

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

██████████ 2023
Signature confirmation

Case: ██████████
Client: ██████████
Request: 217622

NOTICE OF RECONSIDERED DECISION

PARTY

██████████
██████████
████████████████████

PROCEDURAL BACKGROUND

On ██████████ 2023, Community Health Network of Connecticut (“CHNCT”), the Department of Social Services’ contractor for reviewing prior authorization requests for the HUSKY Health Program, issued ██████████ (the “Appellant”) a *Notice of Action* granting her current surgeon’s request for authorization to remove the Appellant’s breast implants and denying the surgeon’s request for authorization to replace her breast implants.

On ██████████, 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received the Appellant’s ██████████ 2023 postmarked administrative hearing request.

On ██████████, 2023, the OLCRAH scheduled the administrative hearing for ██████████, 2023.

On ██████████ 2023, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing by telephone and videoconferencing. The following individuals participated:

██████████, Appellant
██████████, ██████████ ██████████¹
Robin Goss, RN, BSN, CHNCT Representative
Eva Tar, Hearing Officer

On ██████████, 2023, the hearing record closed.

¹ ██████████ did not represent the Appellant as counsel but read a prepared statement.

On [REDACTED], 2023, the undersigned hearing officer denied the Appellant's administrative appeal, finding that CHNCT's denial of the surgeon's request for authorization to replace the Appellant's breast implants was not medically necessary, as the term "medically necessary" was defined at Section 17b-259b of the Connecticut General Statutes.

On [REDACTED], 2023, the OLCRAH received a request for reconsideration of the [REDACTED] 2023 decision as filed by Attorney [REDACTED] of the [REDACTED], acting as the Appellant's representative for the submission of appeals to the Appellant's insurance company.

[REDACTED] submitted an *Authorization for Use and Disclosure of Protected Health Information* (Attachment 1); *Authorization for Disclosure of Information* (Attachment 2); CHNCT Exhibit 9 (Attachment 3); a [REDACTED] 2023 website capture titled "Congenital Anomalies/Surgical Correction of Birth Anomalies" (Attachment 4); an [REDACTED] 2022 article titled "Review of Tuberous Breast Deformity: Developments over the Last 20 Years" (Attachment 5); and an excerpt from *Current Concepts in Plastic Surgery* published online on [REDACTED] 2012 (Attachment 6).

On [REDACTED] 2023, the OLCRAH granted the request for reconsideration "for the purpose of considering a documented diagnosis of [REDACTED] [REDACTED] [REDACTED]) as it may relate to the evaluation of medical necessity for the requested service." This reconsidered Decision follows.

STATEMENT OF ISSUE

The issue is whether State statutes and regulations support CHNCT's denial of authorization for the surgical replacement of the Appellant's breast implants.

FINDINGS OF FACT

1. The Appellant is [REDACTED] years old. (Appellant Testimony)
2. The Appellant has medical coverage through the HUSKY Health Program. (CHNCT Exhibit 3: *Notice of Action*, [REDACTED]/2023)
3. CHNCT is the Department of Social Services' contractor for reviewing medical provider requests for prior authorization for HUSKY Health Program coverage of medical services. (CHNCT Representative Testimony)
4. The Appellant has a history of [REDACTED], [REDACTED]², [REDACTED], [REDACTED]. (Appellant Exhibit A: Correspondence, [REDACTED]/2023) (CHNCT Exhibit 1: Prior Authorization Request, [REDACTED]/2023) (CHNCT Exhibit 9: Correspondence, [REDACTED]/2023)
5. The Appellant takes medication to treat her [REDACTED] and [REDACTED]. (Hearing request) (CHNCT Exhibit 1) (CHNCT Exhibit 8: Medical Records, varying dates)
6. [REDACTED] is underdevelopment. (CHNCT Representative Testimony)

² The terms [REDACTED] and [REDACTED] are used interchangeably in the exhibits.

