

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

██████████ 2020
SIGNATURE CONFIRMATION

Client ID#: ██████████
HEARING ID#: ██████████

NOTICE OF DECISION

PARTY

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

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

PROCEDURAL BACKGROUND

On ██████████, 2019, Ascend Management Innovations (“Ascend”), the Department of Social Services’ (the “Department”) vendor that administers approval of nursing home care, sent ██████████ (the “Resident”) a notice stating that he does not meet the level of care criteria to reside in a nursing facility.

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

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

On ██████████ ██████████ 2019, the Appellant’s attorney, ██████████ ██████████, requested to reschedule the administrative hearing.

On ██████████ 2019, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2020.

On ██████████ 2020, 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 ██████████ Facility. The following individuals were present at the hearing:

████████████████████, the Resident
Attorney ██████████, Appellant’s representative

Paul Cook, MSW, RN, Ascend
██████████, Director of Nursing, ██████████
██████████, RN, Community Options DSS
Attorney Melanie Dillon, Department's representative
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 ██████████. (Exhibit 3: Level of Care Determination form)
2. On ██████████, the Resident was admitted to ██████████ Hospital with a diagnosis of suspected bilateral lower extremity cellulitis, bilateral toe fungal infection, arthritis, Bipolar Disorder, congestive heart failure, coronary heart disease, Depressive Disorder, detached retina, GERD, hyperlipidemia, hypertension, history of heart bypass surgery, obesity, myocardial infarction, sleep apnea, and legal blindness in one eye. (Exhibit 3 and Hearing summary)
3. On ██████████, ██████████ Hospital submitted a Nursing Facility Level of Care ("NFLOC") screening form to Ascend indicating that the Resident required hands on assistance with the following Activities of Daily Living ("ADLs"): toileting, mobility, and transferring. The hospital also indicated that the Resident required supervision with the ADL's of bathing and dressing, but no assistance with the Instrumental Activities of Daily Living ("IADLs"). (Exhibit 14: CT LTC level of care determination form dated ██████████ and Hearing summary)
4. Ascend approved the Resident for a short-term stay of 60 days. This approval expired on ██████████. (Hearing summary)
5. Prior to entering a long-term care facility in ██████████, the Resident was homeless, living for a short time in local motels and in congregate housing in the town of ██████████. (Resident's Attorney's statement)
6. On ██████████, the Resident was admitted to ██████████ ██████████ (the "Facility"). (Exhibit 3 and Hearing summary)
7. Beginning in ██████████, the Resident received physical therapy ("PT") 5 to 7 times per week for four weeks and occupational therapy ("OT") 5 to 7 times per week for two weeks. (Exhibit 12: Electronic medical administration records)

8. On [REDACTED], the Facility submitted a NFLOC screening form to Ascend indicating that the Resident required prompting or cueing with the ADLs of bathing, dressing and eating and that he was capable of preparing meals with minimal assistance. The Facility also indicated that the Resident showed poor judgement, daily supervision was needed to prevent harm, and he was verbally aggressive towards others. (Exhibit 15: CT LTC level of care determination form dated [REDACTED] and Hearing summary)
9. On [REDACTED], Dr. [REDACTED] completed an examination of the Resident and determined that he suffered from mental illnesses of major depressive disorder, suicidal ideations, bipolar disorder, and narcissistic personality disorder, as well as a diagnosis of obesity, hypertension, heart disease, cellulitis, and mixed hyperlipidemia. Dr. [REDACTED] determined that the Resident's conditions negatively affected his ability to secure and maintain a safe living environment, noting that he had been homeless for over 10 years. (Exhibit A: CT Probate Courts physician's evaluation for conservatorship)
10. On [REDACTED], Ascend completed a Level II On-site assessment and approved the Resident for a stay of 180 days. This approval expired on [REDACTED]. (Hearing summary)
11. On [REDACTED], the Facility conducted a Care Plan conference for the Resident, but he refused to attend. (Exhibit 12)
12. On [REDACTED], the Facility submitted a NFLOC screening form to Ascend indicating that the Resident was independent with ADLs, required supervision with medication management, and was capable of preparing meals with minimal assistance. It was also noted that the Resident was verbally aggressive toward others. Ascend conducted a Document Based Review and approved him for another short-term stay of 120 days. This approval expired on [REDACTED]. (Exhibit 16: CT LTC level of care determination form dated [REDACTED] and Hearing summary)
13. On [REDACTED], the Facility submitted a NFLOC screening form to Ascend indicating that the Resident required supervision with bathing and eating, as well as medication management, but that he required no assistance or supervision with his IADLs. The Facility also noted that the Resident was verbally aggressive toward others and posed a threat to the health of safety of others because he would not follow his medication or dietary regimen and exhibited poor judgement. Ascend conducted a Document Based Review and approved him for another short-term stay of 120 days. This approval expired on [REDACTED]. (Exhibit 17: CT LTC level of care determination form dated [REDACTED] and Hearing summary)
14. On [REDACTED], a Money Follows the Person ("MFP") staff representative visited the Resident at the Facility for a scheduled meeting. He refused to meet with the MFP representative. (Exhibit 19: Resident progress notes)

