

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 ID # ██████████  
Request # ██████████

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2018, the Department of Social Services (the "Department"), through its Administrative Service Organization, Community Health Network of Connecticut ("CHNCT") sent ██████████ (the "Appellant"), a notice that his medical provider's request for prior authorization of the Permobil F5 VS power wheelchair ("Permobil") was denied.

On ██████████ 2018, the Appellant through his authorized representative, ██████████ ("AREP") requested an administrative hearing to contest the Department's decision to deny his provider's request for the power wheelchair.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for ██████████ 2019.

The administrative hearing was rescheduled at the Appellant's AREP's request. On ██████████ 2019, OLCRAH issued a notice scheduling an administrative hearing for ██████████ 2019.

On [REDACTED] 2019, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the Department held an administrative hearing. The following individuals were present at the hearing:

[REDACTED], Appellant  
 [REDACTED], Appellant's AREP and Mother  
 [REDACTED], Appellant's Witness and Father  
 [REDACTED], PT, DPT, Appellant's Witness  
 [REDACTED], OTRL, Appellant's Witness, Manufacturer Representative, Permobil  
 Barbara McCoid, CHNCT representative  
 Sybil Hardy, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue is whether CHNCT's denial of prior authorization for the Appellant's Permobil F5 VS power wheelchair because it is not medically necessary was correct.

### **FINDINGS OF FACT**

1. The Appellant is a 20 year old [REDACTED] individual and is a participant in the Medicaid program, as administered by the Department. (Hearing Summary, Exhibit 1: Prior Authorization ["PA"] Request from the vendor, NuMotion [REDACTED]/18)
2. The AREP is the Appellant's mother. (Hearing Record, Appellant's AREP's Testimony)
3. The Appellant lives at home with his parent and a sister. (Appellant's AREP's Testimony)
4. For the past six years the Appellant attended the [REDACTED] School in [REDACTED], full time. He can attend the school until he is 21 years old. (Exhibit 2: Additional Prior Authorization Information Hearing, with Video' 8: Letter of Medical Necessity, [REDACTED]/19)
5. The Appellant receives physical therapy while attending the school. (Physical Therapist's Testimony)
6. CHNCT is the Department's contractor for reviewing medical provider's request for prior authorization of medical services. (Hearing Record)
7. [REDACTED] of [REDACTED] Connecticut (the "PCP"), is the Appellant's primary care physician. (AREP's Testimony)

8. [REDACTED] of [REDACTED], [REDACTED] (the “pediatric orthopedic surgeon”) is the Appellant’s pediatric orthopedic surgeon. (AREP’s Testimony)
9. [REDACTED], of [REDACTED] (the “pediatric urologist”) is the Appellant’s pediatric urologist. (AREP’s Testimony)
10. [REDACTED] of [REDACTED] is the Appellant’s pediatric surgeon. (AREP’s Testimony)
11. [REDACTED] of [REDACTED] is the Appellant’s neurosurgeon. (AREP’s Testimony)
12. The Appellant has a medical diagnosis of Spina Bifida, Chiari II malformation, hydrocephalus with shunt placement and shunt revision, global developmental delays, moderate to severe intellectual disability, hydrocele repair, hydronephrosis of the kidney, pervasive development disorder, global developmental delay, history of bowel obstruction, spastic quadriplegia, range of motion deficits, neurogenic bladder and bowel, history of chronic urinary tract infections and foul smelling urine. (Exhibit 3: Medical Review, [REDACTED] 8, Exhibit 8: Letter of Medical Necessity, [REDACTED] 19)
13. The Appellant’s posture and orthopedic needs is complex; he is closely followed by his orthopedic specialist. (Exhibit A: Additional Documentation from [REDACTED] [REDACTED], PT, DPT, [REDACTED] /19)
14. The Appellant is approved for 52 hours per week of nursing home care. The Appellant does not receive nursing services on the weekends. Due to his need of constant transfers for positional changes during catheterizations there is a high turnover of nursing staff. The Appellant often goes months without available care. (AREP’s Testimony, Exhibit 2)
15. The Appellant has increased his doctor visits due to the multiple urinary tract infections. He has also increased his usage of antibiotics to treat the infections. (AREP’s Testimony)
16. The Appellant is catheterized four times per day in order to empty his bladder and reduce urinary tract infections. (Physical Therapist’s Testimony)
17. The Appellant has a bowel regimen to manage the Appellant’s frequent constipation and bowel incontinence. This requires the use of an anal irrigation system several times per day. (Physical Therapist’s Testimony)
18. The Appellant is at increased risk of skin breakdown due to his inability to complete effective weight shift because of his strength impairments. (Exhibit 2)