7. Tuberos breast is not a term indicating the presence of illness or disease; the term has to do with the breast's appearance. In some individuals, the condition manifests at puberty as having one or both breasts fail to develop, develop asymmetrically, or achieve a less rounded shape. (CHNCT Representative Testimony)
8. The Appellant does not have a personal history of breast cancer or breast malignancy. (Appellant Testimony) (CHNCT Exhibit 1) (CHNCT Exhibit 2: Note Description, [REDACTED]/2023)
9. The Appellant underwent her first breast augmentation surgery in 2020. (Appellant Testimony) (CHNCT Exhibit 1) (CHNCT Exhibit 8: Medical Records, varying dates)
10. The first surgery incorporated [REDACTED]. (CHNCT Exhibit 1)
11. The Appellant was dissatisfied with the results of the 2020 surgery and received a refund of her private payment. (Appellant Testimony)
12. The Appellant used her refund from the 2020 surgery to pay for a second breast implant surgery with a different surgeon. (Appellant Testimony)
13. The Appellant underwent her second breast augmentation surgery in [REDACTED] 2021. (Appellant Testimony) (CHNCT Exhibit 8)
14. The second surgery incorporated [REDACTED]. (CHNCT Exhibit 1)
15. The Appellant was dissatisfied with the results of the 2021 surgery; the Appellant did not receive a refund. (Appellant Testimony)
16. The first and/or second surgeries corrected the Appellant's [REDACTED]. Her breasts are not underdeveloped. (CHNCT Exhibit 1: (photos))
17. The Appellant's 2020 and 2021 surgeries were neither mastectomies nor reconstructive surgeries following a mastectomy.³
18. On [REDACTED] 2023, the Appellant consulted with [REDACTED], MD, (the "third surgeon") for a surgical consultation for revision of her 2021 breast implant surgery. (CHNCT Exhibit 8)
19. At the [REDACTED] 2023 consultation, the third surgeon recommended the removal of the Appellant's current breast implants and replacement with smaller implants in the pre-pectoral plane with potential mesh placement to attempt to hold the implants in a more favorable position. The third surgeon further instructed the Appellant that the procedure would result in a higher risk of capsular contracture. (CHNCT Exhibit 8)

³ The Women's Health and Cancer Rights Act of 1998 in part provides that for patients with breast cancer or a personal history of breast cancer, all stages of reconstruction of the breast on which a mastectomy was performed are considered medically necessary. (CHNCT Exhibit 13)

20. Capsular contracture describes scar tissue that can form around breast implants which may cause the breasts to harden, may cause the breasts to look or feel different, and may cause some discomfort from the tightening of the capsule. Capsular contracture is the most common complication following breast implant surgery and is one of the most common reasons for reoperation. (CHNCT Exhibit 10: Medical Review Request, █████/2023)
21. █████, MD, (the “current surgeon”) is the Appellant’s current surgeon. (Appellant Testimony) (CHNCT Exhibit 1) (CHNCT Exhibit 9)
22. At her █████ 2023 office visit with the current surgeon, the Appellant expressed concerns to the surgeon about painful animation deformity, nipple and IMF [inframammary fold] position, and breast shape (pointy/puffy retroareolar tissue). (CHNCT Exhibit 1)
23. The current surgeon recommended downsizing the Appellant’s breast implants, changing the implant location to a subglandular position, attempting to recreate and reinforce the IMF with Gala flex (mesh), possibly creating an inferior dermal sling for additional reinforcement, and shortening the distance between nipple to IMF using buried de-epithelialized tissue from the lower pole of the breast. (CHNCT Exhibit 1)
24. The third surgeon and the current surgeon independently advised the Appellant that they did not believe they would be able to address all of the Appellant’s concerns and goals; the current surgeon cautioned that the Appellant may be disappointed with the results of the surgery. (CHNCT Exhibits 1 and 8)
25. Breast size and shape are variable in the general population, with a wide range in size, shape, and areolar pigmentation. (CHNCT Exhibit 13)
26. The exact incidence of tuberous breasts in the general population is unknown and underestimated as women with mild degrees of deformity may not seek treatment. A five-year retrospective analysis of photos of White female patients reported that the presence of at least one of the typical features characterizing tuberous breasts is extremely common among the general population (27.5%). (Attachment 5, p.3)
27. The █████ 2023 photos of the Appellant’s breasts as had been submitted with the █████ 2023 request for authorization do not demonstrate the presence of obvious or gross deformity. The breasts do not have dominant masses or areas of significant focal nodularity; the nipple/areolar complexes are normal bilaterally, and there are no significant skin changes. (CHNCT Exhibit 1)
28. In the █████ 2023 photos, the Appellant’s breasts are rounded, full, and natural looking. Her breasts are not disfigured or scarred. Her breasts are not situated excessively low on her chest. (CHNCT Exhibit 1: (photos))
29. The volume and shape of the Appellant’s breasts as they appear in █████ 2023 photographs in CHNCT Exhibit 1 is consistent with the Figure 2 diagram of Attachment 6, p.2, for breasts typical of normal development. (Attachment 6, p.2)