15. On [REDACTED], a MFP housing coordinator and a transition coordinator visited the Resident at the Facility for a scheduled meeting. The MFP transition coordinator proposed a referral to the Department of Mental Health and Addiction Services (“DMHAS”) for an assessment of eligibility for their leadership program and/or a DMHAS group home. Approval for a Rental Assistance Program (“RAP”) certificate was also pending. (Exhibit 19)
16. On [REDACTED], Dr. [REDACTED] signed a Practitioner Certification indicating that the Resident met the Connecticut Code for nursing home level of care. (Exhibit 5: Practitioner certification dated [REDACTED])
17. On [REDACTED], the Facility submitted a NFLOC screening form to Ascend indicating that the Resident was independent with all ADLs and IADLs. (Hearing summary)
18. On [REDACTED], the Facility’s social worker verified with DMHAS that the Resident had been approved for a RAP certificate and that the MFP housing coordinator had sent a number of housing applications to him. (Exhibit 19)
19. On [REDACTED], Ascend conducted a Level of Care Determination screening and found that skilled nursing care had been required to monitor the Resident’s psychiatric medication management, but that he was not currently receiving any planned therapy services, was alert and oriented with no noted cognitive needs at that time and was independent with all ADL needs. (Exhibit 3: CT LTC level of care determination form dated [REDACTED])
20. On [REDACTED], Ascend conducted a Medical On-site Evaluation. The Resident refused to take the Mini-Mental State Examination (“MMSE”) necessary to evaluate any cognitive impairment and displayed threatening and abusive behaviors. He was independent with bathing, dressing, eating, toileting, continence, transferring, mobility, and medication administration. He was alert and oriented to the situation and showed no signs of dementia. Ascend determined that the Resident was independent with all of his ADLs and that his needs could be met in the community with appropriate supports, including home health aide and psychiatric services. (Exhibit 4: CT Medical level of care evaluation dated [REDACTED] and Hearing summary)
21. As of [REDACTED], the Resident was prescribed Lasix, Toprol XL, Prilosec, Ramipril, Trileptal, Allopurinol, ASA, Atorvastatin, Klonopin, Clonazepam and Excitalopram. (Exhibit 2: Ascend notice of action dated [REDACTED] and Exhibit 4)
22. On [REDACTED], Dr. [REDACTED] reviewed the practitioner certification for the Resident, a medical onsite evaluation, his medical records, point of care history, and medical orders. Dr. [REDACTED] determined that nursing facility level of care is not medically necessary for the Resident because he does not require the continuous nursing services delivered at the level of a nursing facility and that his needs could

be met in a less restrictive setting through a combination of medical, psychiatric and social services delivered outside of the nursing facility setting, including intermittent assistance through home health, visiting nurse or some other venue to monitor his condition. (Exhibit 3, Exhibit 6: Point of care history, 7: History and physical information and Hearing summary)

