

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

██████████, 2017
Signature Confirmation

Client # ██████████
Request # 810783

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2017, 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 ██████████ 2017, the Appellant requested an administrative hearing to contest ASCEND’s decision to deny nursing home LOC.

On ██████████ 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling an administrative hearing for ██████████ 2017.

On ██████████, 2017, 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
Jessica Poruban, Specialized Care Manager, Money Follows the Person (“MFP”)
Samantha Calcagni, Transition Coordinator, MFP

Nicole Fletcher, Housing Coordinator, MFP
Anne M. Rustic, Social Worker, Autumn Lake Health Care Center, Cromwell,
Connecticut
Jaimie Johnson, RN, ASCEND Management Innovations Representative (via
telephone)
Brenda Providence, 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] 2016, the Appellant was admitted to Middlesex Hospital, Middletown, Connecticut, with a diagnosis of fall, inability to ambulate, degenerative joint disease, back pain, disc disease and severe arthritis. (Hearing Record)
2. On [REDACTED] 2016, the Appellant was discharged from the hospital, and admitted to Autumn Lake Health Care Center of Cromwell, Connecticut (the "Nursing Facility") for a 90 day short-term stay. (Hearing Record, Exhibit 5 Connecticut LTC Level of Care Determination Form)
3. The Appellant's was admitted to the Nursing Facility with diagnosis of Osteoarthritis of hip and pain in right hip. He has a history of falling, chronic pain and resistance to penicillin. The Appellant required total physical assistance with meal preparation. (Hearing Record, Exhibit 5)
4. The Appellant resides in a nursing facility. (Appellant's Testimony, Exhibit 5)
5. The Appellant does not have an Authorized Representative ("AR"). (Appellant's Testimony)
6. The Appellant is a 61 years old (DOB [REDACTED]/55) single male. (Appellant's Testimony, Exhibit 5, Exhibit 9: APRN Complete Evaluation)
7. The Appellant receives a gross monthly payment from Supplemental Security Income of \$733.00. (Appellant's Testimony)
8. Dr. Jeffrey Kagan, MD, (the "primary care physician") of Newington, Connecticut is the Appellant's primary care physician. (Appellant's Testimony)

9. The Appellant utilizes the services of the Nursing Facility physician, Marc Raad, MD of Wolcott, Connecticut. (Appellant's Testimony, Exhibit 5)
10. On [REDACTED] 2016, the Appellant was admitted to UCONN for hip replacement surgery. (Exhibit 7: Progress Notes)
11. On [REDACTED] 2016, the Appellant applied for assistance under the Money Follows the Person program. (Appellant's Testimony, Hearing Record)
12. On [REDACTED] 2016, ASCEND approved an additional 60-day short-term stay in the Nursing Facility for the Appellant because the Appellant needed the following supports: supervision with transfer. (Hearing Record)
13. On [REDACTED], 2016, the Appellant was referred for a mental health consultation. (Exhibit 9, Exhibit 12)
14. During [REDACTED] 2016, the Appellant was discharged from occupational therapy services. (Hearing Record)
15. During [REDACTED] 2016, the Appellant was discharged from physical therapy services that began [REDACTED] 2016. (Hearing Record, Exhibit 12)
16. The Appellant requires the following medication supports: set ups and physical assistance with some or all of the physical steps of taking medication and adherence cannot be ensured with verbal and gestural support alone. (Appellant's Testimony, Exhibit 5)
17. The Appellant currently takes the following medications daily: Acetaminophen, Calcium 600+D, Dilaudid, Gabapentin Capsule, Methocarbamol Tablet, Trazodone HCl. (Exhibit 12)
18. Effective [REDACTED], 2016, the Appellant was independent with all his Activities of Daily Living (ADL's) and psychiatrically stable. (Exhibit 5, Exhibit 9, Exhibit 10)
19. 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 in all his ADL's and Instrumental ADL's ("IADL"). (Hearing Record, Exhibit 5)
20. The ADL Measures include bathing, dressing, eating, toileting, continence, transferring and mobility (Exhibit 3: Connecticut ADL Measure and Measurements, Exhibit 5)

21. ASCEND found that the Appellant is independent of the all ADLs: bathing, dressing, eating, toileting, continence, transferring and mobility. (Exhibit 3, Exhibit 5)
22. The Appellant requires the assistance of a wheelchair or a wheeled walker to get around. He can get up and pivot but is unable to stand for long periods of time. (Appellant's Testimony)
23. The Appellant's goal is to walk unassisted. (Appellant's Testimony)
24. The Appellant exercises on his own using Nursing Facility equipment and also exercises in his bed. (Appellant's Testimony)
25. The Appellant does not require assistance with meal preparation, but meal preparation is provided by the Nursing Facility. (Appellant's Testimony, Hearing Record, Exhibit 5, Exhibit 10)
26. The Appellant is fully oriented to self, place, time and situation, and does not need prompting or cueing. (Exhibit 5)
27. The Appellant solves problems and makes decisions with no assistance. (Appellant's Testimony, Exhibit 5)
28. The Appellant communicates information intelligibly and understands information conveyed without assistance. (Exhibit 5)
29. The Appellant has no problems with his vision. (Exhibit 5)
30. The Appellant has no problems related to his behaviors due to corroborated dementia. (Appellant's Testimony, Exhibit 5, Exhibit 10, Exhibit 9)
31. The Appellant is cooperative and attentive with no gross behavioral abnormalities. (Exhibit 9)
32. The Appellant is capable of leaving the Nursing Facility for a daily outing with a responsible party. (Appellant's Testimony, Exhibit 7, Exhibit 12)
33. Appellant has an apartment ready once he is discharged from the Nursing Facility. (Appellant's Testimony, Exhibit 7)
34. The Appellant does not require the continuous and intensive nursing services that are delivered at the level of the Nursing Facility. (Exhibit 4, Exhibit 5)
35. On [REDACTED] 2017, 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 4).

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 nursing facility 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, URN, Alternate Care Unit, DSS, Central Office
Jaimie Johnson, RN, 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.