

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 # ██████████
Case ID # ██████████
Request # 152456

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2020, Ascend Management Innovations LLC, (“Ascend”), the Department of Social Services (the “Department”) contractor that administers approval of nursing home care, sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) denying nursing home level of care stating that he does not meet the nursing facility level of care criteria.

On ██████████, 2020, the Appellant requested an administrative hearing to contest Ascend’s decision to deny nursing home level of care.

On ██████████ ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings (“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. The following individuals were present at the hearing:

██████████, Appellant
Melva Cooper, RN, Department’s Representative
██████████, Director of Social Work, ██████████
Paul Cook, Nursing Supervisor, Ascend Management Innovations
Scott Zuckerman, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether Ascend's decision that the Appellant does not meet the level of care requirements for a nursing facility was correct.

FINDINGS OF FACT

1. The Appellant is a Medicaid recipient. (Hearing record)
2. The Appellant's date of birth is [REDACTED], 1957. (Exhibit 6:Level of Care Determination Form dated [REDACTED], 2020)
3. On [REDACTED], 2019, [REDACTED] ("the facility") admitted the Appellant for a 30 day short term stay from the hospital due to medical issues from falls and syncope due to orthostatic hypotension, hypertensive crisis, weakness, difficulty in walking, stroke, type 2 diabetes, chronic back pain, coronary artery disease, hyperlipidemia, depressive disorder, anxiety disorder, insomnia, GERD, neuropathy, pacemaker, and a history of alcohol abuse. (Hearing Summary, Exhibit 6: Connecticut LTC Level of Care Determination Form)
4. On [REDACTED] [REDACTED], 2019, the facility submitted the Level of Care ("LOC") Determination form to Ascend. The Appellant's Activities of Daily Living ("ADL") support needs were, hands on assistance with bathing, dressing, toileting, mobility, and transferring. The Appellant needed physical assistance with meal preparation as an Instrumental Activity of Daily Living ("IADL"). Ascend assessed the Appellant as needing an additional 90 days which expired on [REDACTED], 2019. (Hearing Summary)
5. On [REDACTED], 2019, the facility submitted a LOC determination form. The facility determined the Appellant's ADL supports as hands on with transferring and continence, supervision with bathing, eating/feeding, and mobility. He required total physical assistance with meal preparation. He received a short term approval for ninety days. This approval expired on [REDACTED], 2019. (Hearing Summary)
6. On [REDACTED] 2019, the facility submitted a LOC determination form. The Appellant's ADL support needs were supervision with bathing, eating/feeding and transferring. He required no assistance with his IADL's. The Appellant received a short term approval of 60 days. This approval expired on [REDACTED] [REDACTED], 2020. (Hearing Summary)
7. On [REDACTED] 2020, the facility submitted a LOC determination form. The Appellant's ADL support needs were supervision with bathing. For his IADL's he required continual supervision or physical assistance with multiple

components of meal preparation. The Appellant required a medical doctor review for a LOC determination. (Hearing Summary)

8. The Appellant's medications include the following: Lyrica 100mg for neuropathy, Buspar 25 mg for anxiety, Eloquis 5mg as a blood thinner, aspirin 81mg, Doxepin 25mg for insomnia and depression, Paxil 50mg for depression, Hydroxyzine 25 mg for anxiety, Coreg 37.5mg for blood pressure, Lisinopril 7.5mg for blood pressure, Atorvastatin 40mg for cholesterol, Amlodipine 10mg for blood pressure, Prevident mouthwash, Pantoprazole 40mg for GERD, Magnesium Oxide 400mg supplement, Metformin 500mg for diabetes, Ambien, 10mg for sleep, Detemir injection for blood sugar, Flonase for allergies, Flomax nasal, Oxybutin 10mg for bladder, calcium supplement, potassium chloride supplement, folic acid 1mg, thiamine 100mg, vitamin D, Hydroxine hydrochloride, Albuterol, nebulizer, Preparation H as needed. (Facility testimony and Exhibit 9: Medications)
9. The Appellant is independent with his ADLs including dressing, eating, toileting, continence, transferring and mobility. (Appellant testimony, Hearing Summary, Exhibit 16: Level of Care report, █████/20)
10. The Appellant no longer receives Physical Therapy ("PT") or Occupational Therapy ("OT"). (Appellant's testimony)
11. The Appellant needs some assistance with IADL's of medication management and meal preparation. (Appellants Testimony, Exhibit : Level of Care report, █████/20)
12. The Appellant will be involved with Money Follows the Person ("MFP"). The care plan is for MFT to have a nurse come to his home to set up a medication box, for the Appellant to have home care services and have an assessment for OT or PT services. (Facility Testimony)
13. On █████ █████, 2020, Ascend' medical doctor reviewed all available information relating to the Appellant's needs. He receives supervision of one of seven ADL's. The Appellant uses a walker for ambulation. He is alert and oriented with no noted cognitive needs at this time. The medical doctor determined the Appellant does not meet medical necessity criteria. The Appellant does not require the continuous nursing services delivered at the level of the facility. The Appellant will be able to get needs met through a combination of medical, psychiatric and social services delivered outside of the facility setting. He would need intermittent assistance through home health, visiting nurse of some other venue to monitor his condition. (Hearing Summary and Exhibit 6:Level of care report, █████/20)
14. On ██████████ 2020, Ascend issued a Notice of Action, Denial of Nursing facility Level of Care. (Exhibit 5: NOA, █████/20)

15. 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], 2020. Therefore, this decision is due not later than [REDACTED] 2020. The Commissioner's order dated [REDACTED], 2020 extends the time for the issuance of a decision to up to 120 days of the request for an administrative hearing. Therefore, this decision is due not later than [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. 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."

Conn. Agencies Regs. Section 17b-262-707 (a).
3. "The Department shall pay a provider only when the department has authorized payment for the client's admission to that nursing facility." Conn. Agencies Regs. Section 17b-262-707(b).

4. State regulations provide that "Patients shall be admitted to the facility only after a physician certifies the following:
- (a) 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."
 - (ii) That a patient admitted to a rest home with nursing supervision has controlled and/or stable chronic conditions which require minimal skilled nursing services, nursing supervision, or assistance with personal care on a daily basis.

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

5. 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.

The Appellant does not have uncontrolled and/or unstable conditions requiring nursing services.

The Appellant has the physical ability to complete his ADL's. He does not need substantial assistance with personal care on a daily basis including eating, toileting, bathing, eating, transferring, mobility and dressing.

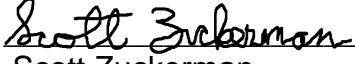
It is not clinically appropriate that the Appellant reside in a nursing facility.

Ascend Management Innovations is correct in its determination that the Appellant does not meet the medically necessary criteria for a nursing facility level of care.

Ascend Management Innovations 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**.


Scott Zuckerman
Hearing Officer

Pc: hearings.commops@ct.gov
Angela Gagen, Ascend Management Innovations
Connie Tanner, Ascend Management Innovations
Jaimie Johnson, Ascend Management Innovations
Paul Cook, Ascend Management Innovations

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.