19. The Appellant is not ambulatory and he is not able to propel any type of manual wheelchair efficiently for functional daily use. (Exhibit 2)
20. The Appellant is dependent with transfers and requires a two person assist or a Hoyer mechanical lift. (Physical Therapist's Testimony, Exhibit 8)
21. The Appellant currently uses a Q6 Edge 3MP-SS power wheelchair which he has learned to drive independently. (Physical Therapist's Testimony, Exhibit 1, Exhibit 2: Additional Prior Authorization Information, Exhibit 8)
22. The power wheelchair has given the Appellant improved independence during activities of daily living at home, at school and in his community. (Physical Therapist's Testimony, Exhibit 8)
23. The Appellant's current power wheelchair is over five years old and is in disrepair including; stripped hardware on bilateral foot hangers, worn and torn bilateral foot plate straps, stripped hardware for attendant mount, torn H-Harness, torn arm rest pads bilaterally, and stripped lateral hardware bilaterally. The chair no longer meets his positional needs. (Exhibit 1, Exhibit 8)
24. The Appellant's current wheelchair cannot be modified to provide the necessary sit to stand and mobility components required to increase his level of independence with activities of daily living and school and vocational tasks. (Exhibit 2)
25. The Appellant's pediatric orthopedic surgeon has prescribed a standing program to improve blood flow throughout the body, decrease his risk for urinary tract infections, and improve his digestion and to prevent further muscle tightness in his lower extremities. (Exhibit 8)
26. The Appellant uses the Evolv EasyStand, a multi-positional stander, at school for 90 minutes per school day. This requires a two person assist or the use of a Hoyer lift to transfer the Appellant from his power wheelchair to the EasyStand. He tolerates standing in 80 degrees of upright before his hips begin to flex in order to compensate for his knee flexion and hip extension contractures. (Physical Therapist's Testimony, Exhibit 8)
27. The Evolv EasyStand is a mechanical system that must be cranked manually into position for each use. It is not preprogrammed or custom fit to the Appellant. (Physical Therapist's Testimony)
28. The Evolv EasyStand is a stationary multi-positional stander. (Physical Therapist's Testimony)
29. The Appellant lacks 20 degrees of knee extension on his left side and 30 degrees of extension on his right side. (Exhibit 2)

30. When the seat of the Evolv Stander is in 80 degrees upright, the Appellant's hips will flex 25 degrees, which is past 80 degrees of seat upright. (Exhibit 2)
31. The Appellant is able to learn, but due to the Appellant's intellectual disabilities he will require increased time, verbal and tactile cues and practice to learn sit to stand function. (Physical Therapist's Testimony, Exhibit A: Additional Documentation , [REDACTED] 19)
32. The F5 power wheelchair base is a stable front wheel drive power wheelchair base with programmable electronics and independent suspension, which will allow the Appellant to safely operate the wheelchair with supervision indoors and on outdoor terrain. It will allow the Appellant improved navigation over obstacles, such as doorway thresholds, and sufficient navigation around corners and doorways to allow necessary home access. The F5 has the ability to support the necessary power seating system recommended, and is not available on any lesser wheelchair. (Exhibit 2)
33. The Permobil F5 VS power wheelchair will keep the Appellant to meet his daily standing protocol prescribed by the Appellant's orthopedic surgeon and physical therapist. It will improve his health in terms of proper urodynamic drainage to reduce the reoccurrence of UTI's, treat his risk for continued hamstring contractures bilaterally and to all him the ability to stand from a seated position without assistance (a change from a dependent transfer to independent transfer from sit to stand) throughout the day. (Physical Therapist's Testimony, OTRL's Testimony)
34. The Permobil F5 VS power tilt and recline functions offer maximum pressure redistribution and postural support to reduce the risk of skin break-down. (Exhibit 2)
35. The Permobil F5 VS offers functional positions for eating self-care, reaching and repositioning. (Exhibit 2)
36. The Permobil F5 VS provides appropriate positioning for bowel and bladder management (catheterization, urinal and or diapering). (Exhibit 2)
37. A recline alone chair can cause sliding forward and increase posterior pelvic tilt. The addition of power tilt reduces shear when returning to neutral position from recline. Also, tilting before reclining minimizes shearing along the trunk, promoting skin health. (Exhibit 2)
38. The Permobil F5 VS allows multiple changes in position for improved sleeping for rest breaks required due to decreased activity tolerance, eliminating the need for transfers in and out of the chair during the day. (Exhibit 2)
39. The Permobil F5 VS can help facilitate exercise in the wheelchair by allowing multiple positions for therapeutic interventions. (Exhibit 2)

