

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

██████████ 2016
Signature Confirmation

Request # 751587

Client ID # ██████████

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, 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 ██████████ 2016, the Appellant requested an administrative hearing to contest Ascend's decision to deny nursing home LOC.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for ██████████ 2016.

On ██████████ 2016, 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 and Sister
Abina Somuah, RN, Windsor Health and Rehabilitation Center, CT

Sandra Leach, LPN, Windsor Health and Rehabilitation Center, Windsor, CT
Ashley Alridge, MSW, Windsor Health and Rehabilitation Center, Windsor, CT
Melva Cooper, URN, Department's Representative
Brenda Providence, URN, Department's Representative
Sheila McCloskey, RN, ASCEND Management Innovations Representative (via telephone)
Sybil Hardy, Hearing Officer

STATEMENT OF THE ISSUE

The issue 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] 2015, the Appellant was admitted from St. Francis Hospital, Hartford, Connecticut to Windsor Health and Rehabilitation Center (the "Nursing Facility"), Windsor, Connecticut which was formerly known as Kindred Transitional Care and Rehabilitation for a 120-day short-term stay. (Hearing Record, Exhibit 4: Pre-Admission Screening and Resident Review ["PASSR"] Form, Exhibit 12: Admission Orders Record, [REDACTED] 15, Exhibit 13: Standard Admission Physicians Orders, [REDACTED] 15)
2. The Appellant was admitted to the Nursing Facility with a primary medical diagnosis of Depression and medical history of the following conditions: hypertension, type 2 diabetes mellitus without complications, alcohol dependence uncomplicated, unspecified abnormalities of gait and mobility, other chronic pain, spinal stenosis, lumbar region, other hereditary and idiopathic neuropathies, atherosclerotic heart disease of native coronary artery without angina pectoris, adjustment disorder with depressed mood, morbid (severe) obesity due to excess calories, obstructive sleep apnea. (Exhibit 6: Connecticut LTC Level of Care Determination Form, Exhibit 15: Preadmission Screening and Resident Review ["PASRR"] Summary of Findings Report)
3. The Appellant is 64 years old (DOB [REDACTED] 51) and resides in a nursing facility (Appellant's Testimony, Exhibit 6)
4. The Appellant does not have an Authorized Representative ("AR"). (Appellant's Testimony)
5. The Appellant applied for the Money Follows the Person program ("MSP") and as of the date of this administrative hearing the application was still pending. (Appellant's Testimony)

6. Effective [REDACTED] 2015 the Appellant received Physical Therapy services at the Nursing Facility and the following short term and long term goals were established: perform bed mobility with stand by assist, perform home exercise program with modified independent to improve ambulation in environment, improve muscle strength to four plus and five good plus in order to increase level of independence. (Exhibit 11: Physical Therapy Progress Notes)
7. Effective [REDACTED] 2015, the Appellant met all established physical therapy goals and was discharged from the program. (Exhibit 11)
8. The Appellant continues to exercise on his own using the Nursing Facility equipment. (Appellant's Testimony)
9. On [REDACTED] 2016, the Nursing Facility submitted a LOC Screening to Ascend which described the Appellant's current activities of daily living ("ADLs") as follows: required supervision with bathing. For the Appellant's Instrumental Activities of Daily Living ("IADLs") the he is capable of preparing meals with minimal assistance. (Hearing Record, Exhibit 6: Level of Care Determination Form)
10. ASCEND found that the Appellant is independent of the following ADLs: bathing, dressing, eating, toileting, continence, transferring and mobility. (Exhibit 2: Connecticut ADL Measures and Measurements, Exhibit 6)
11. The ADL Measures include bathing, dressing, eating, toileting, continence, transferring and mobility (Exhibit 2)
12. The Appellant is capable of walking on his own, but sometimes uses the assist of a cane or walker. (Appellant's Testimony, Exhibit 8: Nursing Assistant Flow Sheet)
13. The Appellant is fully oriented to self, place, time and situation, and does not need prompting or cueing. (Exhibit 6)
14. The Appellant solves problems and makes decisions with no assistance. (Exhibit 6)
15. The Appellant has intermittent low moods but is not a danger to self and others. (Exhibit 14: Mental Health Note)
16. The Appellant communicates information intelligibly and understands information conveyed without assistance. (Exhibit 6)
17. The Appellant has no problems with his vision. (Exhibit 6)

18. The Appellant has no problems related to his behaviors due corroborated dementia. (Exhibit 6)
19. The Appellant receives mental health counseling at the Nursing Facility. (Exhibit 14)
20. The Appellant's current medications include: Cardizem, Folic Acid, Protanix, Thiamine, Lisinapril, Metoprolol Tartrate, Levemir Insulin, NovoLog. (Exhibit 12)
21. On [REDACTED] 2016, Ascend issued a Notice of Action to the Appellant stating that he does not meet the medical criteria for nursing facility LOC and that nursing facility LOC is not medically necessary. (Exhibit 3: NOA, [REDACTED] 16).

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 determined that the Appellant is independent with all his ADLs and his needs could be met through a combination of social and professional services outside of the nursing facility setting.
7. ASCEND correctly determined that the Appellant does not have a chronic medical condition requiring NF level of care.
8. ASCEND correctly determined that the Appellant does not require the continuous and intensive nursing care provided at the nursing facility level.
9. ASCEND correctly issued the Appellant a NOA denying nursing facility level of care.

DECISION

The Appellant's appeal is **DENIED**


Sybil Hardy
Hearing Officer

Pc: Kathy Bruni, Manager, Alternate Care Unit, DSS, Central Office
Brenda Providence, Alternate Care Unit, DSS, Central Office
Melva Cooper, URN, Alternate Care Unit, DSS, Central Office
Sheila McCloskey, Division Manager, 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.