

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

██████████ 2022
Signature Confirmation

Case ID # ██████████
Client ID # ██████████
Request # 197064

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2022, Community Health Network of Connecticut (“CHNCT”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA) denying her provider’s request for authorization for a panniculectomy.

On ██████████ 2022, the Appellant requested an administrative hearing to contest the CHNCT’s decision to deny the prior authorization request.

On ██████████, 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2022.

On ██████████, 2022, 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 by telephone at the Appellant’s request.

The following individuals called in for the hearing:

██████████, Appellant
██████████, MD, Appellant’s physician
Barbara McCoid, RN, CHNCT Representative
Scott Zuckerman, Fair Hearings Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether CHNCT's ██████████ 2022 denial of prior authorization through the Medicaid program for a panniculectomy as not medically necessary, was in accordance with state law.

FINDINGS OF FACT

1. The Appellant is a participant in the Medicaid program as administered by the Department of Social Services (the "Department"). (Hearing Record)
2. Community Health Network of Connecticut ("CHNCT") is the Department's medical administrative services organization responsible for medical case management under Medicaid which includes review of medical requests for prior authorization. (Hearing Record)
3. On ██████████ 2022, the Appellant met with ██████████, MD, for a rash under her abdomen. The Appellant lost 31 pounds by eating healthy, working out and taking Ozempic over the past year. The Appellant reported recurrent episodes of rash under the resultant loose abdominal skin. The Appellant was prescribed Ketoconazole cream for the rash under the abdominal pannus for 14 days. (Appellant's testimony and Exhibit 1: Prior Authorization Request)
4. On ██████████ 2022, the Appellant met with ██████████ for a follow up. She reported a persistent rash under the abdominal folds despite using topical antifungals. The Appellant continued with the Ketoconazole. The outcome of 31 pound weight loss over six months has been loose abdominal skin and related recurrent skin infections. Dr. ██████████ stated she would benefit from surgical intervention for removal of the excess abdominal skin. (Ex. 1)
5. On ██████████ 2022, the Appellant met with Dr. ██████████ MD, of ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████. The Appellant complained of persistent rashes and skin excoriation below the abdominal pannus despite treatment of creams and powders. The doctor described the Appellant as having a large pannus overhanging her pubis. The abdomen showed evidence for rashes and skin excoriation below her abdominal pannus and no open wounds. The skin exam described no rashes or lesions. The Appellant received a diagnosis of Panniculitis. (Ex. 1)
6. The photographs provided by ██████████ do not demonstrate chronic skin irritation, intertrigo, infections, rash, or ulceration. The documentation does not support the pannus hangs below the level of the pubis and no documentation of panniculus interference with activities of daily living ("ADLs"). (CHNCT testimony and hearing summary)

