

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
25 SIGOURNEY STREET
HARTFORD, CT 06106-5033

██████████ 2013
SIGNATURE CONFIRMATION

Request # 552339

Client ID # ██████████

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2013, Ascend Management Innovations LLC, (“Ascend”), the Department of Social Service’s (the “Department”) contractor that administers approval of nursing home care, sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) denying nursing home level of care (“LOC”) stating that he does not meet the nursing facility level of care criteria.

On ██████████ 2013, the Appellant requested an administrative hearing to contest Ascend’s decision to deny nursing home LOC.

On ██████████ 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling an administrative hearing for ██████████, 2013.

On ██████████ 2013, 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

██████████ Appellant’s witness

Evan Ballas, Social Worker, Fairview of Fairfield Health Care Center

Terrance Brennan, Administrator, Fairview of Fairfield
 Stephanie Schott, RN, Medical Coordinator, Fairview of Fairfield
 Charlaine Ogren, LCSW, Alternate Care Unit, DSS
 Pamela Calvert, RN, Operations and Appeals Manager, ASCEND (participated
 by telephone)
 Sybil 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 was correct.

FINDINGS OF FACT

1. On [REDACTED] 2013, Westside Health Care Center admitted the Appellant for a 30-day short-term stay for rehabilitative services. (Hearing Record)
2. The Appellant is 51 years old (DOB [REDACTED]/62) and resides in a nursing facility. (Appellant's testimony, Exhibit 4: Connecticut Medical Level of Care Evaluation, [REDACTED]/13)
3. The Appellant has no disability determination (Appellant's testimony)
4. On [REDACTED] 2013, the Appellant applied for Social Security disability payments. (Appellant's testimony)
5. On [REDACTED] 2013, Ascend retroactively approved an additional 150-day short-term stay with the effective date of [REDACTED] 2013 and end date of [REDACTED], 2013 (Hearing Record)
6. During [REDACTED] 2013 the Appellant applied for the Money Follows the Person program. As of the hearing date the application was still pending. (Appellant's testimony)
7. On [REDACTED] 2013, Fairview of Fairfield's social worker submitted the LOC screening form to Ascend. The Appellant's current medical diagnosis was: right pilon fracture and open reduction internal fixation "ORIF" to the right ankle post fall. (Exhibit 6: Connecticut LTC LOC Determination Form)
8. On [REDACTED] [REDACTED] 2012, Ascend conducted an onsite Medical LOC Evaluation of the Appellant to determine whether he met the minimum criteria for nursing facility placement as defined by State law. (Exhibit 4: Connecticut Medical LOC Evaluation form)
9. Ascend assessed the Appellant as physically capable of independently performing all seven activities of daily living ("ADL") including eating, toileting,

continence, transferring, and mobility. (Exhibit 1: CT ADL Measures and Measurements, Exhibit)

10. The Appellant is independent with Activities of Daily Living (ADL's) including eating, toileting, continence, transferring, and mobility. (Appellant's testimony, Exhibit 6)
11. The Appellant's medical diagnoses/history includes: recovery from right tibial/fibial fracture and open reduction internal fixation (ORIF,) which occurred as a result of a fall from a ladder. (Exhibit 3: Level of Care Report, █████/13)
12. The Appellant's current medications include: Lidoderm Patch, Anolol, Oxycontin, Oxycodone, Neurotin, Ambien, Gabapentin, Symbalta. (Exhibit 13: Medication Administration Record, Hearing Record, Appellant's testimony)
13. The Appellant is not able to self-administer pain medications and requires pain management services. (Exhibit 3)
14. The Appellant no longer requires any rehabilitative therapy services. The Appellant's last physical therapy session was in █████2013. (Exhibit 6)
15. On █████, 2013, the Appellant scored 0 out of 30 points on the SLUMS Examination - Cognitive Impairment Assessment. The Appellant performed with 100 percent accuracy in answering all questions. (Exhibit 4)
16. As of the date of the medical evaluation conducted on █████ 2013, the Appellant presented at baseline, was not impacted by physical limitations such as CP or arthritis, visual or hearing impairments, language barriers and/or other medical condition limiting item performance (Exhibit 4)
17. The Appellant is fully oriented to self, place, and time. (Exhibit 6)
18. The Appellant does not have an uncontrolled chronic medical condition requiring continuous skilled nursing services and substantial assistance with personal care on a daily basis. (Hearing record)
19. Ascend determined that the Appellant does not meet Connecticut Minimum Admission Criteria for nursing facility LOC. (Hearing Record, Exhibit 2 Notice of Action, Denial of Nursing Facility LOC, █████/13; Exhibit: 3 LOC Report, █████/13)
20. Ascend determined that nursing facility services are not medically necessary for the Appellant as his needs could be met through a combination of medical

and social services delivered outside of the nursing facility setting. (Exhibit 2: Notice of Action, Denial of Nursing Facility LOC, █████/13)

21. On █████ 2013, Ascend issued a Notice of Action to the Appellant stating that he does not meet the medical criteria for nursing facility LOC and as a result, he would not be eligible for nursing facility services funded by Medicaid. (Hearing Record)
22. On █████ 2013, Ascend issued an amended Notice of Action to the Appellant. The outcome of the review remained unchanged. (Exhibit 2: Notice of Action, Denial of Nursing Facility LOC, █████/13)

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. State regulations provide 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.”

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. Ascend correctly used clinical criteria and guidelines solely as screening tools.
7. Ascend correctly determined that the Appellant is independent with seven of seven ADLs.
8. Ascend correctly determined that the Appellant does not have a chronic medical condition requiring substantial assistance with personal care on daily basis.
9. Ascend correctly determined that the Appellant does not have uncontrolled and/or unstable medical conditions requiring continuous skilled nursing services and /or nursing supervision.
10. Ascend correctly determined It is not clinically appropriate that the Appellant reside in a nursing facility.
11. Ascend correctly determined that nursing facility services are not medically necessary for the Appellant, because his medical needs could be met with services offered in the community.
12. Ascend correctly determined that it is not medically necessary for the Appellant to reside in a skilled nursing facility and on [REDACTED] 2012 correctly denied her request for continued approval of long-term care Medicaid.

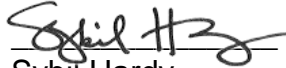
DISCUSSION

The Appellant does not meet the medical criteria for nursing facility LOC and is not eligible for continued nursing facility services funded by Medicaid because the Appellant does not have a chronic/unstable medical condition requiring skilled nursing care and is not in need of substantial assistance with his personal care needs on a daily basis.

The Appellant entered the Fairview of Fairfield in [REDACTED], 2013 for 30 days of rehabilitative services due to injuries sustained in a fall at work. The Appellant was to participate in physical therapy to decrease pain in his right ankle, increase range of motion in his right ankle and facilitate his ability to walk on uneven surfaces. The Appellant is able to walk unassisted and has not had physical therapy or any other rehabilitative service since [REDACTED] 2013. The Appellant no longer requires the LOC provided by the nursing facility. The type of services that the Appellant requires can be administered in the community setting through medical and social services.

DECISION

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


Sybil Hardy
Hearing Officer

Pc: Kathy Bruni, Manager, Alternate Care Unit, DSS, Central Office
Pam Calvert, PASRR Manager,
Ascend Management Innovations, LLC, 227 French Landing Drive,
Suite 250, Nashville, TN 37228

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, 25 Sigourney Street, Hartford, CT 06106-5033.

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, 25 Sigourney Street, Hartford, CT 06106. 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.