

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

██████████ 2016
Signature confirmation

Client: ██████████
Request: 751803

NOTICE OF DECISION

PARTY

██████████
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PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department"), through ASCEND Management Innovations ("ASCEND"), issued ██████████ (the "Appellant") a *Notice of Action* that stated that upon review of her case, ASCEND had found that nursing facility level of care was not medically necessary for her at that time.

On ██████████ 2016, ██████████, the Appellant's conservator of person, filed a request with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") for an administrative hearing to dispute ASCEND's determination.

On ██████████ 2016, the 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 at ██████████ Center, a skilled nursing facility. The following individuals participated in the administrative hearing in person or by telephone:

██████████, Appellant's conservator
██████████, LPN, ██████████ Healthcare Center, Appellant's witness
██████████, ██████████ Healthcare Center, Appellant's witness
Charles Bryan, RN, Department's Alternate Care Unit, Department's representative
Karen Salwocki, RN, Department's Alternate Care Unit, Department's representative
Sheila McCloskey, RN, ASCEND, Department's witness (by telephone)
Eva Tar, Hearing Officer

The administrative hearing record closed [REDACTED] 2016.

STATEMENT OF ISSUE

The issue to be decided is whether ASCEND correctly determined that nursing facility level of care was no longer medically necessary for the Appellant.

FINDINGS OF FACT

1. The Appellant was born on [REDACTED] 1953. (ASCEND's Exhibit 5: *Level of Care Report*, [REDACTED] 16)(ASCEND's Exhibit 6: *Connecticut LTC Level of Care Determination Form*, [REDACTED] 16)
2. On [REDACTED] 2015, the Appellant was admitted to [REDACTED] Center. (ASCEND's Exhibit 6)
3. [REDACTED] Center is a nursing facility.
4. The Appellant was admitted to the [REDACTED] Center with the following diagnoses: GERD (gastroesophageal reflux disease), diabetes, hypertension (high blood pressure), hyperlipidemia (high cholesterol), severe vertigo, congestive heart failure, ascites (abdominal swelling due to fluid), pericardial effusion (swelling from fluid), mitral regurgitation (blood flowing incorrectly through valves in the heart, i.e. a heart murmur), [REDACTED] (NOS-not otherwise specified), [REDACTED] (NOS-not otherwise specified), and [REDACTED] a. (ASCEND's Exhibit 6)(ASCEND's Exhibit 10: *Physician's Orders*, varying dates)(Hearing request)
5. On or around [REDACTED] 2015, the Appellant received approval for a long-term care stay at [REDACTED] Center. (Hearing request)
6. The Appellant is no longer troubled by ascites or pericardial effusion; these symptoms are no longer present. (Appellant's witness's testimony)
7. The Appellant's mitral regurgitation may need occasional monitoring by her physician. (Appellant's witness's testimony)
8. The Appellant's diagnoses of GERD, diabetes, high blood pressure, high cholesterol, and cardiac issues are being controlled through the following oral medications: Norvasc, aspirin, Luvox, Apresoline, Lisinopril, Zantac, Crestor, Coreg, and Metformin. (Appellant's witness's testimony)
9. The Appellant administers her own finger sticks to test her blood sugar levels twice a day for her diabetes. (Appellant's witness's testimony)(ASCEND's Exhibit 8: *Narrative Nurses Notes*, varying dates)
10. The Appellant's diagnoses of [REDACTED] are being controlled through the following oral medications: Trileptal, Ativan, and Seroquel. (Appellant's witness's testimony)

11. The Appellant has not complained of vertigo for some time. (Appellant's witness's testimony)
12. The Appellant is independent in performing the following personal activities: bathing, dressing, eating, toileting, continence, transferring, and mobility. (ASCEND's Exhibit 6)
13. The Appellant gets stubborn about bathing; it's a struggle to get her to do it. (Appellant's witness's testimony)
14. The Appellant once or twice a week needs assistance with toileting or incontinence. (ASCEND's Exhibit 12: *Documentation Survey Report*, ██████████ 2016)
15. The Appellant requires supervision or physical assistance with multiple components of meal preparation. (ASCEND's Exhibit 6)
16. The Appellant uses a walker, as it is recommended for individuals using antipsychotic drugs, to limit falls. (Appellant's witness's testimony)
17. The Appellant needs verbal reminders and set ups for her medication supports. (ASCEND's Exhibit 6)
18. The Appellant does not receive speech therapy, physical therapy, occupational therapy, or respiratory therapy. (ASCEND's Exhibit 6)
19. The Appellant prefers to stay in her room and watch television during the day; she occasionally greets staff outside of her room. (Appellant's witness's testimony)(Appellant's conservator's testimony)
20. The Appellant receives psychiatric services from an APRN on an as needed basis, when something comes up that needs to be addressed. (Appellant's witness's testimony)
21. On ██████████ 2016, the Appellant reported to a nurse that she had a small growth in her nose. (ASCEND's Exhibit 8)
22. The polyp in the Appellant's nose does not hinder her breathing and is not painful. (ASCEND's Exhibit 8)
23. The nurse referred the Appellant for an ENT¹ consultation and daily use of Flonase nasal spray. (ASCEND's Exhibit 8)
24. On ██████████ ██████████ 2016, ██████████ ██████████, LPN, a ██████████ ██████████ Center coordinator, submitted a *Connecticut LTC Level of Care Determination Form* to ASCEND for its annual review of the Appellant's case. (Appellant's witness's testimony)(ASCEND's Exhibit 6)

