

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

██████████ 2023
Signature Confirmation

████████████████████
Request # 224055

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2023, the Community Health Network of Connecticut (“CHNCT”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA) denying her provider’s request for authorization for a panniculectomy and brachioplasty.

On ██████████, 2023, the Appellant requested an administrative hearing to contest CHNCT’s decision to deny the prior authorization request.

On ██████████, 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling a telephonic administrative hearing for ██████████ 2023.

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

██████████ Appellant
Robin Goss, RN, CHNCT Representative
Michelle Chieffall, CHNCT Observer
Carla Hardy, Hearing Officer

The hearing record remained open for the Appellant to submit duplicate photos of her exhibits that were underexposed. The Appellant submitted the photos. The hearing record closed on ██████████ 2023.

STATEMENT OF THE ISSUE

The issue to be decided is whether CHNCT's [REDACTED] 2023, denial of prior authorization through the Medicaid program for a panniculectomy and brachioplasty 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. 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 [REDACTED] 2022, the Appellant had a laparoscopic sleeve gastrectomy. (Exhibit 1)
4. On [REDACTED] 2023, the Appellant had a consultation with [REDACTED] M.D. ("the surgeon") at the request of [REDACTED] ("the primary care provider"). The Appellant complained of ptosis of the arms, thighs, abdomen, and lipodystrophy of the abdomen, back, arms, and thighs. She also has friction between her abdominal pannus, and mons as well as her upper arms against her chest wall. The friction causes rashes that require lotions and creams. (Exhibit 1)
5. On [REDACTED] 2023, the Appellant weighed 165 pounds. (Exhibit 1, pg19)
6. [REDACTED], M.D. ("the surgeon") of [REDACTED] is the Appellant's surgeon. (Exhibit 1: Prior Authorization Request, Appellant's Testimony)
7. On [REDACTED], 2023, the Appellant met with [REDACTED], M.D. She complained of persistent and recurrent rashes due to excessive skin. (Exhibit 1)
8. The Appellant was treated with clotrimazole and betamethasone topical cream for two-week periods in [REDACTED] 2022 and [REDACTED] 2023. (Exhibit 1, Appellant's Testimony)
9. Clotrimazole is an antifungal cream. Betamethasone is a cortical steroid that decreases inflammation. (CHNCT Representative's Testimony)
10. The Appellant used the creams for two weeks. The creams worked but the rash came back. (Appellant's Testimony)

11. The Appellant's medical provider referred the Appellant to a dermatologist. The Appellant did not seek treatment from the dermatologist because the dermatologist did not have an immediate appointment available. (Appellant's Testimony)
12. On [REDACTED] 2023, [REDACTED], M.D. the director of plastic surgery of [REDACTED] wrote a letter outlining the medical necessity of bilateral brachioplasty for the Appellant. Dr. [REDACTED] reported that the Appellant's weight had plateaued and that she started taking Contr[a]ve. She has excess abdominal and upper arm skin after losing weight. There is friction between her abdominal pannus and mons and her upper arms against her chest wall causing rashes that require lotions and creams. (Exhibit 1)
13. On [REDACTED] 2023, the surgeon submitted a letter outlining the medical necessity for a panniculectomy. The surgeon reported that the Appellant lost almost 50 pounds since undergoing a sleeve gastrectomy. Her weight loss has plateaued and she's started Contr[a]ve. The Appellant has excess abdominal and upper arm skin after losing weight. She has friction between her abdominal pannus and mons and her upper arms against her chest wall causing rashes that require lotions and creams. (Exhibit 1, pg. 15)
14. Contrave is a medication that curbs the appetite. The Appellant was on Contrave from [REDACTED] 2023 to [REDACTED] 2023. (Appellant's Testimony)
15. On [REDACTED] 2023, the surgeon submitted a letter of necessity for a panniculectomy. The surgeon reported the Appellant lost almost 50 pounds since her sleeve gastrectomy and that the Appellant has a grade II pannus and stable weight for six months. (Exhibit 1)
16. On [REDACTED] 2023, CHNCT received a prior authorization request from the surgeon for a breast reduction, a panniculectomy, and a brachioplasty for the Appellant. She had a diagnosis of localized adiposity (accumulation of fatty tissue), erythema intertrigo (inflammatory skin condition), low back pain, lipodystrophy (abnormal fat distribution) not elsewhere classified, ptosis (drooping) of the breast, excessive and redundant skin subcutaneous tissue, bariatric surgery status, and hypertrophy of breast (overgrowth of breast tissue). (Hearing Record)
17. The Appellant maintained the following weights:

