

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

██████████ 2017
Signature Confirmation

Client ID # ██████████
Request # 797295

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2016, Ascend Management Innovations LLC, (“Ascend”), the Department of Social Services (the “Department”) contractor that administers approval of nursing home care, sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) approving nursing home level of care short term for a time – limited period of 180 days ending on ██████████, 2017.

On ██████████ 2016, the Appellant’s Power of Attorney (“POA”) requested an administrative hearing to contest Ascend’s decision to approve short – term nursing home level of care.

On ██████████ ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings (“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
██████████ the Appellant’s son and POA
Mark Davis, Social Worker, Watertown Convallarium
Sheila McCloskey, RN, Ascend Management Innovations (by telephone)
Charles Bryan ,RN, Department’s representative

Elizabeth Orejuela, RN, Department's representative
Scott Zuckerman, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether Ascend's decision that the Appellant meets the level of care requirements for a nursing facility for short term approval was correct.

FINDINGS OF FACT

1. The Appellant is a Medicaid recipient. (Hearing record)
2. The Appellant's date of birth is [REDACTED] 1948. (Exhibit 5: Level of Care Report, [REDACTED], 2016)
3. On [REDACTED], 2016, Watertown Convalescent (the "facility") admitted the Appellant for a short term stay of 120 days from the community. The medical issues involved hypertension, diabetes, chronic kidney disease stage III, osteoarthritis and hyperlipidemia. The Appellant has a diagnosis of Schizophrenia and Depressive Disorder. (Hearing Summary, Appellant Testimony)
4. On [REDACTED], 2016, the facility submitted a level of care screening form with an additional diagnosis of Uterine Cancer requiring radiation treatment. The facility requested a long term length of stay. Nursing home level of care is needed to monitor labs/vitals, monitor glucose levels, monitor fluctuations in physiological functioning, assistance with ADL's and IADLS. The Appellant's health and safety were at risk. (Testimony, Exhibit 5: Level of Care report)
5. The Appellant does not receive any rehabilitative therapy such as physical therapy, occupational therapy or respiratory therapy. (Appellant's testimony, Ex. 5: Level of Care report, [REDACTED]/16)
6. The Appellant requires hands on assistance with bathing and dressing. (Hearing Record)
7. The Appellant requires physical assistance with meal preparation and medication administration. (Hearing Summary, Exhibit 5: Level of Care report, [REDACTED]/16)
8. The Appellant receives two shots daily of Byetta Injection for diabetes. (Hearing Record)

9. On [REDACTED] [REDACTED] 2016, the Appellant received an additional short-term approval of 180 days of nursing facility level of care. The short term approval end date is [REDACTED] 2017. (Exhibit 4: Notice of Action, October 27, 2016)
10. On [REDACTED] 2016, the Department determined that a short term stay of six months was an appropriate period of time to assess the level of improvement for her uterine cancer and medication administration. (Ascend's testimony)
11. The Appellant is requesting long term placement in the facility beyond the [REDACTED] 2017 short term stay end date. (Hearing Record)
12. The Appellant has the potential to live in the community with a combination of supportive services to care for her hypertension, diabetes and kidney disease. (Ascend's testimony)
13. Byetta injections could be performed in the community or changed to a different medication. (Ascend's testimony)
14. As of the date of the hearing, the Appellant completed radiation treatments and receives no additional treatment as cancer is in remission. (Appellant's representative's testimony)
15. The facility may send another request for nursing facility level of care prior to the [REDACTED], 2017 expiration date to determine a need for a long term stay. (Ascend's testimony)
16. The Appellant may be considered for a long term nursing facility level of care should there be a change in her medical and clinical presentation with no restorative improvement going forward. (Ascend's Testimony)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. State regulations provide that "the department shall pay for an admission that is medically necessary and medically appropriate as evidenced by the following:
 - (1) certification by a licensed practitioner that a client admitted to a nursing facility meets the criteria outlined in section 19-13-D8t(d)(1) of the Regulations of Connecticut State Agencies. This certification of

the need for care shall be made prior to the department's authorization of payment. The licensed practitioner shall use and sign all forms specified by the department;

- (2) the department's evaluation and written authorization of the client's need for nursing facility services as ordered by the licensed practitioner;
- (3) a health screen for clients eligible for the Connecticut Home Care Program for Elders as described in section 17b-342-4(a) of the Regulations of Connecticut State Agencies;
- (4) a preadmission MI/MR screen signed by the department; or an exemption form, in accordance with 42 CFR 483.106(b), as amended from time to time, for any hospital discharge, readmission or transfer for which a preadmission MI/MR screen was not completed; and
- (5) a preadmission screening level II evaluation for any individual suspected of having mental illness or mental retardation as identified by the preadmission MI/MR screen."

Conn. Agencies Regs. Section 17b-262-707 (a).

3. "The Department shall pay a provider only when the department has authorized payment for the client's admission to that nursing facility." Conn. Agencies Regs. Section 17b-262-707(b).
4. State regulations provide that "Patients shall be admitted to the facility only after a physician certifies the following:
 - (a) That a patient admitted to a chronic and convalescent nursing home has uncontrolled and/or unstable conditions requiring continuous skilled nursing services and /or nursing supervision or has a chronic condition requiring substantial assistance with personal care, on a daily basis."
 - (ii) That a patient admitted to a rest home with nursing supervision has controlled and/or stable chronic conditions which require minimal skilled nursing services, nursing supervision, or assistance with personal care on a daily basis.

Conn. Agencies Regs. § 19-13-D8t(d)(1)(A).

5. Section 17b-259b of the Connecticut General Statutes states that "Medically necessary" and "medical necessity" defined. Notice of denial of services. Regulations.
 - (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.

- (b) Clinical policies, medical policies, clinical criteria or any other generally accepted clinical practice guidelines used to assist in evaluating the medical necessity of a requested health service shall be used solely as guidelines and shall not be the basis for a final determination of medical necessity. (c) Upon denial of a request for authorization of services based on medical necessity, the individual shall be notified that, upon request, the Department of Social Services shall provide a copy of the specific guideline or criteria, or portion thereof, other than the medical necessity definition provided in subsection (a) of this section, that was considered by the department or an entity acting on behalf of the department in making the determination of medical necessity.

6. The Appellant has uncontrolled and/or unstable conditions requiring nursing services.
7. The Appellant needs physical assistance to complete ADL's of bathing and dressing. She needs assistance with medication administration and meal preparation.
8. It is clinically appropriate that the Appellant reside in a nursing facility through [REDACTED], 2017.
9. Ascend Management Innovations is correct in its determination that the Appellant meets the medically necessary criteria for a nursing facility level of care for a short term stay beginning [REDACTED] 2016 through [REDACTED] 2017.

10. Ascend Management Innovations correctly determined that it is medically necessary for the Appellant to reside in a skilled nursing facility through ■■■■■ 2017.

DECISION

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


Scott Zuckerman
Hearing Officer

Pc: Kathy Bruni, Director, Community Options, DSS
Charles Bryan, Community Options, DSS
Elizabeth Orejuela, Community Options, DSS
Sheila McCloskey, Ascend Management Innovations, LLC

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.