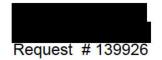
STATE OF CONNECTICUT DEPARTMENT OF SOCIAL SERVICES OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS 55 FARMINGTON AVENUE HARTFORD, CT 06105-3725





NOTICE OF DECISION

PARTY



PROCEDURAL BACKGROUND

On ______, 2019, Community Health Network of CT ("CHNCT"), sent (the "Appellant"), a Notice of Action ("NOA") denying a request for prior authorization for a rhytidectomy as facial feminizing surgery.

On 2019, the Appellant requested an administrative hearing to contest the Department's denial of the medical service.

On 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") scheduled an administrative hearing for 2019.

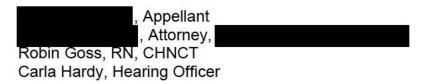
On 2019, the Appellant requested the administrative hearing to be rescheduled.

On 2019, OLCRAH rescheduled the administrative hearing for 2019.

On 2019, the Appellant requested the administrative hearing to be rescheduled.

On 2019, OLCRAH rescheduled the administrative hearing for 2019.

On 2019, 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:

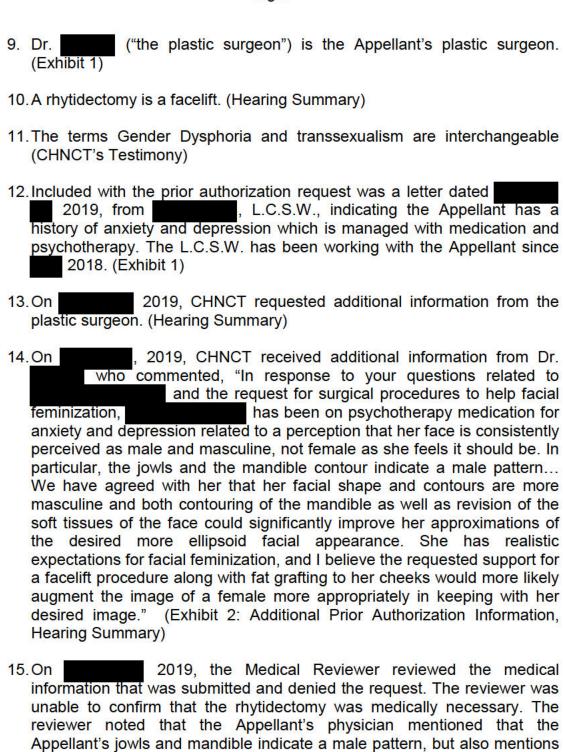


STATEMENT OF THE ISSUE

The issue to be decided is whether it was correct for CHNCT decision to deny prior authorization for a rhytidectomy as facial feminizing surgery.

FINDINGS OF FACT

- 1. The Appellant is 59 years old (DOB 400). (Exhibit 1: Prior Authorization Request, 119)
- 2. The Appellant is also referred to as ... (Hearing Record)
- 3. The Appellant is a participant in the Medicaid program. (Hearing Record)
- CHNCT is the Department's contractor for administering the Medicaid program. (Hearing Record)
- 5. The Appellant is being treated for Gender Dysphoria which is defined by the American Psychiatric Association as a conflict between a person's physical or assigned gender and the gender with which he/she identifies. (Appellant's Exhibit B: Appellant's Pre-hearing Summary)
- 6. The Appellant began dressing and living as a woman in 2011. (Exhibit 1)
- 7. The Appellant has had the following feminizing surgeries and treatments: sexual reassignment, breast implants, rhinoplasty, temporary lip fill, dental caps, and hormone therapy. (Exhibit 1: Appellant's Testimony)
- 8. On processing a plastic surgeon for a rhytidectomy as a facial feminizing surgery for diagnosis of transsexualism. (Exhibit 1: Prior Authorization Request; Hearing Summary)

