

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

[REDACTED] 2019
SIGNATURE CONFIRMATION

HEARING REQUEST #141793-HUSKY D/MLIA
[REDACTED]

[REDACTED]
[REDACTED]

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2019, the Department of Social Services (the "Department"), issued a Notice of Action to [REDACTED] (the "Appellant"). The notice stated that the Appellant's application for coverage of emergency medical services for the period of [REDACTED] 2019 through [REDACTED] 2019 under the Husky D-Medicaid for Low Income Adult ("LIA") program had been denied, as the criteria for emergency services as defined in 42 CFR 440.255b.1 and 42 CFR c (1) must be met in order for the Appellant to be eligible for emergency medical coverage.

On [REDACTED] 2019, [REDACTED] the Appellant's Representative (the "Appellant's Representative") requested an administrative hearing on behalf of the Appellant to contest the Department's denial of the Appellant's request for emergency medical coverage under the Husky D program.

On [REDACTED] 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling a hearing for [REDACTED] 2019 @ 2:00 PM.

On [REDACTED] 2019, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-184 of the Connecticut General Statutes, inclusive, OLCRAH held an administrative hearing to address the Department's denial of the Appellant's request for emergency medical coverage.

following individuals were present at the hearing:

[REDACTED], Appellant's Conservator/Representative
 [REDACTED], Para-Legal
 [REDACTED], Social Worker for the Appellant
 John Moriarty, Representative for Colonial Cooperative Care (By Telephone)
 Tammi Browning, Representative for Colonial Cooperative Care (By Telephone)
 Althea Forbes-Francis, Representative for the Department
 Hernold C. Linton, Hearing Officer

The closing of the record was extended for the Medical Review Team to review the additional information submitted at the hearing. On [REDACTED] 2019, the Medical Review Team submitted its post hearing determination which was shared with the Appellant's Representative for review and comments. The hearing record was then closed on [REDACTED] 2019.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's denial of the Appellant's request for Medicaid coverage of emergency medical services as an undocumented non-citizen for the period of [REDACTED] 2019 through [REDACTED] 2019 under the Husky D-MLIA program is correct.

FINDINGS OF FACT

1. The Appellant is [REDACTED] years of age (DOB [REDACTED]). (Dept.'s Exhibit #2)
2. The Appellant has been residing in the United States for the last twenty years as an undocumented non-citizen from Poland. (Appellant's Exhibit E: Letter from LCSW)
3. The Appellant is not lawfully residing in the United States based on his non-citizen status. (Appellant's Exhibit E)
4. Since [REDACTED] 2017, the Appellant has been a resident of Bradley Memorial Hospital, following a stroke, where he has been receiving in-patient physical therapy, as well as occupational therapy. (Appellant's Exhibit E: [REDACTED] 19 Email; Appellant's Exhibit H: [REDACTED] 19 Gmail)
5. The Appellant has spent 500 days at Hartford Hospital, due to his lack of insurance and immigration status. (Dept.'s Exhibit #2)
6. On [REDACTED] 2019, the Appellant's physical examination revealed that he was oriented to people, place, and time, he appeared to be in no acute distress and was resting comfortably in his bed. (Appellant's Exhibit I: [REDACTED] 19 Medical Report from Dr. [REDACTED])
7. The Appellant denied having any generalized weakness or loss of appetite, chest pain, headaches, vomiting, diarrhea, and abdominal pain. He also denied significant

anxiety or depression, but is positive for right upper extremity stiffness and pain. (Appellant's Exhibit I)

