

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

██████████, 2021
SIGNATURE CONFIRMATION

CASE # ██████████
CLIENT ID # ██████████
REQUEST# ██████████

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2021, 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 ██████████, 2021, the Appellant requested an administrative hearing to contest Ascend’s decision to deny nursing home level of care.

On ██████████ 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2021.

On ██████████ 2021, the following individuals participated via telephone.

- ██████████, Appellant
- Jean Denton, LPN, Lead Clinical Reviewer, Maximus Company
- Brenda Providence, Nurse, Community Options
- Joseph Alexander, Administrative Hearing Officer

On [REDACTED] 2021 the Appellant requested the hearing be reconvened on a date after [REDACTED], 2021 as he had medical appointments he needed to attend that would necessitate additional level of care reviews to be conducted.

On [REDACTED], 2021, the OLCRAH issued a notice scheduling the administrative hearing for [REDACTED] 2021.

On [REDACTED], 2021, the hearing was reconvened, and the following individuals participated via telephone.

[REDACTED], Appellant
Jean Denton, LPN, Lead Clinical Reviewer, Maximus Company
Ellen Troyan, Registered Nurse, Community Nurse Coordinator, Community Options
Joseph Alexander, Administrative 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 [REDACTED] years old (DOB [REDACTED]) and a Medicaid recipient of long term care support services. (Hearing record, Exhibit 6: Level of Care Determination Form dated [REDACTED] 2021)
2. On [REDACTED] 2020, the Appellant was admitted to [REDACTED] (" [REDACTED] ") with a diagnosis of status post right lower extremity sepsis with below the knee amputation. (Hearing Summary)
3. On [REDACTED], 2020, [REDACTED] submitted the Nursing Facility Level of Care ("NFLOC") screening form to Ascend. The NFLOC form described the Appellant's current Activities of Daily Living ("ADL") support needs as follows:

The Appellant required hands on assistance with bathing, dressing, supervision with Bathing, dressing, toileting, mobility, transfers, and continence.

For Instrumental Activities of Daily Living ("IADL"), the Appellant required verbal assistance with medications and required total assistance with meal preparation. (Hearing Summary)

4. On [REDACTED], 2020, the Appellant received short-term approval for [REDACTED] days from his [REDACTED], 2020 admission date. This approval expired on [REDACTED], 2020. (Hearing Summary)

5. On [REDACTED], 2020, the [REDACTED] submitted the NFLOC screening form describing the Appellant's ADL support needs as follows:

The Appellant required supervision with bathing, dressing, mobility, continence, and transfers.

For IADL's the Appellant required verbal assistance with medications, and minimal assistance with meal preparation. (Hearing Summary)

6. On [REDACTED] 2020, the Appellant received short-term approval for [REDACTED] days, with an end date of [REDACTED] 2021. (Hearing Summary)

7. On [REDACTED] 2021, [REDACTED] submitted a NFLOC screening form to Ascend indicating the Appellant's ADL support needs as follows:

The Appellant required supervision with bathing, dressing, toileting, mobility, and transfers.

For IADL's the Appellant required verbal assistance with medications and minimal assistance with meal preparation. (Hearing Summary)

8. On [REDACTED] 2021, the Appellant received short-term approval for [REDACTED] days, with an end date of [REDACTED] 2021. (Hearing Summary)

9. On [REDACTED], 2021, [REDACTED] submitted a NFLOC screening form to Ascend indicating the Appellant's ADL support needs as follows:

The Appellant required hands on assistance with bathing and supervision with dressing, eating, toileting, mobility, and transfers.

For IADL's the Appellant required verbal assistance with medications and continual supervision with meal preparation. (Hearing Summary)

10. On [REDACTED], 2021, the Appellant received short-term approval for [REDACTED] days, with an end date of [REDACTED] 2021. (Hearing Summary)

11. On [REDACTED] 2021, [REDACTED] submitted a NFLOC screening form to Ascend indicating the Appellant's ADL support needs as follows:

The Appellant required hands on assistance with bathing.

For IADL's the Appellant required verbal assistance with medications and continual supervision with meal preparation.
(Hearing Summary)

12. On [REDACTED] 2021, an Ascend medical doctor reviewed all available information for the [REDACTED] 2021 NFLOC submission which included the Practitioner Certification, Minimum Data Set and ADL flow sheets and determined the Appellant was independent in all his ADL's, continuous nursing services delivered at the level of nursing facility were no longer required, and the Appellant's needs could be met in the community with appropriate supports. (Hearing Summary, Exhibit 6: LOC Determination Form, Exhibit 7: Practitioner Certification, Exhibit 8: Minimum Data Set, Exhibit 9: ADL Flow Sheets)
13. Ascend has not received any supporting information to corroborate the Appellant's testimony pertaining to the wound on his left heel. (Hearing Record)
14. On [REDACTED] 2021, Ascend issued a Notice of Action to the Appellant denying Nursing facility level of care. The notice stated that the Appellant does not require continuous nursing services delivered at the level of the Nursing Facility and effective [REDACTED], 2021 the Appellant is no longer eligible for Medicaid coverage of nursing facility services. (Exhibit 5: NOA dated [REDACTED])
15. On [REDACTED] 2021, OLCRAH received the Appellant's hearing request form. (Hearing Record)
16. The Appellant is independent in all his ADL's. The Appellant is not receiving Physical Therapy ("PT"), Occupational Therapy ("OT") or Speech Therapy. (Appellant Testimony)
17. There was no evidence submitted by the facility or the Appellant to support the position that the Appellant needs constant and continuous care for a chronic condition equal to that of a nursing home level. (Hearing Record)
18. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within [REDACTED] days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED], 2021. At the Appellant's request the hearing scheduled for [REDACTED] 2021 was reconvened on [REDACTED], 2021 thus adding a total of [REDACTED] days to the decision due date. Therefore, this decision is due not later than [REDACTED] 2021.

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 daily 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.

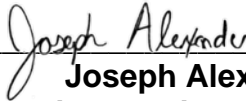
Ascend Management Innovations correctly determined that it is not medically necessary for the Appellant to reside in a skilled nursing facility as his needs could be met in a less restrictive setting with the appropriate support systems in place.

DISCUSSION:

The Appellant provided testimony regarding a medical issue he has with the heel of his left foot and how the issue affects his ability to perform certain tasks independently. Neither the Appellant nor [REDACTED] have provided any evidence or medical documentation to Ascend that would necessitate a new medical review to be completed to determine if the Appellant meets the level of care requirements to remain at [REDACTED]

DECISION

The Appellant's appeal is **DENIED**



Joseph Alexander
Administrative Hearing Officer

CC: hearings.commops@ct.gov
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 §4-1181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, 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 with 45 days of the mailing of this decision, or 45 days after the agency denies 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 06105-3725. 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 her 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.