# STATE OF CONNECTICUT DEPARTMENT OF SOCIAL SERVICES OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS 55 FARMINGTON AVENUE HARTFORD, CT 06106

2014 Signature confirmation

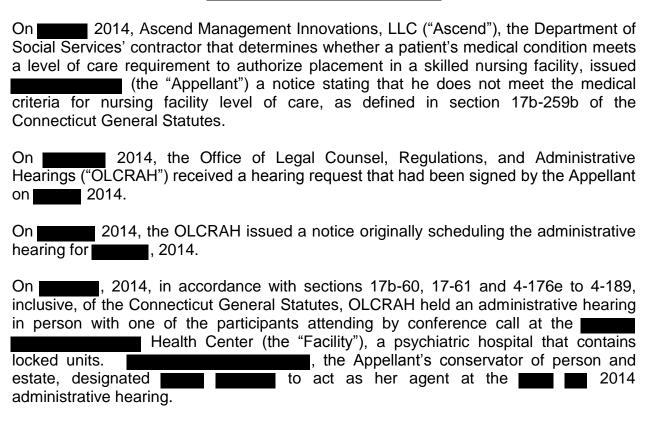
Client: Request: 613227

#### NOTICE OF DECISION

# **PARTY**



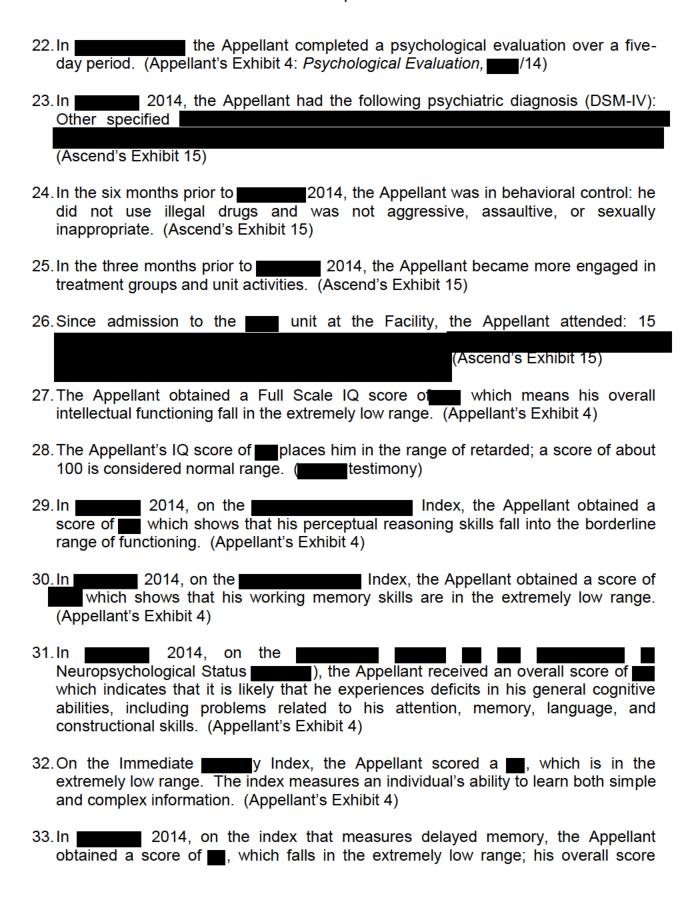
# PROCEDURAL BACKGROUND

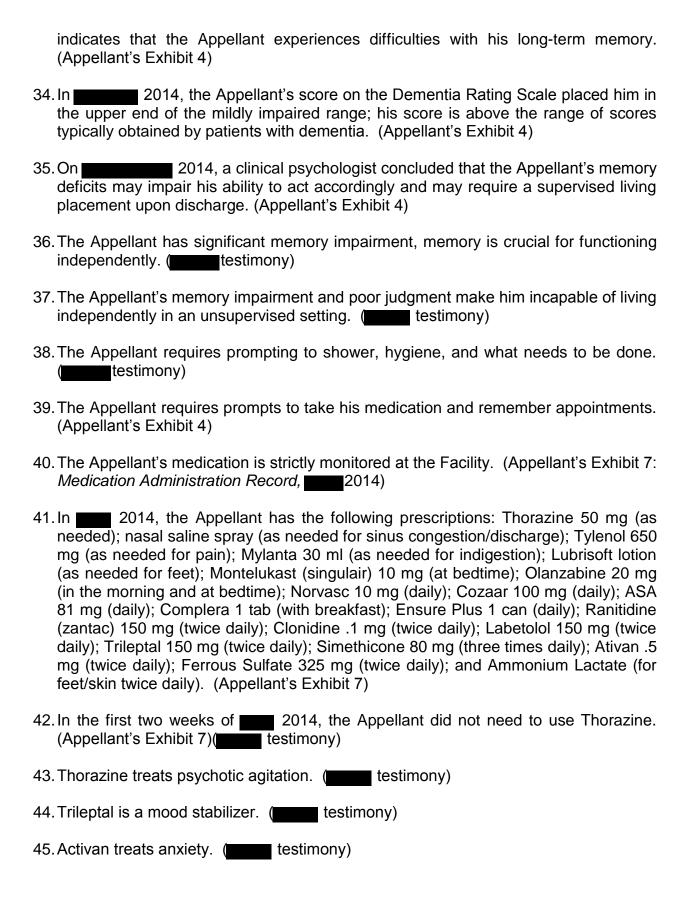


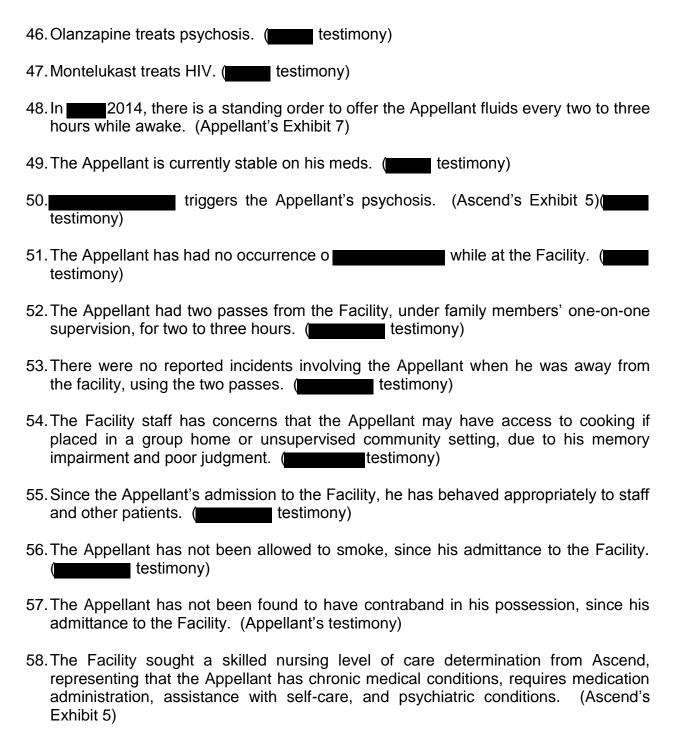
The following individuals attended the hearing:

Cha Lor Pro	, Appellant , MSW, " Health Center, Appellant's witness , LCSW, Department of Via speakerphone) , arlaine Ogren, LCSW, Department of Social Services, Ascend's witness , etta Ricker, RN, Department of Mental Health and Addiction Services, "60 West , Department of Mental Health and Addiction Services, "60 West , Tar, Hearing Officer
	STATEMENT OF ISSUE
	e issue to be decided is whether Ascend correctly determined that skilled nursing ility placement is not medically necessary for the Appellant.
	FINDINGS OF FACT
	The Appellant's date of birth is 1967. (Ascend's Exhibit 5: Preadmission Screening and Resident Review Summary of Findings Report,/14)
	The Appellant has a conservator of person and estate. (Appellant's Exhibit 5: Conservatorship appointment,/12)
	The Appellant receives Social Security disability income. (Ascend's Exhibit 15: Southwest Connecticut Mental Health System Recovery Plan Review Action Plan, 14)
4.	The Appellant is a registered sex offender. ( testimony)
5.	The Appellant is not currently serving a prison sentence or serving probation. (Example 1)
6.	The Appellant is a Medicaid recipient. (Ascend's Exhibit 4: Notice of Action, 14)
	Ascend is the Department of Social Services' contractor with respect to determining the need for skilled nursing level of care for Medicaid recipients. (Ascend's Exhibit 4)
	On 2009, the Health Center admitted the Appellant. (Appellant's Exhibit 3: Neuropsychological and Pyschodiagnostic Assessment, 10)
	Prior to his admission to Health Center, the Appellant was self-medicating with (Appellant's testimony)

