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

[REDACTED] 2019
Signature Confirmation

Client ID # [REDACTED]
Request # [REDACTED]

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2018, Beacon Health Options ("Beacon"), the Department of Social Services ("Department") vendor that administers approval of requests for services under the Connecticut Behavioral Health Program ("CTBHP") sent [REDACTED] (the "Appellant"), mother of [REDACTED] (the "child"), a Notice of Action ("NOA) partially denying the prior authorization request for two paraprofessionals for seventy (70) hours per week for the child under the Autism Spectrum Disorder ("ASD") Services submitted by [REDACTED] (the "Provider"). Beacon approved one paraprofessional for thirty-five (35) hours per week and denied the second paraprofessional because the treatment requested exceeds a covered service under Husky A.

On [REDACTED] 2018, the Appellant requested an administrative hearing to contest the partial denial of services by Beacon on behalf of the child.

On [REDACTED] [REDACTED] 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [REDACTED] 2018.

On [REDACTED] 2018, in accordance with sections 17b-60, 17b-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's Representative and Parent
Jennifer Lombardi, Director of Qualify Management, Beacon Health Options
Jessica Gomez, Department of Social Services, RO #30
Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether Beacon's decision to partially deny the prior authorization request for Autism Spectrum Disorder ("ASD") Services for two paraprofessionals for 70 hours per week for the child was correct.

FINDINGS OF FACT

1. The child is a recipient of Medicaid under the Husky A program. (Hearing Record)

2. Beacon Health Options ("Beacon") is the administrative service organization responsible for the authorization of services provided under the Connecticut Behavioral Health Program ("CTBHP"). (Hearing Record)

3. The child lives at home with his mother [redacted] (the "Appellant"), step-father, step-brother, and grandparents. (Appellant's Testimony)

4. The child is age [redacted] (Hearing Record)

5. The child's medical diagnosis includes [redacted] and [redacted] [redacted] [redacted]. The child is [redacted]. (Hearing Record)

6. The child is [redacted] tall and weighs [redacted] [redacted]. (Appellant's Testimony)

7. The child has [redacted] [redacted] In order to remove the item from the child's mouth, two individuals must hold down the child while a third, usually the Appellant, retrieves the object from his mouth. (Appellant's Testimony)

8. The child exhibits impulsive and aggressive behaviors by kicking, hitting others with an open and closed fist, karate chop, head butting, scratching, pinching, grabbing/squeezing, and pushing and shoving. (Exhibit A:

Level of Care Review, Exhibit 1: Medical Documentation and Appellant's Testimony)

9. The child exhibits self-injurious behaviors such as hitting any part of the body with fists or hitting body parts together, jumping on the ground without bending his knees, slamming his body into furniture, and hitting objects with his wrists, elbows, and/or knees. The child's behaviors are impulsive. (Exhibit A: Level of Care Review, Exhibit 1: Medical Documentation and Appellant's Testimony)

10. The child exhibits self-injurious behaviors to his head such as hitting his head with his fist or hitting his head with his knee. (Exhibit A: Level of Care Review, Exhibit 1: Medical Documentation and Appellant's Testimony)

11. The child wears a helmet for safety to prevent injuries to his head during episodes in which he bangs his head. (Exhibit A: Level of Care Review, Exhibit 1: Medical Documentation and Appellant's Testimony)

12. The Appellant provides a helmet for staff members to wear for safety. (Appellant's Testimony)

13. Therapists carry a pad to protect themselves and block the child when the child's behavior turns aggressive. (Exhibit A: Level of Care Review)

14. For safety concerns, the child requires two adults when bathing/showering because he may jump suddenly or slam his body against the tiles which has resulted in tiles breaking. (Appellant's Testimony)

15. The child requires two adults when eating, one adult to monitor and control his food intake and a second adult to assist with feeding due to his [redacted]. (Appellant's Testimony)

16. The child requires two adults when dressing, one adult to restrain the child to allow the second adult to physically dress him. Recently, the child stepped on the Appellant's fingers while she tried to tie his shoes that resulted in a broken finger. (Appellant's Testimony)

17. The child has a wheelchair with restraints to be used when the child goes out in public but requires two adults to seat him safely in the wheelchair. (Appellant's Testimony)

