Dr. Dori's pioneering work and experience with lymphatic abnormalities in single ventricle patients, the issue of this hearing is the lack of clear and convincing evidence that the in-network referred doctors could not provide the requested services. The child has not been evaluated or treated by the in-network providers referred by CHNCT neither her medical records has been evaluated by the in-network provider.

The Appellant is understandable concerned with the child's condition. Unfortunately, regulations are clear and Dr. Robert Elder's medical necessity letter and supporting evidence that cardiologist from all over the country and world have referred this group of patients to Dr. Dori at CHOP; It is does not award the need for an out-of-network provider.

DECISION

The Appellant's appeal is **DENIED**

Veronica King
Hearing Officer

Cc: Fatmata Williams, DSS
Fabiola Goin, RN, CHNCT

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.