30. The Appellant's breasts do not exhibit ulceration, erythema, edema, or peau-de-orange changes. (CHNCT Exhibit 1)
31. The Appellant's breasts do not exhibit severe capsular contracture or a signs of silicone implant rupture. (CHNCT Exhibit 10)
32. The Appellant has complained of pain and discomfort from animation deformity due to the subpectoral position of her current breast implants. (CHNCT Exhibit 1)
33. The Appellant feels discomfort and a tugging in her chest when opening tough Tupperware or shutting a window. (Appellant Testimony)
34. On ██████ 2023, CHNCT received an authorization request from the current surgeon for the removal and replacement of the Appellant's breast implants. (CHNCT Exhibit 1)
35. The HUSKY Health Program will authorize reconstructive surgery when it is needed to restore a functional issue; it does not pay for cosmetic surgery. (CHNCT Representative Testimony)
36. The HUSKY Health Program identifies body modification repairs or reversal as well as breast augmentation surgery as cosmetic procedures. Procedures are cosmetic when the primary purpose is to preserve or improve appearance in the absence of physical functional impairment. (CHNCT Exhibit 13)
37. On ██████ 2023, CHNCT issued a *Notice of Action* to the Appellant stating that it had authorized the removal of her breast implants and had denied authorization to insert new implants. (CHNCT Exhibit 3: *Notice of Action*, ██████ 2023)
38. On ██████, 2023, CHNCT notified the current surgeon that the HUSKY Health Program had approved authorization for the removal of the Appellant's breast implants and had denied authorization for placement of new breast implants. (CHNCT Exhibit 6: Correspondence, ██████ 2023)
39. On ██████ ████, 2023, CHNCT received correspondence from the current surgeon recommending breast implant replacement to remedy the Appellant's ██████ ██████ and ease the Appellant's psychological distress. (CHNCT Exhibit 9)
40. On ██████ 2023, a Board-Certified plastic surgeon employed by MCMC⁴ reviewed the current surgeon's ██████ 2023 consultation notes, color photos, and correspondence and determined that the replacement of the Appellant's breast implants was not medically necessary based on current standard of care, physician society guidelines, and peer-reviewed literature. (CHNCT Exhibit 10)
41. With respect to the current standard of care and peer-reviewed literature, replacement of breast implants or breast augmentation surgery is medically necessary following a mastectomy or when related to Gender Affirmation Surgery. (CHNCT Exhibit 10)

⁴ MCMC LLC is an accredited independent review organization utilized by CHNCT.

42. With respect to the current standard of care and peer-reviewed literature, removal of or replacement of breast implants may be medically necessary to remove a ruptured silicone implant, to remedy the effects of Poland syndrome, or to address the presence of functionally impairing Baker IV capsular contracture. (CHNCT Exhibit 10)
43. At the [REDACTED] 2023 administrative hearing, the Appellant submitted a [REDACTED] 2023 correspondence from [REDACTED], APRN, MSN (the "APRN") recommending that the Appellant have surgery to address the Appellant's physical discomfort and to remedy the Appellant's current mental health issues related to her self-esteem and anxiety. (Appellant Exhibit A)
44. Upon review of the [REDACTED] 2023 correspondence from the APRN, CHNCT did not overturn its denial of authorization for surgery to replace the Appellant's breast implants. (CHNCT Exhibit 14)
45. The Appellant has not submitted for the hearing record substantial evidence that the surgical replacement of her breast implants is clinically recognized as treatment for the mental health conditions of [REDACTED] based on credible scientific evidence published in peer-reviewed medical literature that is generally recognized by the relevant medical community, the recommendations of a physician-specialty society, and the views of physicians practicing in relevant clinical areas. (Hearing record)
46. The Appellant has not submitted for the hearing record substantial evidence that the surgical replacement of her breast implants is 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 Appellant's mental health conditions of [REDACTED].
47. Connecticut General Statutes § 17b-61 (a) provides: "The Commissioner of Social Services or the commissioner's designated hearing officer shall ordinarily render a final decision not later than ninety days after the date the commissioner receives a request for a fair hearing pursuant to section 17b-60...." On [REDACTED] 2023, the OLCRAH received the Appellant's [REDACTED] 2023 postmarked hearing request. This hearing decision would have become due by [REDACTED] 2023. This final decision is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes in part designates the Department as the state agency to administer the Medicaid program pursuant to Title XIX of the Social Security Act.

"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 (a).

"The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program...." Conn. Gen. Stat. § 17b-262.

The Department of Social Services has the authority to administer the HUSKY Medicaid program in Connecticut.

2. 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 to participate in, and receive payment from, the Connecticut Medical Assistance Program pursuant to section 17b-262 of the Connecticut General Statutes.

“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 (a).

“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.” Conn. Agencies Regs. §17b-262-528 (d).

The current surgeon correctly requested prior authorization for the removal and replacement of the Appellant’s breast implants.

CHNCT acted within the scope of its authority as the Department of Social Services’ contractor when it reviewed the current surgeon’s authorization request to determine the medical necessity of the following procedures: the surgical removal of the current breast implants and the surgical insertion of new breast implants.

3. “[T]he 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.” Conn. Agencies Regs. § 17b-262-531 (g).

Section 17b-262-342 of the Regulations of Connecticut State Agencies provides for goods and services not covered:

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

- (1) ... ;
- (2) ... ;
- (3) ... ;
- (4) Cosmetic surgery;
- (5) ... ;
- (6) ... ;

(7) ... ;

(8) ... ;

(9) ... ;

(10) ... ;

(11) ... ; and

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

Conn. Agencies Regs. §17b-262-342.

