

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

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

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2018, Ascend Management Innovations LLC, (“Ascend”) the Department of Social Services’ (“Department”) vendor that administers approval of nursing home care, sent ██████████ (“the Appellant”) a notice stating that that he no longer met the criteria for skilled nursing facility.

On ██████████, 2018, the Appellant requested an administrative hearing to contest Ascend’s decision.

On ██████████, 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2018.

On ██████████ 2018, the Appellant’s counsel, Attorney Sheldon Taubman requested a continuance of the hearing, which was granted.

On ██████████ 2018, OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2018.

On ██████████ 2018, the Appellant’s counsel requested a continuance of the hearing, which was granted.

On ██████████, 2018, OLCRAH issued a notice scheduling the administrative hearing for ██████████ 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 the [REDACTED] facility located at [REDACTED]. The following individuals were present at the hearing:

[REDACTED], Appellant
[REDACTED] [REDACTED], Attorney for Appellant, [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
Trish McCooley, Attorney for the Department of Social Services
Amy Dumont, Licensed Clinical Social Worker, DSS Community Options
Benille St. Jean, Registered Nurse, DSS Community Options
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Jaime Johnson, Registered Nurse with ASCEND via telephone
[REDACTED]

On [REDACTED] 2018 a copy of audio transcript was provided to the attorneys pending the written transcript as agreed for post hearing briefs.

On [REDACTED], 2018 a copy of the written transcript was provided to the attorneys.

On [REDACTED] 2018, the attorneys requested a continuance of 8 days which was granted.

On [REDACTED] 2018, the attorneys requested an extension of 3 days which was granted.

On [REDACTED], 2018, the post hearing briefs were submitted by the attorneys.

On [REDACTED], 2018, an attorney requested an extension of one week for the submission of reply briefs to expire on [REDACTED] 2018 with no objection from the other attorney, which was granted.

On [REDACTED], 2018 the post hearing reply briefs were submitted by both parties.

On [REDACTED] 2018 the hearing record closed.

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], 2017, the Appellant was admitted into the [REDACTED]. The Appellant's medical conditions at admission were: COPD, alcohol, depression, anxiety, emphysema, bronchitis. (Hearing record)
2. The ADL Measures include bathing, dressing, eating, toileting, continence, transferring and mobility. (Exhibit 11 LOC Determination and Exhibit 21, ADL assistance and Supports chart)
3. On [REDACTED], 2017, [REDACTED] submitted a Nursing Facility Level of Care ("NF LOC") screening form to Ascend for approval of level of care. The NF LOC screening form indicated the Appellant's Activities of Daily Living ("ADL") needed Supervision with bathing, dressing, eating/feeding, toileting, mobility and transfers. The Appellant also needed continual supervision and physical assistance with meal preparation. Ascend approved a short term stay of 90 days to expire on [REDACTED], 2017. (Hearing summary)
4. On [REDACTED], 2017, [REDACTED] submitted a NF LOC to Ascend. Based upon information provided by [REDACTED] a Level 1 screening was required. Ascend approved short term stay of 120 days to expire on [REDACTED], 2017. (Hearing Summary)
5. On [REDACTED], 2017, [REDACTED] submitted a NF LOC to Ascend indicating the Appellant was independent with bathing, dressing, eating/feeding, toileting, mobility, transfers and continence of his ADLs and minimal assistance with meal prep. Ascend approved short term stay for 90 days to expire on [REDACTED], 2018. (Hearing Summary)
6. On [REDACTED], 2018, [REDACTED] submitted a NF LOC to Ascend indicating the Appellant needed supervision with bathing and was capable of preparing meals with minimal assistance. (Hearing Summary)
7. On [REDACTED], 2018, Ascend conducted an onsite Level II assessment. The results of the Level II assessment was that serious mental illness could not be confirmed however, he would benefit from SNF thus was

approved for short term stay for 60 days to expire on [REDACTED] 2018.
(Exhibit 9- LOC decision)

