

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

Client ID ██████████
Request #140551

NOTICE OF DECISION

PARTY

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██████████
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PROCEDURAL BACKGROUND

On ██████████ 2019, Community Health Network of Connecticut (“CHNCT”) sent ██████████ ██████████ (the “Appellant”) a Notice of Action (“NOA”) denying her provider’s prior authorization (“PA”) request for a Permobil F3 custom power wheelchair with seating components (the “Wheelchair”) because it did not receive enough information from her provider to show that the wheelchair was medically necessary for her.

On ██████████ 2019, the Appellant requested an administrative hearing to appeal CHNCT’s denial of PA for the Wheelchair.

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

On ██████████, 2019, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing at the Appellant’s home.

The following individuals were present at the hearing:

The Appellant
██████████, Appellant’s mother
██████████, Appellant’s Personal Care Attendant

██████████, ██████████, Appellant's Health Insurance Agent
██████████, Assistive Technology Professional, ██████████, via telephone
Barbara McCoid, Clinical Quality Specialist, CHNCT
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether CHNCT's decision to deny the Appellant's provider's request for PA for a power wheelchair, because of insufficient information to determine the medical necessity of the device, was in accordance with state statute and regulations.

FINDINGS OF FACT

1. The Appellant is a 53 year old woman who resides at home. (Hearing Record)
2. The Appellant has multiple sclerosis and has no active function of her extremities. She has been wheelchair bound since 2003. (Hearing Record)
3. The Appellant is a recipient of Husky C Medicaid (Hearing Record)
4. CHNCT is the administrative services organization ("ASO") for the Department of Social Services (the "Department"). (Hearing Record)
5. HUSKY C Medicaid is the Appellant's secondary medical insurance. The Appellant's primary insurance is with ██████████. (Testimony)
6. The Appellant currently has a power wheelchair (her "Current Chair") that she has had for approximately nine years. (Appellant's testimony, Hearing Record)
7. The Appellant's Current Chair no longer operates properly. The controls do not respond correctly and certain functions of the chair work intermittently or do not work at all. (Testimony)
8. Because of the malfunctioning controls of her Current Chair, the Appellant has not been able to raise her legs with her feet above her heart. As a result, for the past 5 to 6 months the Appellant has experienced severe edema in her legs. (Testimony, Displayed Photographs)
9. The Appellant developed a pressure ulcer on her foot some time ago and was not able to raise her legs in her Current Chair to relieve the pressure. The ulcer has since healed, but she is concerned that another one might develop. (Testimony)
10. CHNCT agrees that it is medically necessary for the Appellant to have a functioning power wheelchair. (Hearing Record, Ms. McCoid's testimony)

11. On [REDACTED], 2019, CHNCT received a PA request for a Permobil F3 power wheelchair with power tilt/recline/seat elevator/elevating foot platform, alternative drive control, and seating components ordered by Dr. [REDACTED], an Internist. The PA request was 35 pages in total, and included a completed 12-page "Wheeled Mobility Letter of Medical Necessity Form" signed by both the Appellant's physician and by [REDACTED], a licensed physical therapist. (Hearing Summary, Ex. 1: prior authorization request)
12. On [REDACTED] 2019, [REDACTED], the Appellant's primary insurer, approved the requested Wheelchair. (Ex. 10: [REDACTED] approval letter)
13. CHNCT did not make an immediate decision on approval of the Wheelchair, but sent letters asking for more information on [REDACTED] 2019 and [REDACTED], 2019. The letters are not part of the hearing record because CHNCT did not submit them for the record. (Ex. 15: Member Appeal Medical Review Request, Hearing Record)
14. On [REDACTED], 2019, [REDACTED], the Appellant's physical therapist, responded to questions she received from CHNCT. (Ex. 2: Letter from Ms. [REDACTED])
15. On [REDACTED], 2019, Ms. [REDACTED], in response to questions from CHNCT about the chair's operation access point and whether other options were considered, wrote "The current access point is the chin utilizing a chin control MEC with a custom platform with two micro lite switches....The position of the mini joystick was discussed in great detail with Ms. [REDACTED] and her mother who is her primary caretaker to maximize independence and function. Other options that were discussed were a variety of different mounting systems such as the Stealth I drive, and microlite switches on booms off the headrest assembly. During the trial the consumer presented with difficulty activating the control interfaces which impacted her ability to function independently. The current access point is the consumer's chin. She has been using this access point for the past 6 years and has been extremely successful in the operation of the power wheelchair...." (Ex. 2)
16. On [REDACTED] 2019, in response to questions about the seat width and cushioning system, Ms. [REDACTED] wrote, "The larger width seat base was requested due to the patient's comfort and familiarity with pillows and cushions that she utilizes for positioning and comfort. She has minimal muscle and adipose tissue to provide comfort and has significant bony prominences that are at risk for skin breakdown. Ms. [REDACTED] has a good history of skin care management, and she has requested to continue using the system that has been successful in the past. This was discussed greatly with her and her mom and it was determined by the consumer to continue with what has been working for several years....The current cushion was requested due to success in the past with the current cushion she uses. She has had previous episodes of skin breakdown, but Ms. [REDACTED] successfully managed the issue and feels most comfortable with the current cushion. Other gel cushions such as Matrix Libra, Jay 3 Gel, Roho, were discussed with Ms. [REDACTED]. It was agreed upon to