40. The Appellant is able to adjust his trunk and pelvis by weight bearing through his upper extremities against arm rests to shift his weight while seated in a chair. He can do this independently or with verbal cues with increased time. (Exhibit 2)
41. The Appellant will be fitted and a proper standing positioning will be assessed once he receives delivery of the Permobil F5 VS power wheelchair. (Exhibit 2)
42. The Permobil F5 VS will be programmed to stop at the Appellant's maximum degree of upright, preventing him or his caregivers to go too far into the upright position and prevent injury. (Physical Therapist's Testimony, OTRL's Testimony, Exhibit 2)
43. The Permobil F5 VS power wheelchair will be pre-programmed to meet the Appellant's anatomical needs and not to over extend beyond his limitation and meet medical and safety guidelines. (Physical Therapist's Testimony, OTRL's Testimony, Exhibit 8)
44. The videos of the Appellant in-home assessment support that he will need 12 inch thigh supports with adjustable and removable hardware for additional support in the upright and seated positions to maintain his pelvis in neutral. (Exhibit 2)
45. The Appellant will require a chest harness to help maintain his pelvis and core in neutral. (Exhibit 2)
46. The Appellant will wear thoracic lumbar sacral orthosis ("TLSO") for external support while sitting in the power chair and with the additional chest supports, he will maintain midline alignment. (Exhibit 2)
47. The Appellant requires verbal and tactile cues to his cervical extensor muscles to remind him to maintain his head in upright position. He will need external supports to help him maintain midline trunk position while standing in the Evolv EasyStand or the Permobil F5 VS power wheelchair. (Exhibit 2)
48. The Appellant has demonstrated sufficient cognitive and visual ability for appropriate and safe use of the Permobil F5 VS power wheelchair and power seating functions specified both during his home trial. (Exhibit 2)
49. On [REDACTED] 2018, CHNCT received a prior authorization request from the vendor, NuMotion for a Permobil F5 VS power wheelchair with power tilt, recline, seat elevator, elevating foot platform and standing function with seating components. (Hearing Record, Exhibit 1)
50. On [REDACTED] 2018, CHNCT determined that given the Appellant's lower extremity range of motion limitations, right upper extremity contractures, head, neck and trunk weakness, and semi flexible rotational kyphoscoliosis, a power wheelchair with power standing feature cannot be determined to be medically necessary without causing medical compromise including exacerbation of forward flexed posture and

lateral lean, poor visualization of his driving field due to this posture. CHNCT noted that consideration may be given to a power wheelchair which allows for anterior tilt position for partial weight bearing within the member's available range of motion with supportive back support that accommodates for member's semi-flexible rotational kyphoscoliosis, use of rigid chest, knee and pelvic posturing for improved bladder drainage, improved postural support and appropriate visual for power wheelchair use. Consideration may also be given to evaluating the member for a multi-positional stander that allows for variable positioning between upright and supine, accommodating for rotational kyphoscoliosis and the Appellants trunk and neck weakness and range of motion, impairment, and minimize orthopedic risks. (Exhibit 3: Medical Review, [REDACTED] 18)

51. On [REDACTED] 2018, CHNCT sent the Appellant a Notice of Action denying authorization of a Permobil F5 VS power wheelchair with power tilt, recline, seat elevator, elevating foot platform and standing function with seating components because it is not the right type or considered effective for his illness, injury, or disease. The NOA also indicates that the medical notes and videos sent by the Appellant's provider do not show that he will be independent and safe with moving this wheelchair and changing positions while in it. Due to the muscle tightness, the use of a standing feature may increase his risk of injury from over stretching them. The NOA also indicated that the Appellant may consider asking his provider about being evaluated for a multi-positional stander to improve blood flow, decrease risk of urinary infections, improve digestion and prevent muscle tightness. (Exhibit 4: NOA, [REDACTED] 18)
52. On [REDACTED] 2018, the AREP requested an administrative hearing to appeal CHNCT's decision to deny the Appellant prior authorization of a Permobil F5 VS power wheelchair. (Hearing Record, Exhibit 5: Administrative Hearing Request, [REDACTED] 19)
53. On [REDACTED] 2019, CHNCT notified the [REDACTED] of the Appellant's appeal and requested additional information to support the medical necessity of the Appellant's request for prior authorization of the power wheelchair. (Hearing Summary, Exhibit 7: Medical Record Request to the [REDACTED], [REDACTED] 9)
54. On [REDACTED] 2019, the [REDACTED] submitted to CHNCT further information for the medical necessity for the Permobil F5, VS power wheelchair. (Exhibit 8)
55. On [REDACTED] 2019 CHNCT determined that the Permobil F5 VS power wheel is not clinically appropriate because it does not properly support the Appellant's alignment, as well as his bone and joint integrity due to the Appellant's fixed lower extremity contractures. (Exhibit 11: Medical Review Note Detail, [REDACTED] 19)

