

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

██████████ 2018
SIGNATURE CONFIRMATION

REQUEST #117532

CLIENT ID # ██████████
CASE ID ██████████

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2018, CVS Pharmacy issued a statement to ██████████ (the "Appellant") stating that the Appellant's insurance would not cover her prescription for Methocarbamol, a muscle relaxant that is considered a non-maintenance drug used to treat conditions that are acute or short-term.

On ██████████ 2018, the Appellant's Representative, **Attorney** ██████████, requested an administrative hearing on behalf of the Appellant, to contest the Department's denial of her prescription medication and the lack of a Notice of Action ("NOA") prior to the denial.

On ██████████ 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for ██████████ 2018 @ 1:00 PM.

On ██████████, 2018, the Appellant's counsel requested a continuance of the hearing.

On ██████████ 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") granted the Appellant's counsel's request to postpone the ██████████ 2018 hearing.

On ██████████ 2018, OLCRAH issued a notice scheduling an administrative hearing for ██████████, 2018.

On ██████████ 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:

[REDACTED] Appellant
 Xhespina Kokoneshi-Maku, ITI Interpreter
 Attorney Jean Mills Aranha, Counsel for the Appellant
 Attorney Kristen Noelle Hatcher, Co-Counsel for the Appellant
 Jason Gott, Pharmacy Consultant, Representative for the Department
 Hernold C. Linton, Hearing Officer

At the end of the hearing, the record was left open until [REDACTED] 2018, to allow the parties to submit post hearing-briefs.

On [REDACTED] 2018, the Appellant's counsel requested additional time to file her post hearing-brief because she had not yet received the transcript of the hearing.

The Hearing Officer granted the request and gave the Appellant's counsel until [REDACTED] 2018, to file the post-hearing brief.

The Hearing Officer gave the Department five days to respond to the Appellant's post reply brief and pursuant to the Appellant's counsel's request, gave the Appellant five business days to respond to the Department's reply brief.

On [REDACTED] 2018, Appellant's counsel filed a surreply brief and the hearing record was closed on [REDACTED] 2018.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department rendered a decision adversely affecting the Appellant's participation in the Medicaid program, or her entitlement to the prescription drug, Methocarbamol, that should have triggered a Notice of Action ("NOA").

**PLEASE SEE THE ENCLOSED COPY OF THIS DECISION IN ALBANIAN.
JU LUTEMI SHIHNI BASHKËNGJITUR KOPJEN E VENDIMIT NË GJUHËN SHQIPE.**

FINDINGS OF FACT

1. The Appellant is a recipient of medical assistance under the Medicaid program, which provides payment for Pharmaceutical services subject to conditions and limitations. (Appellant's testimony; Hearing Summary)
2. The Appellant received a prescription from her provider for a sixty (60) day supply of the drug Methocarbamol. (Appellant's testimony; Hearing Summary)
3. On [REDACTED] 2018, CVS Pharmacy submitted a claim on behalf of the Appellant to the Department for a sixty (60) day supply of Methocarbamol, a drug classified as a muscle relaxant used to treat muscle spasms and pain. (Hearing Summary)