7. On May 26, 2022, the Appellant met with [REDACTED] for a follow up visit. The Appellant was advised to follow up with Plastic surgery for the panniculectomy. (Ex. 1)
8. On [REDACTED] 2022, CHNCT received a prior authorization request from the plastic surgeon for a panniculectomy noting a diagnosis of Panniculitis. The Plastic surgeon included the following with the request: [REDACTED] 2022, medical necessity letter from the plastic surgeon and progress notes, [REDACTED], 2022, progress notes from [REDACTED], May 12, 2022, progress notes from [REDACTED], [REDACTED] 2022, progress notes with [REDACTED], and four photographs of the Appellant's abdomen. (Exhibit 1)
9. The Appellant complains of an ongoing infection under her pannus. She has ongoing rashes. To assist with the rashes and pain she has been taking antibiotics, both topical and oral. The pannus sits between her legs while sitting at work which causes her pain. (Hearing Record, Appellant's testimony)
10. A panniculectomy is a surgical procedure to remove excess lower abdominal hanging fat and skin. Medicaid covers a panniculectomy if it is medically necessary. To be considered medically necessary, the lower abdominal skin must hang below the pubic bone. (Exhibit 1: Prior Authorization Request, Exhibit 8: Medical Review Request, Exhibit 9: Medical Review and CHNCT Representative's Testimony)
11. On [REDACTED] 2022, CHNCT reviewed a prior authorization request from the plastic surgeon for a panniculectomy which included the following with the request: [REDACTED] 2022 medical necessity letter from the plastic surgeon and progress notes, [REDACTED], 2022 progress notes from [REDACTED], [REDACTED] 2022 progress notes from [REDACTED], [REDACTED] 2022 progress notes with [REDACTED], and four photographs of the Appellant's abdomen. CHNCT determined the panniculectomy as not medically necessary as the pannus does not hang below the level of the pubic symphysis. (Exhibit 2: Medical review, [REDACTED] 2022)
12. On [REDACTED] 2022, CHNCT issued a Notice of Action for Denied Services or Goods to the Appellant informing her that the plastic surgeon's prior authorization request for a panniculectomy has been denied. CHNCT listed the reason for denial as not medically necessary because "it is not based upon an assessment of your medical condition." CHNCT states in part, "The information submitted by your provider does not show the medical need for this request. A panniculectomy could be considered medically needed if the pannus hangs below your pubic bone. Your medical record does not show that your pannus hangs below your pubic bone." (Exhibit 3: Notice of Action, [REDACTED] 2022)

13. On [REDACTED] 2022, CHNCT received an expedited verbal appeal from the Appellant to reconsider CHNCT's decision to deny prior authorization for a panniculectomy. CHNCT notified the Appellant and Dr. [REDACTED] of the [REDACTED] and requested additional information. (Exhibit 4: Expedited Verbal appeal and Exhibit 6: Medical Record Request)
14. On [REDACTED] 7, 2022, CHNCT received additional medical information from the Appellant's PCP [REDACTED]. (Exhibit 7)
15. On [REDACTED], 2022, CHNCT requested a clinical review of the prior authorization request for a panniculectomy from Network Medical Review Co. Ltd. ("Medical Review Organization"). CHNCT asks, "Based on the information presented, is the Panniculectomy medically necessary for this member in accordance with the DSS coverage policy and the DSS Definition of Medical Necessity provided below? If the Panniculectomy is not medically necessary for this member, please explain?" (Exhibit 8: Medical Review Request)
16. The Department's Provider Policies and Procedures state a panniculectomy may be considered reconstructive surgery using InterQual Criteria along with the Department's definition of medical necessity. (Exhibit 8: Medical Review Request)
17. InterQual Criteria is a screening tool to assist in the determination whether the proposed medical procedure(s), specifically abdominal panniculectomy, are clinically appropriate. These criteria do not include abdominoplasty. InterQual Criteria for an abdominal panniculectomy are as follows:
 1. Choose One:
 - A. Post bariatric procedure and \geq Grade 2* panniculus or panniculus extends below the level of the symphysis pubis
 - B. Massive weight loss without bariatric surgery and \geq Grade 2* panniculus or panniculus extends below the level of symphysis pubis
 - C. No massive or significant weight loss or bariatric surgery and \geq Grade 2* panniculus or panniculus extends below the level of the symphysis pubis
 - D. To be performed in conjunction with abdominal or gynecological surgery
 - E. Other clinical information (add comment)
 2. Choose all that apply:
 - A. \geq 1 year since bariatric surgery
 - B. Body mass index (BMI) $<$ 30 kg/m²
 - C. Weight loss \geq 100 lbs (45.36 kg)
 - D. Other clinical information (add comment)