CHNCT correctly determined that the HUSKY Health Program will not authorize surgery in excess of that 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.

CHNCT correctly determined that the HUSKY Health Program will not authorize cosmetic surgery or procedures that are cosmetic in nature, in accordance with Conn. Agencies Regs. § 17b-262-342.

4. Section 17b-259b (a) of the Connecticut General Statutes provides:

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).

CHNCT's conclusion that the surgical replacement of the Appellant's breast implants is primarily for cosmetic purposes, i.e., to change the contour of the Appellant's breasts and adjust the tissue under the nipples to be more esthetically pleasing to the Appellant is supported by the hearing record.

CHNCT correctly determined that the surgical replacement of the Appellant's breast implants was not medically necessary, as the term "medically necessary" is defined at Conn. Gen. Stat. § 17b-259b (a), as a means of treating her mental health issues of

CHNCT correctly determined that the surgical replacement of the Appellant's breast implants is not medically necessary, as the term "medically necessary" is defined at Conn. Gen. Stat. § 17b-259b (a).

State statutes and regulations support CHNCT's denial of authorization for the surgical replacement of the Appellant's breast implants.

DISCUSSION

On [REDACTED] 2023, CHNCT granted authorization for the surgical removal of the Appellant's current breast implants to treat the Appellant's complaints of pain. CHNCT denied authorization for surgery to insert replacement breast implants.

CHNCT authorizes breast augmentation surgery or the replacement of existing breast implants under very limited conditions, such as is the case with reconstructive surgery after a mastectomy or as part of gender affirmation surgery. With respect to the current standard of care and peer-reviewed literature, replacement of breast implants also may be medically necessary to remedy the effects of Poland syndrome or to address the presence of functionally impairing Baker IV capsular contracture. The Appellant's circumstances objectively do not meet these conditions.

At the [REDACTED] 2023 administrative hearing, the Appellant expressed her concern that the removal of the breast implants would result in excess skin and leave her "completely flat" or "going back to square one." In her hearing request, the Appellant asserted that the replacement of the breast implants would remedy her issues of anxiety and poor self-esteem.

The hearing record was extended through [REDACTED] 2023 to permit CHNCT the opportunity to review a [REDACTED], 2023 correspondence authored by the Appellant's APRN; the APRN opined in part that the surgery would "greatly help [the Appellant] in addressing her current mental health issues...." The hearing record is devoid of evidence that would establish that breast implant replacement surgery is consistent with generally accepted standards of medical practice for the treatment of the Appellant's diagnoses of [REDACTED]

[REDACTED] There also is no evidence that the surgical procedure and related follow-up would be less costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results to treat the Appellant's mental illness.

It is evident from the hearing record that surgery to replace the Appellant's current breast implants would be for cosmetic purposes as the end goal would be to provide the Appellant with a contour

or appearance that is more esthetically pleasing to her; any improvement in the Appellant's symptoms of anxiety and depression over her body image would be, at best, a happy by-product of the surgery rather than medically necessary treatment for her mental illness.

It should be noted that two surgeons stated in their treatment notes that they did not believe that they could meet all of the Appellant's goals with the proposed surgery. One surgeon indicated that the Appellant had met with several other plastic surgeons throughout the New England region to discuss her issues "and has not found one who she feels confident will achieve all of her goals." (CHNCT Exhibit 8)

The Appellant's current surgeon cautioned the Appellant that she may not be pleased by the surgery's results and may require additional surgeries.

On reconsideration, the hearing officer reviewed the submissions of Attorney [REDACTED] of the [REDACTED]. Attorney [REDACTED] appears to infer that as tuberous breasts are considered by surgeons to be a congenital abnormality⁵, then breast implant surgery must be a medically necessary procedure to treat that condition. Such an argument is unpersuasive. According to Attorney [REDACTED] Attachment 5, "the presence of at least one of the typical features characterizing [tuberous breasts] is extremely common among the general population (27.6%)." It is reasonable to conclude that tuberous breasts is a variant that is within the normal range for breast shape and appearance, if at least one in every four women manifest at least one of the typical features characterizing this congenital condition.

In short, the HUSKY Health Program only pays for medically necessary medical procedures, as the term "medically necessary" is strictly defined at Conn. Gen. Stat. § 17b-259b (a). Surgery to replace the Appellant's breast implants would be for cosmetic purposes. Replacement implant surgery is not medically necessary. CHNCT's denials of authorization for such surgery is upheld.

DECISION

The Appellant's appeal is DENIED.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

cc: [REDACTED], [REDACTED]
appeals@chnct.org
Fatmata Williams, DSS-Central Office

⁵ "Babies are not born with breasts." (CHNCT Representative Testimony)

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.