

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3730

July 20, 2018
Signature Confirmation

Client ID # [REDACTED]
Request # 110904

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED], Ascend Management Innovations LLC, (“Ascend”) the Department of Social Services’ (the “Department”) vendor that administers approval of nursing home care, sent [REDACTED] (the “Appellant”) a Notice of Action denial of nursing facility level of care stating that the Appellant does not meet the medical criteria for skilled nursing level of care.

On [REDACTED], the Appellant requested an administrative hearing to contest Ascend’s decision.

On [REDACTED] [REDACTED] [REDACTED] the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) sent the Appellant a notice that the issue of her hearing appeared to be resolved.

On [REDACTED] the Appellant contacted the Department to advise that she was still waiting for her hearing on the denial of nursing facility level of care.

On [REDACTED], OLCRAH issued a notice scheduling the administrative hearing for [REDACTED]

On [REDACTED], 2018, 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
 Jamie Johnson, RN, Ascend Management Innovations, (By telephone)
 Charlene Ogren, Community Options Unit, Department of Social Services
 Hal Moreno, Social Worker, ██████████ ██████████
 Judith Hoheb, Business Office Manager, Chelsea Place Care Center
 Maureen Foley-Roy, Hearing Officer

The hearing officer held the hearing record open for the submission of additional evidence. No additional evidence was received. The record closed on July 2, 2018.

STATEMENT OF THE ISSUE

The issue to be decided is whether Ascend's decision on ██████████ that skilled nursing facility level of care was not medically necessary for the Appellant is correct.

FINDINGS OF FACT

1. On ██████████, ██████████ ██████████ ("the facility") admitted the Appellant with diagnoses of chronic alcoholism in remission, chronic depressive, cocaine abuse, episodic heroin dependence, opiate withdrawal, nicotine dependence, cellulitis of left wrist, abscess of dorsum of left hand, acute kidney injury, cardiac murmur, left hand I & F, Bipolar disorder, PTSD and pseudogout of multiple joints. (Hearing Summary)
2. On ██████████, the Appellant received approval a short term stay of 60 days from Ascend Management Services. (Hearing Summary)
3. Ascend Management Services approved three subsequent short term stays for the Appellant. The last of those approvals expired on ██████████ ██████████. (Hearing Summary)
4. On ██████████, the Appellant had reconstructive surgery on her foot. (Exhibit 19: St. Francis Hospital Visit Summary Appellant's testimony)
5. On ██████████, the Appellant sustained a surgical wound infection to her foot. (Exhibit 19)
6. On ██████████ ██████████ ██████████, the Appellant experienced the onset of "unspecified abnormalities of gait and mobility" and "generalized muscle weakness. (Exhibit 14: PT Evaluation and Plan of Treatment)

7. Healing had been inconsistent since the foot surgery. Sometimes the foot would appear to be healing and the Appellant would wear a boot and use a walker. Other times, she was told to put no weight on her foot and confine herself to a wheelchair. (Appellant's testimony)
8. In [REDACTED], the physical therapy department at the facility found that due to documented physical impairments and associated functional deficits; the Appellant was at risk for decrease in level of mobility and decreased ability to return to prior level of supervision and falls. (Exhibit 14)
9. In [REDACTED], the Appellant needed no help or oversight moving to and from bed, chair, wheelchair or standing. (Exhibit 6: CNA Flow Sheets)
10. On [REDACTED], the Appellant was found unconscious in a public park and taken to Hartford Hospital emergency room. The discharge paperwork stated that the Appellant admitted to snorting a bag of heroin. (Exhibit 8: Nurse's Notes)
11. On [REDACTED], the Appellant's podiatrist determined that the previous surgery was not successful as her foot was buckling and the Appellant was walking on the side of her foot. The podiatrist's decision was that another surgery was necessary, however it could not be scheduled before the end of the year as the surgeon was completely booked up. (Appellant's testimony)
12. The Appellant's testimony regarding the inconsistent healing of her foot and need for another surgery was credible.
13. On [REDACTED], Ascend conducted a level of care review. The reviewer found that the Appellant needed supervision with bathing and was independent with the remaining activities of daily living ("ADL's) and that set up was needed for medication administration. The Appellant was receiving physical therapy three days a week. Skilled nursing services were being utilized to monitor vital signs, lab values and medication management. (Exhibit 3: Connecticut Level of Care determination form)
14. On [REDACTED], Dr. Susan Rieck, MD for Ascend Management, determined that the Appellant did not require continuous and intensive nursing services delivered at a nursing facility and that her needs would be more appropriately met in a residential treatment facility. (Exhibit 3)
15. In [REDACTED], the Appellant had the second surgery on her foot. The Appellant is experiencing the same type of inconsistent healing after

