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

[redacted] **2021**
Signature Confirmation

Case # [redacted]
Client ID # [redacted]
Request # 171413

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted], 2021, the Department of Social Services (the "Department") through Ascend Management Innovations ("Ascend"), the Department's contractor that administers approval of nursing home care sent [redacted] (the "Appellant") a Notice of Action ("NOA) denying nursing home level of care indicating that he does not meet the nursing facility level of care ("NFLOC") criteria.

On [redacted], 2021, the Appellant requested an administrative hearing to contest the Department's decision to deny NFLOC.

On [redacted] 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for [redacted] 2021.

On [redacted], 2021, the administrative hearing was re-scheduled.

On [redacted] 2021, OLCRAH issued a Notice scheduling the administrative hearing for [redacted] 2021.

On [redacted] 2021, 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. Due to the pandemic, the hearing was held telephonically with no objection from any of the parties.

The following individuals were present at the hearing:

[redacted], Appellant
Benile St. Jean, RN Community Options, Department Representative
Jean Denton, Ascend Representative
[redacted], Director of Social Services, [redacted]
Almelinda McLeod, Hearing Officer

The hearing record was held open for the submission of additional evidence. On [redacted] 2021, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether Ascend's decision that the Appellant does not meet the criteria for NFLOC is correct.

FINDINGS OF FACT

1. On [redacted] 2019, the Appellant was admitted to the facility from [redacted] Hospital for a short term stay of 90 days to expire [redacted] 2019. (Hearing summary)

2. The Appellant is [redacted] years old, date of birth [redacted] and a Medicaid recipient. (Hearing record)

3. The Appellant's primary admitting diagnosis was Type 1 Diabetes Mellitus with Ketoacidosis. In addition to this diagnosis, the Appellant also has Coronary artery disease, heart failure, hypertension, orthostatic hypotension, Gerd, hyperlipidemia, arthritis, cerebrovascular accident, seizure or epilepsy disorder, anxiety disorder, bipolar disorder. (Hearing summary and Exhibit 8)

4. At the time of admission, the Appellant required hands on assistance with bathing, dressing, toileting, mobility, supervision with transfer, continence, and eating/ feeding in his activities of daily living ("ADL's") and for his instrumental activities of daily living ("IADL's"), he required set ups for medications and required continual supervision or physical assistance with meal preparation. (Hearing summary)

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

6. On [redacted] 2019, the facility submitted a NFLOC form to Ascend. The Appellant was approved for 90 days short term stay to expire on [redacted], 2019. (Hearing summary)

7. On [redacted], 2019, the facility submitted a NFLOC form to Ascend. The Appellant was approved for 120 days short term stay to expire on [redacted], 2020. (Hearing summary)

8. On [redacted] 2019, the facility submitted a NFLOC form to Ascend. The Appellant was approved for 90 days short term stay to expire on [redacted], 2020. (Hearing summary)

9. On [redacted] 2020, the facility submitted a NFLOC form to Ascend. The Appellant was approved for 90 days short term stay to expire on [redacted], 2020. (Hearing summary)

10. On [redacted] 2020, the facility submitted a NFLOC to Ascend. The Appellant was approved 180 days for short term stay to expire on [redacted], 2021. (Hearing summary)

11. On [redacted] 2021, the facility submitted a NF LOC to Ascend. At the time, the Appellant required supervision with one ADL, bathing; and for his IADL, he required set up for his medications. The Appellant did not require assistance with meal preparation. Based on this information, the Appellant required a medical doctor review. (Hearing summary)

12. The medical review revealed the Appellant is independent in all his ADLs and his needs could be met in the community with appropriate supports. (Hearing summary)

13. The Appellant is fully oriented to self, place, and time. (Hearing record)

14. On [redacted] 2021, Bill Regan, MD, an Ascend Medical doctor, reviewed the NFLOC screen, Practitioner Certification, minimum data set and the Appellant's medical records and concluded that the NFLOC was not medically necessary because it was not clinically appropriate and not effective for his condition. The Appellant's needs could be met in a less restrictive setting where he will need intermittent assistance through home health, visiting nurse or some other kind of venue to monitor his condition. (Hearing summary)

