

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

██████████ 2019
Signature Confirmation

Case ID # ██████████
Client # ██████████
Request # ██████████

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services' (the "Department") Connecticut Medical Assistance Drug Utilization Review Program sent ██████████ (the "Appellant") a notice indicating that she would continue to be restricted to using only one pharmacy when having her prescriptions for controlled substances filled.

On ██████████ 2018, the Appellant filed a request for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") to contest the decision.

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

On ██████████ 2018, OLCRAH, at the Appellant's request, issued a notice rescheduling the administrative hearing for January 4, 2019.

On ██████████ 2019, in accordance with sections 17b-60, 17-61, and 4-176e to 4-184, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals attended the hearing:

- ██████████ Appellant
- Althea Francis-Forbes, Proctor for the Department
- Jerrent Wyant, Proctor for the Department
- Jason Gott, Pharmacy Consultant for the Department
- Heather Kissinger, DXC Technology for the Department
- Christopher Turner, Hearing Officer

STATEMENT OF ISSUE

The issue to be decided is whether the Department's [REDACTED] 2018 action to continue the Appellant's restriction to one pharmacy with respect to using her Connecticut Medical Assistance card for filing prescriptions is supported by federal and state statute.

FINDINGS OF FACT

1. [REDACTED] 2018, the Department conducted a review of the Appellant's drug utilization. The review is performed yearly in the month of September with the previous 12-month period of September through August utilized as the look back period. (Exhibit A: Diagnosis profile; Hearing summary; Testimony)
2. The Appellant's date of birth is [REDACTED]. (Exhibit A; Appellant's testimony)
3. The Appellant is a Connecticut Medical Assistance program participant. (Record)
4. Health Information Designs, Inc. ("HID") oversees the Connecticut Medical Assistance Drug Utilization Review Program and is the Department's Retrospective Drug Utilization Review contractor with respect to the Connecticut Medical Assistance Drug Utilization Review Program. (Record)
5. The HID reviews the prescription usage of all Connecticut Medical Assistance program participants that meet a specific profile associated with type, usage, and frequency and determines a risk score concerning controlled substance usage. (HID's/DXC representative's testimony)
6. DXC Technology is the Department's pharmacy consultant under administrative contract to approve prior authorization requests for drugs covered under the Department's medical assistance program. (Hearing Record)
7. The Appellant has been restricted to one pharmacy by the Department since [REDACTED]. (Hearing summary)
8. HID's review of the Appellant's prescription usage considered her diagnoses of major depressive disorder and history of alcohol abuse. (Exhibit A)
9. In order for a patient's case to be flagged for a pharmacy restriction review, the patient has to have received [REDACTED] supply of controlled substances within a [REDACTED] period. A review of the Appellant's drug utilization indicated the Appellant received [REDACTED] days' supply of controlled substances. (Exhibit E: Findings Based on Drug Utilization Review)
10. The Appellant has utilized three prescribers since [REDACTED]. (Exhibit A)

11. [REDACTED], the Appellant filled the following prescriptions:

[REDACTED] Products containing [REDACTED] may be over-utilized with possible dependency issues. Administration of [REDACTED] along with [REDACTED] should be approached with caution due to possible [REDACTED] issues. (Exhibit A)

From [REDACTED] through [REDACTED] 2018, the Appellant filled the following prescriptions for [REDACTED]

13. In its drug utilization review, HID made the following recommendations: 1) The Appellant continue to be restricted to a single pharmacy and 2) If the Appellant's pharmacy is temporarily out of a medication she needs, to change the pharmacy location for a one-day period to a pharmacy that has the medication in stock, but not allow the Appellant to utilize multiple pharmacies for controlled substances as it is in the Appellant's best interest and safety to be monitored by a single pharmacy for controlled substances. (Exhibit E)

14. There is a procedure in place that would allow the Appellant to change to a different pharmacy, should she call HID's toll-free number and fax a signed request to change the pharmacy. (Department's representative's testimony)

15. On [REDACTED] 2018, the Department mailed the Appellant a letter indicating the continuation of Appellant's pharmacy restriction for another year. The letter specified the Appellant would be restricted to using only one pharmacy when having her prescriptions for controlled substances filled under the Connecticut Medical Assistance program. (Exhibit D: Letter; Hearing summary)

16. As of the hearing date, the Appellant has filled a prescription for [REDACTED]. (Exhibit J: Pharmacy claim printout)

17. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be rendered within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED] 2018. The hearing was originally scheduled for [REDACTED] 2018 but rescheduled at the Appellant's request to [REDACTED] 2019. Due to this 32-day delay, this decision, therefore, was due no later than [REDACTED] 2019. (Hearing Record)

CONCLUSIONS OF LAW

1. Connecticut General Statutes § 17b-2 (6) provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Social Security Act § 1927 (g)(1)(A) PAYMENT FOR COVERED OUTPATIENT DRUGS. In order to meet the requirement of section 1903(i)(10)(B), a State shall provide, by not later than January 1, 1993, for a drug use review program described in paragraph (2) for covered outpatient drugs in order to assure that prescriptions (i) are appropriate, (ii) are medically necessary, and (iii) are not likely to result in adverse medical results. The program shall be designed to educate physicians and pharmacists to identify and reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists, and patients, or associated with specific drugs or groups of drugs, as well as potential and actual severe adverse reactions to drugs including education on therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse.