8. On [REDACTED], 2018, [REDACTED] submitted a NF LOC screening form to Ascend indicating the Appellant scored a "0" on the ADL chart indicating he was Independent with bathing, dressing, eating/feeding, toileting, mobility, transfers and continence. In addition he was capable of preparing meals with minimal assistance. The Appellant was not currently receiving speech, occupational, respiratory or physical therapies or other MD ordered services. (Exhibit 11, LOC determination)
9. The Appellant's COPD is a progressive condition but can be managed outside of the skilled nursing facility. ([REDACTED], APRN testimony)
10. The Appellant is on oxygen for his COPD. The Appellant has been prescribed in-halers by [REDACTED] facility doctors; however, he testified he does not like to use the steroids or chemicals. The Appellant also has a nebulizer prescribed from his personal pulmonologists after a hospitalization. The nebulizer had become the Appellant's chosen treatment for his COPD condition. (Hearing record and Appellant's testimony)
11. [REDACTED] helps the Appellant with a Nebulizer treatment twice per day and conducts a lung assessment at every shift while he remains in the nursing facility; however the Appellant does not need to be in a skilled nursing facility for this treatment. (Exhibit 11, LOC Determination and facility testimony)
12. The Appellant has seen a pulmonologist and a respiratory therapist continuously while in the [REDACTED] facility. Neither the pulmonologists nor his respiratory doctors have privileges to care for the Appellant inside the facility and thus have no knowledge of his ADLs or his skilled nursing needs on a daily basis. (Hearing record)
13. Appellant has his own personal wheelchair donated by a local church, after the nursing staff at the facility took away a wheelchair he was using. He uses the wheelchair in the morning when his oxygen levels are low and he feels it's easier for him to maneuver. (Appellant's testimony)
14. The Appellant has a rollator with a seat on it, prescribed by the facility for endurance, to get around the facility and has been encouraged to use the rollator instead of the wheelchair because more ambulation would be better for his condition as it would help to open up his lungs and strengthen his muscles. (Appellant's testimony)

15. The Appellant uses both the wheelchair and rollator to ambulate within the facility, however; he prefers to use the wheelchair. (Appellant's testimony and [REDACTED] Physical Therapist and Director of Rehabilitation)
16. The Appellant does not qualify for physical therapy because he is functionally independent in bed mobility, transfers and ambulation, which is mobility throughout the facility. [REDACTED], Physical Therapist and Director of Rehabilitation)
17. On [REDACTED] [REDACTED], 2018, Ascend requested the Medical practitioner's certificate required by regulations from [REDACTED] however, the Medical practitioner declined to sign the MD Attestation citing that the cancellation reason was that the Appellant did not meet SNF LOC and has no skilled nursing care requirements. (Exhibit 11, LOC Determination)
18. The LOC determination form section VI. Practitioner Certification (on page 29 -bottom right) states:
"Certification that the client meets the nursing facility level of care criteria described in Section 19-13 D (8) (t) (1) of the Public Health Code must be provided by a physician, APRN, or physician assistance. This certification must be signed and dated by the practitioner, telephone and voice orders are not acceptable."
The medical practitioner, in this case APRN, [REDACTED] did not sign the form (after she consulted with the primary facilities medical doctor, [REDACTED]). The reasoning was that the Appellant did not meet the criteria for skilled nursing level of care in a skilled nursing facility. [REDACTED] testimony and Exhibit 11- LOC Determination)
19. The medical certification was not signed because the Appellant did not need the NF LOC as he was independent in all of his ADLs and has no skilled nursing care requirements. ([REDACTED], APRN testimony)
20. On [REDACTED], 2018, Ascend denied the NF LOC screening and cited that it was a technical denial because the Practitioner Certificate was not signed. Under the Ascend Outcome of the NF LOC determination form, Ascend suggest that if a LOC review was still needed, a new LOC along with the required previously requested document be submitted for review. (Exhibit 11, LOC Determination)
21. On [REDACTED], 2018, Ascend generated a "Notice of Closure of Screening Request for Nursing Facility Level of Care" to the Appellant and to [REDACTED]. The notice stated that Ascend did not process the LOC request submitted on [REDACTED] 2018 by [REDACTED] because the "requested information supporting

your need for nursing facility level of care was not provided". Ascend included appeal rights and a hearing request form with the notice of closure. (Exhibit 10, Exhibit 12 and Exhibit B)