Date	Weight	Provider
[REDACTED]/22	165 lbs	[REDACTED] PA-C
[REDACTED]/23	165 lbs	Dr. [REDACTED]
[REDACTED]/23	165 lbs	Dr. [REDACTED]
[REDACTED]/23	162 lbs	Dr. [REDACTED]
[REDACTED]/23	153 lbs	PCP visit

(Exhibit 11: Medical Review Request)

18. The Appellant has not maintained the same weight for the last six months. (Fact # 17)
19. A panniculectomy is a surgical procedure to remove excess lower abdominal skin. (Exhibit 3: NOA, [REDACTED]/23, Hearing Record)
20. Brachioplasty is a surgical procedure for the removal of excess skin from the upper arms. (Exhibit 3, Hearing Record)
21. Brachioplasty is a cosmetic procedure. It requires a medical reason for approval. (CHNCT Representative's Testimony)
22. On [REDACTED], 2023, CHNCT reviewed the prior authorization request from the surgeon for the panniculectomy and brachioplasty. CHNCT approved the reduction mammoplasty. The documentation attested to its medical necessity. The request for the brachioplasty was denied as the Department's policy lists this procedure as cosmetic, and does not address resolving any functional issues. The request for the panniculectomy was denied because the Appellant's weight does not appear to be stable. The Appellant is actively attempting to lose more weight. In addition, there is no documentation of 12 weeks of treatment of the rashes from the provider. The Appellant was treated two times, once in [REDACTED] 2022 and once in [REDACTED] 2023 with Clotrimazole and Betamethasone, both utilized for two weeks. (Exhibit 2: Medical Review, [REDACTED]/23)
23. On [REDACTED] 2023, CHNCT issued a Notice of Action for Denied Services or Goods to the Appellant informing her that the surgeon's prior authorization request for a breast reduction, panniculectomy, and brachioplasty was partially denied. CHNCT approved the breast reduction. CHNCT denied the request for the panniculectomy because "A panniculectomy could be considered medically needed if your pannus (lower abdominal skin) is at least Grade 2 and your weight has been the same for at least six (6) months. The medical record must also show that the rashes under your lower abdominal skin have been treated with antibiotics, corticosteroids, or antifungal medications for at least twelve (12) weeks. Your record shows that you had weight loss surgery with a significant weight loss. Your medical record also shows that your pannus is Grade 2. However, your record does not show that your weight has stayed the same for at least six (6) months. Your record also does not show that the rashes under your lower abdominal skin have been treated with antibiotics, corticosteroids, or antifungal medications for at least twelve (12) weeks." Therefore, the request for a panniculectomy is denied as not medically needed. A brachioplasty is primarily intended to improve the appearance of your arms. Your medical record does not show the medical

need for this procedure. Therefore, it is considered cosmetic, and the request for a brachioplasty is denied as not medically needed.” (Exhibit 3: Notice of Action, ██████████, 2023)