23. On [REDACTED], Ascend issued a notice of action to the Resident informing him that Ascend and the Department had reviewed his case and determined that nursing facility level of care is not medically necessary for him because it is not considered effective and not clinically appropriate. (Exhibit 2: Ascend notice of action dated [REDACTED] and Hearing summary)
24. On [REDACTED], the MFP housing coordinator confirmed that the Resident had received housing applications for [REDACTED], CT, but he preferred to live in [REDACTED] or [REDACTED]. (Exhibit 20: Email correspondence dated [REDACTED])
25. Although the Facility has attempted to have the Resident complete an application for the MFP program, he has not followed through because he does not feel that he will be able to live in public or senior housing due to a prior eviction and altercations with a resident in community housing in 2016. (Exhibit B: Memorandum of decision dated [REDACTED], Resident's testimony and Nursing Director's testimony)
26. The Resident is currently not receiving any skilled nursing, PT or OT services at the Facility. (Nursing director's testimony)
27. The Resident has refused to see the APRN or psychiatrist in the Facility, but does have a psychiatrist in the community who can prescribe necessary psychotropic medications for him. (Resident's testimony)
28. The Resident refuses daily monitoring of vital signs, body swelling, blood pressure, application and maintenance of his CPAP mask, skin checks, turning and repositioning in bed, and maintenance of his humidifier. (Exhibit 13: Treatment administration record)
29. Prior to the Resident's discharge, the Facility is able to provide education regarding the Resident's medical treatment and services in the community through which he could obtain his medications, PT, OT, home health aides, and nursing visits, as required. (Nursing director's testimony)
30. The Resident receives \$529.00 per month in Social Security benefits. (Resident's testimony)
31. 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 Resident requested an administrative hearing on [REDACTED] 2019. However, the Resident's attorney requested to reschedule the

administrative hearing and the close of the hearing record was further extended through [REDACTED], 2020, to allow for the submission of additional evidence by his attorney. Because of the delay in the close of the hearing record, this final decision is not due until [REDACTED] 2020, and is therefore timely.

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 Section 17b-262-707(a) provides 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.
3. Connecticut Agencies Regulations Section 17b-262-707(b) provides that "the Department shall pay a provider only when the department has authorized payment for the client's admission to that nursing facility."
4. Connecticut Agencies Regulations Section 19-13-D8t(d)(1)(A) provides 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.”

On [REDACTED], the Resident was correctly admitted to the Facility after a medical evaluation indicated that he had uncontrollable and unstable conditions that required continuous skilled nursing services.

5. Section 17b-259b of the Connecticut General Statutes provides 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.

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

The Appellant's mental health medical conditions can be managed through medication, psychiatric services and social services outside of the Facility.

The Appellant is currently not receiving any skilled nursing, PT or OT services at the Facility and is independent with all ADLs and IADLs. He may require supervision with medication administration, which can be provided in a community setting.

It is not clinically appropriate that the Appellant reside in a nursing facility.

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 Resident does not require continuous skilled nursing services and nursing supervision on a daily basis. Evidence in the hearing record reflects that he is independent with all of his ADLs and IADLs and that, based on a thorough assessment of the individual and his medical condition, his needs could be met with a combination of medical, psychiatric and social services in a community setting. Although the Resident does require medication management, he has refused to see the APRN or psychiatrist in the Facility and has refused daily monitoring nursing services. However, he has acknowledged that he has a psychiatrist in the community who can prescribe the necessary psychotropic medications for him. Evidence clearly shows that, with intermittent assistance through home health, visiting nurse, case management services, and psychiatric services, his needs could be met outside of the skilled nursing facility.

While the Resident has a history of homelessness, MFP staff have attempted to assist him in obtaining permanent housing. The hearing record shows that he was uncooperative with the MFP program and acknowledged that he has not followed through because he does not feel that he will be able to live in public or senior housing due to a prior eviction and altercations with a resident in community housing in 2016. It is clear that he has a history of aggressive and abusive behavior, but that does not preclude him from living outside of the Facility. Ascend was correct in their decision that the Appellant does not meet medical necessity criteria for nursing home level of care because it is not clinically appropriate in terms of the level of services provided and it is not effective for his condition.

DECISION

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


Roberta Gould
Hearing Officer

PC: Angela Gagen, DSS Central Office
Connie Tanner, Ascend
Paul Cook, Ascend
Jaime Johnson, Ascend
Attorney Melanie Dillon, OLCRAH

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.