

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

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

Client ID # ██████████
Request # 749268

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the “Department”) denied ██████████ (the “Appellant”) request for Medicaid under the emergency medical program effective ██████████ 2015.

On ██████████ 2016, Cardon Outreach (the “AREP”) on behalf of the Appellant requested an administrative hearing to contest the Department’s decision to deny such benefits.

On ██████████ ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2016.

On ██████████ 2016, the AREP on behalf of the Appellant requested a continuance of the hearing, which OLCRAH granted.

On ██████████ 2016, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2016.

On ██████████ 2016, in accordance with sections 17b-60, 17-61 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

Natasha Rolon, Cardon Outreach and Authorized Representative for the Appellant

Sara Hart, Department Representative

Jennifer Zapata, Department Interpreter Clerk

Lisa Nyren, Fair Hearing Officer

The hearing record remained open for the submission of additional evidence. On ██████████ 2016, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department properly denied the Appellant's application for Medicaid under the emergency medical program.

FINDINGS OF FACT

1. The Appellant was born in Mexico on ██████████ 1961. (Exhibit 1: Online Application and Appellant's Testimony)
2. In 2000, the Appellant entered the United States. The Appellant is an undocumented non-citizen residing in ██████████, Connecticut. (Appellant's Testimony and Exhibit 1: Online Application)
3. The Appellant has diabetes and takes medication. (Appellant's Testimony, Exhibit 6: W310R Emergency Medical Non-Citizen Determination, Exhibit 7: Medical Letter ██████████/15)
4. The Appellant has end-stage renal disease ("ESRD"). The Appellant has permanent damage to his kidneys and the loss of normal kidney function. (Appellant's Testimony, Exhibit 6: W310R Emergency Medical Non-Citizen Determination, Exhibit 7: Medical Letter ██████████/15, Exhibit 8: Hospital Letter ██████████/15)
5. In ██████████ 2014 or ██████████ 2014, ██████████ Hospital (the "hospital") admitted the Appellant due to kidney failure. The Appellant remained hospitalized for one week until the hospital discharged him home with medication. (Appellant's Testimony)
6. On ██████████ 2015, the hospital admitted the Appellant with kidney failure. The Appellant experienced lower abdominal pain because his

- body filled with fluids and swelled. He had increased weakness, blurry vision and a loss of appetite. (Appellant's Testimony and Exhibit 6: W310R Emergency Medical Non-Citizen Determination. Exhibit 7: Medical Letter [REDACTED]/15, and Exhibit 8: Hospital Letter [REDACTED]/15)
7. While hospitalized, the Appellant had two surgeries to place a catheter in his leg and abdomen necessary for dialysis. (Appellant's Testimony)
 8. Beginning [REDACTED] 2015, the Appellant received dialysis 4 times per day, seven days per week. Each session lasted approximately 30 minutes. (Appellant's Testimony)
 9. On [REDACTED] [REDACTED] 2015, the Appellant applied for Medicaid under the emergency medical program. (Exhibit 2: Case Narrative and Exhibit 5: Notice of Action)
 10. On [REDACTED] 2015, the hospital discharged the Appellant home. (Hearing Record)
 11. On [REDACTED] [REDACTED] 2016, Colonial Cooperative Care, Inc. ("CCCI") determined the Appellant ineligible for Medicaid under the emergency medical program for the dates of service [REDACTED] 2015 through [REDACTED] [REDACTED] 2015. CCCI commented, "the medical information submitted does not meet the criteria for emergency services as defined in 42 CFR 440.255.b.1 and 42 CFR 440.255c(1) and is therefore not covered." CCCI commented, "53 Y O M with ESRD, admitted [REDACTED]/15 for increased weakness and malaise, burry vision, loss of appetite, lower ABD pain, constipation decreased U.O, ABD distention and Pain x several weeks, increased ABD pain for a week, s/s > 40 hours, non-emergency D.O.S, does not meet criteria for emergency services. (Exhibit 2: Case Narrative and Exhibit 6: W310R Emergency Medical Non-Citizen Determination)
 12. CCCI is the Department's contractor for reviewing requests for emergency medical benefits under Medicaid. (Department Representative's Testimony)
 13. On [REDACTED] 2016, the Department denied the Appellant's application for Medicaid under the emergency medical program because the Appellant did not meet the emergency medical criteria. (Exhibit 2: Case Narrative)
 14. Upon discharge home, the Appellant received outpatient dialysis where he learned to use the medical equipment and transitioned to home treatment. (Appellant's Testimony)

15. The Appellant self-administers dialysis at home one time per day lasting nine hours seven days per week. The Appellant needs dialysis to survive. (Appellant's Testimony)
16. The closing of the record was extended to allow the Department to submit additional evidence from CCCI. The Department or CCCI submitted no additional information and the record closed.

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes ("CGS") 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. Title 42 of the Code of Federal Regulations ("CFR") § 435.139 provides that the agency must provide services necessary for the treatment of an emergency medical condition as defined in § 440.255(d) of this chapter, to those aliens described in § 435.406(c) of this subpart.
3. Uniform Policy Manual ("UPM") § 3005.05(C) provides that a non-citizen who does not fall into one of the categories listed in B is eligible for MA only, if he or she has an emergency medical condition.
4. Title 42 of the CFR § 435.350 provides that if an agency provides Medicaid to the medically needy, it must provide the services necessary for the treatment of an emergency medical condition, as defined in § 440.255(c) of this chapter, to those aliens described in § 435.406(c) of this subpart.
5. Title 42 of the Code of Federal Regulations ("CFR") § 440.255(c) 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 the color of law must receive the services necessary to treat the condition defined in paragraph (1) of this section if –
 1. The alien has, after sudden onset, a medical condition (including labor and delivery) 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, and
 2. The alien otherwise meets the requirements in §§ 435.406(c) and 436.406(c) of this subpart.

6. UPM § 3000.01 defines an 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 (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. An emergency medical condition includes emergency labor and delivery. An emergency medical condition does not include care or services related to an organ transplant procedure.
7. The Department incorrectly determined the Appellant's medical condition did not meet the criteria of an emergency medical condition. On [REDACTED] 2015, the Appellant presented himself at the hospital with ESRD. The Appellant's medical condition meets the criteria of severity that without immediate medical attention, the Appellant's health would have been placed in serious jeopardy.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department must reopen the Appellant's application for emergency medical assistance effective [REDACTED] 2015 and continue to process eligibility. The Appellant's medical condition upon admission to the hospital on [REDACTED] 2015 through [REDACTED] 2015 meets the criteria of an emergency medical condition.
2. Compliance is due [REDACTED] 2016.

Lisa A. Nyren

Lisa A. Nyren
Fair Hearing Officer

CC: Tonya Cook-Beckford, Social Services Office Manager
Sara Hart, Fair Hearing Liaison
Cardon Outreach, 80 Seymour St. Hartford, CT 06106

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.