18. [redacted] 2017, the child was hospitalized at the [redacted] [redacted] ("institute") and remained inpatient for five months until his discharge on [redacted], 2017 home. (Hearing Record)

19. Staffing recommendations made by the institute under the child's plan of care completed on [redacted] include:
    1. A professional with training in Applied Behavioral Analysis (ABA) and/or a Board Certified Behavior Analyst (BCBA) should have a role in monitoring implementation of the behavior plan, data collection, and updating the behavior plan as needed.
    2. All caregivers working with [the child] should receive training on [redacted] behavioral protocol prior to working with him. This will allow for the consistent implementation of his plan, which will be particularly important as [redacted] transitions back to his home and school environment. We expect that the consistent implementation of the behavior plan will continue to result in low levels of problem behaviors, which will allow [the child] to continue to excel at home, school, and in the community.
    3. Given the severity of [redacted] problem behavior and the risk of harm to himself and others, a one to one aid is recommended.
    (Exhibit J: Plan of Care and Beacon Representative's Testimony)

20. Since [redacted] 2017, the child attends a therapeutic school full time with a one to one ratio. Two to four additional staff members are required to manage any problem behaviors displayed by the child during the six hour school day to keep the child and others in his environment safe. (Exhibit H: Husky Authorization Request and Exhibit 1: Medical Documentation)

21. The child receives ABA therapy and case management services from [redacted] (the "Provider"). (Appellant's Testimony and Exhibit 1: Medical Documentation)

22. The child's therapy centers around ABA therapy which centers on a three step prompt to encourage compliance with a request and limit the risk of inappropriate behavior. Step one, tell the child what you want him to do, if the child complies, provide praise. If the child does not comply, move to step two. Step two, show the child what you want him to do while repeating the request. If the child complies, provide praise. If the child does not comply, move to step three. Step three; guide the child to complete the task using hand-over-hand assistance. (Appellant's Testimony and Exhibit J: Plan of Care)

23. The child receives services under the [redacted] [redacted] [redacted] [redacted] [redacted]. [redacted] approved five hours respite care in which a family member must be present for and ten hours of respite care in which a family need not be present. (Appellant's Testimony)

24. The child received approval for ASD services for two behavioral technicians upon his discharge from the institute through his step-father's

employer sponsored medical insurance. Due to the loss of this insurance, the Provider submitted a request for ASD services to Beacon. (Appellant's Testimony)

25. On [redacted], 2018, Beacon received a request for ASD services from the Provider on behalf of the child. The request was for two behavioral technicians to one client [2 to 1 ratio] for in-home autism services of thirty-five hours each week for each behavioral technician for a total of seventy (70) hours per week. (Exhibit A: Level of Care Review and Exhibit H: Husky Authorization Request)

26. Beacon contacted the Provider by telephone upon receipt of the prior authorization request for two behavioral technicians to one client to inquire if the Provider could replace a behavior technician with a Board Certified Behavior Analyst ("BCBA") effectively increasing the observation and direction hours resulting in more support to the child. The Provider responded they do not have available staff to place a BCBA in the home for 35 hours per week. (Beacon Representative's Testimony and Hearing Summary)

27. On [redacted] 2018, Beacon partially denied the prior authorization request submitted by the Provider. Beacon approved the request for one behavioral technician to one client [1 to 1 ratio] for in-home autism services of thirty-five hours each week and denied the request for the second behavioral technician because the treatment requested exceeds a covered service under Husky A. Beacon did not review the clinical evidence submitted by the Provider and make a determination of medical necessity because Medicaid limits prevent the authorization of two behavioral technicians for one patient [2 to 1 ratio] simultaneously. (Beacon Representative's Testimony and Exhibit B: Notice of Action)

28. On [redacted], 2018, Beacon issued a notice of action to the Appellant. The notice stated "the request for an authorization for autism service delivery for two paraprofessionals for seventy (70) hours per week is denied because this treatment requested exceeds a covered service under the Husky A program. You are currently approved for one paraprofessional for 35 hours per week." (Exhibit B: Notice of Action)

29. On [redacted] 2018, the [redacted] admitted the child their facility where the child remains as of [redacted] 2018, the administrative hearing date. (Appellant's Testimony)

30. The issuance of this decision is timely under Connecticut General Statutes § 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an

administrative hearing on [redacted]. Therefore, this decision is due not later than [redacted].