24. On ██████████, 2023, the Medical Reviewer completed a Peer-to-Peer Review with the Appellant’s surgeon to discuss the rationale for the denial of the panniculectomy and brachioplasty. The surgeon agreed with the denial. (Exhibit 4: Peer-to-Peer Review; Hearing Record)
25. On ██████████ 2023, the CHNCT Department received the Appellant’s request for a hearing. (Exhibit 5: Hearing Request, Hearing Record)
26. On ██████████ 2023, CHNCT notified the surgeon that the Appellant requested an appeal and requested additional documentation from the surgeon. (Exhibit 7: Request for Medical Records from the Surgeon, Hearing Record)
27. On ██████████ 2023, CHNCT sent a duplicate request to the surgeon requesting additional information due to the Appellant’s appeal request. (Exhibit 8: Request for Medical Records from the Surgeon, Hearing Record)
28. On ██████████ 2023, CHNCT received medical records from the surgeon. (Exhibit 10: Medical Records, Hearing Record)
29. On ██████████ 2023, CHNCT sent the Appellant’s appeal for Medical Review. (Exhibit 11: Medical Review Request, Hearing Record)
30. On ██████████ 2023, CHNCT completed the Medical Review. They upheld the denial of a panniculectomy and brachioplasty. CHNCT cited, “The brachioplasty denial is upheld. The primary intent of the requested surgery appears to be to improve or enhance appearance. There is no compelling information otherwise presented to support that surgery in the instance would be medically indicated rather than cosmetic in nature... The panniculectomy denial is upheld. The submitted photos do not support a correlation between the clinical complaints documented as there is no evidence of chronic intertrigo. There is [sic] no records to support 12 weeks of medical management of intertrigo. Furthermore, submitted weights for the member indicate a 13 lbs weight loss from ████████/23 – ████████/23 with noted starting of Contrave. The American Society of Plastic Surgery recommends candidates for panniculectomy should also be weight stable for ideally 12-18 months post-bariatric surgery. The member does not meet criteria for stable weight of at least 6 months by IQ or the 12 – 18 months of stability by ASPS...” (Exhibit 12: Medical Review, Hearing Record)
31. On ██████████, 2023, CHNCT sent the Appellant an appeal determination notice. The notice stated, “Your appeal to the Husky Health Program of the

denial of authorization for the panniculectomy and brachioplasty was processed. The denial was upheld... The principal reason to uphold the denial is that the information does not support the medical necessity for the panniculectomy and brachioplasty because the information submitted by your provider does not show that medical need for the procedures. A panniculectomy may be considered medically needed if your weight has been the same for at least six (6) months and the medical record shows that the rashes under your lower abdominal skin have been treated with antibiotics, corticosteroids, or antifungal medications for at least twelve (12) weeks. Your record shows that you had weight loss surgery with a significant weight loss. However, your medical record does not show that your weight has stayed the same for at least six (6) months. Your medical record shows a 13-pound weight loss from [REDACTED] 2023 to [REDACTED] 2023, and that you started Contrave to lose weight. Your record also does not show that the rashes under your lower abdominal skin have been treated with antibiotics, corticosteroids, or antifungal medications for at least twelve (12) weeks. Therefore, the request for a panniculectomy is not considered medically needed. A brachioplasty is primarily intended to improve the appearance of your arms. Your medical records do not show the medical need for this procedure. Therefore, it is considered cosmetic in nature, and is not considered medically necessary for you. 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 13: Determination Letter, [REDACTED]/23)

32. The Appellant complains of an ongoing rash under her pannus and arms. She stopped using topical treatments on her pannus after two weeks of treatments and after four weeks of treatment on her arms. (Appellant's Testimony)
33. 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], 2023. Therefore, this decision is due no later than [REDACTED], 2023. However, the hearing record remained open until [REDACTED], 2023, for the Appellant to submit additional information. Because of this seven-day delay, the decision is due no later than [REDACTED], 2024.

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(a)]
3. State statute 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)]

Section 17b-262-527 of the Regulations of Connecticut State Agencies ("Regs., Conn. State Agencies") provides 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, "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, “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. Section 17b-262-338 of Regs., Conn. State Agencies provides, “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 provided in section 17b-259b of the Connecticut General Statutes.”
[Regs., Conn. State Agencies § 17b-262-338(32)]

“*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 regulations provide that 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 that 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:

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)]

11. 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 and the brachioplasty as not medically necessary for the Appellant. The hearing record failed to establish a chronic and persistent rash that has not responded to non-surgical treatments and failed to establish a functional impairment that interferes with the patient's everyday activities.

On [REDACTED], 2023, CHNCT was correct to deny the prior authorization request for a panniculectomy and brachioplasty because the procedures failed to meet the medical necessity or medically necessary criteria in accordance with state statutes and regulations.

DECISION

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

___*Carla Hardy*___

Carla Hardy
Hearing Officer

PC: 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.