¹ ENT = Otolaryngologists: Physicians trained in the medical and surgical treatment of patients with diseases and disorders of the ears, nose, and throat.

25. On [REDACTED] 2016, [REDACTED], a [REDACTED] Center APRN, signed a *Practitioner Certification*, attesting that the Appellant meets the Connecticut Code for nursing home level of care. (ASCEND's Exhibit 7: *Practitioner Certification*, [REDACTED] 16)
26. On [REDACTED] 2016, [REDACTED], M.D., an ASCEND psychiatrist and reviewer, found that the Appellant would require close psychiatric and medical follow up, but did not require the intensity of continual nursing services that are delivered at the level of a skilled nursing facility. (ASCEND's Exhibit 5)
27. Dr. [REDACTED] found that the Appellant's medical needs could be met through a continuation of medical, psychiatric and social services delivered in a less restrictive setting than a skilled nursing facility. (ASCEND's Exhibit 5)
28. [REDACTED] Center staff acknowledge that treatment of the Appellant's current medical conditions do not require the Appellant to be institutionalized in a skilled nursing facility. (Appellant's witnesses' testimony)
29. On [REDACTED] 2016, ASCEND issued a *Notice of Action* to the Appellant, stating that nursing facility level of care was not medically necessary for her at that time. (ASCEND's Exhibit 4: *Notice of Action*, [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. 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).

3. 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).
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. Section 17b-262-707 (a) of the Regulations of Connecticut State Agencies provides: 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.
6. 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 and/or chronic conditions requiring continuous skilled nursing services and/or nursing supervision or has chronic conditions requiring substantial assistance with personal care, on a daily basis;
 - (ii) That a patient admitted to a rest home with nursing supervision has controlled and/or stable chronic conditions which require minimal skilled nursing services, nursing supervision, or assistance with personal care on a daily basis. Conn. Agencies Regs. § 19-13-D8t (d)(1)(A).
7. The Appellant's medical conditions are under control through medication.
8. The Appellant does not have an uncontrolled and/or unstable and/or chronic medical conditions requiring continuous skilled nursing services and/or nursing supervision.
9. The Appellant is independent with her activities of daily living.

10. The Appellant does not require substantial assistance with personal care on a daily basis.
11. The Appellant's institutionalization at a skilled nursing facility is not clinically appropriate in terms of type, frequency, timing, site, extent and duration for the treatment of her medical conditions.
12. The Appellant's institutionalization at a skilled nursing facility is not the least restrictive means to medically treat the Appellant's medical conditions.
13. Treatment at the skilled nursing facility level of care is no longer medically necessary for the Appellant.
14. ASCEND correctly denied the Appellant's [REDACTED] 2016 request for continued approval of Medicaid coverage of the Appellant's long-term care services provided by [REDACTED] e Center.

DISCUSSION

The Appellant's medical condition has significantly improved from what it was at the time of her [REDACTED] 2015 admittance to [REDACTED] Center. The Appellant's current medical and mental health issues are being controlled through oral medication. The Appellant does not require assistance with completing her activities of daily living. A skilled facility is not the least restrictive means to treat the Appellant's medical conditions; her medical needs can be met through community services and support.

DECISION

The Appellant's appeal is DENIED.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

Cc: [REDACTED], [REDACTED]
Kathy Bruni, Manager, Alternate Care Unit, DSS-Central Office
Charles Bryan, Alternate Care Unit, DSS-Central Office
Karen Salwocki, Alternate Care Unit, DSS-Central Office
Angela Gagan, ASCEND
Nancy Walden, ASCEND
Joi Shaw, ASCEND
Connie Tanner, ASCEND

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 Legal Counsel, Regulations, and Administrative Hearings, 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.