4. Methocarbamol is considered a non-maintenance drug, which means it is used to treat conditions that are acute or short term. (Hearing Summary)
5. The Appellant's Pharmaceutical service under the Medicaid program is subject to a thirty (30) day supply payment limitation for non-maintenance drugs, such as Methocarbamol. (Hearing Summary)
6. CVS Pharmacy received an electronic message from the Department stating that the claim exceeds the maximum days supply allowed. (Hearing Summary)
7. CVS Pharmacy did not fill the Appellant's prescription for a 60-day supply of Methocarbamol, because the Department's payment is limited to only a 30-day supply for non-maintenance drugs, such as Methocarbamol. (Hearing Summary; Hearing Transcript, page 48)
8. The pharmacy gets a message right away that it can submit the prescription for a 30-day supply but CVS did not submit it for a 30-day supply on [REDACTED] 2018. (Department's representative's Testimony, Hearing Transcript, page 39)
9. CVS had an opportunity to submit the prescription claim for a 30-day supply. (Department's Representative's Testimony, Hearing Transcript, page 45)
10. On [REDACTED] 2018, CVS Pharmacy issued a message to the Appellant stating that her insurance would not cover her prescription for Methocarbamol. (Appellant's testimony; Hearing Summary; Appellant's Exhibit #1: CVS Receipt, dated [REDACTED] 18)
11. While it may be true that CVS told the Appellant her insurance would not cover the prescription, CVS could have resubmitted the prescription for a 30-day supply and it would have been approved. (Facts 8-10, Hearing Transcript, page 48)
12. It was CVS's words to say it was not covered, which is not correct. (Department's Testimony, Hearing Transcript, page 49)
13. On [REDACTED] 2018, CVS Pharmacy submitted a claim on behalf of the Appellant to the Department for payment of a thirty (30) day supply of Methocarbamol, which was paid for by the Department. (Appellant's testimony; Hearing Summary)
14. The Department uses First Data Bank ("FDB") drug compendia, which is a nationally recognized source of pharmacy information. FDB classifies Methocarbamol as a non-maintenance drug that should be subject to quantity and supply limitations. (Hearing Summary)
15. The Department determined that the quantity and supply limitations that the Medical Services Policy placed on non-maintenance drugs, such as Methocarbamol should not trigger a notice of action, as such quantity limitations do not have the effect of depriving the Appellant of a Medicaid covered service or benefit. (Hearing Summary; Dept.'s Post-Hearing Brief)

16. In █████ 2002, the Department notified pharmacy providers that in an effort to make compliance with the Medical Services Policy easier, claims for non-maintenance drugs that are submitted for greater than a 30-day supply, regardless of the quantity dispensed, will be denied and providers will receive an electronic notification stating "Exceeds Allowed Days Supply". (Connecticut Department of Social Services Medical Assistance Program, Provider Bulletin, PB 2002-25, █████ 2002, Department's Post Hearing Brief)
17. The Appellant has not been deprived of the prescription drug Methocarbamol due to a recent action taken by the Department. (See Facts 1 to 12)
18. The Appellant's availability and supply of the prescription drug, Methocarbamol, provided to her under the Medicaid program have not been reduced due to an action taken by the Department. (See Facts 1 to 13)
19. The Appellant is not disputing the quantity and supply limitations that the Medicaid program placed on the availability of her non-maintenance drugs, such as Methocarbamol, and agreed that the prescription error for a 60 day supply, instead of a 30 day supply, is not an action that should have triggered the requirements of due process. (Appellant's Surreply Brief, dated █████18)
20. The Department has not rendered a decision that adversely affected the Appellant's participation in the Medicaid program, or her entitlement to the prescription drug Methocarbamol. (See Facts 1 to 14; Hearing Summary)
21. The Department will notify the Appellant of any change in her eligibility for payment of Pharmaceutical services, under the Medicaid program. (Hearing Summary)
22. The factors that led to the Appellant's request for an administrative hearing no longer exist. (See Facts #1 to 16; Hearing Summary)
23. The Department does not have jurisdiction to rule on the point at issue in this case, because the matter has been resolved. (See Facts # 1 to 17)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Medicaid program.
2. 17b-60 of the Connecticut General Statutes provides that an aggrieved person authorized by law to request a fair hearing on a decision of the Commissioner of Social Services or the conservator of any such person on his behalf may make application for such hearing in writing over his signature to the commissioner and shall state in such application in simple language the reasons why he claims to be aggrieved. Such application shall be mailed to the commissioner within sixty days after the rendition of such decision. The commissioner shall thereupon hold a fair hearing within thirty days from receipt thereof and shall, at least ten days prior to the date of such hearing, mail a notice, giving the time and place thereof, to such aggrieved person, or if the application concerns a denial of or failure to provide emergency housing, the commissioner shall

hold a fair hearing within four business days from receipt thereof, and shall make all reasonable efforts to provide notice of the time and place of the fair hearing to such aggrieved person at least one business day prior to said hearing. A reasonable period of continuance may be granted for good cause. The aggrieved person shall appear personally at the hearing, unless his physical or mental condition precludes appearing in person, and may be represented by an attorney or other authorized representative. A stenographic or mechanical record shall be made of each hearing, but need not be transcribed except (1) in the event of an appeal from the decision of the hearing officer or (2) if a copy is requested by the aggrieved person, in either of which cases it shall be furnished by the Commissioner of Social Services without charge.

