

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

██████████ 2020
Signature Confirmation

Client # ██████████
Request # 148072

NOTICE OF DECISION

PARTY

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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 buttock augmentation, adding fat filler to the buttock area, for gender affirming 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, 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
Heather Shea, RN, CHNCT
Marci Ostroski, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether it was correct for CHNCT to deny prior authorization for a buttock augmentation, adding fat filler to the buttock area, for gender affirming surgery.

FINDINGS OF FACT

1. The Appellant was 57 years old (DOB [REDACTED]) at the time of her request. (Exhibit 1: Prior Authorization Request)
2. The Appellant is a participant in the Medicaid program. (Hearing Record)
3. CHNCT is the Department's contractor for administering the Medicaid program. (Hearing Record)
4. The Appellant has a diagnosis of gender dysphoria and transsexualism. She is transitioning from male to female and has identified as female since adolescence. (Appellant's testimony; Ex. 1: Prior Authorization Request; Ex. 10: Additional Information from [REDACTED])
5. The Appellant has been on hormone replacement therapy since 1996 as part of her gender transition. (Appellant's testimony, Ex. 1: Prior Authorization Request; Ex. 10: Additional Information from [REDACTED])
6. The Appellant has been using a buttock padding garment daily since 2012. She finds the padding insufficient as it is not a permanent modification to her body. She has also attempted buttock enhancing exercises but felt that they contributed to a more muscular look rather than the feminine shape that she was seeking. (Appellant's testimony)
7. In [REDACTED] 2017, the Appellant began seeing [REDACTED], (the "doctor") [REDACTED] [REDACTED] to manage her hormone replacement therapy. (Ex. 9: Additional Information from [REDACTED])
8. In [REDACTED] 019, the Appellant began seeing [REDACTED] [REDACTED] (the "therapist") a Licensed Clinical Social Worker ("LCSW"), for evaluation, support and therapy for her gender dysphoria. The Appellant is also receiving therapy from the therapist for anxiety and depression related to grief from the loss of family members and as a victim of violence. (Appellant's testimony; Ex. 10: Additional Information from [REDACTED])

9. The Appellant had breast augmentation as a feminizing surgery and is currently pursuing facial feminization surgery, laser hair removal, and she has a long term goal for sexual reassignment surgery. (Exhibit 1: Prior Authorization Request; Appellant's Testimony; Ex. 10: Additional Information from [REDACTED])
10. On [REDACTED] 2019, CHNCT received a prior authorization request from [REDACTED] a plastic surgeon ("the plastic surgeon") for a buttock augmentation with lipografting for diagnosis of gender dysphoria. (Ex 1: Prior Authorization Request; Hearing Summary)
11. Included with the prior authorization request was a letter dated [REDACTED], 2019, from the therapist, indicating the Appellant "has a history of anxiety and depression which appears to have been in response to the stressors during her early stages of transitioning. At this time, however she presents with no apparent residual psychiatric symptoms and reports using positive coping skills when under stress and appears stable. She intends to continue her therapy regime which she believes has been quite helpful." (Ex. 1: Prior Authorization Request)
12. On [REDACTED] [REDACTED], 2019, CHNCT's Medical Reviewer reviewed the medical information that was submitted and denied the request. The reviewer was unable to confirm that the buttock augmentation was medically necessary "as there is no specific comprehensive information provided demonstrating and confirming evidence that such procedure(s) will provide functional improvement for this patient." (Ex. 3: Medical Review [REDACTED]/19; Hearing Summary)
13. On [REDACTED] 2019, CHNCT sent the Appellant an NOA denying the authorization for a buttock augmentation (adding fat filler to the buttock area) for gender affirming surgery. (Ex. 4: NOA, [REDACTED] 19)
14. On [REDACTED] 2019, CHNCT received an administrative hearing request. They contacted the Appellant, her therapist, her plastic surgeon, and her doctor, and requested additional information to support the Appellant's request. (Exhibit 5: Administrative Hearing Request; Ex. 6: Acknowledgment Letter, [REDACTED] 19; Ex 7: Medical Record Request for [REDACTED] [REDACTED] Ex. 8: Medical Record Request for [REDACTED] Hearing Summary)
15. The Appellant's plastic surgeon reported that he did not have any additional information. (Hearing Summary)
16. On [REDACTED] 2019, CHNCT received a Letter of Medical Necessity ("LMN") from the Appellant's doctor which stated in part, the Appellant "is a transgender woman. She has been diagnosed with gender dysphoria by

a mental health provider and has been treated with hormone replacement therapy (HRT) to improve some of the symptoms of her gender dysphoria....I have been managing her HRT...She has fully and successfully socially transitioned to her new gender, FEMALE.” The letter further stated “ Her lack of buttock development over the years could be in part due to her lack of estrogen at puberty, but also due to lipodystrophy” the Appellant “ was diagnosed HIV+ in 1989. Lipodystrophy has been well documented in patients living with HIV...(she)was prescribed medications that were known to cause atrophy early in her HIV treatment history...(she) has fat loss or lipoatrophy in the buttock region....Surgical intervention is the only solution to her buttock fat loss issue due to lipoatrophy.” (Ex. 9: Additional Information from [REDACTED])