continue with the current cushion system that Ms. [REDACTED] is using because of the success in her skin management.” (Ex. 2)

17. On [REDACTED], 2019, a Medical Reviewer reviewed the information and denied the PA request. The decision rationale was listed as “insufficient information” and the reviewer commented, “UNABLE TO APPROVE...as ADDITIONAL INFORMATION REQUESTED WAS NOT RECEIVED”. The decision went on to say, “1. The information provided does not confirm consistent control via use of a mini joystick mounted at the chin/mouth given cervical range of motion limitations. 2. Technical justification was not provided for numerous components. 3. Updated, accurate weight was not provided resulting in inability to confirm accurate seat dimensions...” (Ex. 3: Care Manager Note Detail)
18. On [REDACTED], 2019, CHNCT issued a NOA to the Appellant denying approval of PA for the Wheelchair “because we did not receive enough information from your provider to show that these goods are medically necessary for you... [REDACTED] must give us information to show the power wheelchair and seating components are medically necessary. We asked for the information, but did not get it...” (Ex. 4: NOA)
19. On [REDACTED], 2019, the Appellant filed a verbal appeal with CHNCT. (Ex. 6: Email regarding appeal)
20. On [REDACTED] 2019, CHNCT sent letters to [REDACTED], and to [REDACTED], notifying them of the Appellant’s verbal appeal and asking for more information. The requested information included documentation that confirms her ability to use the mini-joystick with her chin and mouth to operate the wheelchair, a recent measurement of her weight, and a letter of medical necessity. (Ex. 8, Ex. 9: Letters to Providers)
21. On [REDACTED] 2019, [REDACTED] (the PT) wrote a letter to CHNCT. Ms. [REDACTED] explained in the letter that, regarding the Appellant’s ability to use a mini-joystick with her chin and mouth, “She has limited cervical range of motion, but still demonstrated at least a 20 degree arc of motion” and “minimal cervical motion is needed for full operation since (the Appellant) primarily relies on the force generated from her chin for operation of her power wheelchair.” “She demonstrated the ability (to operate the chair and attachments) with the...chin operated mini-joystick she has on her current chair. She has normal range of motion and mobility of her jaw and demonstrated the ability to generate enough movement and force to operate the microlight switches as well as the mini joystick.” (Ex. 12: Letter from Ms. [REDACTED])
22. Ms. [REDACTED] further explained in the letter that “(the Appellant’s) weight per her report of recent doctor’s appointment was 135 lbs. The listed weight on the intake form is likely to differ from her current weight due to fluctuations in leg edema and possibly due to a recent hospitalization.” She went on to say, “The current wheelchair and seating components that are being requested for (the Appellant)

were justified in the letter of medical necessity previously submitted. If another copy is required...I would be happy to re-send..." (Ex. 12)