8. On [REDACTED] 2019, the Department received the Appellant's application for Medicaid coverage of emergency medical services under the Husky D-Low Income Adult program for non-citizens. (Appellant's Exhibit A: Verification Checklist)
9. The Appellant is seeking emergency medical coverage under the Husky D program for the medical treatment that he has been receiving as a result of his hospitalization. (Dept.'s Exhibit #2)
10. The Department received a discharge summary from Hartford Hospital for the Appellant regarding his hospitalization and treatment for the period of [REDACTED] 2019 through [REDACTED] 2019. (Dept.'s Exhibit #2: Emergency Medical Determinations)
11. The Medical Review Team, also known as Colonial Cooperative Care, Inc. ("CCCI"), is a subcontractor for the Department in determining eligibility for Medicaid coverage of emergency medical services for non-citizens. (Dept.'s Exhibit #2)
12. CCCI reviewed the medical information provided by the Appellant regarding his hospitalization and treatment for the period of [REDACTED] 2018 through [REDACTED] 2019, and determined that the Appellant has been hospitalized since [REDACTED] 2017 following a stroke, suffers right upper and lower extremity weakness, has no active medical issues that qualify for emergency medical services, is in stable condition for continued discharge planning, and the date of services are non-emergent (Dept.'s Exhibit #2)
13. CCCI determined that the Appellant has no active medical issues that qualify for emergency medical services as defined in the regulation, and therefore, the dates of service are not covered. (Dept.'s Exhibit #2)
14. On [REDACTED] 2019, the Department sent the Appellant a Notice of Action denying his application for Medicaid coverage of emergency services under the Husky D program for the period of [REDACTED] 2019 through [REDACTED] 2019 for the following reasons: no eligible household members, does not meet program requirements, and does not meet the eligible non-citizen program requirements for emergency services as defined in the regulation. (Dept.'s Exhibit #2)
15. The Appellant's Representative provided additional medical information to be included into the hearing record and for the Department's reconsideration. (Appellant's Exhibit #1; Appellant's Exhibit #2: Orthopedic Discharge Summary)
16. The Department submitted the additional medical information provided by the Appellant's Representative to CCCI for a reconsideration review of the Appellant's request for approval of coverage for emergency medical services. (Hearing Record)

17. On ██████ 2019, CCCI reviewed the additional medical information provided by the Appellant's Representative regarding his hospitalization and treatment for the period of ██████ 2019 through ██████ 2019, and determined that the Appellant is alert, oriented, stable, and remains hospitalized while discharge options are explored, and concluded that the Appellant is receiving rehabilitative care that does not meet the criteria for emergency medical services as defined in the regulation, and is therefore not covered. (Dept.'s Exhibit #3: ██████19 Emergency Medical Non-Citizen Determination)

CONCLUSIONS OF LAW

1. 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. Conn. Gen. Stat. § 17b-2(6)
2. "The department's uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990)).
3. "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." Uniform Policy Manual ("UPM") § 3005.08(C)

The Department correctly determined that the Appellant is unlawfully residing in the United States as a non-citizen. The Appellant does not dispute this fact.

4. Title 42 of the Code of Federal Regulations § 440.255 (b)(1) provides for legalized aliens eligible only for emergency services and services for pregnant women and states, in pertinent part, as follows:

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.

42 C.F.R § 440.255(b)(1)

5. 42 C.F.R. § 440.255(c) provides, in pertinent part, as follows:

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 if:

(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.
42 C.F.R. § 440.255(c)

6. UPM § 3000.01 provides in pertinent part, as follows:

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.
UPM § 3000.01

7. An Emergency medical event is considered to be a hospital emergency room visit and/or an emergency room visit that leads to an inpatient admission. If the visit and/or the procedure were planned, then the treatment is not eligible for coverage as an emergency medical treatment. Additionally, if the patient is discharged and follow up care is then scheduled as an outpatient, only the initial emergency room visit qualifies for emergency medical coverage, but the subsequent follow up care is considered non-emergency care.
8. The Appellant's hospital stay beginning on [REDACTED] 2019 does not meet the criteria for an emergency event for the following reasons:

Because the Appellant's hospitalization from [REDACTED] 2019 through [REDACTED] 2019 was due to his immigration status, lack of insurance, and the lack of safe discharge plan and he is receiving physical therapy and occupational therapy, is in stable condition, with no active medical issues as he awaits the completion of a safe discharge plan.

Because the Appellant's hospitalization from [REDACTED] 2019 through [REDACTED], 2019 was not due to an immediate medical condition resulting in acute symptoms of such severity that would result in serious impairment of his bodily functions.

Because the Appellant's medical condition resulting in his hospitalization from [REDACTED] 2019 through [REDACTED] 2019 was not of a sudden onset manifesting itself by acute symptoms of sufficient severity of such that in the absence of immediate medical attention would place his health in serious jeopardy.

The Department correctly determined that as an undocumented non-citizen, the Appellant is ineligible for emergency medical assistance under the Husky D-MLIA program as an undocumented non-citizen.

DECISION

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



Hernold C. Linton
Hearing Officer

Pc: **Patricia Ostroski**, Social Service Operations Manager,
DSS, R.O. #52, New Britain

Fair Hearing Liaisons, DSS, R.O. #52, New Britain

[REDACTED]
[REDACTED]

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 06105-3725.

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.