CONCLUSIONS OF LAW

1. Connecticut General Statute ("C.G.S.") § 17b-2(11) provides that the Department of Social Services is designated as the state agency for the administration of services for persons with autism spectrum disorder in accordance with sections 17a-215 and 17a-215c.

2. State statute provides that the Department of Social Services shall serve as the lead agency to coordinate, where possible, the functions of the several state agencies which have responsibility for providing services to persons diagnosed with autism spectrum disorder. [C.G.S. § 17a-215]

3. State statute provides that there is established a Division of Autism Spectrum Disorder Services within the Department of Social Services. [C.G.S. § 17a-215c(a)]

4. State statute provides that the Commissioner of Social Services may, with regard to the provision of behavioral health services provided pursuant to a state plan under Title XIX or Title XXI of the Social Security Act: (1) Contract with one or more administrative services organizations to provide clinical management, intensive care management, provider network development and other administrative services; (2) delegate responsibility to the Department of Children and Families for the clinical management portion of such administrative contract or contracts that pertain to HUSKY A and B, and other children, adolescents and families served by the Department of Children and Families; and (3) delegate responsibility to the Department of Mental Health and Addiction Services for the clinical management portion of such administrative contract or contracts that pertain to Medicaid recipients who are not enrolled in HUSKY A. [C.G.S. § 17a-22f(a)]

5. State statute provides that for purposes of this section, the term "clinical management" describes the process of evaluating and determining the appropriateness of the utilization of behavioral health services and providing assistance to clinicians or beneficiaries to ensure appropriate use of resources and may include, but is not limited to, authorization, concurrent and retrospective review, discharge review, quality management, provider certification and provider performance enhancement. The Commissioners of Social Services, Children and Families, and Mental Health and Addiction Services shall jointly develop clinical management policies and procedures. [C.G.S. § 17a-22f(b)]

6. State statute provides that the Division of Autism Spectrum Disorder Services may, within available appropriations, research, design, and implement the delivery of appropriate and necessary services and programs for all residents of the state with autism spectrum disorder. Such services and programs may include the creation of: (1) Autism-specific early intervention services for any child under the age of three diagnosed with autism spectrum disorder; (2) education, recreation, habilitation, vocational and transition services for individuals age three to twenty-one, inclusive, diagnosed with autism spectrum disorder; (3) services for adults over the age of twenty-one diagnosed with autism spectrum disorder; and (4) related autism spectrum disorder services deemed necessary by the Commissioner of Social Services. [C.G.S. § 17a-215c(c)]

7. State statute provides that the Department of Social Services may adopt regulations, in accordance with chapter 54, to define the term “autism spectrum disorder”, establish eligibility standards and criteria for the receipt of services by any resident of the state diagnosed with autism spectrum disorder, regardless of age, and data collection, maintenance and reporting processes. The Commissioner of Social Services may implement policies and procedures necessary to administer the provisions of this section prior to adoption of such regulations, provided the commissioner shall publish notice of intent to adopt such regulations not later than twenty days after implementation of such policies and procedures. Any such policies and procedures shall be valid until such regulations are adopted. [C.G.S. § 17a-215c(b)]

8. On December 24, 2014, the Department implemented the Proposed Regulations as binding Operational Policies and Procedures effective January 1, 2015 under C. G. S. § 17b-10. For the purposes of this decision, Departmental Operating Policies are cited as Connecticut Agency Regulations.

9. Connecticut Agency Regulations (“Conn. Agency Regs.”) § 17b-262-1051 provides that sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies, set forth the Department of Social Services requirements governing payment for autism spectrum disorder services provided to Medicaid members under age twenty-one.

10. State regulation defines “autism spectrum disorder” or “ASD” as a spectrum of neurodevelopmental conditions marked by challenges with social functioning, communication, restricted interests and repetitive behaviors and sensory processing and which are classified as ASD by the DSM. [Conn. Agency Regs. § 17b-262-1052(5)]

    State regulation defines “DSM” or “Diagnostic and Statistical Manual of Mental Disorders” means the most current edition of the manual of mental

disorders produced by the American Psychiatric Association. [Conn. Agency Regs. § 17b-262-1052(14)]

11. State regulation provides that ASD treatment services shall comply with 42 C.F.R. 440.130(c) and any other applicable federal Medicaid requirements, such as section 4385 of the State Medicaid Manual. [Conn. Agency Regs. § 17b-262-1058(a)]

    Title 42 of the Code of Federal Regulations § 440.130(c) provides that "preventive services" means services recommended by a physician or other licensed practitioner of the healing arts acting within the scope of authorized practice under State law to-

    1. Prevent disease, disability, and other health conditions or their progression;
    2. Prolong life; and
    3. Promote physical and mental health and efficiency.

