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

[redacted] **2020**
Signature Confirmation

Client ID # [redacted]
Case # : [redacted]
Request # 149614

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2019, Ascend Management Innovations LLC, ("Ascend") the Department of Social Services' ("Department") vendor that administers approval of nursing home care, sent [redacted] ("the Appellant") a notice of closure of screening request for nursing facility level of care ("NFLOC") stating that ASCEND was unable to complete a review of whether NFLOC was medically necessary because the medical attestation was not signed.

On [redacted] 2019, the Appellant requested an administrative hearing to contest Ascend's decision.

On [redacted] 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2022.

On [redacted] 2022, 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]

The following individuals were present at the hearing:

[redacted], Appellant
[redacted], Administrator, [redacted]
[redacted], Director of Social Services, [redacted]
[redacted], Registered Nurse Day Supervisor, [redacted]
[redacted], Director of Nursing, [redacted]
Janice Ricciuti, Registered Nurse, Community Nurse Coordinator, Department of Social Services-Community Options
Jamie Ferrel, Registered Nurse. Ascend / Maximus Representative
Almelinda McLeod, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether Ascend's decision to close the nursing facility ("NF") Level of Care ("LOC") referral as incomplete because the practitioner certificate was not signed was correct.

FINDINGS OF FACT

1. On [redacted] 2019, the Appellant was admitted to [redacted] a Chronic and Convalescent Nursing Home ("NF") from [redacted] hospital in [redacted], Connecticut with an admitting diagnosis of acute hypoxemia (low oxygen level), respiratory failure, COPD exacerbation (a pulmonary disease), atrial fibrillation, pneumonia and hypertension. (Hearing Summary and Appellant testimony)

2. On [redacted] 2019, the Appellant started physical and occupational therapy for ambulation and functional mobility in his room and within the unit. (Exhibit 7, Physical and Occupational notes)

3. On [redacted] 2019, the NF submitted a level of Care ("LOC") evaluation to Ascend. The NF LOC screen described the Appellant's current Activities of daily living ("ADL") as requiring supervision with bathing, eating/feeding and mobility. The Appellant required no assistance or supervision for instrumental Activities of daily living ("IADL"). (Hearing Summary)

4. Ascend is the Departments contractor that determines if a patient meets the nursing home LOC criteria to authorize Medicaid payment. (Hearing record)

5. The ADL measures include bathing, dressing, toileting, continence, transferring and mobility. (Exhibit 4, ADL measures and measurements)

6. On [redacted] 2019, Ascends granted a short term stay for 60 days to expire on [redacted] 2019.(Hearing summary)

7. On [redacted] 2019, the Appellant was discharged from both physical and occupational therapy as all goals were met. (Exhibit 7, Pt and OT notes)

8. On [redacted], 2019, the NF submitted another NF LOC to Ascend. In this referral, the ADL reflected that the Appellant only required supervision with his bathing and that the Appellant required no assistance or supervision with IADL's. The Appellant did not have uncontrolled, unstable, and/or chronic conditions that required continuous skilled nursing services, was not currently receiving speech, physical, occupational or respiratory therapy and only required daily set up of medications. (Hearing summary and Exhibit 6, LOC determination)

9. On [redacted] 2019 and [redacted] 2019, Ascend requested that the practitioner certification be signed by the physician from NF. (Hearing summary)

10. The LOC determination form Section VI. Practitioner Certification states:

    "Certification that the client meets the nursing facility level of care criteria described in Section 19-13-D (8) (t) (d) (1) of the Public Health Code must be provided by a physician, APRN, or physician assistant. This certification must be signed and dated by the practitioner; telephone and voice orders are not acceptable."