Social Security Act § 1927 (g)(2)(B) RETROSPECTIVE DRUG USE REVIEW.— The program shall provide, through its mechanized drug claims processing and information retrieval systems (approved by the Secretary under section 1903(r)) or otherwise, for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists and individuals receiving benefits under this title, or associated with specific drugs or groups of drugs.

The Department is required to implement a program for drug use review with respect to the administration of the Connecticut Medical Assistance program, or Medicaid program.

The Department did not exceed its authority when it reviewed the Appellant's prescription usage.

3. Connecticut General Statutes § 17b-259b provides (a) 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.

Connecticut General Statutes § 17b-259b (b) provides 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.

4. Connecticut General Statutes § 21a-266 provides (a) No person shall obtain or attempt to obtain a controlled substance or procure or attempt to procure the administration of a controlled substance (1) by fraud, deceit, misrepresentation or subterfuge, or (2) by the forgery or alteration of a prescription or of any written order, or (3) by the concealment of a material fact, or (4) by the use of a false name or the giving of a false address (b) Information communicated to a practitioner in an effort unlawfully to procure a controlled substance, or unlawfully to procure the administration of any such substance, shall not be deemed a privileged communication. (c) No person shall willfully make a false statement in any prescription, order, report or record required by this part. (d) No person shall, for obtaining a controlled substance, falsely assume the title of, or claim to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, podiatrist or other authorized person. (e) No person shall make or utter any false or forged prescription or false or forged written order. (f) No person shall affix any false or forged label to a package or receptacle containing controlled substances. (g) No person shall alter an otherwise valid written order or prescription except upon express authorization of the issuing practitioner. (h) No person who, in the course of treatment, is supplied with controlled substances or a prescription therefor by one practitioner shall, knowingly, without disclosing such fact, accept during such treatment controlled substances or a prescription therefor from another practitioner with intent to obtain a quantity of controlled substances for abuse of such substances. (i) The provisions of subsections (a), (d) and (e) shall not apply to manufacturers of controlled substances, or their agents or employees, when such manufacturers or their authorized agents or employees are actually engaged in investigative activities directed toward safeguarding of the manufacturer's trademark, provided prior written approval for such investigative activities is obtained from the Commissioner of Consumer Protection.

Connecticut General Statutes § 17b-275 provides for the Physician and pharmacy lock-in procedure. The Commissioner of Social Services shall implement, not later than October 1, 1984, a physician and pharmacy lock-in procedure to restrict the use of the health care delivery system by medical assistance recipients who are determined by the commissioner to have utilized medical services or items at a frequency or amount that is not medically necessary. The commissioner shall

establish criteria and a case review system in order to make such determination. The commissioner shall require such recipients for a reasonable period of time to obtain medical services or items only from designated providers provided (1) the department gives the recipient notice and an opportunity for a hearing, in accordance with procedures established by the department, before such restrictions are imposed and (2) the department assures that the recipient has reasonable access, taking into account geographic location and reasonable travel time, to medical services of adequate quality.

The Department correctly determined that the Appellant was subject to the pharmacy lock-in procedure as described in section 17b-275 of the Connecticut General Statutes.

The Department's [REDACTED] action to continue the Appellant's pharmacy restriction for another year with respect to filling her Medicaid covered controlled substance prescriptions is supported by federal and state statute.

DISCUSSION

The Appellant testified she feels she is being treated as child and the pharmacy restriction is no longer appropriate due to her sole prescription for one controlled substance, [REDACTED]. Although the Appellant has taken steps to reduce her usage of controlled substances, the Department's position that the pharmacy restriction is for the health and safety of the Appellant supersedes the Appellant's sentiments.

The Appellant may identify a different pharmacy to be restricted into, should she decide that her current pharmacy does not meet her needs.

DECISION

The Appellant's appeal is denied.



Christopher Turner
Hearing Officer

Cc: Jason Gott, Medical Care Administration, DSS-CO
Herman Kranc, Manager, DSS-CO

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, law, and 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, if 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.