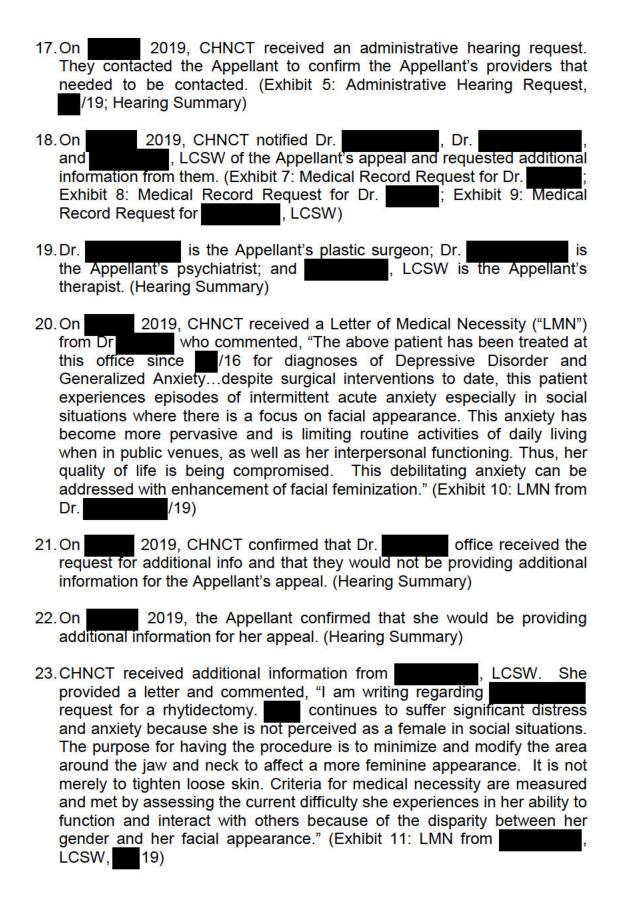


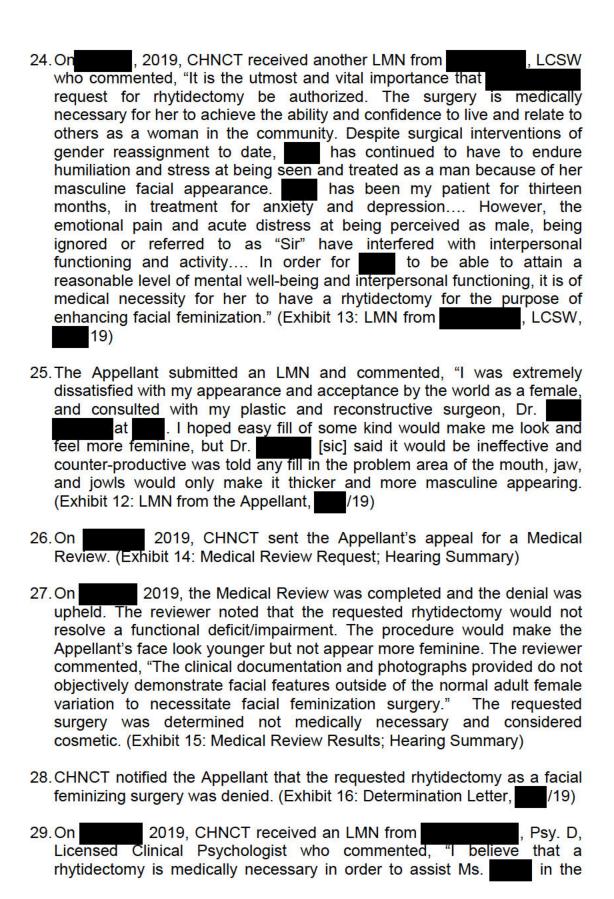
that skin laxity is her concern and that she wants a [sic] facelift and wants to define this as feminizing. The Medical Reviewer commented, "A facelift is not considered to be a part of facial feminization for gender affirmation

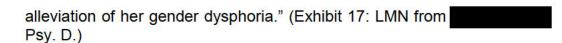
16.CHNCT sent the Appellant an NOA denying the authorization for a

surgery." (Exhibit 3: Medical Review, 19; Hearing Summary)