22. Subsequent to the [REDACTED] 2018 generated notice, Ascend realized that the [REDACTED] 2018 "Notice of Closure of Screening Request for Nursing Facility Level of Care" was not issued to the Appellant or to the facility. (Hearing Summary)
23. On [REDACTED] 2018, [REDACTED] submitted another NF LOC to Ascend; however Ascend could not complete the review without the required medical Practitioner Certificate, which remained unsigned. (Hearing Summary)
24. On [REDACTED] 2018, Ascend issued the "Notice of Closure of Screening Request" to the Appellant and [REDACTED] after [REDACTED] submitted another NF LOC to Ascend. The notice stated Ascend did not process the LOC requested submitted on [REDACTED] 2018 because the submitter did not send information requested by Ascend to support the need for nursing facility level of care. Ascend included appeal rights and a hearing request form with the notice of closure. (Hearing Summary)
25. The Appellant has been hospitalized on at least two occasions prior to this hearing. There is no evidence that the Appellant requires NF LOC as a result from these hospital stays because the [REDACTED] [REDACTED] has not submitted any new NF LOC to Ascend. (Hearing record)
26. In a more recent physical therapy evaluation due to the Appellant's hospitalizations, the most current ADL charts indicated that the Appellant needed limited assistance, meaning clothes set-up; however not on a daily basis. The Appellant has no range of motion deficit or strength deficit. He can dress and bathe himself. [REDACTED], Physical Therapist and Director of Rehabilitation)
27. From [REDACTED] 2018 and ongoing, the Appellant continues his stay at the [REDACTED] despite Ascend's determination to allow his short term stay to expire on [REDACTED] 2018 as a result of this administrative hearing and his Medicaid continues to cover his stay pending the results of this hearing. (hearing record)
28. The Appellant is currently active under the Money Follows the Person and is waiting for decent housing through this program. (Appellant's testimony)

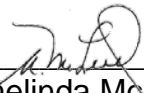
CONCLUSIONS OF LAW

1. Connecticut General Statute § 17b-2(6) provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Title 42 CFR 441.505 defines activities of daily living (“ADLs) as basic personal everyday activities, including but not limited to tasks such as eating, grooming, dressing, bathing and transferring.
3. 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.

4. State regulations provide that “the department shall pay for an admission that is medically necessary and medically appropriate as evidence by the following: (1) certification by a licensed practitioner that a client admitted to a nursing facility meets the criteria outlines 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/MT 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).
5. 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) and Section 19-13 D (8) (t) (d) (1) of the Public Health Code.
6. Ascend correctly determined that they were unable to process the NF LOC submitted by the facility for another “short term stay” because the submitter did not send the requested and required signed medical certification per regulations attesting to the Appellant meeting the nursing facility level of care (NF LOC) and requiring skilled nursing level of care.
7. Ascend correctly determined that without a signed medical certification attesting that the Appellant met the NF LOC and reports indicating the Appellant was independent in all his ADL’s, a determination of medical necessity could not be established therefore a notice of denial based medical necessity could not be sent.
8. Ascend correctly issued a Notice of Closure of Screening Request For Nursing Facility Level of Care to the Appellant and correctly notified the Appellant the requested information supporting his need for nursing facility level of care was not provided.

DECISION

The Appellant's appeal is DENIED.



Almelinda McLeod
Hearing Officer

CC: Shirley Stoute, DSS, CO.
Laurie Filippini, DSS CO
Paul Chase, DSS, CO
Jaime Johnson, JamieSJohnson@maximus.com

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Trish McCooley, Patricia.McCooley@ct.gov

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.