

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

██████████ 2018  
Signature Confirmation

Client ID # ██████████  
Request # 111607

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

**DECISION**

On ██████████ 2017, the Department of Social Services (“the Department”) through its Administrative Services Organization, Community Health Network of Connecticut (“CHNCT”) partially denied ██████████ (the “Appellant”) request for complex nursing services. Twenty-four (24) hours of complex nursing care is approved. An additional sixty (60) hours of complex nursing care from Pediatric Services of America (the “Provider,”) for her child, ██████████ is denied because the additional 60 hours per week of complex nursing services are not documented as being medically necessary in order to keep the member in stable condition at home.

On ██████████ 2017, Appellant requested an administrative hearing to contest the denial of an authorization of the additional 60 hours of complex nursing services.

On ██████████ 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████  
██████████ 2018.

The scheduled administrative hearing on ██████████, 2018 was rescheduled by OLCRAH due to an impending winter storm. On ██████████ 2018, OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2018.

The scheduled administrative hearing was rescheduled several times at the Appellant's request. On [REDACTED] 2018, 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] Interpreter, Interpreters and Translations  
 Rosa Marizo, RN, Appeals and Grievances Analyst, CHNCT Representative  
 Sybil Hardy, Hearing Officer

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

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department's decision to deny the Appellant's request for an additional 60 hours per week of complex nursing services is correct.

### **FINDINGS OF FACT**

1. [REDACTED] is a participant in the Medicaid program as administered by the Department (Hearing Record, Appellant's Testimony)
2. CHNCT is the Department's contractor for the purpose of administering the Medicaid Program. (Hearing Record)
3. [REDACTED] is a [REDACTED] year old [REDACTED] female with a medical history that includes cerebral palsy, static encephalopathy, seizures, precocious puberty, osteoporosis, sleep apnea, and hypercholesterolemia. (Appellant's Testimony, Exhibit 1: Prior Authorization Request, [REDACTED], Exhibit 4: Medical Review, [REDACTED], Exhibit 13: Information from AREP, Exhibit 14: Reconsideration Review Request, [REDACTED])
4. The Appellant is the mother of [REDACTED]. (Appellant's Testimony, Hearing Record, Exhibit 6: Administrative Hearing Request, [REDACTED])
5. [REDACTED] lives with her parents and her 18 year old sister. (Appellant's Testimony, Exhibit 1: Prior Authorization Request, [REDACTED])
6. [REDACTED] attends [REDACTED] Middle School in [REDACTED] daily from eight o'clock in the morning until three o'clock in the afternoon. (Appellant's Testimony)

7. [REDACTED], MD (the "treating pediatrician") is [REDACTED] treating pediatrician. (Exhibit 10: Medical Review Request, [REDACTED])
8. [REDACTED] has the following limitations: intellectual, bowel and bladder incontinence, contracture, ambulation, and speech. (Exhibit 1)
9. [REDACTED] has spasticity, poor coordination, and is wheelchair dependent. (Exhibit 1)
10. [REDACTED] sleeps in a crib with the side rails up for safety. (Exhibit 1, Exhibit 2: Progress notes, Exhibit 3: Nurse Notes by Patient)
11. [REDACTED] is fed orally and is a high aspiration and choking risk. She is on a regular diet with nectar thick liquids and purees. (Exhibit 1, Exhibit 13, Exhibit 14)
12. [REDACTED] has special precautions: aspiration, reflux, and choking. She has a fully stocked go bag for emergency equipment readiness. (Exhibit 1)
13. [REDACTED] has a history of status epilepticus, which is a condition in which continuous seizures occur and do not stop even with medication. (CHNCT's Representative's Testimony)
14. [REDACTED] has a suction machine, which is used as needed for excessive drooling and to remove left over food in her mouth that does not clear. (Exhibit 13)
15. [REDACTED] is on a respiratory sick plan and requires intermittent positive pressure breathing ("IPPB") treatments, cough assists and continuous positive airway pressure ("CPAP") overnight. (Exhibit 2, Exhibit 14)
16. [REDACTED] takes the following medications daily: Albuterol, Atorvastatin, Baclofen, Hypertonic, Saline, Keppra, Pulmicort, Tylenol, Diastat Rectal Kit, Flonase, Miralax, Pataday, and Trileptal. (Exhibit 1)
17. [REDACTED] follows the Well Plan medication every day when she feels well and the sick plan is followed when [REDACTED] has a cough, wheeze, increases in secretions, and shortness of breath or tight chest. This plan is followed for five days after all symptoms have resolved. If there is no improvement on the Sick Plan after two or three days pulmonary should be called. (CHNCT Representative's Testimony, Exhibit 1)
18. The private duty nurse ("PDN") determines when and if [REDACTED]  
[REDACTED] [REDACTED]
19. [REDACTED] requires adult supervision 24 hours per day. (Hearing Record, Appellant's Testimony)

