

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3730

██████████ 2016  
SIGNATURE CONFIRMATION

Request # 736224

Client ID # ██████████

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████, 2015, 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 ██████████ 2015, the Appellant requested an administrative hearing to contest Ascend’s decision to deny nursing home LOC.

On ██████████ ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling an administrative hearing for ██████████ 2015.

On ██████████ 2015, 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 Nursing, Fairview of Fairfield

Jenni Wargo, MDS, LPN, Fairview of Fairfield  
Evan Ballas, Social Worker, Fairview of Fairfield  
Charles Bryan, RN, Alternate Care Unit, DSS  
Melva Cooper, RN, Alternate Care Unit, DSS  
Sheila McKowski, RN, Clinical Reviewer, ASCEND (Via telephone)  
Veronica King, 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], 2015, the Appellant was admitted to the Facility ("Fairview of Fairfield"), which is a skilled nursing facility, from Norwalk Hospital. (Hearing Record)
2. The Appellant was admitted to the Facility with a medical diagnosis of Wernicke's encephalopathy, acute kidney injury, alcohol withdrawal, hypokalemia, fall, intracranial hemorrhage, and thrombocytopenia. (Exhibit 7: physician's Orders, Exhibit 2: Notice of Action dated [REDACTED]/15 and Hearing Record)
3. On [REDACTED] 2015, the Facility submitted the Nursing Facility Level of Care ("NF LOC") screening form to Ascend. The NF LOC screen stated that the Appellant required supervision with bathing, dressing, eating, toileting, mobility, transfer and continence. He was participating in physical, speech and occupational therapy. The Appellant was approved for short-term 60 days. (Hearing Record)
4. On [REDACTED] 2015, the Facility submitted another NF LOC screening form to Ascend. The NF LOC screen stated that the Appellant required supervision with dressing and mobility. He was no longer participating in physical, speech or occupational therapy. The Appellant was approved for additional short-term 30 days. (Hearing Record)
5. On [REDACTED] 2015, the Facility submitted another NF LOC screening form to Ascend. The NF LOC screen stated that the Appellant required no assistance with his activities of daily living ("ADLs") and for instrumental activities of daily living ("IADLs"), the Appellant required no assistance or supervision. (Hearing Record and Exhibit 4: Connecticut Level of Care Determination Form)
6. On [REDACTED], 2015, 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. (Hearing Record and Exhibit 4)

7. The Appellant is 69 years old (DOB ██████/1946). (Hearing Record)
8. The Appellant has the cognitive and physical ability to manage all his medications. (Hearing Record and Appellant's Testimony)
9. The Appellant does not require any rehabilitative therapy services.(Hearing Record and Appellant's testimony )
- 10.The Appellant is fully oriented to self, place, and time. (Hearing Record)
- 11.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. (Exhibit 6: ADL tracking log. For ██████ and Exhibit 4)
- 12.Ascend determined that the Appellant does not meet Connecticut Minimum Admission Criteria for nursing facility LOC. (Hearing Record)
- 13.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. (Hearing Record)
- 14.On ██████ 2015, 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. (Exhibit 2: Notice of Action ██████ 15)

### **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 all of his 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] 2015, 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 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 Fairview of Fairfield on [REDACTED] [REDACTED] 2015, after a hospitalization at the Norwalk Hospital, after the care received in the nursing facility his health status has improved and stabilized. The Appellant testified that he is not receiving or does he needs any supervision with his ADL's, he also testified that he is only residing at the Facility because he is waiting for his waiting to secure housing in the community. 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**.

*Veronica King*

Veronica King  
Hearing Officer

Cc: Kathy Bruni, Manager, Alternate Care Unit, DSS, Central Office  
Charles Bryan, Alternate Care Unit, DSS, Central Office  
Nancy Walden, Ascend Innovations  
Connie Tanner, Ascend Innovation

### **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.

### **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.