

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

██████████, 2019
SIGNATURE CONFIRMATION

Client ██████████
Hearing ID # 139139

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, the Department of Social Services (the "Department"), through its medical Administrative Services Organization, Community Health Network of Connecticut Inc. ("CHNCT"), sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying a request for prior authorization of Husky Medicaid payment for custom foot orthotics.

On ██████████, the Appellant requested an administrative hearing to contest the Department's denial of prior authorization for payment of custom foot orthotics.

On ██████████, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") scheduled an administrative hearing for ██████████.

On ██████████, 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 participated in the hearing:

██████████, Appellant
Barbara McCoid, CHNCT Representative
Maureen Foley-Roy, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether CHNCT's decision to deny authorization of Husky Medicaid payment for custom foot orthotics because it is not medically necessary is correct.

FINDINGS OF FACT

1. The Appellant is 52 years old (D.O.B. [REDACTED]). (Exhibit 1: Prior Authorization request)
2. The Appellant is a participant in the Husky C Medicaid program, as administered by the Department. (Hearing Record)
3. CHNCT is the Department's contractor for reviewing medical requests for prior authorization of medical services. (CHNCT Representative's testimony)
4. The Appellant has been treated for at least one year by [REDACTED], APRN (the "APRN") in orthopedic surgery for bilateral knee pain. (Exhibit 9: Medical Notes from [REDACTED])
5. On [REDACTED], the Appellant visited the orthopedic APRN. She was diagnosed with bilateral primary osteoarthritis of the knee, given a knee brace and a prescription for Naprosyn, referred to physical therapy and referred to podiatry. (Exhibit 9)
6. On [REDACTED], the Appellant saw Dr. [REDACTED] from podiatry (the "Podiatrist") for the purpose of receiving orthotics. The Podiatrist diagnosed the Appellant with bursitis of the foot and ankle, synovitis and pes planus of both feet. The Podiatrist did not indicate any issues with the Appellant's knees. (Exhibit 1: Prior Authorization form)
7. On [REDACTED], CHNCT received a Prior Authorization request from the Appellant's podiatrist requesting custom foot orthotics. (Exhibit 1)
8. On [REDACTED], CHNCT's medical reviewer denied the prior authorization request for custom foot orthotics for the Appellant. The medical reviewer noted that custom foot orthotics could not be considered medically necessary because required conservative medical treatments had not been tried. The reviewer also noted that custom orthotics may be considered clinically appropriate when there was a failure, contraindication or intolerance to a prefabricated foot orthosis after a trial of a prefabricated foot orthosis. (Exhibit 3: Medical Review)

9. On [REDACTED], CHNCT sent a notice to the Appellant denying the request for custom orthotics. The notice stated that “the notes do not show that you have tried pre-fabricated foot orthotics to take care of your symptoms. Therefore, the request for custom foot orthotics has been denied as they cannot be determined to be medically necessary at this time. If your doctor determines that pre-fabricated foot orthotics do not help you, another request may be submitted.” (Exhibit 3: Notice of action for denied services or goods)
10. On [REDACTED], CHNCT advised both the Podiatrist and the APRN that the request for custom orthotics for the Appellant had been denied and was being appealed. CHNCT requested additional medical documentation from both providers, including clinical documentation that prefabricated foot orthotics had been tried and the effectiveness of the prefabricated orthotics. (Exhibits 6 and 7: Requests for additional documentation)
11. On [REDACTED], the Podiatrist submitted the identical information that he had submitted with his prior authorization request and a list of “L3000 Orthotic Inserts Previous Treatments that have tried and failed.” The list included exercises, shoe gear changes, over the counter inserts, over the counter medications, heat, stretching and immobilization. The Podiatrist also noted on the form that the patient could not afford prefabricated inserts. (Exhibit 8: Additional information from the podiatrist)
12. On [REDACTED], CHNCT received progress notes from the APRN from an encounter on [REDACTED] 2019. The notes indicated that the Appellant had a diagnosis of bilateral osteoarthritis of the knee. The APRN gave the Appellant a knee brace, a prescription for naproxen, and a referral to rehab services and podiatry. There is nothing in the APRN’s notes regarding orthotics, either prefabricated or custom. (Exhibit 9)
13. Clinical guidelines state that custom foot orthotics may be considered medically necessary when there is a failure, contraindication or intolerance to prefabricated foot orthosis for congenital or acquired conditions that impair circulation, functioning, or cause pain to the lower extremities. (Exhibit 13: Husky policies and procedures)
14. On [REDACTED], a second review was completed by CHNCT and the denial of custom foot orthotics was upheld. The reviewer commented that the requested foot orthotics could not be confirmed as medically necessary. The reviewer stated that the L3000 foot orthotics were not indicated for knee osteoarthritis. The reviewer noted that the Appellant would need to have a 6 to 12 month trial of prefabricated orthotics prior to “considering a custom device if she had indicated foot pathology to warrant use.” (Exhibit 11: Medical Review)

15. On [REDACTED], CHNCT sent the Appellant a notice denying the appeal for her request of custom foot orthotics. (Exhibit 12: Denial letter of [REDACTED])
20. The issuance of this decision is timely under Connecticut General Statute 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] 2019. Therefore, this decision is due not later than [REDACTED] 2019 and is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 (6) & § 17b-262 of the Connecticut General Statutes provides in part that the Department of Social Services 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.
2. Section 17b-239(d) of the Connecticut General Statutes addresses medical payments for outpatient hospital services.
3. 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. [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)]

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)]

The Department of Social Services shall amend or repeal any definitions in the regulations of Connecticut state agencies that are inconsistent with the definition of medical necessity provided in subsection (a) of this section, including the definitions of medical appropriateness and medically appropriate, that are used in administering the department's medical assistance program. The commissioner shall implement policies and procedures to carry out the provisions of this section while in the process of adopting such policies and procedures in regulation form, provided notice of intent to adopt the regulations is published in the Connecticut Law Journal not later than twenty days after implementation. Such policies and procedures shall be valid until the time the final regulations are adopted. [Conn. Gen. Stat. 17b-259b(d)]

4. CHNCT correctly determined that the Appellant did not provide recent medical documentation to establish that a trial and failure of pre-fabricated inserts or a contraindication to the use of per-fabricated inserts.
5. CHNCT was correct to deny the request for custom foot orthotics as it is not medically necessary.

DISCUSSION

The Appellant testified that her orthopedic APRN referred her to a podiatrist to obtain custom foot orthotics to treat the arthritis in her knee. There is some question as to whether the use of foot orthotics is an appropriate treatment for arthritis in the knee but that is not the issue of this hearing. There is no indication of the Appellant's arthritis diagnosis on the prior authorization request initially submitted for the orthotics. Regardless, the legal definition of medical necessity contains language that the treatment must not be more costly than alternative treatments. Thus the guidelines that a prefabricated orthosis must be attempted before a custom orthosis can be approved. The Appellant credibly testified that she has been wearing the Dr. Scholl's inserts for a period of time but neither of her medical providers documented such use and the results. Given those circumstances, CHNCT was correct under the law to deny the request for custom orthotics.

DECISION

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

Maureen Foley-Roy

Maureen Foley-Roy
Hearing Officer

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 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, 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 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.