

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

██████████  
██████████  
Request # 180428

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

██████████, 2021, Ascend Management Innovations LLC, (“Ascend”), the contractor that administers approval of nursing home care for the Department of Social Services (the “Department”), sent a Notice of Action (“NOA”) denying nursing facility (“NF”) level of care (“LOC”) for ██████████ (the “Appellant”) because she did not meet the medical criteria, as defined in section 17b-259b of the Connecticut General Statutes.

██████████ 2021, ██████████, the Appellant’s Conservator of Person and Estate, requested an administrative hearing to appeal Ascend’s decision to deny NF LOC.

██████████ ██████████ ██████████ 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2021. The hearing was scheduled to be held telephonically, due to the COVID-19 pandemic.

██████████ 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. The Appellant did not object to a telephonic hearing. The following individuals were present at the hearing:

██████████, the Appellant’s Conservator  
██████████ Case Manager, ██████████ Hospital

██████████, Social Worker, ██████████ Hospital

██████████ Social Worker, Town of ██████████

██████████, Director of Case Manager, Town of ██████████

Paul Cook, MSN, RN, Ascend's Representative

Jean Denton, RN, Ascend's Representative

Benille St. Jean, RN, Department's Representative

Veronica King, Hearing Officer

The Appellant was not present at the hearing

### **STATEMENT OF THE ISSUE**

The issue is whether the Department's contractor, Ascend, correctly determined that institutionally based nursing care as provided at the Nursing Facility Level of Care (NFLOC) was not medically necessary for the Appellant.

### **FINDINGS OF FACT**

1. The Appellant is ██████ ears old (DOB ██████████) and is a recipient of Medicaid. (Exhibit 4: CT Level of Care Determination and Hearing record)
2. The Appellant lived with her elderly father in an apartment setting. Between ██████/21-██████/21, she was admitted at ██████████ Hospital after emergency services was called to assess her father who fell. Adult protective services found the home unlivable. She was discharged home with a diagnosis of failure to thrive and was told to follow-up with a primary care physician and dermatologist for her eczema. (Appellant's Exhibit B: ██████████, LCSW ██████ 21 letter and hospital medical records dated ██████21 and ██████ 21)
3. After the Appellant was discharged from ██████████ Hospital on ██████ 21, the Town of ██████████ Social Services initiated process for conservatorship which was established on ██████████, 2021. (Appellant's Exhibit A: Court Probate document, Exhibit B and Exhibit 4: CT Level of Care form dated ██████ 21)
4. ██████████, 2021, the Appellant was removed from her house by the Town of ██████████ Social Worker due to the condition of the home and that she was unable to care for herself. (Exhibit B and Hearing Record)
5. ██████████ 2021, the Appellant was admitted to ██████████ Hospital with diagnoses of failure to thrive. She has a history of HTN (hypertension), Depression, Osteomyelitis (2018) and Eczema. (Hearing Record and Exhibit 4)

6. ██████████ 2021, the facility submitted a Nursing Facility Level of Care (NFLOC) screening form to Ascend. The NFLOC screen described the Appellant's Activities of Daily Living ("ADL") support needs as follows: She required supervision with bathing, dressing, eating, and toileting. For Instrumental Activities of Daily Living ("IADL"), she required no assistance with medication and required total assistance with meal preparation. Based on this information, it was required a Medical Doctor Review. (Hearing Record and Exhibit 4)
7. ██████████ ██████████ ██████████ 2021, after review of the NFLOC screen, Practitioner Certification, Medicine Progress Note, and Physical Therapy Report, Ascend's medical doctor concluded that NF LOC was not necessary for the Appellant. The Physical Therapy Evaluation notes that she is independent with all ADLs and skilled therapy services are not needed. (Hearing Record, Exhibit 4, Exhibit 5: Practitioner Certification, Exhibit 6: Medicine Progress note, and Exhibit 7: Physical Therapy Report)
8. The Ascend physician's rationale for the decision included that the Appellant is noted to need supervision with bathing, dressing, and eating, however the provided PT consult notes her to be completely independent and able to be discharge home. Medical conditions are noted to be stable at this time. The provided documentation does not support a NF level of care at this time. No skilled nursing services other than medication management are provided which is standard for NF. (Exhibit 4)
9. ██████████, 2021, Ascend issued an NOA to the Appellant denying NF LOC. The reason for the denial was that after a comprehensive assessment of the submitted documentation and that submitted PT evaluation, NF LOC was not medically necessary because it was not considered effective for her and was not clinically appropriate in terms of level at this time. (Hearing Record and Exhibit 4)
10. ██████████, 2021, the Appellant had a Geriatric Evaluation. The evaluation indicates that the Appellant was assessed for dementia and that she requires an MRI of the head to complete the dementia workup. (Appellant's Exhibit B and Hearing Record)
11. ██████████ ██████████ ██████████ 2021, Physician Progress Notes indicates that the Appellant has an unsafe home environment due to her Dementia's assessment conclusion. The geriatric assessment by Dr. ██████████ stated; "The history of short-term memory loss and functional decline is suggestive of dementia. Her dementia may be due to heavy alcohol use. Due to her dementia, the patient lacks insight and judgment. She has been neglect her own care since she has sign of self-neglect. This patient has proven that she cannot care for herself and is unable to live at home alone due to her self-neglect." (Appellant's Exhibit B)

12. The NF LOC submitted by [REDACTED] hospital on [REDACTED] [REDACTED] 2021, presented that the Appellant had “No problems indicated” in regard to behaviors due to corroborated Dementia. (Exhibit 4 and Ascend’s Representative’s Testimony)
13. Ascend had not received any additional supporting documentation from [REDACTED] Hospital. (Ascend’s Representative’s Testimony and [REDACTED] Representative’s Testimony)
14. 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] 2021. This decision, therefore, was due no later than [REDACTED] 2021, and is therefore timely. (Hearing Record)

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes (Conn. Gen. Stat.) authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Section 17b-262-707(a) of the Regulations of Connecticut State Agencies (Regs., Conn. State Agencies) provides as follows:

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.”
3. “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 substantial assistance with personal care, on a daily basis; ...” Regs., Conn State Agencies § 19-13-D8t(d)(1)(A)
4. Conn. Gen. Stat. § 17b-259b(a) provides as follows:

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.

**In accordance with the documentation provided by ██████████ Hospital at the time of determination, the Appellant did not have uncontrolled and/or unstable medical conditions requiring substantial assistance with personal care on a daily basis.**

**NF LOC was not medically necessary for the Appellant because it was not considered effective for her condition. It was not clinically appropriate in terms of type and extent. The Appellant's needs could have been met in a less restrictive setting through a combination of**

medical, psychiatric and social services delivered outside of a facility setting.

██████████, 2021, the Department, through its agent, Ascend, was correct when it denied approval of NF LOC for the Appellant, because based on the ██████████ 2021 documentation provided, NF LOC was not medically necessary for her.

**DECISION**

The Appellant's appeal is **DENIED**.

*Veronica King* Type text here

---

Veronica King  
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 §4-181a(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, 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 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.