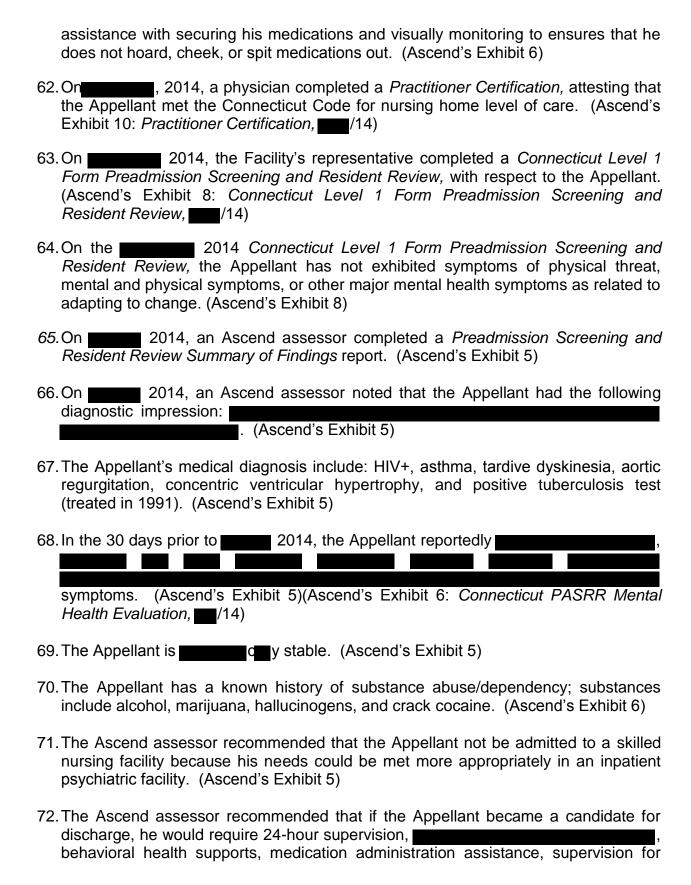
10.Upon admittan <u>ce t</u>	to the	Health Center, the	e Appellant had a
diagnosis of characterized			
	(Appellant's Exhibit	t 3)	
	s in transitional housing months. (Ascend's Exhim, 14)		Health TC Level of Care
	I Health Center, to the chandled in the chandled in the change of the ch		
	pehavior at ited, exhibited very poor job. (Ascend's Exhibit 9)	Health Cen judgment, and exhib	
	Health Cent nt, became confrontational nent team. (Ascend's Exhi		
15.A admitted to assessment. (	Health Center staff ph testimony)	nysician recommende Health Center (the	
disorganized though	s, the Appellant was adnights, tangential thinking, Examination, [13]	<u>, and </u> no insight int	•
17.The Facility is a ps	ychiatric hospital. (	testimony)	
and a staff to patier	highest level of care in a nt ratio of eight to 12 staffed nursing facility.	for 20 patients; it prov	
19.The Facility does testimony)	s not provide permaner	nt housing for patie	ents. (Antinozzi's
	ose is to assess a patien e needs, for appropriate p		
	the Facility, the Appellant a danger to himself and o		care offered by the stimony)







- 59. The Appellant is independent in the following activities of daily living ("ADLs"): toileting, continence, transferring, and mobility.
- 60. The Appellant requires supervision in the following ADLs: bathing, dressing, and eating.
- 61. The Appellant requires setups and verbal or gestural assistance for handing him the pre-prepared dosages of his medications at the prescribed times; he also requires



ADL completion, assistance such as homemaker services; transportation assistance for appointments; and a legal advocate. (Ascend's Exhibit 5)

73. The Ascend assessor noted that	the Appellant may benefit	from participation in a
day treatment program and/or		and participation ir
community groups such as		
(Ascend's Exhibit 5)		_

74. On 2014, Ascend issued a *Notice of Denial* of skilled nursing facility level of care to the Appellant, noting that the company had determined that skilled nursing facility level of care was not medically necessary for him at that time. (Ascend's Exhibit 4)

## **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. The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program. Such regulations shall include provisions requiring the Department of Social Services (1) to monitor admissions to nursing home facilities, as defined in section 19a-521, and (2) to prohibit the admission by such facilities of persons with primary psychiatric diagnoses if such admission would jeopardize federal reimbursements. Conn. Gen. Stat. § 17b-262.
- 3. 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. Conn. Gen. Stat. § 17b-259b (a).
- 4. 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. Conn. Gen. Stat. § 17b-259b (b).

