

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

██████████ 2018  
SIGNATURE CONFIRMATION

REQUEST #124031

CLIENT ID ██████████  
CASE ID ██████████

NOTICE OF DECISION

PARTY

██████████  
██████████  
██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████ 2018, Ascend Management Innovations LLC, (“Ascend”) under contract with the Department of Social Services (“DSS or the Department”) to administer approval of nursing home care, sent ██████████ (the “Appellant”) a Notice of Closure of Screening for Nursing Facility Level of Care stating that Ascend would not be processing the Appellant’s request for approval of nursing facility (“NF”) level of care pursuant to Section 17b-259b of the Connecticut General Statutes, because the clinical information requested by Ascend to support the Appellant’s need for nursing facility level of care was not submitted.

On ██████████ 2018, the Appellant requested an administrative hearing to contest Ascend’s decision to deny on going NF level of care.

On ██████████ 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling an administrative hearing for ██████████ 2018 @ 10:00 AM to address Ascend’s decision to deny the Appellant’s request for ongoing NF level of care.

OLCRAH granted the Appellant a continuance on ██████████ 2018.

On ██████████ 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:

[REDACTED], Appellant  
 [REDACTED], Administrator for the Facility  
 [REDACTED], Director of Nursing for the Facility  
 [REDACTED] RN, Care Coordinator for the Facility  
 Jaimie Feril, RN, Representative for Ascend (By Telephone)  
 Melva Cooper, RN, Representative for the Department/Alternate Care Unit ("ACU")  
 Hearing C. Linton, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether Ascend correctly determined that NF level of care is not medically necessary for the Appellant, pursuant to Connecticut General Statutes.

### **FINDINGS OF FACT**

1. On [REDACTED] 2017, the Appellant was admitted to Park Place Health Center (the "Facility") with diagnoses of gangrene of foot, ulcer of left foot, type 2 diabetes with foot ulcer and long term use of insulin, diabetic neuropathy, cellulitis of foot, acute osteomyelitis of right foot, diabetic infection of right foot, gas gangrene, hypocalcemia, hyponatremia, hyperlipidemia, obstructive sleep apnea, tachycardia. (Appellant's testimony; Hearing Summary)
2. On [REDACTED] 2017, the Facility submitted a Nursing Facility Level of Care ("NF LOC") screening form to Ascend for approval of short-term NF stay for the Appellant. (Hearing Summary)
3. The NF LOC screening form described the Appellant's support needs with regards to his Activities of Daily Living ("ADL") as needing supervision with bathing, toileting, mobility, and transfers, and for his Instrumental Activities of Daily Living ("IADL") as requiring no assistance or supervision. (Hearing Summary; Dept.'s Exhibit #5: ADL Measures and Ratings)
4. On [REDACTED] 2017, the Appellant had an on-site Level II assessment, and the Appellant received approval for a short-term NF stay of 180 days, to expire on [REDACTED] 2018. (Hearing Summary)
5. On [REDACTED] 2018, the Facility submitted a NF LOC screening form to Ascend for approval of short-term NF stay for the Appellant. (Hearing Summary)
6. The NF LOC screening form described the Appellant's current ADL support needs as independent with his activities of daily living, and for his IADLs as requiring no assistance or supervision. (Hearing Summary)
7. The Appellant received approval for another short-term NF stay of 60 days, to expire on [REDACTED] 2018. (Hearing Summary)