12. Connecticut State Plan Amendment ("SPA") 15-004 to the Medicaid State Plan provides that services to treat autism spectrum disorders (ASD), as defined in the most recent edition of the diagnostic and Statistical Manual of Mental Disorders, pursuant to EPSDT are provided only to Medicaid beneficiaries (defined below as individual or individuals) under age twenty-one. Pursuant to 42 C.F.R. § 440.130(c), these services are provided as preventive services and are recommended by a physician or other licensed practitioner of the healing arts within his or her scope of practice under state law to prevent the progression of ASD, prolong life, and promote the physical and mental health and efficiency of the individual. [Connecticut State Plan Amendment, Transmittal Number 15-004, Department of Health and Human Services, Centers for Medicare and Medicaid Services, Approval Date May 1, 2017]

    State regulation defines "Medicaid State Plan as the current Medicaid plan established, submitted and maintained by the department and approved by the United States Centers for Medicare and Medicaid Services in accordance with 42 CFR 430, Subpart B. [Conn. Agency Regs. § 17b-262-1052(21)]

    State regulation defines "Early and Periodic Screening, Diagnostic and Treatment special Services or EPSDT special services" as services that are not otherwise covered under Medicaid by that are covered for Medicaid members under age twenty-one pursuant to 42 USC 1396d(r)(5) when the service is (A) medically necessary, (B) identified in an EPSDT screen as needed, (C) provided by a provider who is enrolled in Medicaid and (D) coverable by Medicaid under 42 USC 1396d(a). [Conn. Agency Regs. § 17b-262-1052(15)]

13. State regulations provides that the Department pays each billing provider for ASD services provided to each member who needs such services and for whom such services are medically necessary, subject to applicable requirements. [Conn. Agency Regs. § 17b-262-1054]

14. State regulation defines “medical necessity” or “medically necessary” as the same meaning as provided in section 17b-259b of the Connecticut General Statutes. [Conn. Agency Regs. § 17b-262-1052(23)]

    State statute provides 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. [C.G.S. § 17b-259b(a)]

15. State regulation provides that the department shall pay only for medically necessary ASD services that are directly related to the member’s diagnosis, symptoms or medical history. [Conn. Agency Regs. § 17b-262-1055(a)]

16. State regulation defines “ASD treatment services” as medically necessary interventions designed to treat individuals with ASD provided in accordance with section 17b-262-1058 of the Regulations of Connecticut State Agencies, including (A) services identified as evidence-based by nationally recognized research reviews, (B) services identified as evidence-based by other nationally recognized substantial scientific and clinical evidence or (C) any other intervention supported by credible scientific or clinical evidence, as appropriate to each individual. ASD treatment services include a variety of behavioral interventions that meet

the criteria in one or more of subparagraphs (A), (B), or (C) of this subdivision, such as evidence-based ABA interventions that meet the criteria in one or more of such subparagraphs. [Conn. Agency Regs. § 17b-262-1052(3)]

17. State regulation defines "ASD services" as the comprehensive diagnostic evaluation, behavior assessment, development of the behavioral plan of care and ASD treatment services. [Conn. Agency Regs. § 17b-262-1052(4)]

18. State regulation provides that the following limits apply to covered services:

    1. The provider shall obtain prior authorization for all ASD services.
    2. The provider shall meet all applicable provider qualifications and other requirements before performing a service.
    3. The member's total ASD treatment services received from all sources may only be the amount medically necessary for the member in accordance with the behavioral plan of care, up to a maximum of twenty-five hours per week. With prior authorization from the Department, such twenty-five hour limit may be exceeded to the extent medically necessary, based on sufficient documentation as determined by the department. [Conn. Agency Regs. § 17b-262-1055(b)]

