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

[redacted] **2018**
**Signature confirmation**

**Client #** [redacted]
**Request # 110699**

## NOTICE OF DECISION

## PARTY

[redacted]

## PROCEDURAL BACKGROUND

On [redacted] 2017, the Department of Social Services (the "Department") issued a Notice of Action ("NOA") to [redacted] ("the Appellant") denying his prescriber's prior authorization request for Oxymorphone HCL ER 30 Mg TAB.

On [redacted], 2017, the Appellant requested an administrative hearing to contest the Department's decision to deny the prior authorization request.

On [redacted] 2018 the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2018.

On [redacted] 2018, 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:

[redacted], Appellant
[redacted], Pharmacy Consultant,
James Hinckley, Hearing Officer

The hearing record remained open for the submission of additional evidence. On [redacted], 2018, the record closed.

## STATEMENT OF THE ISSUE

The issue is whether the Department's decision to deny the Appellant's provider's [redacted] 2017 prior authorization request was correct.

## FINDINGS OF FACT

1. The Appellant is a participant in the Medicaid program, as administered by the Department. (Hearing Record)

2. DXC Technology is the Department's pharmacy consultant under administrative contract to approve prior authorization requests for drugs covered under the Department's medical assistance program. (Hearing Record)

3. Certain drugs require prior authorization ("PA") approval for coverage under Medicaid; PA requests are evaluated on a case-by-case basis, and consider the unique circumstances of the patient at the time of the request, and the particular drug and dosage being requested to treat his or her condition. [redacted] testimony, Hearing Record)

4. Because of their potential for abuse, all prescriptions for long acting sustained release opioids ("LAOs") require PA before payment under Medicaid can be authorized. ([redacted] testimony)

5. The Appellant was previously prescribed *Opana ER*, a brand-name LAO, for his condition, and payment for the drug under Medicaid had been approved for him through the PA process in the past. (Appellant's testimony)

6. The Department's preferred drug list can include generic or brand-name drugs. ([redacted] testimony)

7. Prior to the PA denial that is the issue of this hearing, the Appellant received approval of a PA for LAOs on [redacted], 2017, and the approval covered the six-month period from [redacted] 2017 to [redacted], 2017. (Ex. 6: Screen Print of Prior Authorization Information for review date [redacted] 2017)

8. Sometime during the second half of 2017, due to concerns raised by the FDA regarding risks related to *Opana ER*, its maker voluntarily removed the drug from the market. (Hearing Record)

9. Except in the cases of certain cancer patients being treated with Schedule II opioids by an Oncologist or pain specialist for their cancer pain, PA requests for LAOs require a Letter of Medical Necessity for approval. ([redacted] testimony)

10. On [redacted] 2017, the Appellant's prescriber sent DXC Technology a PA request for Oxymorphone HCL ER 30 Mg TAB, a drug that was the generic equivalent of *Opana ER*, which was no longer available because it had been taken off the market; the prescriber used the form specifically designed by the Department to be used in cases where a PA request is being made for a LAO, and the form stated that if certain clinical questions on the form were answered "NO", "…a Letter of Medical Necessity must be reviewed by the Medical Director for consideration". (Ex. 1: Ct Medical Assistance Program Long Acting Sustained Release Opioid Prior Authorization Request form dated [redacted]/17)

11. On the [redacted] 2017 PA request form, the Appellant's prescriber answered that the Appellant did not have a diagnosis of cancer, and was not being treated by an Oncologist or pain specialist for cancer pain. (Ex. 1, [redacted] testimony, Hearing Record)

12. The PA request form sent to DXC Technology by the Appellant's prescriber on [redacted] 2017 did not include a Letter of Medical Necessity. ([redacted] testimony, Hearing Record)

13. On [redacted] 2017, the Department denied the Appellant's prescriber's PA request because clinical criteria had not been met, because the request required a Letter of Medical Necessity which was not received with the request. (Ex. 2: Screen Print of Prior Authorization Information for review date [redacted]/17)