3. Weight stable for ≥ 6 months
 - A. Yes
 - B. No
4. Choose all that apply:
 - A. Panniculus causes limitations in ambulation or physical activity
 - B. Panniculus interferes with ADLs
 - C. Nonhealing ulceration under panniculus
 - D. Chronic maceration or necrosis of overhanging skin folds
 - E. Recurrent or persistent skin infection under panniculus
 - F. Intertriginous dermatitis or cellulitis or panniculitis
 - G. Other clinical information (add comment)
5. Choose all that apply:
 - A. Local or systemic antibiotic treatment ≥ 12 weeks
 - B. Topical or systemic corticosteroid treatment ≥ 12 weeks
 - C. Topical antifungal medication treatment ≥ 12 weeks
 - D. Other clinical information (add comment)
6. Continued symptoms or findings after treatment
 - A. Yes
 - B. No
7. Choose all that apply
 - A. Body mass index (BMI) < 30 kg/m²
 - B. Weight loss ≥ 100 lbs (45.36 kg/m²)
 - C. Other clinical information (add comment)

*The severity of a panniculus is graded as:

Grade 1: Panniculus covers hairline and mons pubis but not the genitals

Grade 2: Panniculus covers genitals and upper thigh crease

Grade 3: Panniculus covers upper thigh

Grade 4: Panniculus covers mid-thigh

Grade 5: Panniculus covers knees and below

“A Panniculectomy would only be appropriate for resection of a large panniculus which, for the purposes of these criteria, is defined as a panniculus which extends below the level of the symphysis pubis or at least Grade 2.”

(Exhibit 8: Medical Review Request and CHNCT Representative’s Testimony)

18. Based on the Department’s definition of medical necessity, the Department’s coverage policies, and InterQual policy guidelines, the Medical Review Organization upheld the denial of the prior authorization request for a panniculectomy. The Medical Review Organization states in pertinent part, “the requested panniculectomy is not considered medically necessary for this member in accordance with the DSS coverage policies and the DSS Definition of Medical Necessity.” Using InterQual Criteria for

an abdominal panniculus, the Medical Review Organization cites, "no other options lead to the requested service." The Medical Review Organization found the medical documentation and photographs fail to demonstrate a panniculus that extends below the level of the symphysis pubis and fail to establish a chronic skin irritation or infection. The medical documentation does not support a greater than or equal grade 2 panniculus. (Exhibit 8: Medical Review Request)

19. On [REDACTED] 2022, CHNCT conducted a medical review, and the denial was upheld. CHNCT's medical directed noted, "The documentation does not support intertrigo recalcitrant to medically directed conservative therapy. The plastic surgery physical examination documents skin with no rashes and no open wounds. The supplied photographs do not demonstrate chronic skin irritation, intertrigo, infection, rash, or ulceration. Additionally, the documentation does not support that the pannus hangs below the level of the pubis and therefore does not correlate with at least a Grade 2 panniculus. The patient has not lost at least 100 pounds and does not have a history of bariatric surgery. Stable weight for at least 6 months is not documented. Panniculus interference with activities of daily living (ADLs) is not documented. Functional impairment is not established by the supplied documentation. For these reasons, the documentation does not support functional impairment. Therefore, medical necessity is not established for this patient to undergo panniculectomy. This correlates with society guidelines and the relevant medical literature for symptomatic panniculectomy. Without otherwise meeting medical necessity, the procedure is considered for the benefit of the convenience of the patient and provider. In conclusion, the Panniculectomy is not medically necessary for this patient in accordance with the DSS coverage policy and the DSS Definition of Medical Necessity provided. (Exhibit 9: Medical Review, [REDACTED] 2022)
20. On [REDACTED] 2022, CHNCT sent the Appellant an appeal determination notice. The notice stated that your appeal to the Husky Health Program of the denial of authorization of panniculectomy requested by your provider has been denied. CHNCT cites the principal reason to uphold the denial is that the information submitted does not support the medical necessity for the requested service because the excess lower abdominal skin must hang below your pubic bone to approve a panniculectomy. The information and photographs provided does not show the pannus hangs below the pubic bone, rashes, open wounds, or infection. Internal medicine notes confirm that the pannus does not hang below the pubic bone and therefore it is denied as not being medically necessary. "The denial is based on Connecticut General Statute § 17b-259b(a)(5), as set forth in the Notice of Action that was already sent to you." (Exhibit 10: Determination Letter)

21. On ██████ 2022, the Appellant requested an administrative hearing with the Department to contest CHNCT's denial of the prior authorization request for the panniculectomy. (Exhibit 11: Administrative Hearing Request)
22. 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 ██████ 2022. Therefore, this decision is due no later than ██████ 2022, and is therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes ("Conn. Gen. Stat.") provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. "The Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department." Conn. Gen. Stat. § 17b-261b
3. State statute 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.