23. On [REDACTED], 2019, [REDACTED], an Assistive Technology Professional ("ATP") from [REDACTED], wrote a letter to CHNCT that said, in part, "Mrs. [REDACTED] is a 53 y.o. that has been dependent on a power mobility device since 2003. In 2010-2011 her Multiple Sclerosis progressed requiring her to operate through a control interface from the chin. The MEC with 2 micro lite switches has been a successful interface to date. This has allowed her to continue to function her mobility device independently. The consumer has the necessary jaw movement to operate the MEC and switches on a custom platform. The new chair will have the EXACT same control interface set up to assure continued success...." (emphasis in original) (Ex. 11: Letter from [REDACTED])
24. On [REDACTED], 2019, a CHNCT Medical Reviewer completed an appeal review that considered all of the information, including the new letters from the providers. It stated, in pertinent part, "While this member is in need of a replacement power wheelchair...the requested power wheelchair does not address this member's numerous medical needs..." and "Given the new information, it cannot be determined that (the requested wheelchair and components)...is medically necessary to meet this member's medical needs...." The Medical Review listed four numbered concerns, as follows: 1. Request for a skin positioning cushion does not address necessary skin protection for this member who spends numerous hours in the chair each day with history of compromised skin with multiple risk factors. 2. The request for a 21" wide wheelchair with hip measurement of 16". Additional information during the original PA process indicated that pillows and cushions would be utilized to address positioning and comfort. 3. Additional positioning components are needed to accommodate for pelvic stability and the increased width of the wheelchair, however these components are not present on the LMN or quotation request. 4. Attendant control for caregiver access when member is not in the wheelchair is not present. (Ex. 16: Care Manager Note Detail)
25. On [REDACTED], 2019, CHNCT sent the Appellant a notice that her appeal to the HUSKY Health Program of the denial of PA for the Wheelchair was denied. The principal reason the denial was upheld was because "while you are in need of a replacement power wheelchair, the information submitted does not support the medical necessity of the requested (Wheelchair) because the requested wheel chair does not address your medical needs." (Ex. 17: Notice of denial of appeal to HUSKY Health)
26. The Appellant's Current Chair has worked extremely well for her for nine years. Except for its current state of breakdown and malfunction, it has been the "best chair she has ever had". (Appellant's testimony, Appellant's Mother's testimony)
27. The Appellant does not have difficulty operating her Current Chair using the chin controls. It is the interface she is comfortable with and has used successfully for years. She had difficulty with trials of different control interfaces that were presented

to her recently during the process of selecting a new replacement power wheelchair. (Appellant's testimony, Appellant's Mother's testimony, Ex. 2)

28. The Appellant uses lateral supports in her Current Chair. The supports help her maintain postural stability and work "really well". The supports are affixed to the chair itself. She plans to use the same type of supports in her new Wheelchair. (Appellant's testimony, ██████████ testimony)
29. The Quote from ██████████ included with the PA request proposed two Permobil 5 x 7" Lateral Supports and "Adj Rem Lateral Hardware". (Ex. 1, p. 1.)
30. The difference between the Appellant's hip measurement of 16 inches and the chair width of 21 inches does not mean that there are "five extra inches". There are multiple considerations when determining the appropriate width of a wheelchair; it is not calculated through a simple formula (although some formulas help to determine the space required for hip guides or lateral supports). All of the measurements, dimensions, features and components of the wheelchair have to be determined based on a comprehensive evaluation of all the information, extensive discussion with the patient/customer, and an in-person fitting. (██████████ testimony)
31. The lateral supports the Appellant uses, and plans to use on the new Wheelchair, take up some of the width of the chair. Beyond the room needed for the lateral supports, additional room is needed to accommodate the pillows and cushions the Appellant uses. (██████████ testimony)
32. The requested Wheelchair is from the same manufacturer as the Appellant's Current Chair. It has the same 21 inch width and 20 inch depth as the Appellant's Current Chair and uses the same chin control interface. The new Wheelchair is essentially the same model as the old chair but with improved features. The new chair will have an articulating platform that will make it easier for the Appellant to extend her feet. (██████████ testimony)
33. The Appellant's past history of skin compromise has been unrelated to her Current Chair, or the pillows and cushions she uses for positioning and comfort. The Appellant uses a Hoyer lift, and the pads of the lift are of a rough canvas material that has scraped her skin in the past. The scrapes from the Hoyer pads were the origin points of her past problems with skin breakdown, not anything to do with sitting long hours in her wheelchair. (Appellant's testimony)
34. The Appellant's chair set-up that has included pillows and cushions for comfort and support has been extremely successful for her in the past. Despite her risk factors for skin breakdown that include thin skin and multiple bony prominences, she has for several years avoided any serious skin-related complications. (Hearing Record)

