

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

██████████ 2016
Signature Confirmation

CL ID # ██████████
Request ID #723483

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department"), issued a Notice of Denial to ██████████ (the "Appellant") denying the Appellant's application for emergency medical assistance for non-citizens under the Medicaid program.

On ██████████ 2015, the Appellant's Authorized Representative at Cardon Outreach requested an administrative hearing to contest the Department's action.

On ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2015.

On ██████████ 2015, 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 were present at the hearing:

██████████, Appellant
██████████ Daughter in Law
██████████ Cardon Outreach, Appellant's Authorized Representative ("AREP")

D'Asia Newman, Department's Representative
Shelley Starr, Hearing Officer

The hearing record remained open for the submission of additional evidence by the Department. On [REDACTED] 2016, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's denial of the Appellant's application for emergency medical assistance for non-citizens under the Medicaid program was correct.

FINDING OF FACTS

1. The Appellant is 66 years old (DOB: [REDACTED]/49). (Appellant's Testimony and Exhibit C: W-302 Disability/Unemployability Routing Slip)
2. The Appellant was born in Nigeria and is not a citizen of the United States. (Appellant's Testimony and Hearing Record)
3. The Appellant re- entered the United States on [REDACTED] 2014. (Appellant's Testimony)
4. The Appellant was diagnosed with breast cancer in [REDACTED] 2014. (Appellant's Testimony)
5. In [REDACTED] 2015, the Appellant was advised she needed to have mastectomy surgery to remove her left breast. (Appellant's Testimony)
6. The mastectomy surgery was planned and scheduled approximately four months in advance. (Appellant's Testimony)
7. On [REDACTED] 2015, the Appellant was admitted to [REDACTED] Hospital and the scheduled mastectomy of the left breast was performed. (Exhibit D: [REDACTED] Hospital Discharge Plan)
8. On [REDACTED] 2015, the Appellant was discharged home from [REDACTED] Hospital. (Appellant's Testimony and Exhibit D: [REDACTED] Hospital Discharge Plan)
9. On [REDACTED] 2015, the Department received the Appellant's online application for emergency medical assistance. (Hearing Summary and Exhibit H: Online application dated [REDACTED] 2015)
10. On [REDACTED] 2015, the Department sent the Appellant's medical packet to Colonial Cooperative Care Inc. ("CCCI") Medical Review Team ("MRT"), the

Department's contractor for determining eligibility for emergency services coverage for non-citizens, for a determination of eligibility for emergency medical. (Exhibit C: W-310R received [REDACTED] 2015)

11. On [REDACTED] 2015, CCCI determined that the Appellant does not meet the criteria for emergency medical as defined by regulations and are not covered. (Exhibit D: W-310R CCCI emergency medical non-citizen determination dated [REDACTED] 2015)
12. On [REDACTED] 2015, the Department sent the Appellant a notice of action denying her application for emergency medical services and coverage for the [REDACTED] 2015 through [REDACTED] 2015 hospitalization. (Department's Testimony and Exhibit A: NOA dated [REDACTED] 2015)
13. On [REDACTED] 2015, OLCRAH held an administrative hearing. The Department submitted to CCCI a request for a reconsideration review of the Appellant's emergency services medical packet. (Hearing Record, Exhibit L: email dated [REDACTED] 2015)
14. On [REDACTED] 2015, the Department re-sent to CCCI the request for a reconsideration review of the Appellant's emergency services medical packet. (Hearing Record; Exhibit L: email dated [REDACTED] 2015)
15. On [REDACTED] 2016, the Department received the Appellant's reconsideration review decision from CCCI. CCCI's determination remained unchanged and CCCI determined that the Appellant does not meet the criteria for emergency medical as defined by regulations and are not covered. (Exhibit K: reconsideration review document; Exhibit L: Email dated [REDACTED] 2016)

CONCLUSION OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Medicaid program.
2. Title 42 of the Code of Federal Regulations ("CFR") § 440.255 (b)(1) provides for legalized aliens eligible only for emergency services and services for pregnant women and states that aliens granted lawful temporary resident status, or lawful permanent resident status under sections 245A, 210 or 210A of the Immigration and Nationality Act, who are not in one of the exempt groups described in §§ 435.406(a)(3) and 436.406(a)(3) and who meet all other requirements for Medicaid will be eligible for the following services: (1) Emergency services required after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (i) Placing the patient's health in serious jeopardy;
- (ii) Serious impairment to bodily functions; or
- (iii) Serious dysfunction of any bodily organ or part

Uniform Policy Manual ("UPM") § 3000.01 defines emergency medical condition as a medical condition, which, after sudden onset, manifests itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in 1. Placing the patient's health in serious jeopardy, 2. serious impairment to bodily functions; or 3. Serious dysfunction of any bodily organ or part.

The Appellant is a non-citizen.

The Appellant did not present to the emergency room or seek immediate medical attention due to acute stress.

3. Title 42 of the Code of Federal Regulations ("CFR") § 440.255(c)(1) provides that effective January 1, 1987, aliens who are not lawfully admitted for permanent residence in the United States or permanently residing in the United States under color of law must receive the services necessary to treat the condition defined in paragraph (1) of this section (1) if the alien has, after sudden onset, a medical condition (including emergency labor and delivery) manifesting itself by acute symptom of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:
 - (i) Placing the patient's health in serious jeopardy;
 - (ii) Serious impairments to bodily functions; or
 - (iii) Serious dysfunction of any bodily organ or part; and
 (2) The alien otherwise meets the requirements in § 435.406(c) and 436.406(c) of this subpart.

