

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

██████████, 2020  
Signature confirmation

Case: ██████████  
Client: ██████████  
Request: 152859

**NOTICE OF DECISION**

**PARTY**

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

**PROCEDURAL BACKGROUND**

On ██████████, 2020, the Department of Social Services (the “Department”), through its contractor, ASCEND Management Innovations (“ASCEND”), issued ██████████ (the “Appellant”) a *Notice of Action* denying Medicaid approval for payment for nursing facility level of care effective ██████████ 2020.

On ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received the Appellant’s administrative hearing request.

On ██████████, 2020, the OLCRAH issued a notice scheduling an 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 by teleconferencing.

At the ██████████ 2020 administrative hearing, the following individuals were sworn in:

██████████, Appellant  
██████████, M.S.W., ██████████, Appellant’s witness  
Benille St. James, R.N., Department’s representative  
Paul Cook, R.N., ASCEND employee, Department’s witness  
Eva Tar, Hearing Officer

The hearing record closed ██████████, 2020.



14. Prior to her admittance to the skilled nursing facility, the Appellant had lived in a shelter for about four months. (Appellant testimony)
15. The Appellant refuses to be discharged to a shelter. (Appellant testimony)
16. Connecticut General Statutes § 17b-61 (a), as found in the 2020 Supplement to the General Statutes of Connecticut (revised to January 1, 2020), provides in part that “the commissioner’s designated hearing officer shall ordinarily render a final decision not later than ninety days after the date the commissioner receives a request for a fair hearing pursuant to section 17b-60....” On ██████████ 2020, the OLCRAH received the Appellant’s faxed hearing request. This final decision would have been due by ██████████, 2020. This decision is timely.

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes in part designates the Department of Social Services as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

**ASCEND, as the Department’s medical review contractor, had the authority to assess the Appellant’s medical records to determine whether her medical condition required on-going treatment at a skilled nursing level.**

2. Section 17b-262-707 (a) of the Regulations of Connecticut State Agencies discusses when the Department will pay for an admission to a skilled nursing facility.

“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 and/or chronic conditions requiring continuous skilled nursing services and/or nursing supervision or has chronic conditions requiring substantial assistance with personal care, on a daily basis.” Conn. Agencies Regs. § 19-13-D8t (d)(1)(A)(i).

“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.” Conn. Gen. Stat. § 17b-259b (b).

**The Appellant currently does not have an uncontrolled, unstable, and/or chronic medical condition requiring continuous skilled nursing services or nursing supervision.**

**The Appellant does not have a chronic condition requiring substantial assistance with personal care, i.e. with her ADLs, on a daily basis.**

**Continuous skilled nursing services are not clinically appropriate in terms of type and frequency with respect to treatment of the Appellant’s medical conditions.**

**It is reasonable to conclude that the Appellant’s medical treatment as provided at the skilled nursing facility—her once-weekly alcohol and drug counseling sessions and receipt of oral medications from staff—may be provided to her in a non-institutionalized setting.**

**The Appellant’s continued placement at a skilled nursing facility is not the least restrictive means to medically treat the Appellant.**

3. Section 17b-259b (a) of the Connecticut General Statutes provides:

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.

Conn. Gen. Stat. § 17b-259b (a) (emphasis added).

**The Appellant’s continued placement at a skilled nursing facility is primarily for her convenience.**

**ASCEND correctly determined that the Appellant no longer medically requires care at a skilled nursing facility.**

### **DECISION**

The Appellant’s appeal is DENIED.

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Eva Tar  
Hearing Officer

cc: Angela Gagen, ASCEND  
Connie Tanner, ASCEND  
Jaimie Johnson, ASCEND  
Paul Cook, ASCEND

### **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 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.