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

[redacted] **2019**
Signature Confirmation

Client ID # [redacted]
Request # [redacted]

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2018, Ascend Management Innovations LLC, ("Ascend") for the Department of Social Services' ("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 reside in a nursing facility.

On [redacted], 2018, the Appellant requested an administrative hearing to contest Ascend's decision.

On [redacted] 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("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 [redacted], a skilled nursing facility. The following individuals were present at the hearing:

[redacted], Appellant
[redacted], CNA care giver at [redacted]
[redacted], Social Worker at [redacted]
Charles Bryan, RN- Community Options for Dept. of Social Services
Jaime Feril, RN- ASCEND Representative
Almelinda McLeod, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether Ascend's decision that the client does not meet the skilled nursing level of care criteria for a long term placement was correct.

FINDINGS OF FACT

1. On [redacted] 2016, the Appellant was admitted to [redacted]. The Appellant's medical diagnosis at admission were; fracture of the right humerus, failure to thrive, osteoporosis, alcohol dependence, NSTEMI, nicotine dependence, and open internal fixation femoral neck [redacted]. (Hearing summary)

2. On [redacted], 2016, [redacted] submitted a Nursing Facility Level of Care ("NF LOC") screen for approval of level of care; which required a Level 1 screening. The screen described the Appellant's current Activities of Daily Living ("ADL") needs as hands on assistance with bathing, dressing, toileting, mobility and transfers. Ascend granted a short term approval of 90 days to expire on [redacted] 2017. (Hearing summary)

3. On [redacted] 2017, [redacted] submitted a NF LOC evaluation to Ascend. Ascend granted short term 180 day approval to expire on [redacted], 2017. (Hearing summary)

4. On [redacted] 2017, [redacted] submitted a NF LOC evaluation to Ascend. Ascend granted short term 90 day approval to expire on [redacted] 2017. (Hearing Summary)

5. On [redacted] 2017, [redacted] submitted a NF LOC evaluation to Ascend. Ascend approved short term 90 days to expire [redacted] 2018. (Hearing Summary)

6. On [redacted] 2018, [redacted] submitted a NF LOC evaluation to Ascend which required a Level 1 screen. The screen described the Appellant's current ADL needs as: total assistance with bathing, supervision with eating/feeding and toileting. His Instrumental Activity of Daily Living ("IADL") he was capable of preparing meals with minimum assistance. (Hearing summary)

7. On [redacted] 2018, Ascend approved short term stay for 60 days to expire on [redacted] 2018. (Hearing summary)

8. On [redacted] 2018, [redacted] submitted a NF LOC to Ascend. Ascend approved short term stay for 30 days to expire on [redacted] 2018. (Hearing summary)

9. On [redacted] 2018, [redacted] submitted a NF LOC to Ascend. The Appellant's current ADL required supervision with eating/feeding and for IADL; he required total physical assistance with meal preparation. Based on this report an onsite medical review was required. (Hearing summary)

10. On [redacted] 2018 an onsite medical review was completed by [redacted] Registered Nurse and based on the results of this review, Ascend found the Appellant was independent in all ADLs and only needed set up for medication. (Hearing Summary and Exhibit 7, Medical Level of Care Evaluation)

11. The ADL coding measures include bathing, dressing, eating, toileting, continence, transferring and mobility.

0	Independent- no help required.
1.	Supervision , cueing
2	Limited assistance
3	Extensive assistance
4	Total dependence
8	Did not occur

(Exhibit 4- ADL Measures & Measurements)

12. On [redacted] 2017, Ascend's medical doctor, Dr. Susan Rieck, concluded that the Appellant did not require continuous nursing services delivered at the level of the nursing facility and that his needs could be met in a less restrictive setting. This conclusion was derived from a review of NF LOC screen, Practitioner Certification, Medical on-site assessment, resident Personal Care Record, History and Physical, Minimum Data Set, Medication Review Report and Medication administration record] (Hearing summary)

13. The facilities CNA testified that because the Appellant has limited use of his right shoulder, she has provided limited assistance with bathing every Friday and guides him with his dressing. The Appellant does help himself by doing whatever he can with his good arm. (Appellant and CNA's testimony)

14. The ADL chart from [redacted] 2018 to [redacted] 2018 indicated scores of "zeros 0" meaning independent in bathing. Because the Appellant only showered on Fridays, the rest of the week were charted as eight "8" meaning that the ADL did not occur. (Exhibit 9- ADL Personal Care Record)

15. The ADL chart from [redacted] 2018 to [redacted], 2018 indicated Appellant was independent in dressing as he was primarily coded "0" s during the month with an occasional "8" on the weekends indicating the ADL did not occur. (Exhibit 9- ADL Personal Care Record)

16. The Appellant sways when he walks, however does not require any assistive technology like a cane, walker or wheelchair. (Appellant's testimony)

17. The Appellant is currently active on the Money follows the person program and awaiting an apartment. (Hearing record)

18. On [redacted] 2018, Ascend issued a Notice of Action to the Appellant stating that he does not meet criteria for nursing facility LOC because it is not considered clinically appropriate in terms of Level. His needs could be met through a combination of medical, psychiatric and social services delivered in a less restrictive setting. As a result of this determination, the nursing facility level of care was no longer medically necessary. (Exhibit C- notice of action)

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. Connecticut Agencies Regulations (Conn. Agencies Regs.) Section 17b-262-707 (a). provides 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."

3. Conn. Agencies Regs. § 19-13-D8t (d) (1) (A). provides 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."

4. 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.

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 ADL's.

7. Ascend correctly determined that based on the evidence, the Appellant does not have a chronic medical condition requiring substantial assistance with personal care on a daily basis.

8. Ascend correctly determined that based on the evidence, the Appellant does not have uncontrolled and/or unstable medical conditions requiring continuous skilled nursing services and /or nursing supervision.

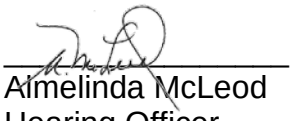
9. Ascend correctly determined it is not clinically appropriate in terms of level of services and considered effective for the individual's illness, injury or disease; that the Appellant reside in a nursing facility.

10. Ascend correctly determined that nursing facility services are not medically necessary for the Appellant, because his medical needs could be met with a combination of medical, psychiatric and social services delivered in ales restrictive setting out in the community.

11. Ascend correctly determined that it is not medically necessary for the Appellant to reside in a skilled nursing facility

DECISION

The Appellant's appeal is DENIED.



Almelinda McLeod
Hearing Officer

CC: Shirley Stoute, DSS, CO.
Laurie Filippini, DSS CO
Paul Chase, DSS, CO
Pam Adams, DSS- CO
Angela Cagen , AngelaGagen@maximus.com
Jaime Feril, JamieSJohnson@maximus.com

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 Legal Counsel, Regulations, and Administrative Hearings, 55 Farmington Avenue, Hartford, CT 06105.

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 his 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.