the second surgery. She is currently confined to a wheelchair and has been advised to put no weight on her foot. (Appellant's testimony)

16. In [REDACTED], Ascend issued approval for a short term stay for the Appellant going forward. The facility is requesting a retrospective review.

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. 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. § 19-13-D8t(d)(1)(A).

5. State regulations provide that nothing in subparagraph A above shall require the transfer of any patient admitted to the facility prior to October 1, 1981. Conn. Agencies Regs. § 19-13-D8t(d)(1)(B).
6. State regulations provide that no patient shall be admitted to a facility without compliance with the above requirements except in the event of an emergency, in which case the facility shall notify the Department within 72 hours after such admission. Conn. Agencies Regs. § 19-13-D8t(d)(1)(C).
7. Section 17b-259b of the Connecticut General Statutes states that “Medically necessary” and “medical necessity” defined. Notice of denial of services. Regulations.(a) For the 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 medial 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 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.

8. On the day of the review, the Appellant was independent six of seven of her activities of daily living and required supervision with bathing.
9. The Appellant was receiving physical therapy and medication supports.
10. Because the condition of the Appellant's foot was unstable after the first surgery and subsequent infection and the Appellant required nursing services (monitoring of foot) and assistance with ADL's at unpredictable intervals; it was clinically appropriate that the Appellant reside in a nursing facility.
11. Ascend Management Innovations was incorrect in its determination that the Appellant does not meet the medical criteria for a nursing facility level of care.
12. Ascend Management Innovations was incorrect in its determination that it was not medically necessary for the Appellant to reside in a skilled nursing facility.

DISCUSSION

A most unusual situation in that the time period that is the subject of the hearing was six months ago. At that time, as now, the Appellant was experiencing an inconsistent degree of healing in her surgically repaired foot. In late November, when Ascend made its determination, the podiatrist had already determined that another surgery was warranted. (The undersigned had requested a copy of the [REDACTED] 2017 podiatry consult for the record but it was not provided. However, as the surgery did take place, the Appellant's testimony regarding the pending surgery and difficulties in scheduling it before the end of 2017 was credible.)

.Although at times in [REDACTED], it appears that the Appellant was having no difficulty in transferring or ambulating; that seemed to change from day to day. The Appellant was still receiving physical therapy three times a week and PT expressed concern that the patient was still at risk for decreased mobility and falls. In addition, the Appellant had a drug overdose in [REDACTED]. Given her relapse to her "episodic heroin use" and her unstable surgically repaired foot, nursing facility level of care was appropriate for the Appellant in [REDACTED] of 2017.

DECISION

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

ORDER

The Department is to rescind its [REDACTED], 2017 denying nursing facility level of care for the Appellant. Compliance with this order is due by [REDACTED] 2018 and shall consist of verification that the [REDACTED], 2017 notice has been rescinded.



Maureen Foley-Roy
Hearing Officer

PC: Shirley Stoute, DSS, C. O., Paul Chase, DSS C. O., Lisa Bonetti, DSS, C.O,
Laurie Filipini, DSS C. O, Pam Adams, DSS, C. O.,Charlaine Ogren, DSS C. O.
Jamie Johnson, Ascend Management Services

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 06105-3730.

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.