8. On [REDACTED] 2018, the Facility submitted a NF LOC screening form to Ascend for approval of short-term NF stay for the Appellant. (Hearing Summary)
9. The NF LOC screening form described the Appellant's current ADL support needs as independent with his activities of daily living, and for his IADLs as requiring no assistance or supervision. (Hearing Summary)
10. Ascend determined that the Appellant required a Level I screening, and requested additional information of the Practitioner Certification signed by the physician from the Facility on [REDACTED] 2018, [REDACTED] 2018, [REDACTED] 2018, and [REDACTED], 2018, but Ascend did not receive the requested information after fourteen days. (Hearing Summary)
11. The Appellant's Level I review received a Technical Denial due to Ascend not receiving requested information from the Facility. (Hearing Summary)
12. On [REDACTED] 2018, Ascend issued a Notice of Closure of Screening for Nursing Facility Level of Care stating that Ascend would not be processing the Appellant's request for approval of nursing facility level of care, because the information requested by Ascend to support the Appellant's need for nursing facility level of care was not submitted by the Facility. (Hearing Summary; Dept.'s Exhibit #6: [REDACTED] 18 Notice of Closure)
13. On [REDACTED] 2018, the Facility submitted another NF LOC screening form to Ascend for approval of short-term NF stay for the Appellant. (Hearing Summary)
14. Ascend conducted a Level 1 Screening, and requested a signed Practitioner Certification. However, the review was withdrawn due to not receiving the requested information, after more than fourteen days from the date of the request. (Hearing Summary)
15. The Facility informed Ascend that the physician would not sign the Practitioner Certification as the Appellant does not meet the clinical criteria for NF level of care. (Hearing Summary)
16. On [REDACTED] 2018, the Appellant was discharged from the Facility and readmitted on [REDACTED] 2018 without the completion of a Pre-Admission Screening and Resident Review ("PASRR") assessment. (Hearing Summary)
17. Ascend uses the NF LOC Criteria as guidelines when determining medical necessity for nursing facility level of care for an individual. Ascend's clinicians review all available information including the PASRR Level 1 assessment, PASRR Level II assessment (if required), medical records, and progress notes when determining the medical necessity for NF level of care for an individual. (Hearing Summary)
18. The Appellant is [REDACTED] years of age (DOB [REDACTED]). (Dept.'s Exhibit #7: Level of Care Report Determination)

19. The Appellant has no mental illness or intellectual/development disability, based on the findings of his PASRR Level 1 assessment. (Dept.'s Exhibit #8: ██████████ 18 Notice of Negative PASRR)
20. The Appellant is currently medically and mentally stable. (Hearing Summary; Dept.'s Exhibit #7)
21. The Appellant ambulates with the assistance of a wheel chair. (Appellant's testimony; Dept.'s Exhibit #7)
22. The Appellant does not require supervision or hands on assistance with completing his activities of daily living. (Dept.'s Exhibit #7)
23. The Appellant does not have an uncontrolled chronic medical condition requiring continuous skilled nursing services and substantial assistance with personal care on a daily basis. (Hearing Summary; Dept.'s Exhibit #7)
24. The Appellant reported an alternate address of ██████████ ██████████ for the mailing of his hearing decision. (Appellant's testimony)
25. The Appellant is allowed to leave the Facility daily on a leave of absence until midnight. (Appellant's testimony; Dept.'s Exhibit #10: Physician's Order)

### **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 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.

8. Ascend's denial of the Appellant's request for NF level of care was not based on clinical criteria and guidelines which were used solely as screening tools.
9. The Appellant does not need supervision with his ADLs, including eating, toileting, and mobility, and he also does not require hands on assistance with his activities of daily living.
10. Ascend correctly determined that the Appellant does not have a chronic medical condition requiring substantial assistance with personal care on daily basis.
11. Ascend correctly determined that the Appellant does not have uncontrolled and/or unstable medical conditions requiring continuous skilled nursing services and /or nursing supervision.
12. The Appellant would need a combination of social and professional services for support, if placed in the community.
13. Ascend correctly determined that the Appellant's medical and social needs could be met in the community with the appropriate support services.
14. Ascend correctly determined that NF services are not medically necessary for the Appellant, because his medical needs could be met in a less restrictive setting that is clinically appropriate in scope.
15. Ascend was correct in its determination that the Appellant does not meet the medical criteria for NF level of care, and that NF services are not medically necessary for the Appellant.
16. Ascend's denial of the Appellant's request for NF level of care is based on the statutory definition of medical necessity.

## DISCUSSION

The evidence established that the Appellant is currently capable of completing his activities of daily living with no supervision and hands on assistance. He is for the most part independent with his eating and mobility and has no restrictions on activities. Because the Appellant does not have a chronic/unstable medical condition requiring skilled nursing care or is in need of substantial assistance with his personal care on a daily basis, a less restrictive environment such as a group home or an assisted living facility would be an appropriate setting to meet the his medical needs. Therefore, it is not medically necessary for the Appellant to receive NF services, and he is ineligible for NF level of care funded by the Medicaid program, as his medical condition does not meet the statutory definition of medical necessity. Ascend correctly denied the request for additional NF services for the Appellant as not medically necessary, as his medical needs could be met in the community with the appropriate support and professional services put in place.

## DECISION

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



Hernold C. Linton  
Hearing Officer

CC: **Laurie Filippini, Manager**, Alternate Care Unit, DSS, Central Office

**Melva Cooper, RN**, Alternate Care Unit, DSS, Central Office

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### **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.