15. The Appellant is independent with bathing, dressing, eating/feeding, toileting, transferring and has no issues with continence. (Appellant testimony)

16. The Appellant testified that he has mobility issues for two reasons. The first is that he is missing a nail on his right big toe for which he is receiving wound care. He doesn't feel solid on his feet. Secondly, the Appellant blood sugars are either extremely high or extremely low. When his blood

sugar level drops, he needs to grasp the bed for support, and he needs to be woken up. (Appellant testimony)

17. The Appellant's sugar level is monitored with a finger stick, every day before every meal, at noon time and at bedtime. The normal average blood sugar range for a non-diabetic is between 90 to 110 and the normal range for a diabetic person is between 90 to 120. When his numbers are in the low 100's, the Appellant will be encouraged to eat something. Any number above 120, medication can be adjusted and if above 200, there is a protocol with medication to follow up with a meal to bring him within normal range. However, all these procedures can be performed outside of the nursing facility. (Facility and Department's testimony)

18. On two occasions, the Appellant's blood sugar was lower than normal which required the facility to encourage the Appellant to eat: On [redacted], 2020 at 22:24 (10:24 pm) his blood sugar level was at 56.0. On [redacted] 2021 at 21:31 (9:31 pm) his blood sugar was 62.0. Outside of these two low blood sugar readings, the Appellant's blood sugar level ranged from 93 to 468. This range of numbers would not induce a coma. (Exhibit 12 and Department testimony)

19. Currently, the Appellant does not receive any rehabilitative services such as physical therapy (*last received in* [redacted] *2020*), occupational, speech or respiratory therapies. (Appellants testimony)

20. The Appellant currently does not use a cane or a walker but have used a cane and a walker supplied by the facility whenever he needed it in the past. (Hearing record)

21. The Appellant had an application for Money follows the person ("MFP"). MFP found 3 apartments for him. The Appellant rejected all three because of either location of the apartments, apartment being on a second floor or its proximity to prostitution activities. (Hearing record, Department testimony and Appellant testimony)

22. As of [redacted] 2020, the Appellant terminated his MFP application. (Hearing record and Appellant testimony)

23. The issuance of this decision under Connecticut General Statutes 17b-61 (a) which requires that a decision be issued within 90 days of the request for an administrative hearing has been extended to "not later than 120 days " after a request for a fair hearing pursuant to Section 17b-60 by order of Department of Social Services Commissioner dated April 13, 2020. The Appellant requested an administrative hearing on [redacted], 2021. The closing of the record was delayed by 25 days due to the re-schedule and 24 days due to the submission of additional evidence for a

total of a 39-day delay. Therefore, this decision is due no later than [redacted] 2021 and is therefore timely.

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. 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*.

5. 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.

6. Ascend correctly used clinical criteria and guidelines solely as screening tools.

7. Ascend correctly determined that the Appellant is independent with all his ADL’s.

8. Ascend correctly determined that based on the evidence, the Appellant does not have a chronic medical condition requiring substantial assistance with personal care daily.

9. Ascend correctly determined that based on the evidence, the Appellant does not have uncontrolled and/or unstable medical conditions requiring continuous skilled nursing services and /or nursing supervision.

10. Ascend correctly determined that the Appellants stay at the SNF is not clinically appropriate in terms of the level of services nor considered effective for the Appellant's condition.

11. Ascend correctly determined that it is not medically necessary for the Appellant to remain in a skilled nursing facility on [redacted] 2021 because his medical needs could be met with a combination of home health and visiting nurse services to monitor his condition in a less restrictive setting out in the community.

12. Ascend correctly denied continual approval of long-term care Medicaid.

DECISION

The Appellant's appeal is DENIED.

Almelinda McLeod
Hearing Officer

CC: Hearings.commops@ct.gov, Community Options Unit
AscendCTadminhearings@maximus.com

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.

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, 165 Capitol Avenue, 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.