rhytidectomy as facial feminizing surgery. (Exhibit 4: NOA,







- 30. On 2019, CHNCT received two LMNs from Dr. commented, "Despite surgical interventions to M.D., Ph.D. Dr. date, this patient experiences episodes of intermittent acute anxiety especially in social situations where there is a focus on facial appearance. This anxiety has become more pervasive and is limiting routine activities of daily living when in public venues, as well as interpersonal functioning. Thus, her quality of life has been significantly compromised. She has experienced psychological regressio11 [sic] with regards to escalating anxiety and depressive symptoms. She has been obsessed with what she considers dysmorphic residual masculine physiognomy. It is of medical necessity, from a psychiatric perspective, thal [sic] surgical enhancement of facial feminization to be performed." (Exhibit 18: LMN from Dr. , Ph. D, MD, /19; Exhibit 19, LMN from Dr. D, MD dated 19)
- 31.On 2019, CHNCT received several photographs and a letter from the Appellant. The Appellant commented, "Any facial feminization authorized by the ordering physician, whether a rhytidectomy, alternative or complementary procedure recommend in the future, I would humbly consider expedient to the completion of my transition from male to trans female...I have commended my body to a feminine future, resolved no to be stuck between two worlds for the dwindling duration. As it stands, my physiognomy contradicts and constrains my feminine ambitions." (Exhibit 20: Letter and Photos from the Appellant; Hearing Summary)
- 32.On Reconsideration Review. (Exhibit 21: Reconsideration Review Request; Hearing Summary)
- 33.On 2019, the Reconsideration Review was completed and the denial was upheld. The reviewer noted that this rhytidectomy is not considered medically necessary in accordance with the DSS coverage Policy and the DSS definition of medical necessity and that the documentation submitted did not make the patient look more feminine, but gave the face a different shape and more youthful appearance. (Exhibit 22: Reconsideration Review, 199; Hearing Summary)
- 34. "Facial feminization procedures (e.g. rhinoplasty, facial bone reconstruction, blepharoplasty, etc., and electrolysis) may be considered medically necessary as part of male to female gender affirmation when all of the following criteria are met:

- 1. The individual has capacity to make fully informed decisions and consent for treatment; and
- 2. The individual has been diagnosed with gender dysphoria, and exhibits all of the following:
 - a. The desire to live and be accepted as a member of the opposite sex, usually accompanied by the wish to make his or her body as congruent as possible with the preferred sex through surgery and hormone treatment; and
 - b. The transsexual identity has been present persistently for at least two years; and
 - c. The disorder is not a symptom of another mental disorder; and
 - d. The disorder causes clinically significant distress or impairment in social, occupational, or other important areas of functioning; and
- 3. If the individual has significant, outstanding medical or mental health conditions present, they must be reasonably well controlled. If the individual is diagnosed with severe psychiatric disorders and impaired reality testing (e.g., psychotic, bipolar disorder, dissociative identity disorder, borderline personality disorder), an effort must be made to improve these conditions with psychotropic medications and/or psychotherapy before surgery is contemplated; and
- 4. A letter from a qualified mental health professional certifying that the individual is experiencing significant psychosocial distress due to perceived inability to pass in the community as a member of the selfidentified gender, letter should be specific to the individual's unique experiences; and
- 5. Facial photographs (both front and side views) for facial procedures, or of the affected part of the body." (Exhibit 14)
- 35. CHNCT has determined that the Appellant meets the criteria found in one through four. (Exhibit 14)
- 36.CHNCT determined that the Appellant does not meet criteria number five because the Appellant's facial photographs demonstrate facial features within the normal spectrum of adult females. (Exhibit 14)
- 37. An individual Board Certified in Plastic Surgery determined that the Appellant's facial features are within the normal spectrum of an adult female. (Exhibit 14)
- 38.CHNCT does not know what criterion was used to determine that the Appellant's facial features were within the normal spectrum of an adult female. (CHNCT's Testimony)
- 39. 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 2019. Therefore, this decision was due not later than 2019. However, the hearing which was originally scheduled for 2019, was rescheduled for 2019, and rescheduled again for 2019, at the request of the Appellant, which caused a 40-day delay. Because this 40-day delay resulted from the Appellant's request, this decision is not due until 2019, and is therefore timely.

CONCLUSIONS OF LAW

- 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(8); Conn. Gen. Stat. § 17b-262]
- 2. 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 physicianspecialty 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)]

- 3. CHNCT incorrectly determined that the rhytidectomy for facial feminizing is not medically necessary.
- 4. CHNCT was incorrect to deny the request for the rhytidectomy as it is medically necessary.

DISCUSSION

The purpose of the rhytidectomy is to provide facial feminizing to treat the Appellant's Gender Dysphoria. Although the Appellant will benefit from a younger-looking face, cosmetic appearance is not the reason for the surgery. The Appellant has provided clear and convincing evidence from multiple healthcare providers that the rhytidectomy is medically necessary to treat her medical condition in order to attain or maintain her achievable health and independent functioning.

DECISION

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

ORDER

 CHNCT shall rescind the denial notice for the rhytidectomy for facial feminizing.

- 2. CHNCT shall issue a notice to the Appellant approving the rhytidectomy.
- 3. Compliance with this order shall be submitted to the undersigned no later than 2019.

Carla Hardy Hearing Officer

Pc: appeals@chnct.org

Fatmata Williams, Department of Social Services



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 <u>specific</u> grounds for the request: for example, indicate <u>what</u> error of fact or law, <u>what</u> new evidence, or <u>what</u> 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.