- 5. 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. Conn. Gen. Stat. § 17b-259b (c).
- 6. The Department of Social Services shall amend or repeal any definitions in the regulations of Connecticut state agencies that are inconsistent with the definition of medical necessity provided in subsection (a) of this section, including the definitions of medical appropriateness and medically appropriate, that are used in administering the department's medical assistance program. The commissioner shall implement policies and procedures to carry out the provisions of this section while in the process of adopting such policies and procedures in regulation form, provided notice of intent to adopt the regulations is published in the Connecticut Law Journal not later than twenty days after implementation. Such policies and procedures shall be valid until the time the final regulations are adopted. Conn. Gen. Stat. § 17b-259b (d).
- 7. Sections 17b-262-701 to 17b-262-711, inclusive, of the Regulations of Connecticut State Agencies set forth the Department of Social Services requirements for payment to nursing facilities for services to clients eligible to receive such services under Connecticut's Medicaid program pursuant to section 17b-262 of the Connecticut General Statutes.
- 8. Payment for nursing facility services is available to all persons eligible for the Medicaid program subject to the conditions and limitations that apply to these services. Conn. Agencies Regs. § 17b-262-704.
- 9. 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. § 17b-262-707 (a).
- 10. 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).
- 11. For purposes of this section, the terms "mentally ill" and "specialized services" shall be as defined in Subsections (e)(7)(G)(i) and (iii) of Section 1919 of the Social Security Act and federal regulations. Conn. Gen. Stat. § 17b-739 (a).
- 12. No nursing facility shall admit any person, irrespective of source of payment, who has not undergone a preadmission screening process by which the Department of Mental Health and Addiction Services determines, based upon an independent physical and mental evaluation performed by or under the auspices of the Department of Social Services, whether the person is mentally ill and, if so, whether such person requires the level of services provided by a nursing facility and, if such person is mentally ill and does require such level of services, whether the person requires specialized services. A person who is determined to be mentally ill and not to require nursing facility level services shall not be admitted to a nursing facility. In order to implement the preadmission review requirements of this section and to identify applicants for admission who may be mentally ill and subject to the requirements of this section, nursing facilities may not admit any person, irrespective of source of payment, unless an identification screen developed, or in the case of out-of-state residents approved, by the Department of Social Services has been completed and filed in accordance with federal law. The Commissioner of Social Services may require a nursing facility to notify, within one business day, the Department of Social Services of the admission of a person who is mentally ill and meets the admission requirements of this subsection. Conn. Gen. Stat. § 17b-739 (b).
- 13. A nursing facility shall notify the Department of Mental Health and Addiction Services when a resident who is mentally ill undergoes a significant change in condition or when a resident who has not previously been diagnosed as mentally ill undergoes a change in condition which may require specialized services. Upon such notifications, the Department of Mental Health and Addiction Services, under the auspices of the Department of Social Services, shall perform an evaluation to determine whether the resident requires the level of services provided by a nursing facility or requires specialized services for mental illness. Conn. Gen. Stat. § 17b-739 (d).

