

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

2019
SIGNATURE CONFIRMATION

Request # 132107

NOTICE OF DECISION

PARTY

PROCEDURAL BACKGROUND

On [REDACTED] 2018, Ascend Management Innovations ("Ascend"), the Department of Social Service's (the "Department") contractor that administers approval of nursing home care, sent [REDACTED] (the "Appellant"), a Notice of Action ("NOA") denying nursing home level of care ("LOC") indicating that she does not meet the nursing facility LOC criteria.

On [REDACTED], 2018, the Appellant requested an administrative hearing to contest Ascend's decision to deny nursing home LOC.

On [REDACTED], 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an 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], [REDACTED]

[REDACTED]

Jaimie Feril, Ascend Representative (participated by phone)
 Elizabeth Orejuela, RN, Community Options, Department of Social Services
 Carla Hardy, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether Ascend's decision that the Appellant does not meet the criteria for nursing facility LOC is correct.

FINDINGS OF FACT

1. On [REDACTED] 2018, the Appellant was admitted to [REDACTED] ("[REDACTED]"). (Exhibit 6: Level of Care Report; Hearing Summary)
2. The Appellant is [REDACTED] years old (DOB [REDACTED]) and a Medicaid recipient. (Exhibit 6)
3. The Appellant's medical diagnoses at the time of admission were: coronary artery disease, hyperlipidemia, diabetes mellitus type II without complication, Anxiety Disorder, cholelithiasis, duodenal ulcer, hypertension, myocardial infarction, other pulmonary embolism, paroxysmal atrial fibrillation, spinal stenosis, stroke and supraventricular tachycardia. The Appellant required supervision with the following activities of daily living ("ADLs"): bathing, eating/feeding, and mobility. She did not require any assistance with her Instrumental Activities of Daily Living ("IADLs"). (Hearing Summary)
4. On [REDACTED], 2018, [REDACTED] submitted the Nursing Facility Level of Care ("LOC") form to Ascend. Ascend approved the Appellant for a for a 60-day short-term stay. The approval expired on [REDACTED] 2018. (Hearing Summary)
5. On [REDACTED] 2018 [REDACTED] submitted the nursing facility LOC evaluation form to Ascend. The nursing facility LOC screen described the Appellant's current status as independent with her ADLs and requiring no assistance or supervision with her IADLs. Based on this information, Ascend approved the Appellant for a 30-day short-term stay which expired on [REDACTED] 2018. (Hearing Summary)
6. On [REDACTED], 2018, the Appellant was referred to Money Follows the Person ("MFP"). She has not received any follow-up contact from the program. (Appellant's Testimony)

7. On [REDACTED] 2018, [REDACTED] submitted the nursing facility LOC evaluation form to Ascend. The nursing facility LOC screen described the Appellant's current activities of daily living ("ADL") support needs as independent with her ADLs. For IADLs she was capable of preparing meals with minimal assistance. Based on this information, the Appellant required an MD review. During the review, the MD noted that the Appellant was independent with all of her ADLs and that her needs could be met in the community with appropriate supports that included a home health aide and nurse, therapy evaluation and home evaluation for safety, meals on wheels, family support, case management, arranged public transportation, training in self-health care management, psychiatric services and specialist follow ups. (Exhibit 6: Level of Care Report; Hearing Summary)
8. The ADL Measures include bathing, dressing, eating, toileting, continence, transferring and mobility. (Exhibit 4: Connecticut ADL Measures and Measurements)
9. On [REDACTED] 2018, William M. Regan, MD, an Ascend Medical Doctor, reviewed the nursing facility LOC screen, Practitioner Certification, Medications Record, Physician History and Physical Note and the ADL Flow Record and concluded that nursing facility level of care is not medically necessary for the Appellant because she does not require the continuous nursing services delivered at the level of the nursing facility. Her needs could be met in a less restrictive setting. (Exhibit 6: Level of Care Report; Hearing Summary)
10. The Appellant is able to complete all of her ADL's. (Exhibit 6; Appellant's Testimony)
11. The Appellant does not receive any rehabilitative services such as physical, occupational, speech or respiratory therapies. (Appellant's Testimony)
12. The Appellant's current medications include: aspirin; atorvastatin; carvedilol; furosemide; gabapentin; hydrochlorothiazide; iron; losartan potassium; metformin hcl; pantoprazole; tizanidine hcl; vitamin D3; Coumadin; glipizide; Lasix; acetaminophen; biscolax; enema; milk of magnesia suspension; and oxycodone-acetaminophen. (Appellant's Exhibit A: Medication List)
13. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED] 2018. Therefore, this decision is due not later than [REDACTED], 2019.

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. Conn Agencies Regs. § 19-13-D8t(d)(1)(A) provides that “Patients shall be admitted to the facility only after a physician certifies the following:
 - (i) 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.”
4. 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.

5. Ascend correctly used clinical criteria and guidelines solely as screening tools.
6. Ascend correctly determined that the Appellant is independent with all of her ADLs.
7. Ascend correctly determined that the Appellant does not have a chronic medical condition requiring substantial assistance with personal care on a daily basis.
8. Ascend correctly determined that the Appellant does not have uncontrolled and/or unstable medical conditions requiring continuous skilled nursing services and /or nursing supervision.
9. Ascend correctly determined that it is not clinically appropriate for the Appellant to reside in a nursing facility.

10. Ascend correctly determined that nursing facility services are not medically necessary for the Appellant, because her medical needs could be met with services offered in the community.
11. Ascend correctly determined that it is not medically necessary for the Appellant to reside in a skilled nursing facility and on [REDACTED] 2018, correctly denied her request for continued approval of long-term care Medicaid.

DECISION

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



Carla Hardy
Hearing Officer

Pc: Angela Gagen, Ascend Management Innovations
Joi Shaw, Ascend Management Innovations
Connie Tanner, Ascend Management Innovations
Jaimie Johnson, Ascend Management Innovations

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 06105-3725. 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.