17. The Appellant is seeking the buttock augmentation because she feels the shape has always been more masculine and has not experienced fat loss or change in the shape due to any medical condition. (Appellant's testimony)
18. On [REDACTED] [REDACTED] 2019, CHNCT received another LMN from the Appellant's therapist. This letter was identical to the letter he wrote dated [REDACTED] 2019, submitted with the Prior Authorization request in which he reported the Appellant “has a history of anxiety and depression which appears to have been in response to the stressors during her early stages of transitioning. At this time, however she presents with no apparent residual psychiatric symptoms and reports using positive coping skills when under stress and appears stable. She intends to continue her therapy regime which she believes has been quite helpful.” this letter also added that the Appellant “reports, ‘I still feel like a man below, I have no curve in the back, and it really affects my self-esteem. I feel like I can't be in a relationship; my butt as is, makes me embarrassed, and the pads I use now to augment my behind, feel like a prosthetic diaper. It makes me feel bad about myself.’ The client continues to exhibit a strong desire to live and be accepted as a member of the opposite sex, accompanied by the wish to make her body as congruent as possible with the female sex through these procedures, and a continuation of hormone replacement therapy.” (Ex. 10: Additional Information from [REDACTED] [REDACTED]/19)
19. On [REDACTED] 2019, CHNCT sent the Appellant's appeal for a Medical Review along with the HUSKY Health Provider Policy and Procedure; Gender Affirmation Surgery. (Exhibit 11: Medical Review Request; Hearing Summary)
20. The Department uses the Husky Health Provider Policy and Procedure Manual to assist in the evaluation of medical necessity of a requested health service. The manual provides in part for gender affirmation surgery; Cosmetic Procedures for Aging Skin “procedures to address

aging skin...are not reconstructive in nature and are therefore typically considered cosmetic in nature and not medically necessary. These procedures include but are not limited to....cosmetic fillers including...fat transplantation and implants.” (Ex. 11: Medical Review Request, Husky Health Provider Policy and Procedure Manual; Hearing Summary)

21. On [REDACTED] 2019, the Medical Review was completed and the denial was upheld. The reviewer noted that the requested buttock augmentation procedure is not medically necessary in accordance with the DSS coverage policy as this procedure is not required to prevent, identify, diagnose, treat, rehabilitate, or ameliorate an individual’s medical condition including mental illness or its effects in order to maintain the individuals achievable health and independent functioning. The requested surgery was determined not medically necessary as the primary intent would be to improve or enhance the appearance of the buttocks and considered cosmetic. (Ex. 12: Medical Review Results; Hearing Summary)
22. On [REDACTED], 2019, CHNCT notified the Appellant that the requested buttock augmentation adding fat filler to the buttock area had been denied. (Ex. 13: Determination Letter, [REDACTED] 9)
23. 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 and is therefore timely. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-2 & § 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. Regulation addresses the requirements of prior authorization. Subsection (a) provides that prior authorization, to determine medical appropriateness and medical necessity, shall be required as a condition of payment for certain Medical Assistance Program goods or services as set forth in the regulations of the department governing specific provider types and specialties. The department shall not make payment for such goods and services when such authorization is not obtained by the provider of the goods or services. [Conn Agencies Regs. § 17b-262-528]

3. State statute provides that 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)]

State statute provides that 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)]

State statute provides that 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)]

4. Regulation provides that for coverage of services for the treatment of gender dysphoria the Department shall not pay for the following: (4) cosmetic surgery. [Conn Agencies Regs. § 17b-262-342(4)]
5. Regulation provides that the department shall not pay for the following: (12) any procedures or services of an unproven, educational, social research, experimental or cosmetic nature; any diagnostic therapeutic or treatment services in excess of those deemed medically necessary by the department to treat the client's condition; or for services not directly related to the client's

diagnosis, symptoms or medical history. [Conn Agencies Regs. § 17b-262-342(12)]

6. CHNCT correctly determined the Appellant's condition does not meet the criteria in accordance with state statute and regulations to support the medical necessity and appropriateness of the requested procedure. The evidence submitted supports that it is cosmetic in nature.
7. CHNCT was correct to deny the Appellant's medical provider's request for prior authorization of Husky Medicaid payment for a buttock augmentation because it is not medically necessary.

DECISION

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

Marci Ostroski

Marci Ostroski
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 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.