20. All care, medication, and treatments are provided by competent, trained, caregivers in the absence of a nurse. (Exhibit 1)
21. ██████ parents are involved and knowledgeable in all aspects of her care. The family is competent to care for her in the absence of a nurse. (Exhibit 1)
22. ██████ is receiving a maximum of 24 hours per week of nursing care. (Exhibit 7: Notice4 dated ██████/17 from CHNCT on Verbal Appeal)
23. On ██████ 2017, ██████ I was admitted to ██████ Medical Center in ██████ Connecticut ("CCMC") with Status Epilepticus (continuous seizures). During that admission she had acute respiratory failure with hypoxia, hypercapnia, and hypertension. (CHNCT Representative's Testimony, Appellant's Testimony, Exhibit 14: Reconsideration Review Request, ██████)
24. On ██████, 2017, ██████ was discharged home from CCMC. (CHNCT Representative's Testimony, Exhibit 1)
25. For the period of ██████ 2017 through ██████, 2017, CHNCT approved 84 hours per week of complex nursing care for ██████ as a result of her hospitalization in ██████ 2017. (CHNCT Representative's Testimony, Exhibit 11: Medical Review, ██████ Exhibit 14)
26. On ██████ 2017, CHNCT received a prior authorization request from the Provider for a continuation of 84 hours per week of complex nursing care for a diagnosis of cerebral palsy, intellectual limitations and osteoporosis. (Hearing Record, Exhibit 1: Authorization Request, ██████)
27. Complex nursing is a higher skilled function required for a person who is chronically ill and requires continuous intervention and assessment. (CHNCT Representative's Testimony)
28. The goals for ██████ rehabilitation plan are: routine care and actions to prevent complications, knowledge of the signs and symptoms of complications; knowledge and skills to provide appropriate immediate response to complications; knowledge of when and how to contact appropriate resources and physicians, knowledge of measures to maintain safety; and knowledge of emergency plan. (Exhibit 1)
29. ██████ plan of treatment includes notifying a physician if her seizure activity continues beyond three minutes after Diastat is administered and to notify CCMC and the provider if Diastat was administered for a seizure lasting more than five minutes. (Exhibit 1)
30. Effective ██████ 2017 ██████ receives 24 hours of per week of complex nursing care from 4:00 p.m. to 10:00 p.m. on Monday, Wednesday and Friday. (CHNCT's Representative's Testimony)

31. Medically necessary services must meet generally accepted standards of medical care, be the right type, level amount or length, be provided in the right health care setting, not be provided as a convenience for you or for your provider, cost no more than a different service that will produce the same result and be based on your specific medical condition. (Exhibit 5: NOA, [REDACTED])
32. On [REDACTED] 2017 CHNCT sent the Appellant a NOA partially denying the request for 84 hours per week of complex nursing care because this is not the right amount of services for your child. CHNCT approved 24 hours per week of complex nursing care, however 60 hours per week of complex nursing care is denied as it is not medically necessary and is not the right amount of care for [REDACTED]. [REDACTED] has not required a hospitalization for over three months. There are no specific complex nursing needs identified to justify 84 hours of weekly nursing care. (Hearing Record, Exhibit 5: Notice of Action, [REDACTED])
33. On [REDACTED] 2017, [REDACTED] treating pediatrician indicated that the reduction in her nursing support may provoke a decompensation on her care that could potentially send her back to an expensive care in the hospital. (Exhibit 13)
34. On [REDACTED] 2017, CHNCT sent the treating pediatrician a medical review request. (Exhibit 10: Medical Review Request, [REDACTED])
35. On [REDACTED] 2017, CCMC Speech and Language Pathology recommended outpatient feed therapy for [REDACTED] through the speech Department 30 minutes per week for three to four sessions. (Exhibit 13)
36. On [REDACTED] 2017, CHNCT notified the Appellant that a reconsideration review was completed of her appeal for an additional 60 hours of complex nursing care for [REDACTED] and the denial was upheld. (Exhibit 12: Letter Regarding Additional 60 Hours of Complex Nursing)
37. On [REDACTED], 2017, the Appellant requested an administrative hearing to contest CHNCT's decision to approve 24 hours of complex nursing care and deny 60 hours of complex nursing care. (Exhibit 6: Appeal Request, [REDACTED])
38. On [REDACTED] 2017, [REDACTED] had a visit to the emergency department due to seizure activity but was not admitted to the hospital. (Exhibit 16: Hospitalization Information)
39. On [REDACTED] 2018, [REDACTED] had a visit to the emergency department due to quadrant abdominal pain but was not admitted to the hospital. (Exhibit 16)

### **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.
2. The Commissioner may make such regulations as are necessary to administer the medical assistance program. Conn. Gen. Stat. § 17b-262.
3. For the purposes of the administration of the medical assistance programs by the Department, "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)
4. There is no evidence that ██████ requires the additional complex nursing hours to ensure that she does not end up back in the hospital.
5. Based on conclusions of law 4, CHNCT was as correct when it denied the prior authorization for an additional 60 hours per week of complex nursing care hours for ██████ because these hours are not documented as being medically necessary in order to keep ██████ in stable condition at home.
6. CHNCT was correct to deny prior authorization for 60 additional hours of extended complex nursing services as not medically necessary for ██████ because it is not clinically appropriate in terms of type, frequency, timing, site, extent and duration and considered effective for the ██████' illness, injury or disease.

### **DISCUSSION**

CHNCT denied the Appellant's request for 60 additional hours of extended complex nursing services because it is not clinically appropriate in terms and type. CHNCT

indicates that complex nursing is a higher skilled function required for a person who is chronically ill and requires continuous intervention and assessment. [REDACTED] medical condition is chronic and now requires management with medication and intervention but does not require continuous intervention and assessment. The evidence indicates that she does not require 84 hours of complex nursing care per week because it is clinically appropriate in terms of type, frequency, timing, site, extent and duration and considered effective for the [REDACTED]' illness, injury or disease.

If [REDACTED] requires additional hours of care, the Appellant should request a provider type other than complex nursing.

### **DECISION**

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

  
Sybil Hardy  
Hearing Officer

Pc: appeals@chnct.org  
Fatmata Williams

### **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.