3. Medical Services Policy Section 174 provides that the drug program provides Medicaid reimbursement for accepted methods of drug treatment for Title XIX patients.
 - A. Provides definitions as follows:
 - XVII "Pharmacy" means a facility licensed by the Commission of Pharmacy in the Department of Consumer Protection under Section 20-168 of the Connecticut General Statutes or by the appropriate regulatory body of the state in which it is located.
 - XIX "Prescription" means an order issued by a licensed authorized practitioner and documented in writing by either the practitioner or pharmacist. In nursing homes the signed order of a licensed authorized practitioner will be accepted in lieu of a written or oral prescription. The written prescription includes:
 - a. the name and address of the patient; and
 - b. whether the patient is an adult or a child, or the patient's specific age; and
 - c. the compound or preparation ordered; and
 - d. its strength when applicable and the specific amount thereof, to be dispensed at one time; and
 - e. directions for the use of the medication and any cautionary statements required; and
 - f. the number of times that the prescription may be refilled, if applicable; and
 - g. date of issuance; and
 - h. name and address of the prescribing practitioner and his/her Drug Enforcement Act number when appropriate
4. Medical Services Policy Section 174C provides that eligibility for payment for Pharmaceutical Services is available for all Medicaid eligible recipients subject to the conditions and limitations which apply to these services.
5. Medical Services Policy Section 174D provides for covered services and limitations as follows:
 - I. Services Covered

Except for the limitations and exclusions listed below, the Department will pay for drugs which are prescribed by a licensed authorized practitioner as a result of accepted methods of diagnosis and treatment.

II. Service Limitations

a. Maximum Allowable Supply

The Department will not reimburse for an original prescription or refill that exceeds the supply requirement for a period of thirty (30) days not to exceed two hundred and forty (240) units except in the following instances:

1. Prescriptions for chronic conditions or maintenance drugs shall be for at least a thirty (30) day supply not to exceed two hundred and forty (240) units unless a lesser amount is prescribed.
6. Provider Bulletin PB 2002-25 provides that effective [REDACTED] 2002 claims for non-maintenance drugs that are submitted for greater than a 30 day supply, regardless of the quantity dispensed, will be denied and providers will receive an electronic notification stating "Exceeds Allowed Days Supply".

A maintenance drug is one that is used to treat a chronic illness or condition, where chronic means "lasting longer than one year". The Department has limited the edit to non-maintenance medications available as oral dosage forms, with the exception of OTC vitamins, laxatives, and analgesics. Provider may continue to dispense a greater than 30 day supply for maintenance drugs and the above listed exceptions, up to the state defined maximum quantity. [PB 2002-25]

7. The Medical Services Policy allows for the Department to limit non-maintenance drugs, such as Methocarbamol, to a 30-day supply. Such supply limitations are very common in the Medicaid program to protect against waste, fraud, and abuse. The Medical Services Policy for pharmacy also provides for a "Maximum Allowable Supply". The Department will not reimburse for a prescription or refill that exceeds the supply requirement period of thirty (30) days.
8. The availability and supply of the prescription drug, Methocarbamol, provided to the Appellant under the Medicaid program have not been changed by the Department.
9. CVS Pharmacy incorrectly submitted a claim on behalf of the Appellant to the Department for a sixty (60) day supply of the drug, Methocarbamol, which is classified as a non-maintenance drug, when the Medical Services Policy limits the quantity of the drug to a 30-day supply, causing the claim to be electronically rejected as "Exceeding Allowed Days Supply."
10. CVS should have resubmitted the prescription for a 30-day supply and the Department would have approved the prescription.

11. CVS Pharmacy erroneously informed the Appellant that her insurance would not cover her prescription for the drug, Methocarbamol.
12. The Appellant's appeal regarding the availability and supply of the prescription drug Methocarbamol to treat her condition is hereby dismissed for lack of jurisdiction as the matter has been resolved, and there are no further issues to be adjudicated.

DECISION

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



Hernold C. Linton
Hearing Officer

PC: **Herman Kranc**, Medical Care Administration, DSS, Central Office

Jason Gott, Medical Care Administration, DSS, Central Office

Attorney Jean Mills Aranha, Connecticut Legal Services,
1177 Summer Street, 4th Floor, Stamford, CT 06905

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Patricia McCooey, Staff Attorney,
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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.