    The NF's medical doctor did not sign the practitioner certificate. (Exhibit 6, LOC determination)

11. On [redacted] 2019, [redacted], the director of Social Services for the NF informed Ascend that the physician will not signed the practitioner Certification because the Appellant only needed supervision with bathing and was independent in all of the ADL's and does not meet skilled NF LOC criteria. (Exhibit 6, LOC determination)

12. Ascend determined that because the practitioner certificate was not signed by the facility's physician, the NF LOC referral was incomplete. (Hearing record)

13. On [redacted] 2019, Ascend issued a notice of closure of screening request for NF LOC to the Appellant and to [redacted] because a signed medical attestation required pursuant to the regulations of Connecticut State Agencies § 17b-262-707, was not provided. (Exhibit 5, closure notice for NF LOC)

14. Subsequent to the Appellant's request for this hearing, the Appellant had been diagnosed with pneumonia as of [redacted] 2020 and is currently being treated with antibiotics. The NF testified that in his current medical condition, the Appellant could not be released into the community. (Facility testimony)

15. As of the date of this hearing, a new NF LOC referral to Ascend has *not* been submitted. (facility testimony)

16. The Appellant has a son in the community however does not get along with the daughter-in-law. Going to a shelter that requires him to leave at 8:00 AM and return at 5:00 PM is not feasible in his present condition due to his pneumonia. He feels he would be able to reside in the community with supports in place but requires a place to live first. (Appellant's testimony)

17. The Appellant is not currently pending any application with Money follows the Person. (Hearing record)

18. The issuance of this decision is timely under Connecticut General Statute's 19a-535(h) (1) which requires that a decision be issued no later than thirty days after the termination of the hearing or not later than sixty days after the date of the hearing request, whichever occurs sooner. Thirty days from [redacted] 2020 is [redacted] 2020 and sixty days from [redacted] 2020 is [redacted] 2020. Therefore, this hearing decision is due no later than [redacted] 2020.

CONCLUSIONS OF LAW

1. Section 17b-2 (6) of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer 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. Conn Agencies Regs. § 19-13-D 8 t (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."

4. **On [redacted] 2019, the NF appropriately determined the Appellant did not have an uncontrolled or unstable medical condition at the time when submitting the NF LOC referral without the physician's certification.**

5. **However, based on the Appellant's re-occurrence of pneumonia diagnosed on [redacted] 2020, it is reasonable that he has an unstable chronic condition which requires nursing supervision on a daily basis.**

6. Regulations of Connecticut State Agencies ("Regs. Conn.State Agencies") § 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-D 8 t (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*.

7. Conn. Gen. Stat. § 17b-259b 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.

8. **The testimony presented from the Appellant and the NF with regard to his ability to return to the community in his present medical condition with pneumonia contradicts the documentary evidence provided which shows that that the Appellant did not meet the NF LOC criteria in order to stay in skilled nursing.**

   As a result, a decision to evaluate whether the Appellant meets NF LOC is not possible at this time.

DISCUSSION

I find no fault with the NF's *initial* determination that the Appellant did not meet the NF LOC criteria to remain in a skilled nursing facility based on the information it had at the time. The Appellant only required supervision with bathing and was independent in all his ADL's and IADL's. Without a practitioner signature on the NF LOC, Ascend correctly determined that the referral was incomplete and therefore no LOC could be determined for medical necessity.

Subsequent to the Appellant's hearing request, he has been diagnosed with pneumonia for which he is being treated with antibiotics. The NF testified that based on his current condition, he could not be released into the community. Clearly the Appellant's medical condition has changed since his request for this administrative hearing and warrants a second look.

DECISION

The Appellant's appeal is remanded for further action.

ORDER

1. Ascend is ordered to request another NF LOC referral from the NF based on the change in the Appellants' medical condition for a new determination.

2. Compliance with this order is due no later than [redacted] 2020 to the undersigned.

Almelinda McLeod
Hearing Officer

CC:

[redacted], Administrator, [redacted]
[redacted], Director of Social Services for [redacted]
Hearings.Commops@ct.gov .DSS Community Option
Hearings.commops@ct.gov - Ascend/ Maximums

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.