

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 ID#: ██████████
HEARING ID#: 791034

NOTICE OF DECISION

PARTY

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██
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PROCEDURAL BACKGROUND

On ██████████ 2016, Ascend Management Innovations LLC, (“Ascend”) the Department of Social Services’ (“Department”) vendor that administers approval of nursing home care, sent ██████████ (“Appellant”) a notice stating that he does not meet the level of care criteria to be admitted to or reside in a nursing facility.

On ██████████ 2016, the Appellant requested an administrative hearing to contest Ascend’s decision.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for October 27, 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 Paradigm Healthcare in Waterbury (“Paradigm”). The following individuals were present at the hearing:

- ██████████ Appellant
- Sheila McCloskey, RN, Ascend
- Amanda Mangiafico, Social Worker, Middlesex HCC
- Beth Schmeizel, Administrator, Middlesex HCC
- Elizabeth Orejuela, RN, Department of Social Services
- Brenda Providence, RN, Department of Social Services

Jessica Poruban, Specialized Care Manager, Agency on Aging So Central CT
Samantha Calcagni, Transition Coordinator, Agency on Aging So Central CT
Roberta Gould, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether Ascend's decision that the Appellant does not meet the skilled nursing level of care criteria was correct.

FINDINGS OF FACT

1. The Appellant's date of birth is [REDACTED] 1952. He is 64 years old. (Exhibit 4: Level of Care Determination form and Hearing summary)
2. Prior to [REDACTED] 2016, the Appellant lived in a motel. (Hearing summary and Appellant's Testimony)
3. On [REDACTED] 2016, Middlesex Health Care Center admitted the Appellant for generalized muscle weakness, heart disease, chronic kidney disease, anxiety, unspecified abdominal pain and a digestive disorder. (Exhibit 12: Physician Orders form, Exhibit 16: Admission history and physical exam and Hearing summary)
4. The Appellant has a past medical history of hypertension, congestive heart failure, chronic kidney disease, diseases of the digestive system, anxiety disorder and generalized muscle weakness. (Exhibit 4: Level of Care Determination form, Exhibit 12 and Hearing summary)
5. The Appellant has a past psychiatric history of anxiety disorder, and digestive disorders. (Exhibit 4)
6. Ascend determined that the Appellant met the Connecticut Minimum Admission Criteria for short-term nursing facility stay of 30 days. This approval expired on [REDACTED] [REDACTED] 2016. (Hearing summary)
7. On [REDACTED] 2016, Middlesex Health Care Center submitted a Level of Care screening for the Appellant's continued stay at the facility for the period of [REDACTED] 2016, through [REDACTED] 2016. (Exhibit 4 and Exhibit 15: Minimum Data Set resident assessment and care screening)
8. The Appellant was independent with seven out of seven activities of daily living (ADLs). (Exhibit 4 and Hearing summary)
9. The Appellant requires supervision with medication administration. (Exhibit 4)

10. The Appellant is oriented to all spheres with no cognitive deficits. (Exhibit 15 and Hearing summary)
11. Beginning on [REDACTED] 2016, the Appellant received physical and occupational therapy 3 times per week for one week. (Exhibit 4)
12. At the time of the Level of Care screening, the Appellant was independent with all ADL's, with support provided for medication administration only. (Exhibit 4 And Hearing summary)
13. On [REDACTED] 2016, the Appellant had a medical on-site assessment. The attending physician, Dr. Bill Regan, stated that nursing home level of care was not medically necessary. (Exhibit 3: Notice of Denial of Nursing Home Facility level of care and Hearing summary)
14. On [REDACTED] 2016, Ascend determined that the Appellant did not meet the Connecticut Minimum Admission Criteria for nursing facility level of care as it was not medically necessary. (Exhibit 3 and Hearing summary)
15. The Appellant has declined placement in Shailerville Manor rest home in East Haddam, CT. (Social Worker's testimony and Appellant's testimony)
16. The Appellant has been approved for Money Follows the Person Program ("MFP"). (Specialized Care Manager testimony)
17. On [REDACTED] 2016, MFP program received approval for the Rental Assistance Program ("RAP") for the Appellant. (Specialized Care Manager testimony).
18. The MFP housing coordinator will work with the Appellant to secure permanent housing outside of the long-term care facility. (Specialized Care Manager testimony)
19. The Appellant would prefer to live in a permanent housing situation outside of a long-term care facility. (Appellant's testimony)

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. .

- (2) 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;
 - (3) the department's evaluation and written authorization of the client's need for nursing facility services as ordered by the licensed practitioner;
 - (4) 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;
 - (5) 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
 - (6) 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. "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. Section 17b-262-707(b).
4. 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. Section 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. The Appellant has some chronic medical conditions that are managed through medication.
7. There was no documentation provided of any severe mental health diagnoses or treatment.
8. The Appellant has the physical ability to complete his ADLs. He may require supervision with medication administration, which can be provided in a community setting.
9. It is not clinically appropriate that the Appellant reside in a nursing facility.
10. Ascend Management Innovations is correct in its determination that the Appellant does not meet the medical criteria for nursing facility level of care.

DISCUSSION

Because the Appellant is independent with all of his ADLs and requires only supervision with medication administration, he may live in a less restrictive setting in the community and receive home care services and social services. The Appellant testified that would prefer to live in a community setting outside of the long-term care facility. He is currently working with the MFP program to obtain permanent housing and a RAP certificate has been approved for him. Ascend was correct in their decision that the Appellant does not meet medical necessity criteria for nursing home level of care.

DECISION

The Appellant's appeal is **DENIED.**

Roberta Gould
Roberta Gould
Hearing Officer

PC: K. Bruni, Manager, Alternate Care Unit, DSS
Sheila McCloskey, RN, Ascend
Joi Shaw, Ascend
Connie Tanner, Ascend
Brenda Providence, Alternate Care Unit, DSS
Elizabeth Orejuela, Alternate Care Unit, DSS
Facility Administrator, Middlesex Health Care Center

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. 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.