Conn. Gen. Stat. § 17b-259b(a)

Section 17b-262-527 of the Regulations of Connecticut State Agencies (“Regs., Conn. State Agencies”) provides as follows:

The Department shall review the medical appropriateness and medical necessity of medical goods and services provided to Medical Assistance Program clients both before and after making payment for such goods and services.

4. “Clinical policies, medical policies, 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)

5. State statute provides as follows:

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)

6. State regulation provides as follows:

Sections 17b-262-337 to 17b-262-349, inclusive, of the Regulations of Connecticut State Agencies, set forth the Department of Social Services requirements for payment of accepted methods of treatment performed by or under the personal supervision of licensed physicians for clients who are determined eligible to receive services under Connecticut’s Medicaid Program pursuant to section 17b-261 of the Connecticut General Statutes.

Regs., Conn. State Agencies § 17b-262-337

7. State regulation provides as follows:

For the purposes of sections 17b-262-337 to 17b-262-349, inclusive, of the Regulations of Connecticut State Agencies, the following definitions shall apply:

“Billing provider means a physician, physician group or other entity enrolled in Medicaid that bills the department for physicians’ services.” Regs., Conn. State Agencies § 17b-262-338(6)

“ICD means the International Classification of Diseases established by the World Health Organization or such other disease classification system that the department currently requires providers to use when submitting Medicaid claims.” Regs., Conn. State Agencies § 17b-262-338(23)

“Medical necessity or medically necessary has the same meaning as provide in section 17b-259b of the Connecticut General Statutes.” Regs., Conn. State Agencies § 17b-262-338(33)

Physicians’ services mean services that are billed by the billing provider and are provided:

1. By an individual physician who is also the billing provider;
2. By a physician who is employed by or affiliated with the billing provider;
or
3. By an AHP working under the personal supervision of a physician who is employed by or affiliated with the billing provider;

Regs., Conn. State Agencies § 17b-262-338(46)

“Prior authorization means approval for the provision of a service or the delivery of goods from the department before the provider actually provides the service or delivers the goods.” Regs., Conn. State Agencies § 17b-262-338(47)

8. “Payment to a billing provider for physicians’ services billed by the billing provider shall be available on behalf of clients who have a need for such services, provided such services are medically necessary, subject to the conditions and limitations which apply to these services.” Regs., Conn. State Agencies § 17b-262-340
9. State regulation provides as follows:

The Department shall pay billing providers for the following physicians’ services:

Those procedures that are medically necessary to treat the client’s condition;

Physicians' services provided in an office, a general hospital, the client's home, a chronic disease hospital, nursing facility, ICF/MR or other medical care facility;

Surgical services necessary to treat morbid obesity as defined by the ICD that causes or aggravates another medical illness, including illnesses of the endocrine system or the cardio-pulmonary system, or physical trauma associated with the orthopedic system.

Regs., Conn. State Agencies § 17b-262-341(1), (2), & (9)

State regulation provides as follows:

The department shall not pay for the following goods or services or goods or services related to the following:

Cosmetic surgery;

Services to treat obesity other than those described in section 17b-262-341(9) of the Regulations of Connecticut State Agencies;

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 services not directly related to the client's diagnosis, symptoms or medical history.

Regs., Conn. State Agencies § 17b-262-342(4), (11), & (12)

10. State regulation provides as follows:

Payment is available to billing providers for an initial office visit and continuing services that are medically necessary provides that:

- a. The services are within the provider's scope of practice; and
- b. The provider documents the services in the client's medical record.