The Appellant's medical condition was not the result of a sudden onset.

The Appellant's medical condition of breast cancer was diagnosed in [REDACTED] 2014, and the Appellant had a scheduled mastectomy procedure.

4. Uniform Policy Manual ("UPM") § 3000.01 defines non-citizen and provides that a non-citizen is a person born outside of the United States who is a subject or citizen of a foreign country and is not a citizen of the United States.

Uniform Policy Manual ("UPM") § 3005.08 (B) provides the eligibility requirements for non-citizen arriving in U.S. on or after 8/22/96 and provides that an eligible non-citizen is one who:

1. is admitted to the U.S. as a refugee under section 207 of the Immigration and Nationality Act; or

2. is granted asylum under section 208 of such act; or
3. whose deportation is being withheld under section 243(h) of such act (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such act (as amended by section 305(a) of division C of Public Law 104-208); or
4. is lawfully residing in the state and is:
 - a. a veteran (as defined in section 101, 1101, or 1301, or as described in section 107 of title 38, United States Code) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38 U.S.C.; or
 - b. on active duty (other than active duty for training) in the Armed Forces of the United States; or
 - c. the spouse or unmarried dependent child of an individual described in subparagraph a or b or the unremarried surviving spouse of a deceased individual described in subparagraph a or b if the marriage fulfills the requirements of section 1304 of title 38, U.S.C.; or
5. is granted status as a Cuban and Haitian entrant under section 501 (e) of the Refugee Education Assistance Act of 1980; or
6. is admitted to the U.S. as an Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101 (e) of Public Law 100-202 and amended by the 9th proviso under MIGRATION AND REFUGEE ASSISTANCE in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100-461, as amended); or
7. is an American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act apply; or
8. is a member of an Indian tribe under section 4 (e) of the Indian Self-Determination and Education Assistance Act; or
9. is receiving SSI; or
10. has lawfully resided in the U.S. for at least five years and:
 - a. is lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act; or
 - b. is paroled into the U.S. under section 212 (d) of such act for a period of at least one year; or
 - c. is granted conditional entry pursuant to section 203 (a) (7) of such act as in effect prior to April 1, 1980; or

- d. has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent, or by a member of the spouse or parent's family living with the non-citizen and the spouse or parent allowed such battery or cruelty to occur, but only if:
 - (1) the Department determines that the battery or cruelty has contributed to the need for medical assistance; and
 - (2) the non-citizen has been approved or has an application pending with the INS under which he or she appears to qualify for:
 - (a) status as a spouse or child of a U.S. citizen pursuant to clause (ii), (iii) or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act; or
 - (b) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of such act; or
 - (c) suspension of deportation and adjustment of status pursuant to section 244(a)(3) of such act; or
 - (d) status as a spouse or child of a U.S. citizen pursuant to clause (i) of section 204(a)(1)(A) of such act, or classification pursuant to clause (i) of section 204(a)(1)(B) of such act; and
 - (3) the individual responsible for such battery or cruelty is not presently residing with the person subjected to such battery or cruelty; or
 - e. is a non-citizen whose child has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the non-citizen (without the active participation of the non-citizen in the battery or cruelty), or by a member of the spouse or parent's family living with the non-citizen and the spouse or parent allowed such battery or cruelty to occur, but only if the criteria in subparagraph d (1), (2) and (3) above are met; or
 - f. is a non-citizen child living with a parent who has been battered or subjected to extreme cruelty in the U.S. by that parent's spouse or by a member of the spouse's family living with the parent and the spouse allowed such battery or cruelty to occur, but only if the criteria in subparagraph d (1), (2) and (3) above are met; or
11. is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian Tribe at the time that tribe rendered assistance to United States personnel during the Viet Nam era. The individual's spouse, surviving spouse and unmarried dependent children are also eligible.

UPM § 3005.08(C) states that a non-citizen who does not fall into one of the categories listed in A or B is eligible for MA only to cover an emergency medical condition and only if the non-citizen is otherwise eligible for Medicaid.

The Appellant has lawfully resided in the United States for less than five years, which makes her an ineligible non-citizen.

The Department correctly determined that the Appellant was residing in the United States for less than five years as a non-citizen.

The Department correctly denied the Appellant's application for medical assistance to cover an emergency medical condition for a non-citizen under the Medicaid program as the Appellant did not meet the criteria under the Federal and State requirements.

DISCUSSION

Based on the evidence and testimony presented, I find the Department's action to deny the admission and subsequent hospital stay as an emergency medical was correct. Regulations and Departmental policy are clear that coverage of emergency medical assistance for non-citizens is for the sudden onset of a medical condition, which exhibits acute symptoms of sufficient severity.

Documentation indicates the Appellant elected to have a mastectomy performed to remove a cancerous tumor. The medical procedure was a scheduled surgery and according to the Appellant's testimony, was planned approximately four (4) months in advance. While it is understandable that the Appellant would want to treat her diagnosis of breast cancer by having a mastectomy, it does not meet the criteria for emergency services. In addition, the Appellant does not meet the criteria for eligibility as a non-citizen according to policy and regulations.

DECISION

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



Shelley Starr
Hearing Officer

cc: Brian Sexton, Operation Manager, DSS R.O. # 20 New Haven
Lisa Wells, Operation Manager, DSS R.O. #20 New Haven

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, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45 day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or the Commissioner's designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.