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

[redacted] 2018
SIGNATURE CONFIRMATION

Client ID#: [redacted]
HEARING ID#: [redacted]

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2017, 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 stating that he does not meet the level of care criteria to be admitted to or reside in a nursing facility.

On [redacted] 2017, the Appellant's Conservator requested an administrative hearing to contest Ascend's decision.

On [redacted], 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted], 2018.

On [redacted] 2018, the OLCRAH requested to reschedule the administrative hearing due to inclement weather.

On [redacted], 2018, the OLCRAH issued a notice scheduling the administrative hearing for [redacted] 2018.

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 at Paradigm Healthcare in Waterbury ("Paradigm"). The following individuals were present at the hearing:

[redacted], Appellant
Connie Tanner, LPN, Ascend

[redacted], Mother and Conservator of Appellant
Carla Wright, Assistant Director, [redacted] Center
Terry Nichols, Bookkeeper, [redacted] Center
Joshulynn Pritchett, Business Office Manager, [redacted] Center
Kendra Toodle, Co-Director of Social Services, [redacted] Center
April Walden, Co-Director of Social Services, [redacted] Center
Melva Cooper, Community Nurse Coordinator, DSS
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]. (Exhibit 3: Level of Care Determination form)

2. On [redacted] 2017, [redacted] Center admitted the Appellant for a short-term stay in order to treat a dislocation of his left shoulder, schizophrenia, auditory hallucinations, paranoia, psychosis and self-inflicted injury. (Exhibit 3 and Hearing summary)

3. The Appellant has a past medical history of psychosis, auditory hallucinations, methamphetamine use, alcohol abuse, nicotine use, and marijuana use. (Exhibit 17: Psychiatric evaluation dated [redacted]/2017 and Hearing summary)

4. On [redacted], 2017, 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] 2017. (Hearing summary)

5. On [redacted], 2017, [redacted] Center submitted a Level of Care screening for the Appellant's continued stay at the facility. (Hearing summary)

6. The Appellant required supervision with bathing, dressing, meal preparation and mobility, activities of daily living ("ADL's"), as well as meal preparation, an instrumental activity of daily living ("IADL's"). (Hearing summary)

7. On [redacted], 2017, a Level II on-site assessment was conducted. (Hearing summary)

8. The Appellant was approved for an additional short-term stay at the facility for 150 days. This approval expired on [redacted], 2017. (Hearing summary)

9. On [redacted], 2017, a psychiatric evaluation was conducted by [redacted], Clinical Psychologist. It was determined that the Appellant would likely benefit from a less-restrictive level of care that would provide a balance of supervision, supportive services, and independence as well as continued psychiatric treatment including medication management and psychotherapy. (Exhibit 17 and Co-Director of Social Services' testimony)

10. On [redacted] 2017, [redacted] Center submitted a Level of Care screening for the Appellant's continued stay at the facility. (Hearing summary)

11. On [redacted] 2017, an on-site medical Level of Care review was conducted. Ascend found that the Appellant was independent for all ADL's and IADL's. (Hearing summary)

12. On [redacted], 2017, Ascend's Medical Director, Susan Rieck M.D., determined that the Appellant did not meet the nursing facility level of care because his medical conditions have stabilized and he is independent with his ADL's. Ascend determined that his needs could be met through a combination of medical, psychiatric and social services delivered in a less restrictive setting and that it was not medically necessary for him to received nursing facility level of care. (Exhibit 2: Ascend notice of action dated [redacted]/2017 and Hearing summary)

13. The Appellant has been placed on a waiting list for a mental health waiver through the Money Follows the Person Program ("MFP"). (Co-Director of Social Services' testimony)

14. 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. Connecticut Agency Regulations Section 17b-262-707(b) provide that the Department shall pay a provider only when the department has authorized payment for the client's admission to that nursing facility.

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 Statures 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. Documentation was provided that indicates that the Appellant has a severe mental health diagnosis requiring treatment.

7. The Appellant's mental health medical conditions can be managed through medication, psychiatric services and social services..

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

After reviewing the evidence and testimony presented at this hearing, I find that the Appellant is independent with all of his ADLs. A clinical psychologist as well as Ascend Management Innovations determined that he is capable, with assistance, of living in a less restrictive setting in the community with a combination of medical, psychiatric services and social services. The Appellant testified that he 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 has been placed on a waiting list for a mental health waiver. 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.**

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Roberta Gould
Hearing Officer

PC: Melva Cooper, Community Options Unit, DSS Central Office
Connie Tanner, Ascend
Joi Shaw, Ascend
Connie Tanner, Ascend
[redacted], Conservator for Appellant
Facility Administrator, [redacted] 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.