Regs., Conn. State Agencies § 17b-262-343

11. State regulation provides as follows:

Prior authorization, on forms and in the manner specified by the department, is required in order for payment to be available for the following physicians' services. Prior authorization is also required for

services designated by the department and published on its website or by other means accessible to providers.

Except in emergency situations, the provider shall receive prior authorization before rendering services.

In order to receive payment from the department, a billing provider shall comply with all prior authorization requirements. The department, in its sole discretion, determines what information is necessary in order to approve a prior authorization request. Prior authorization does not guarantee payment unless all other requirements for payment are met.

Regs., Conn. State Agencies § 17b-262-344(f) & (h)

12. State regulation provides as follows:

Sections 17b-262-522 through 17b-262-532, inclusive, of the Regulations of Connecticut State Agencies set forth the Department of Social Services general requirements to which providers of Medical Assistance Program goods and services shall adhere in order to participate in, and receive payment from, the Connecticut Medical Assistance Program pursuant to section 17b-262 of the Connecticut General Statutes.

Regs., Conn. State Agencies § 17b-262-522

13. State regulation provides as follows:

For 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.

Regs., Conn. State Agencies § 17b-262-528(a)

“Prior authorization means approval for the provision of a service or delivery of goods from the department before the provider actually provides the service or delivers the goods.” Regs., Conn. State Agencies § 17b-262-523(20)

“Medical necessity or medically necessary” means health care provided to correct or diminish the adverse effects of a medical condition or mental illness; assist an individual in attaining or maintaining an optimal level of health; diagnose a condition; or prevent a medical condition from occurring” Regs., Conn. State Agencies § 17b-262-523(15)

Type and specialty mean the department's categorization of Medical Assistance Program providers according to the type and specialty of the goods or services furnished by the provider." Regs., Conn. State Agencies § 17b-262-523(29)

State regulation provides as follows:

In order to receive payment from the department a provider shall comply with all prior authorization requirements. The department in its sole discretion determines what information is necessary in order to approve a prior authorization request. Prior authorization does not, however, guarantee payment unless all other requirements for payment are met.

Regs., Conn. State Agencies § 17b-262-528(d)

"Coverable Medical Assistance Program goods or services requiring prior authorization may be so identified on the department's applicable fee schedule or identified in regulation. Regs., Conn. State Agencies § 17b-262-528(e)

"Coverable Medical Assistance Program good or service" means any good or service which is payable by the Medical Assistance Program under its regulations." 17b-262-523(7)

State regulation provides as follows:

Payment, by the Department, to all providers shall be limited to medically appropriate and medically necessary goods or services furnished to Medical Assistance Program clients. The following payment limitations shall also apply: the department shall not pay for any procedures, goods, or services of an unproven, educational, social, research, experimental, or cosmetic nature; for any diagnostic, therapeutic, or treatment goods or services in excess of those deemed medically necessary and medically appropriate by the department to treat the client's condition; or for services not directly related to the client's diagnosis, symptoms, or medical history.

Regs., Conn. State Agencies § 17b-262-531(g)

14. State statute provides as follows:

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)

CHNCT correctly determined the panniculectomy as not medically necessary for the Appellant. The hearing record failed to establish the pannus hangs below the pubic bone, failed to establish a chronic and persistent rash that has not responded to non-surgical treatments, and failed to establish a functional impairment which interferes with the patient's everyday activities.

Medical reports and photos provided by the plastic surgeon do not support a pannus which hangs below the pubic bone.

On [REDACTED] 2022, CHNCT was correct to deny the prior authorization request for a panniculectomy because the procedure failed to meet the medical necessity and medically necessary criteria in accordance with state statutes and regulations.

DECISION

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

Scott Zuckerman
Scott Zuckerman
Fair Hearing Officer

CC: appeals@chnct.org
Fatmata Williams, DSS, CO

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.

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, 165 Capitol Avenue, 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.