NEWS RELEASE

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DISABILITY RIGHTS CONNECTICUT
Justice. Community. Inclusion.

Disability Rights Connecticut Says State Department of Social Services Violates Federal, State Law in Denying Medicaid Coverage of Robotic Arm for Individuals with Severe Disabilities

In defiance of state and federal law, Connecticut's Department of Social Services has repeatedly denied Medicaid coverage for severely disabled individuals who are seeking authorization for a robotic arm to assist with basic activities of daily living, such as eating and meal preparation, and basic health and safety-related activities, such as answering a phone, opening a door, or adjusting paralyzed legs.

Despite the fact that the individuals successfully demonstrated the device at the Department's request, showing definitively that the Jaco Kinova Robotic Arm does assist them with significant upper extremity mobility limitations, the Department has refused repeated attempts to obtain Medicaid payment for the device. It has been approved as medically necessary in more than a dozen states, as well as by private insurers and Medicare. It has even been found by the Department's own hearing officer to have been "demonstrated to assist individuals with upper extremity mobility limitations who use a power wheelchair."

Disability Rights Connecticut has assisted in trying to obtain the Department's approval, repeatedly for more than three months, for one individual with Spinal Muscular Atrophy, and, more recently, became aware of another individual, with Duchenne Muscular Dystrophy, similarly denied coverage. The first individual is age 30, the second is age 18. The device was actually approved for payment on October 15th by the second individual's private insurer, even as Medicaid denied payment on the grounds it was "experimental."

"It is apparent that the denials in these two cases are not based on any law at all, or the facts, but rather a transparent desire not to pay for items which federal Medicaid law requires to be covered," said DRCT Attorney Sheldon Toubman.

DRCT's most recent correspondence, dated October 20, 2021, informed the Department that "we write a final time to urge your agency to immediately rescind this policy and approve this device (and) to address the serious constitutional due process problem … so as to avert a federal court case."

The device assists individuals to maximize their independence, by enabling them to accomplish many tasks of daily life. Maintaining independence is a fundamental goal of the federal Medicaid Act and state and federal disability law. In the absence of such independence, the likelihood of institutionalization increases, which is adverse to the best interests of the individual, constitutes disability discrimination and ultimately harms the taxpayers, who would be impacted by the higher costs of institutionalization.

For both of the Medicaid enrollees, the Department had first sought a trial demonstration of the device in a clinical setting, and then in a home setting. Both were carried out, and deemed to be successful demonstrations of the way in which the individual was aided by the medical device, with the Department's hearing officer in one case saying the individual "successfully participated in a 2-hour trial" of the device.

Nonetheless, by declaring the device to be "investigational," the Department has indicated that it will ***always*** deny coverage regardless of the facts of the particular medical condition giving rise to the prescription for the device, and despite a state statute that requires medical necessity under Medicaid to be determined "based on an assessment of the individual and his or her medical condition."

The record also reflects extensive evidence not only of broad acceptance of the device among physicians in various relevant specialties, but also of broad payment for this device among many payers, including both Medicare and many state Medicaid programs, including for the specific medical condition of one of the two individuals denied payment.

The Department's own hearing officer found, correctly, that "Arizona, California, Colorado, Florida, Idaho, Illinois, Indiana, Kentucky, Louisiana, Minnesota, Ohio, South Carolina, Texas and Washington state's Medicaid plans cover the Jaco V2 Robotic Arm and Kinova Lift Arm."

Given the Department's actions and considerable passage of time, DRCT is calling on the Department to take three immediate steps, this week:

- Immediate rescission of the July 1 written policy declaring the robotic arm device to be "investigational and therefore not medically necessary for all indications…"
- Immediate approval of the device for the individual who has been seeking coverage authorization and has not obtained alternative coverage
- Issuance of a directive to all relevant staff at DSS and CHNCT, and any other contracted administrative services organizations, that any denial of medical equipment submitted by a vendor on behalf of a Medicaid enrollee must in all cases result in the issuance of a written notice directly to the Medicaid enrollee

In reviewing the Department's actions, DRCT "discovered a serious constitutional and regulatory due process problem which appears to be systemic" – the individual applicant was not notified of a denial on the basis that only the vendor of durable medical equipment need be notified where it is the vender who appeals and obtains the denial, and the Department failed to notify the individual of their right to appeal.

DRCT also noted that past court cases, in which the Department had attempted to apply a kind of categorical exclusion similar to the process in the current instance and had failed to provide written notices of denial, relief was granted against the Department, including substantial costs to the state for attorney's fees in the cases.

DRCT's mission is to advocate, educate, investigate and pursue legal, administrative, and other appropriate remedies to advance and protect the civil rights of individuals with disabilities to participate equally and fully in all facets of community life in Connecticut. DRCT is the Protection & Advocacy System for Connecticut, having replaced the state Office of Protection & Advocacy for Persons with Disabilities in 2017.

[MEDIA: A copy of the DRCT correspondence to DSS is available upon request; links to video 1 and video 2]

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