

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

██████████
Request # 139926

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 [REDACTED] 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:

[REDACTED], Appellant

[REDACTED], Attorney, [REDACTED]

Robin Goss, RN, CHNCT

Carla Hardy, Hearing Officer

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 [REDACTED] 60). (Exhibit 1: Prior Authorization Request, [REDACTED]/19)
2. The Appellant is also referred to as [REDACTED]. (Hearing Record)
3. The Appellant is a participant in the Medicaid program. (Hearing Record)
4. 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 [REDACTED], 2019, CHNCT received a prior authorization request from Dr. [REDACTED] a plastic surgeon for a rhytidectomy as a facial feminizing surgery for diagnosis of transsexualism. (Exhibit 1: Prior Authorization Request; Hearing Summary)

9. Dr. [REDACTED] (“the plastic surgeon”) is the Appellant’s plastic surgeon. (Exhibit 1)
10. A rhytidectomy is a facelift. (Hearing Summary)
11. The terms Gender Dysphoria and transsexualism are interchangeable (CHNCT’s Testimony)
12. Included with the prior authorization request was a letter dated [REDACTED] [REDACTED] 2019, from [REDACTED], L.C.S.W., indicating the Appellant has a history of anxiety and depression which is managed with medication and psychotherapy. The L.C.S.W. has been working with the Appellant since [REDACTED] 2018. (Exhibit 1)
13. On [REDACTED] 2019, CHNCT requested additional information from the plastic surgeon. (Hearing Summary)
14. On [REDACTED], 2019, CHNCT received additional information from Dr. [REDACTED] who commented, “In response to your questions related to [REDACTED] and the request for surgical procedures to help facial feminization, [REDACTED] has been on psychotherapy medication for anxiety and depression related to a perception that her face is consistently perceived as male and masculine, not female as she feels it should be. In particular, the jowls and the mandible contour indicate a male pattern... We have agreed with her that her facial shape and contours are more masculine and both contouring of the mandible as well as revision of the soft tissues of the face could significantly improve her approximations of the desired more ellipsoid facial appearance. She has realistic expectations for facial feminization, and I believe the requested support for a facelift procedure along with fat grafting to her cheeks would more likely augment the image of a female more appropriately in keeping with her desired image.” (Exhibit 2: Additional Prior Authorization Information, Hearing Summary)
15. On [REDACTED] 2019, the Medical Reviewer reviewed the medical information that was submitted and denied the request. The reviewer was unable to confirm that the rhytidectomy was medically necessary. The reviewer noted that the Appellant’s physician mentioned that the Appellant’s jowls and mandible indicate a male pattern, but also mentions 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 surgery.” (Exhibit 3: Medical Review, [REDACTED]/19; Hearing Summary)
16. CHNCT sent the Appellant an NOA denying the authorization for a rhytidectomy as facial feminizing surgery. (Exhibit 4: NOA, [REDACTED]/19)

17. On [REDACTED] 2019, CHNCT received an administrative hearing request. They contacted the Appellant to confirm the Appellant's providers that needed to be contacted. (Exhibit 5: Administrative Hearing Request, [REDACTED]/19; Hearing Summary)
18. On [REDACTED] 2019, CHNCT notified Dr. [REDACTED], Dr. [REDACTED], and [REDACTED], LCSW of the Appellant's appeal and requested additional information from them. (Exhibit 7: Medical Record Request for Dr. [REDACTED]; Exhibit 8: Medical Record Request for Dr. [REDACTED]; Exhibit 9: Medical Record Request for [REDACTED], LCSW)
19. Dr. [REDACTED] is the Appellant's plastic surgeon; Dr. [REDACTED] is the Appellant's psychiatrist; and [REDACTED], LCSW is the Appellant's therapist. (Hearing Summary)
20. On [REDACTED] 2019, CHNCT received a Letter of Medical Necessity ("LMN") from Dr. [REDACTED] who commented, "The above patient has been treated at this office since [REDACTED]/16 for diagnoses of Depressive Disorder and Generalized Anxiety...despite surgical interventions to 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 her interpersonal functioning. Thus, her quality of life is being compromised. This debilitating anxiety can be addressed with enhancement of facial feminization." (Exhibit 10: LMN from Dr. [REDACTED]/19)
21. On [REDACTED] 2019, CHNCT confirmed that Dr. [REDACTED] office received the request for additional info and that they would not be providing additional information for the Appellant's appeal. (Hearing Summary)
22. On [REDACTED] 2019, the Appellant confirmed that she would be providing additional information for her appeal. (Hearing Summary)
23. CHNCT received additional information from [REDACTED], LCSW. She provided a letter and commented, "I am writing regarding [REDACTED] request for a rhytidectomy. [REDACTED] continues to suffer significant distress and anxiety because she is not perceived as a female in social situations. The purpose for having the procedure is to minimize and modify the area around the jaw and neck to affect a more feminine appearance. It is not merely to tighten loose skin. Criteria for medical necessity are measured and met by assessing the current difficulty she experiences in her ability to function and interact with others because of the disparity between her gender and her facial appearance." (Exhibit 11: LMN from [REDACTED], LCSW, [REDACTED] 19)