35. An attendant control is a second control system, usually mounted to the back of the power wheelchair, that allows the caregiver full control over the wheelchair. ([REDACTED] testimony)
36. The requested Wheelchair *will be equipped with attendant control*. On a chair equipped with chin control, the manufacturer includes a no charge joystick mounted to the back of the chair that can be utilized as attendant control. The attendant control was not included with the quote because no payment is being sought for the feature, because it is included at no charge. ([REDACTED] testimony)
37. In making its determinations, CHNCT takes into consideration information provided by licensed individuals such as medical doctors, physical therapists and others. (Ms. McCoid's testimony)
38. CHNCT's representative offered no additional clarification regarding what CHNCT still required for approval of PA for the requested Wheelchair, and advised that reference should be made to the documents in the record. She also declined to comment on the sufficiency of the testimony and evidence presented at the hearing in addressing CHNCT's outstanding concerns. The representative gave as her reason for not commenting that she is a nurse, not a physical therapist, and does not have expertise in the area of wheeled mobility devices. (Ms. McCoid's testimony)

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. Section 17b-2, 17b-262 of the Connecticut General Statutes (Conn. Gen. Stat.)
2. "Durable medical equipment" or "DME" means equipment that meets all of 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 an injury; and (D) is nondisposable" Section 17b-262-673(8) of the Regulations of Connecticut State Agencies (Regs., Conn. State Agencies)
3. The power wheelchair requested by the Appellant's providers is DME.
4. "Payment for DME and related equipment is available for Medicaid clients who have a medical need for such equipment which meets the department's definition of DME when the item is prescribed by a licensed practitioner, subject to the conditions and limitations set forth in sections 17b-262-672 to 17b-262-682, inclusive, of the Regulations of Connecticut State Agencies." Regs., Conn. State Agencies § 17b-262-675

5. "The department shall not pay for...services in excess of those deemed medically necessary by the department to treat the recipient's condition or for services not directly related to the recipient's diagnosis, symptoms, or medical history." Regs., Conn. State Agencies § 17b-262-676(b)(1)

6. Conn. Gen. Stat. §17b-259b(a) provides as follows:

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.

7. The Department correctly determined that a power wheelchair is medically necessary for the Appellant.

8. The particular power wheelchair, with set-up and components as specified in the Appellant's provider's PA request, is medically necessary for the Appellant. The Wheelchair, as specified in the PA request, is based on an assessment of the Appellant and her medical condition, and is clinically appropriate in terms of type and considered effective for the Appellant's illness or disease.

9. The Department was incorrect when it denied PA for the requested Wheelchair, because the equipment, as specified in the request, is medically necessary for the Appellant.

DISCUSSION

When CHNCT denied PA for the requested Wheelchair initially on [REDACTED], 2019, and then again after an appeal review on [REDACTED], 2019, it listed considerations that factored into the denials. The two denials listed different considerations, but each was equally unclear as to how CHNCT wanted them addressed. For example, the initial denial stated, "Technical justification was not provided for numerous components." Which ones? The second denial stated, "The request for a 21" wide wheelchair with hip measurement of 16". Additional information during the original PA process indicated that pillows and cushions would be utilized to address positioning and comfort." This is not worded as a question or a request for specific information, and appears to answer itself. Yes, the additional width is needed to accommodate pillows and cushions used for positioning and comfort.