19. State regulation provides that the department shall not pay a billing provider for the following:

    1. Any procedure or service of an unproven, experimental, cosmetic or research nature; any service that is not medically necessary for a member; or services not directly related to the member's diagnosis, symptoms or medical history;
    2. Cancelled services or appointments not kept;
    3. Any services, treatment or items for which the provider does not usually charge;
    4. Any services provided to a member that would duplicate services being received concurrently from any other source, regardless of the source of payment;
    5. Any service requiring prior authorization for which the provider did not obtain prior authorization before performing the service;
    6. Services that are solely educational, vocational, recreational, or social;
    7. Services that are related solely to specific employment opportunities, work skills, work settings or academic skills that are not medically necessary;
    8. Services that are not coverable within the Medicaid State Plan, such as respite care, child care or other custodial services; and

9. Information or services provided to a member by a provider in any setting other than face-to-face, except as otherwise specifically authorized in writing by the department.
   [Conn. Agency Regs. § 17b-262-1059]

20. Medical Services Policy § 17b-262-1055 provides for Services Covered and Limitations – General Provisions

    a. The department shall pay only for medically necessary ASD services that are directly related to the member's diagnosis, symptoms or medical history.
    b. The following limits apply to covered services:
       1. The provider shall obtain prior authorization for all ASD services.
       2. The provider shall meet all applicable provider qualifications and other requirements before performing a service.
       3. The member's total ASD treatment services received from all sources may only be the amount medically necessary for the member in accordance with the behavioral plan of care, up to a maximum of twenty-five hours per week. With prior authorization from the department, such twenty-five hour limit may be exceeded to the extent medically necessary, based on sufficient documentation as determined by the department.

    [Chapter 7 Provider Manual Autism Spectrum Disorder Regulations and Program Policy, Volume 1.0, January 18, 2018, p. 6]

21. Connecticut State Plan Amendment ("SPA") 15-004 to the Medicaid State Plan provides for limitations.

    1. Total ASD treatment services from all sources may only be the amount medically necessary for each individual.
    2. DSS shall not pay for program services or components of services that:
       a. Are of an unproven, experimental, cosmetic or research nature.
       b. Do not relate to the individual's diagnosis, symptoms, functional limitations or medical history.
       c. Are intended solely to prepare individuals for paid or unpaid employment or for vocational equipment and uniforms.
       d. Are solely educational, vocational, recreational, or social.
       e. Are not coverable within the preventive services benefit category, such as respite care, child care, or other custodial services.
       f. Are provided by an individual to that individual's spouse or to that individual's natural or adoptive parent, child, sibling, stepparent, stepchild, stepbrother, stepsister, grandparent, or grandchild.

[Connecticut State Plan Amendment, Transmittal Number 15-004, Department of Health and Human Services, Centers for Medicare and Medicaid Services, Approval Date May 1, 2017]

22. Beacon was incorrect to deny the prior authorization request for two paraprofessionals for 70 hours per week citing the treatment requested exceeds a covered service under the Husky A program. In accordance with state statutes and regulations, the Department shall pay for medically necessary ASD services that are directly related to the member's diagnosis, symptoms or medical history. Beacon failed to evaluate the clinical evidence submitted by the Provider needed to make a determination of medical necessity of the prior authorization request for ASD services. Because the Provider requested two paraprofessionals, Beacon incorrectly determined the request for two paraprofessionals was a duplication of services. Medicaid does not pay for a duplication of services, but Medicaid does not limit a prior authorization request for ASD services to one clinician or paraprofessional per member. Eligibility for ASD services is based on medical necessity and medically necessary.

DECISION

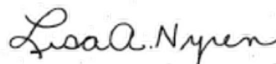
The Appellant's appeal is GRANTED.

ORDER

1. Beacon must rescind the partial denial of the [redacted] 2018 prior authorization request for ASD services for 35 hours per week on a 2 to 1 model of 2 behavioral technicians to one client in home.

2. Beacon must review the prior authorization request for ASD services on behalf of the child in accordance with state statutes and regulations which govern medically necessary and medical necessity ASD services.

3. Compliance is due 10 days from the date of this decision.



Lisa A. Nyren
Fair Hearing Officer

CC: William Halsey, DSS, CO
Lynne Ringer, Beacon Health Options
Ann Phelan, Beacon Health Options
Joseph Tritschler, Beacon Health Options
Jennifer Lombardi, Beacon Health Options
Jilliam Skoczylas, Beacon Health Options

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.