

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

██████████ 2019  
Signature Confirmation

██████████  
██████████

**NOTICE OF DECISION**

**PARTY**

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██████████  
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**PROCEDURAL BACKGROUND**

On ██████████, 2019, Ascend Management Innovations LLC, (“Ascend”), the Department of Social Services contractor that administers approval of nursing home care, sent ██████████ (the “Appellant”) a notice denying Nursing Facility (“NF”) Level of Care (“LOC”) because he does not meet the medical criteria, as defined in section 17b-259b of the Connecticut General Statutes.

On ██████████, 2019, the Appellant requested an administrative hearing to contest Ascend’s decision to deny nursing home LOC.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling an administrative hearing for ██████████ 5, 2019.

On ██████████ 2019, 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], (participated by telephone)  
 Jaimie Feril, RN, Ascend (participated by telephone)  
 Phillip Nebiolo, Social Services, [REDACTED]  
 Mary Fusco, Director of Nurses, [REDACTED]  
 Joshua Sector, Administrator, [REDACTED]  
 Chelsea Geddes, Unit Manager, [REDACTED]  
 Thomas Monahan, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether Ascend correctly determined that skilled nursing facility placement is not medically necessary for the Appellant.

### **FINDINGS OF FACT**

1. On [REDACTED], the Appellant was admitted to [REDACTED] (the "facility"), a skilled nursing facility. (Exhibit 5: LTC Level Of Care Determination Form)
2. The Appellant's medical diagnoses at the time of admission were: fall on same level from slipping, tripping and stumbling without striking against object, generalized muscle weakness, cellulitis of lower left limb, systemic inflammatory response syndrome (SIRS) of non-infectious origin without acute organ dysfunction, elevated white blood cell count, hyper tension, pre-diabetes and adjustment disorder with anxiety. (Hearing record, Exhibit 5: Level of Care Determination form ([REDACTED]/19)
3. The Appellant is [REDACTED] years old ([REDACTED]) and a Medicaid recipient. (Hearing record)
4. On [REDACTED], the facility submitted a Nursing Facility Level of Care ("NF LOC") evaluation form to Ascend. Ascend approved the Appellant for 90 days through [REDACTED] of short term care due to his continued need for hands on assistance with dressing, bathing, mobility, transfers and continence. In addition, the Appellant required supervision and physical assistance with meal preparation. (Hearing Summary)
5. On [REDACTED] 2018, the facility submitted a NF LOC evaluation form to Ascend. Ascend approved the Appellant for 90 days of short term care through [REDACTED], 2018 due to his continued need for hands on assistance with dressing, bathing, toileting, transfers and continence. He required supervision with mobility. He



continued to need supervision or physical assistance with meal preparation. (Hearing Summary)

6. On [REDACTED] 2018, the facility submitted another NF LOC evaluation form to Ascend. [REDACTED], 2018 due to his continued need for hands on assistance with bathing. He continued to need supervision or physical assistance with meal preparation. (Hearing Summary)
7. On [REDACTED] 2018, the facility submitted another NF LOC evaluation form to Ascend. The Appellant was now independent with his ADL's and was capable of preparing meals with minimal assistance. Based on the Appellant's independence with his ADL's a medical on-site review was conducted. (Hearing Summary)
8. On [REDACTED] 2019 a medical onsite review was completed by a nurse for Ascend. The nurse found that the Appellant's medical conditions were now stable. She found the Appellant independent with his ADL's and medication supports. The nurse found no indication of cognitive impairments. (Exhibit 6: Medical Level of Care Evaluation)
9. The Appellant's current medications include Norvasc, Metoprolol, Metformin, Vitamin B-12 and Vitamin D-3 (Hearing record)
10. The Appellant is able to take his medications but cannot identify them. He needs medication supports. (Appellant's testimony)
11. The Appellant has occasional incontinence. (Hearing record)
12. The Appellant can shower with supervision. (Appellant's testimony)
13. The Appellant is independent with dressing, toileting, mobility and transferring. (Appellant's testimony)
14. The Appellant received physical therapy to improve his ability to walk with a walker, stand for two minutes without support, and transfer. He was discharged from physical therapy on [REDACTED] 2018. He still uses the facility's exercise bicycle on his own. (Exhibit 13: PT Discharge Summary, Appellant's testimony)
15. The Appellant received Occupational therapy in [REDACTED]. (Exhibits 14 and 15: Plan of Treatment)
16. The Appellant does not have an uncontrolled chronic medical condition requiring continuous skilled nursing services and does not need substantial assistance with personal care on a daily basis. (Exhibit 6: Medical Level of Care Evaluation, Exhibit 11; Minimum Data Set)

17. On [REDACTED], 2019, Dr. Susan Rieck, M.D., Medical Director for Ascend, conducted a review of the Appellant's medical condition. Dr. Rieck reviewed all available information relating to the Appellant's medical and total needs. Dr. Rieck concluded that nursing facility placement was not medically necessary for the Appellant. Dr. Rieck found that the Appellant's chronic medical conditions have stabilized and that he is independent with his ADL's. Dr. Rieck found the Appellant's needs could be met through a combination of medical and social services in a less restrictive setting. (Summary, Exhibit 4: Notice of Action, Level of Care Report)
18. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED], 2019. This decision, therefore, was due no later than [REDACTED] 2019.

### **CONCLUSIONS OF LAW**

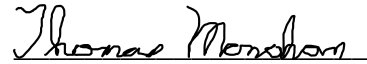
1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. State regulation provide that "the department shall pay for an admission that is medically necessary and medically appropriate as evidenced by the 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. 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)
- 4. Section 17b-259b of the Connecticut General Statutes provides (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 ADLs and only needs supervision while bathing.
- 7. Ascend correctly determined that the Appellant does not have uncontrolled and/or unstable medical conditions requiring continuous skilled nursing services and/or nursing supervision and it is not clinically appropriate that the Appellant reside in a nursing facility.

8. Ascend correctly determined that nursing facility services are not medically necessary for the Appellant and properly denied his request for continued approval of long-term care Medicaid because his medical needs could be met with community based assistance.

**DECISION**

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

  
Thomas Monahan  
Hearing Officer

C: Shirlee Stoute, Community Options Unit, Department of Social Services  
Paul Chase, Community Options Unit, Department of Social Services  
Laurie Filippini, Community Options Unit, Department of Social Services  
Pam Adams, Community Options Unit, Department of Social Services  
Angela Gagen, Ascend Management Innovations/Maximus  
Joi Shaw, Ascend Management Innovations/Maximus  
Connie Tanner, Ascend Management Innovations/Maximus  
Jaimie Johnson, Ascend Management Innovations/Maximus

### **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 06105-3725. 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.