

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

██████████ 2014  
Signature Confirmation

Client ID # ██████████  
Request # 602700

NOTICE OF DECISION

PARTY

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██  
██  
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PROCEDURAL BACKGROUND

On ██████████ 2014, 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 Facility (“NF”) Level of Care (“LOC”) stating that it is not medically necessary.

On ██████████ 2014, the Appellant requested an administrative hearing to contest Ascend’s decision.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2014.

On ██████████ 2014, 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 son
- Claudia Katz, Director of Nurses, Fairview HCC
- Jenni Wargo, MDS, LPN, Fairview HCC
- Stephanie Shott, RN Supervisor, Fairview HCC
- Patricia Milord, RN, MDS, Fairview HCC

Evan Ballas, Social Worker, Fairview HCC  
Trevia Marquis, RN, Ascend Management Innovations, (By telephone)  
Charles Bryan, Department's Representative  
Thomas Monahan, 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 NF level of care was correct.

### **FINDINGS OF FACT**

1. The Appellant is a Medicaid recipient. (Hearing record)
2. The Appellant's date of birth is [REDACTED] 1949. (Exhibit 5: Preadmission Screening and Resident Review ["PASSR"] Summary of Findings Report, [REDACTED]/14)
3. On [REDACTED] 2013, the Appellant was admitted to Fairview Healthcare Center (the "facility") from the hospital after a fall at home. At the hospital the Appellant had an episode of hypoxic respiratory failure and needed intubation to maintain his airway. (Ex. 2: Hearing summary)
4. On [REDACTED] 2013, Ascend approved nursing services for 180 days due to his physical and mental health conditions. (Ex. 2: Hearing summary)
5. The Appellant's current medical diagnoses include septic shock, hypoxic respiratory failure due to pneumonia, bradycardia, hypertension, Vitamin B Deficiency, Traumatic Brain Injury (fall in 2002) and a Urinary Tract Infection) (Hearing Summary, Ex. 5: PASSR Summary of Findings Report, [REDACTED]/14)
6. The Appellant mental health diagnoses include bipolar disorder, adjustment disorder and depression. (Ex. 5: PASSR Summary of Findings Report, [REDACTED]/14, Appellant's Ex. A: Harvest Healthcare Psychiatric assessment, [REDACTED]/14)
7. The Appellant has a history of alcohol abuse. (Hearing record)
8. The Appellant's medications include, Lexapro for depression, Norvasc, Pepsid, Vitamin B-12, and Keflex.
9. At the time of admission the Appellant received physical and occupational therapy. The Appellant is no longer receiving any physical or occupational therapy. (Hearing record)

10. The Appellant is independent with Activities of Daily Living (“ADL’s”) including bathing, eating, dressing, toileting, continence, transferring and mobility. He does need cueing and instruction to complete many of his ADL’s including eating and showering. (Appellant’s testimony, facility nurses and social worker testimony, Ex. 6: PASSR onsite evaluation, █████/14)
11. The Appellant will stay in bed all day unless encouraged or instructed to get up. (Facility nurses and social worker testimony)
12. The Appellant requires verbal/gestural support for administration of his medications. (Hearing record)
13. The Appellant sees a psychiatrist and a clinical social worker once a week. (Hearing record)
14. The Appellant scored 27 out of 30 on the St. Louis University Mental Status Exam. Scores below 24 are indicative of early cognitive decline. (Hearing summary, Ex. 6: PASSR onsite evaluation, █████/14)
15. The █████ 2013, Minimum Data Set indicates that the Appellant has no cognitive needs. (Ex. 16: Minimum Data Set)
16. The Appellant exhibits a depressed mood and withdrawn behavior. (Ex. 6: PASSR onsite evaluation, █████/14)
17. The Appellant suffers from short term memory fluctuation. (Facility nurses and social worker testimony)
18. The Appellant does not remember taking any current medications that are administered daily at the facility. (Hearing record)
19. There is current self-awareness risk to the Appellant if he is without care oversights such as ensuring ADL’s are completed and medication managed. (Facility nurse and social worker testimony, Ex. 6: PASSR onsite evaluation, █████/14))
20. On █████ 2013, Ascend received a Nursing facility Level of Care Screen Determination and Connecticut PASSR Level one forms from the facility. (Ex. 8: LTC Level of Care Determination Form, Ex. 7: Level 1PASSR)
21. On █████ 2014, Janet Lamson, of Ascend reviewed the LTC forms and referred the case for a Level two Determination due to mental illness. (Ex. 8: LTC Level of Care Determination Form, Ex. 7: Level 1PASSR)
22. On █████ 2014, a PASSR Level II Evaluation was completed by Jane Roberts, R.N., for Ascend.

23. On [REDACTED] 2014, Ascend Assessor, Bhupendra Rajpura MD, found that *NF* services were not medically necessary for the Appellant. Dr. Rajpura found that the Appellant has reached maximum benefit from nursing level of care. He stated that the Appellant “has the potential for community placement with the following supports: mental health services, socialization group/program, regular follow up with PCP and on-going community support. He would benefit from engaging in a program to maintain abstinence from substances of abuse. Ongoing case management could assist with providing support, coordinating services, and monitoring his mental health.” (Ex. 5: PASSR Summary of Findings Report)
24. On [REDACTED] 2014, Ascend issued a Notice Action of Denial of Nursing Facility Level of Care. (Ex. 4: Notice of Denial, [REDACTED]/14)

### **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. § 17b-262-707(b).
4. 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.

7. The Appellant has the physical ability to complete all of his ADL's. He requires encouragement and cueing to complete his ADL's. He requires individual psychotherapy.
8. The Appellant does not have uncontrolled and/or unstable conditions requiring continuous nursing services.
9. Ascend correctly determined that NF services are not medically necessary for the Appellant because his medical needs could be met in a less restrictive setting of a clinically appropriate scope.
10. Ascend correctly determined that it is not medically necessary for the Appellant to reside in a skilled nursing facility.

### **DISCUSSION**

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

The Appellant does need substantial services such as case management services, psychotherapy, counseling, and medication supports. These services can be provided in a setting other than a NF.

### **DECISION**

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

*Thomas Monahan*

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Thomas Monahan  
Hearing Officer

Pc: K. Bruni, Manager, Alternate Care Unit  
Treva Marquis, Ascend Management Innovations, LLC  
Rebecca Beard, Ascend Management Innovations, LLC  
Connie Tanner, Ascend Management Innovations, LLC  
Charles Bryan, Alternate Care Unit

### **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.