24. On [REDACTED], 2019, CHNCT received another LMN from [REDACTED], LCSW who commented, "It is the utmost and vital importance that [REDACTED] request for rhytidectomy be authorized. The surgery is medically necessary for her to achieve the ability and confidence to live and relate to others as a woman in the community. Despite surgical interventions of gender reassignment to date, [REDACTED] has continued to have to endure humiliation and stress at being seen and treated as a man because of her masculine facial appearance. [REDACTED] has been my patient for thirteen months, in treatment for anxiety and depression.... However, the emotional pain and acute distress at being perceived as male, being ignored or referred to as "Sir" have interfered with interpersonal functioning and activity.... In order for [REDACTED] to be able to attain a reasonable level of mental well-being and interpersonal functioning, it is of medical necessity for her to have a rhytidectomy for the purpose of enhancing facial feminization." (Exhibit 13: LMN from [REDACTED], LCSW, [REDACTED] 19)
25. The Appellant submitted an LMN and commented, "I was extremely dissatisfied with my appearance and acceptance by the world as a female, and consulted with my plastic and reconstructive surgeon, Dr. [REDACTED] at [REDACTED]. I hoped easy fill of some kind would make me look and feel more feminine, but Dr. [REDACTED] [sic] said it would be ineffective and counter-productive was told any fill in the problem area of the mouth, jaw, and jowls would only make it thicker and more masculine appearing. (Exhibit 12: LMN from the Appellant, [REDACTED]/19)
26. On [REDACTED] 2019, CHNCT sent the Appellant's appeal for a Medical Review. (Exhibit 14: Medical Review Request; Hearing Summary)
27. On [REDACTED] 2019, the Medical Review was completed and the denial was upheld. The reviewer noted that the requested rhytidectomy would not resolve a functional deficit/impairment. The procedure would make the Appellant's face look younger but not appear more feminine. The reviewer commented, "The clinical documentation and photographs provided do not objectively demonstrate facial features outside of the normal adult female variation to necessitate facial feminization surgery." The requested surgery was determined not medically necessary and considered cosmetic. (Exhibit 15: Medical Review Results; Hearing Summary)
28. CHNCT notified the Appellant that the requested rhytidectomy as a facial feminizing surgery was denied. (Exhibit 16: Determination Letter, [REDACTED]/19)
29. On [REDACTED] 2019, CHNCT received an LMN from [REDACTED], Psy. D, Licensed Clinical Psychologist who commented, "I believe that a rhytidectomy is medically necessary in order to assist Ms. [REDACTED] in the

alleviation of her gender dysphoria.” (Exhibit 17: LMN from [REDACTED] Psy. D.)

30. On [REDACTED] 2019, CHNCT received two LMNs from Dr. [REDACTED] M.D., Ph.D. Dr. [REDACTED] commented, “Despite surgical interventions to 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, that [sic] surgical enhancement of facial feminization to be performed.” (Exhibit 18: LMN from Dr. [REDACTED], Ph. D, MD, [REDACTED]/19; Exhibit 19, LMN from Dr. [REDACTED], Ph. D, MD dated [REDACTED] 19)
31. On [REDACTED] 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 [REDACTED], 2019, CHNCT sent the Appellant’s appeal for a Reconsideration Review. (Exhibit 21: Reconsideration Review Request; Hearing Summary)
33. On [REDACTED], 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, [REDACTED]/19; 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 self-identified 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 [REDACTED] 2019. Therefore, this decision was due not later than [REDACTED] 2019. However, the hearing which was originally scheduled for [REDACTED] 2019, was rescheduled for [REDACTED] 2019, and rescheduled again for [REDACTED] 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 [REDACTED], 2019, and is therefore timely.

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(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 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)]

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

1. 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 [REDACTED] 2019.


Carla Hardy
Hearing Officer

Pc: appeals@chnct.org
Fatmata Williams, Department of Social Services

[REDACTED]

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.