56. On [REDACTED] 2019, CHNCT upheld its prior denial of prior authorization for the Permobil F5 VS power wheelchair and sent the Appellant a NOA indicating the information received does not indicate that the DME is medically necessary. The Appellant does not have the muscular strength to support his hips, knees and ankles during prolonged standing due to spina bifida. This may put the Appellant at risk for inflammation, pain, worsening spinal and pelvic alignment as well as impairment of bony structures of the pelvis and knees. (Exhibit 10: Medical Review, [REDACTED]/19, Exhibit 11, Exhibit 12: Determination Letter, [REDACTED]/19)

### **CONCLUSIONS OF LAW**

1. The Department is the designated state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act and may make such regulations as are necessary to administer the medical assistance program. [Conn. Gen. Stat. §17b-2; Conn. Gen. Stat. §17b-262]
2. Medicaid pays for Medicaid-covered services that are medically necessary. [Conn. Agencies Regs. 17b-262-531].
3. For purposes of administering the Department's medical programs, the terms "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)]

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. [Conn. Gen.Stat. §17b-259b(b)]

4. The following definitions apply: "Client means a person eligible for goods or services under the Medicaid program. "Department" means the Department of Social



Services or its agent. “Durable Medical Equipment or “DME” means equipment that meets all the following requirements: (A) can withstand repeated use; (B) is primarily and customarily used to serve a medical purpose; (C) generally is not useful to a person in the absence of an illness or injury; and (D) is not disposable. “Medicaid” means the program operated by the Department of Social Services, pursuant to section 17b-260 of the Connecticut General Statutes and authorized by Title XIX of the Social Security Act. “Prior Authorization” or “PA” means approval for the service or the delivery of good from the Department before the provider actually provides the service or delivers the goods. “Provider” means the vendor or supplier of durable medical equipment who is enrolled with the Department as a medical equipment, devices, and supplies supplier. [Conn Agencies Regulations 17b-262-672 to 17b-262-682]

**The Permobil F5 VS power wheelchair is “durable medical equipment” as defined by state law.**

5. The Department shall pay for the purchase or rental and the repair of DME, except as limited by sections 17b-262-672 to 1262-682, inclusive, of the Regulations of the Connecticut State Agencies, that conforms to accepted methods of diagnosis and treatment and is medically necessary. [Conn. Agencies Regulations § 17b-262-676(a)(1)]
6. 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.[Conn.Gen.Stat.§17b-259b(c)]

**CHNCT incorrectly denied the Appellant’s preauthorization of the Permobil F5 VS because it cannot be determined that it will take care of the Appellant’s medical and positioning needs and that the medical notes and videos sent by the Appellant’s for the prior authorization request do not show that he will be independent and safe with moving this wheelchair and changing position while in the power wheelchair.**

**CHNCT incorrectly determined that the requested Permobil F5 VS power wheelchair is not medically necessary because the power wheelchair does not address the medical and safety concerns listed by CHNCT.**

**CHNCT was incorrect to deny prior authorization of the Permobil F5 power wheelchair because it is not the right type or considered effective for his illness, injury or disease.**

**The Permobil F5 VS power wheelchair meets the medical necessity criteria for the Appellant based on the evidence in the record because it is clinically**

**appropriate in terms of type, frequency, timing, site, extent and duration and considered effective for the Appellant.**

### **DISCUSSION**

CHNCT incorrectly denied the prior authorization of the Permobil F5 VS power wheelchair because it does address the Appellant's prescribed standing program requested by his orthopedic surgeon and the physical therapist. CHNCT did not provide evidence that the multi-position stander or an anterior tilt power wheelchair will be more effective than or just as effective as the Permobil F5 VS power wheelchair, requested by the Appellant's medical providers.

CHNCT indicated that there were safety concerns regarding the Appellant's ability to maneuver the Permobil while in an upright position because of his intellectual disability and he did not appear properly supported in the video provided for prior authorization. The physical therapist provided testimony that the Permobil provided for the Appellant trial run was missing some supports that were not available at the time the video was made.

The physical therapist and the occupational therapist addressed CHNCT's medical and safety concerns. They provided testimony and evidence that the Appellant's Permobil will be properly fitted to address his anatomical needs with any necessary supports. Because the Permobil F5 VS will be preprogrammed to stop at the Appellant maximum degree of upright, he and his caregivers cannot extend beyond a safe upright position and cause injury. Also, the Permobil will allow the Appellant's caregiver's to perform any medical treatments that are required throughout day when the treatments are necessary as opposed to when there are two caregiver's available to transfer the Appellant before performing any medical treatments.

### **DECISION**

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

### **ORDER**

1. CHNCT is ordered to rescind its denial of the prior authorization of the Permobil F5 VS power wheelchair because it is not the right type or considered effective for the Appellant's illness, injury or disease.
2. Compliance of this order is due back to the undersigned no later than [REDACTED] 2019.

  
Sybil Nardy  
Hearing Officer

Pc: [appeals@chnct.org](mailto:appeals@chnct.org)

Fatmata Williams, Department of Social Services, Central Office, Hartford

### **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.