Essentially, CHNCT's concerns centered on the Appellant's ability to use the chin control to operate the wheelchair, and on the chair's 5 inches of "extra" width. The appeal reviewer also noted the absence of necessary positioning components and the absence of attendant control. Both reviewers expressed concern about the chair's width in light of the Appellant's history of, and multiple risk factors for, compromised skin.

It is noteworthy that CHNCT's representative at the hearing, a nurse, testified that she does not have expertise in the area of the hearing issue and that such expertise belongs to medical professions such as Physical Therapist and Assistive Technology Professional. We were fortunate that the Appellant's ATP appeared at the hearing, and spent twenty-two minutes testifying to try to address CHNCT's concerns, as they could be understood.

First, regarding the chin control system, the testimony merely affirmed the information the record is already replete with, that the Appellant does not have difficulty operating the chin control. It is the exact same system she has used successfully for nine years. She had difficulty with *other* control options that were tried with her during her chair fitting. The PT and ATP both already explained this in letters that were submitted to CHNCT. The PT explained that while the Appellant does have a 20 degree cervical arc of motion, the chin control requires only minimal cervical input. The control is mainly through the jaw, and the Appellant has normal strength and range of motion of her jaw that allows her to use the control successfully.

Regarding the width of the chair and the concerns about positioning and stability and risk of skin compromise, the testimony again mostly confirmed what is already in the record, but with some clarification. When the appeal reviewer said that additional positioning components were needed for pelvic stability and to accommodate the increased width of the chair, he failed to note that lateral supports *were* part of the request, and part of the reason the extra width was needed. The ATP confirmed that the chair is essentially the same model from the same manufacturer and with the same width and depth measurements as the Appellant's Current Chair. The Appellant and her mother both confirmed that the width of her Current Chair has not been a problem and

that for nine years it has been “the best chair she has ever had”. The Appellant confirmed that past issues with skin breakdown have not proven serious, and that past issues have had nothing to do with her wheelchair being ill-fitting, but rather resulted from scrapes she received from the rough canvas pad of her Hoyer lift. Regarding CHNCT’s request for a recent measurement of the Appellant’s weight, it has already been provided with the most recent figure available, from her most recent doctor’s visit.

Regarding the attendant control, there was perhaps a misunderstanding because it was not listed as a separate item on the quote due to it being included at no charge, but the requested Wheelchair *will have attendant control*.

It is clear that the Appellant’s providers who are experts in the area of wheeled mobility spent many hours determining the appropriate wheelchair and set-up for her. It is unclear why CHNCT, in possession of attestations from these individuals, seemingly discounted them. CHNCT had a twelve-page Wheeled Mobility Letter of Medical Necessity Form signed by the Appellant’s Internist and PT, and two more letters from the PT and one more from the ATP. None of the information in any of the documents was conflicting and all the information confirmed that the Appellant was able to use the chin control and that the width of the chair was appropriate, yet CHNCT still denied the PA request, offering little in the way of explanation why.

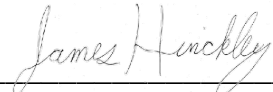
The Appellant is in desperate need of a replacement power wheelchair because she regularly suffers from severe edema as a result of the malfunction of her Current Chair. The Appellant’s providers’ collective determination, that the requested Wheelchair is the appropriate chair and set-up for her, should be accepted. The PA request should be approved without further delay.

DECISION

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

ORDER

1. CHNCT must approve PA for the Permobil F3 custom power wheelchair with power tilt/recline/seat elevator/elevating foot platform, alternative drive control and seating components ordered by the Appellant’s Internist.
2. Proof of compliance with this order must be sent to the undersigned hearing officer by no later than [REDACTED], 2019.



James Hinckley
Hearing Officer

cc: appeals@chnct.org

Fatmata Williams

Robert Zavoski, M.D., Medical Director

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 06105-3725.

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.