

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

Client # ██████████
Request # 760782

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 she 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
██████████, Director of Social Work, ██████████
Connecticut

[REDACTED], RN, Director of Nursing, [REDACTED]
[REDACTED], Program Director, [REDACTED],

Connecticut

Sheila McCloskey, RN, ASCEND Management Innovations Representative (via telephone)

Patricia J. Jackowski, URN, DSS, Central Office

Charles Bryan, URN, DSS Central Office

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. During [REDACTED] 2015, the Appellant had a heart attack and was treated at Hartford Hospital and released into the community after a three day admission. (Appellant's Testimony)
2. The Appellant resided in a shelter after her release from the hospital. (Appellant's Testimony)
3. A visiting nurse would come to the shelter and provide the Appellant with her required medications. (Appellant's Testimony)
4. The Appellant is 53 years old (DOB [REDACTED] 62) and resides in a nursing facility (Appellant's Testimony, Exhibit 7)
5. The Appellant does not have an Authorized Representative ("AR"). (Appellant's Testimony)
6. On [REDACTED] 2015, the Appellant was discharged from [REDACTED] [REDACTED], Connecticut to [REDACTED] (the "Nursing Facility") [REDACTED], Connecticut for a 120-day short-term stay. (Hearing Record, Exhibit 6: Pre-Admission Screening and Resident Review ["PASSR"] Form)
7. The Appellant was admitted to the Nursing Facility with a medical diagnosis of [REDACTED] y, [REDACTED] and medical history of the following conditions: hypertension, non-insulin dependent diabetes mellitus, asthma, GERD, status post heart attack, hyperlipidemia, coronary artery disease,

history of [REDACTED], dental infection, and cataracts.. (Hearing Record, Exhibit 7: Connecticut LTC Level of Care Determination Form, Exhibit 13: Physicians Order Sheet)

8. It is the Nursing Facility Protocol to dispense all medications to patients. (Director of Nursing's Testimony)
9. On [REDACTED] 2016, the Appellant successfully discharged from physical therapy services. (Exhibit 18: Physical Therapy/Speech Therapy Discharge Summary)
10. On [REDACTED] 2016, the Appellant was denied a Mental Health Waiver with the department of Mental Health and Addiction Services ("DMHAS") because she did not meet ADL requirement. (Exhibit 3: Letter from DMHAS, [REDACTED] 15)
11. On [REDACTED] 2016, the Appellant was successfully discharged from Speech Therapy services. (Exhibit 18)
12. On [REDACTED] 2016, 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)
13. Effective [REDACTED] 2016, the Appellant was independent with all her Activities of Daily Living (ADL's) and psychiatrically stable. (Exhibit 7: Level of Care Report, [REDACTED] 16)
14. Effective [REDACTED] 2016, the Appellant required medication supports. (Exhibit 7)
15. On [REDACTED] 2016, the Appellant successfully completed her Cardiac Rehabilitation at [REDACTED] Hospital. (Hearing Record, Exhibit 21: Physicians Order Sheet)
16. 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: Independent but required supervision with bathing and feeding. (Hearing Record, Exhibit 7)
17. ASCEND found that the Appellant is independent of the following ADLs: bathing, dressing, eating, toileting, continence, transferring and mobility. (Exhibit 4: Connecticut ADL Measures and Measurements, Exhibit 7)
18. The ADL Measures include bathing, dressing, eating, toileting, continence, transferring and mobility (Exhibit 2)

19. The Appellant is capable of walking on her own, but sometimes uses the assist of a walker. (Appellant's Testimony, Exhibit 7)
20. The Appellant requires no assistance with meal preparation. (Exhibit 7)
21. The Appellant is fully oriented to self, place, time and situation, and does not need prompting or cueing. (Exhibit 7)
22. The Appellant solves problems and makes decisions with minimal assistance. (Exhibit 7)
23. The Appellant communicates information intelligibly and understands information conveyed without assistance. (Exhibit 7)
24. The Appellant has cataracts and requires reading glasses. (Exhibit 7)
25. The Appellant has no problems related to his behaviors due corroborated dementia. (Exhibit 7)
26. The Appellant currently takes the following medications daily: Humalog, Lanus, Omeprazole, Aspirin, Bupropion HCL, Colpidogrel F?C, Isosorbide Mono ER, Metoprolol Succ ER, Venlafaxine HCL ER, Vitamin B-1, Advair, Buspirone HCL, Gabapentin, Ranexa F/C, Famotidine, Gabapentin, Melatonin, Pravastatin Sodium, Senexon, Tricor, Proair HFA. (Exhibit 21 Physicans Order Sheet. [REDACTED]/16)
27. The Appellant receives mental health counseling at the Nursing Facility. (Exhibit 11: [REDACTED] Exhibit 12: [REDACTED] [REDACTED] Notes, Exhibit 14: [REDACTED] ogess Notes, Exhibit 15: [REDACTED] Session Notes, Exhibit 17: [REDACTED] Consultation Med Option)
28. On [REDACTED] 2016, Ascend issued a Notice of Action to the Appellant stating that she 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 her ADLs and her 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
Charles Bryan, URN, Alternate Care Unit, DSS, Central Office
Patricia J. Jackowski, 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.