

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

Request # 819606
Client ID # ██████████

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 May 5, 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
Heather Griskewicz, Social Worker, Touchpoints at Chestnut
Donna Grant, Director Nursing Services, Touchpoints at Chestnut

Patricia Jackowski, RN, Community Options, Department of Social Services
Jaimie Johnson, ASCEND (participated by telephone)
Carla Hardy, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether Ascend's decision that the Appellant does not meet the criteria for nursing facility LOC was correct.

FINDINGS OF FACT

1. On [REDACTED] 2015, the Appellant was admitted to Crossings West Health and Rehab ("Crossings") from Hartford Hospital. The Appellant was approved by Ascend for a 90-day short-term stay. (Hearing Summary)
2. The Appellant's medical diagnosis was: foot fracture, hypertension, high cholesterol, obesity, diabetes mellitus type II, Schizoaffective, Schizophrenia, and etoh. The Appellant required supervision with bathing, dressing, toileting, mobility, transfer and continence. (Hearing Summary)
3. On [REDACTED] 2015, Crossings submitted the LOC evaluation form to Ascend. Ascend approved the Appellant for 90 days of extended short term care. (Hearing Summary)
4. On [REDACTED], 2015, the Appellant was admitted to Touchpoints at Chestnut ("Touchpoints"). (Hearing Summary)
5. On [REDACTED] 2015, Touchpoints submitted the LOC screening form to Ascend. The nursing facility LOC screen described the Appellant's current activities of daily living ("ADL") support needs as follows: the Appellant required hands on assistance with bathing and dressing. The Appellant was capable of preparing meals with minimal assistance. (Hearing Summary)
6. The ADL Measures include bathing, dressing, eating, toileting, continence, transferring and mobility. (Exhibit 4: Connecticut ADL Measures and Measurements)
7. On [REDACTED] 2015, Ascend approved the Appellant for 180 days of extended short term care which expired on [REDACTED], 2016. (Hearing Summary)
8. On [REDACTED] 2016, Touchpoints submitted the LOC screening form to Ascend which reported the Appellant required hands on assistance with bathing and dressing and supervision with eating/feeding and toileting. The

Appellant required no assistance or supervision with IADLs (instrumental activities of daily living). (Hearing Summary)

9. On [REDACTED], 2016, Ascend approved the Appellant for 180 additional days of extended short term care which expired on [REDACTED] 2016. (Hearing Summary)
10. On [REDACTED] 2016, Ascend received the nursing facility LOC form from Touchpoints which reported the Appellant required hands on assistance with bathing and dressing. He did not require any assistance or supervision with his IADLs. Ascend approved the Appellant for 180 days of extended of extended short term care which expired on [REDACTED] 2017. (Hearing Summary)
11. On [REDACTED] 2017, Touchpoints submitted the nursing facility LOC screening form to Ascend which reported the Appellant required hands on assistance with bathing. He did not require any assistance or supervision with his IADLs (“instrumental activities of daily living”). (Hearing Summary)
12. Based on the information provided on the nursing facility LOC screening form, the Appellant required a Level I screen and an on-site Level II evaluation which took place on [REDACTED] 2017. (Hearing Summary)
13. The Appellant is 60 years old (DOB [REDACTED]/57) and resides in a nursing facility. (Exhibit 6: Level of Care Determination Form)
14. The Appellant is able to complete all seven ADL’s. (Appellant’s Testimony)
15. The Appellant is not receiving rehabilitative services which include physical therapy, occupational therapy, speech therapy and respiratory therapy. (Appellant’s Testimony)
16. The Appellant’s medical diagnoses/history includes: htn, diabetes mellitus type II, toxic encephalopathy, lithium and Depakote toxicity, aspiration pneumonia, schizophrenia (paranoid), seizure disorder, (R) humerus fx, (L) hand wound, chronic pain, dysphagia. (Appellant’s Exhibit A: Physician’s Order Sheet)
17. The Appellant’s current medications include: amlodipine besylate, atorvastatin calcium, clozapine, hydrochlorothiazide, loratadine, pioglitazone hcl, benztropine mesylate, divalproex sod, ferrous sulfate, haloperidol, metformin hcl f/c, clozapine, milk of magnesia, bisac-evac, enema latex-free, acetaminophen, ipratropium-albuterol, oxycodone-acetaminoph, and robafen. (Appellant’s Exhibit A: Physician’s Order Sheet)
18. Touchpoints nursing staff dispenses all of the Appellant’s medications and observes the Appellant as he takes his medications. (Appellant’s Testimony)

19. On [REDACTED], 2017, Ascend determined that nursing facility services were not medically necessary for the Appellant because his chronic medical conditions are stabilized and he is independent with his ADLs. He does not require the intensive and continuous nursing services that are delivered at the level of the nursing facility. His needs could be met through a combination of medical, psychiatric and social services delivered in a less restrictive setting. (Exhibit 5: Notice of Action, [REDACTED]/17)
20. 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 as a result, he would not be eligible for nursing facility services funded by Medicaid. (Exhibit 5: NOA, [REDACTED]/17)

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. Conn Agencies Regs. § 19-13-D8t(d)(1)(A) provides 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."
4. 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.
5. Ascend correctly used clinical criteria and guidelines solely as screening tools.

6. Ascend correctly determined that the Appellant is independent with all of his ADLs.
7. Ascend correctly determined that the Appellant does not have a chronic medical condition requiring substantial assistance with personal care on a daily basis.
8. Ascend correctly determined that the Appellant does not have uncontrolled and/or unstable medical conditions requiring continuous skilled nursing services and /or nursing supervision.
9. Ascend correctly determined it is not clinically appropriate that the Appellant reside in a nursing facility.
10. Ascend correctly determined that nursing facility services are not medically necessary for the Appellant, because his medical needs could be met with services offered in the community.
11. Ascend correctly determined that it is not medically necessary for the Appellant to reside in a skilled nursing facility and on [REDACTED] 2017, correctly denied his request for continued approval of long-term care Medicaid.

DISCUSSION

The Appellant does not meet the medical criteria for nursing facility LOC because he does not have a chronic/unstable medical condition requiring skilled nursing care and is not in need of substantial assistance with his personal care needs on a daily basis. Ascend was correct to deny nursing facility level of care.

DECISION

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


Carla Hardy
Hearing Officer

Pc: Patricia Jackowski, Community Options, DSS, Central Office
Angela Gagan, Ascend Management Innovations
Joi Shaw, Ascend Management Innovations
Connie Tanner, Ascend Management Innovations
Jaimie Johnson, 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.