- 14. The Department of Mental Health and Addiction Services, in consultation with the Department of Social Services, may no less than annually review, within available appropriations, the status of each resident in a nursing facility who is mentally ill to determine whether the resident requires (1) the level of services provided by a nursing facility, or (2) specialized services for mental illness. Nursing facilities shall grant to the Department of Mental Health and Addiction Services and the Department of Social Services access to nursing facility residents and their medical records for the purposes of this section. Conn. Gen. Stat. § 17b-739 (e).
- 15. In the case of a mentally ill resident who is determined under subsection (b), (d) or (e) of this section not to require the level of services provided by a nursing facility but to require specialized services for mental illness and who has continuously resided in a nursing facility for at least thirty months before the date of the determination, the resident may elect to remain in the facility or to receive services covered by Medicaid in an alternative appropriate institutional or noninstitutional setting in accordance with the alternative disposition plan submitted by the Department of Social Services to the Secretary of the United States Department of Health and Human Services, and consistent with the Department of Mental Health and Addiction Services requirements for the provision of specialized services. Conn. Gen. Stat. § 17b-739 (f).
- 16. In the case of a mentally ill resident who is determined under subsection (b), (d) or (e) of this section not to require the level of services provided by a nursing facility but to require specialized services for mental illness and who has not continuously resided in a nursing facility for at least thirty months before the date of the determination, the nursing facility in consultation with the Department of Mental Health and Addiction Services shall arrange for the safe and orderly discharge of the resident from the facility. If the department determines that the provision of specialized services requires an alternate residential placement, the discharge and transfer of the resident shall be made in accordance with the alternative disposition plan submitted by the Department of Social Services and approved by the Secretary of the United States Department of Health and Human Services, except if an alternate residential placement is not available, the resident shall not be transferred. Conn. Gen. Stat. § 17b-739 (g).
- 17. In the case of a resident who is determined under subsection (b), (d) or (e) of this section not to require the level of services provided by a nursing facility and not to require specialized services, the nursing facility shall arrange for the safe and orderly discharge of the resident from the facility. Conn. Gen. Stat. § 17b-739 (h).
- 18. Any person seeking admittance to a nursing facility or any resident of a nursing facility who is adversely affected by a determination of the Department of Mental Health and Addiction Services under this section may appeal such determination to the Department of Social Services within fifteen days of the receipt of the notice of a determination by the Department of Mental Health and Addiction Services. If an appeal is taken to the Department of Social Services the determination of the

Department of Mental Health and Addiction Services shall be stayed pending determination by the Department of Social Services. Conn. Gen. Stat. § 17b-739 (i).

- 19. The Appellant has chronic conditions that require skilled nursing services, nursing supervision, or assistance with his personal care on a daily basis for at least three of seven ADLs.
- 20. The Appellant's admission to a skilled nursing facility containing a locked ward is clinically appropriate in terms of type, frequency, timing, site, extent and duration and considered effective for the individual's illness, injury or disease.
- 21. The Appellant's admission to a skilled nursing facility is medically necessary, as defined by section 17b-259b (a) of the Connecticut General Statutes.
- 22. Ascend incorrectly determined that skilled nursing facility placement is not medically necessary for the Appellant.

#### **DISCUSSION**

The Appellant has been a patient at the Health Center (the "Facility"), a locked psychiatric hospital, since 2013. The Facility is a temporary measure for individuals in immediate crisis; its purpose is not to be permanent housing for psychiatric patients.

The Facility is seeking to discharge the Appellant to a skilled nursing facility with a locked ward. The Facility recommends against discharging the Appellant to the community or transitional housing, as the Appellant has significant cognitive deficits, impaired short-term memory, and poor judgment. The Appellant is a conserved individual.

The hearing officer assigned significant weight to the testimony of the Appellant's psychiatrist and Facility staff, who have closely interacted with the Appellant since his admission to the Facility. It is evident from the hearing record that the Appellant's continuing placement at the Facility is no longer appropriate, based on the current stabilization of the symptoms of his psychiatric illness.

A skilled nursing facility that provides supervised care for individuals with cognitive limitations and memory impairments, one that has staff with expertise with individuals who may become violent due to their illness if left unsupervised or exposed to personal triggers, is an appropriate placement for the Appellant at this time.

Should the Appellant's medical conditions improve to where he no longer requires skilled nursing services in an institutional setting, the nursing facility to which he is eventually admitted will need to make the arrangements for discharge to a less restrictive setting.

# **DECISION**

The Appellant's appeal is GRANTED.

### **ORDER**

- Ascend is ordered to issue to the Facility written confirmation that skilled nursing level of care is medically necessary for the Appellant.
- 2. Within <u>21</u> calendar days of the date of this decision, or <u>2014</u>, documentation of compliance with this order is due to the undersigned.

Eva Tar Hearing Officer

cc: Naugatuck, CT 06770

Charlaine Ogren, LCSW, DSS-Central Office Kathy Bruni, Manager, Alternate Care Unit, DSS-Central Office Treva Marquis, Ascend, 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 <u>specific</u> grounds for the request: for example, indicate <u>what</u> error of fact or law, <u>what</u> new evidence, or <u>what</u> other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Legal Counsel, Regulations, and Administrative Hearings, 25 Sigourney Street, Hartford, CT 06106.

#### 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 his 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.