14. On [redacted] 2017, the Department issued a NOA to the Appellant denying his prescriber's request for PA for Oxymorphone HCL ER 30 Mg TAB; the stated reason for the denial was "Your prior authorization could not be approved because we did not get enough information from your provider showing that the drug is medically necessary for you. Your provider must submit a request along with the reason for medical necessity to the DSS Medical Director for review." (Ex. 3: Pharmacy Prior Authorization Denial Notice)

15. On [redacted] 2017, the Appellant's prescriber filed a new request for PA for a LAO that was accompanied by a Letter of Medical Necessity, and the PA was approved for the six-month period from [redacted] 2017 to [redacted] 2018. (Screen Print of Prior Authorization Information for review date [redacted] 2017)

16. The Appellant argues that a prescription that he paid for out-of-pocket prior to the [redacted] 2017 approval of his PA should be covered under Medicaid. (Appellant's testimony)

## CONCLUSIONS OF LAW

1. Connecticut General Statutes §17b-2(6) 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. Connecticut General Statutes §17b-262 provides that the Department may make such regulations as are necessary to administer the medical assistance program.

3. Connecticut General Statutes §17b-259b provides (a) 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

4. Connecticut General Statutes §17b-491a(a) provides that the Commissioner of Social Services may require prior authorization of any prescription for a drug covered under a medical assistance program administered by the Department of Social Services, including an over-the-counter drug. The authorization for a brand name drug product shall be valid for one year from the date the prescription is first filled. The Commissioner of Social Services shall establish a procedure by which prior authorization under this subsection shall be obtained from an independent pharmacy consultant acting on behalf of the Department of Social Services, under an administrative only contract.

5. The Department, through its administrative agent, DXC Technology, properly denied the Appellant's prescriber's [redacted], 2017 PA request for Oxymorphone HCL ER 30 Mg TAB, in accordance with state statute and regulations, because the medical necessity of the treatment for the Appellant

was not established, because the request did not include the required Letter of Medical Necessity.

## DISCUSSION

The Appellant was of the understanding that the requirement for his prescriber to obtain a new prior authorization for coverage of a generic opioid drug to replace his usual *Opana ER* was a mere "technicality". The Appellant believed that he had a PA for *Opana ER* already in place, and that the existing PA should have covered the generic equivalent of his brand-name drug without the red tape of requiring a new authorization just because of the change. If the Appellant's understanding of the facts had been accurate, his argument would have been persuasive.

When the Pharmacy Consultant researched the Appellant's previous PA and submitted the information for the hearing record, the PA was found to have expired on [redacted] 2017. Furthermore, the previous PA did not specify a brand-name, as the Appellant had believed; the PA simply authorized a long acting opioid. The Pharmacy Consultant explained during the hearing that drugs included on the Departments preferred drug list are sometimes generics, but can also be brand-name when an agreement with the drug maker, such as for the state to receive rebates, makes the name-brand more cost effective. The Appellant's previous PA did not limit him to a specific brand name of drug, and *Opana ER* may have simply been the brand that was on the Department's preferred list at the time. So when *Opana ER* was removed from the market, the Appellant obviously had to find a replacement medication, but the need to switch brands of medications was not the reason he required a new PA. The reason was simply that his previous PA had expired and the medical necessity of his continued use of an opioid drug was due to be reviewed again.

The [redacted] 2017 PA request was properly denied, because it did not include the Letter of Medical Necessity that was required in the Appellant's case. When a new PA request was submitted on [redacted], 2017 that *did* include the Letter of Medical Necessity, the approval date was [redacted] 2017. This also was proper, because the Letter of Medical Necessity had to be considered to describe the Appellant's medical needs only going forward from the date it was written. So no relief is available to the Appellant for reimbursement for the prescription that he filled and paid for out-of-pocket on [redacted] 2017. Filling the prescription was his personal decision, but in doing so without prior authorization in place, he should not have had any expectation of reimbursement.

## DECISION

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

James Hinckley
Hearing Officer

cc: Herman Kranc**,** Manager, DSS Medical Care Administration, C.O.
Jason Gott, DSS Medical Care Administration, 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, 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.