

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3730

██████████ 2022
Signature Confirmation

Case ID # ██████████
Client ID # ██████████
Request # 192330

NOTICE OF DECISION

PARTY

██████████
██
██
██

PROCEDURAL BACKGROUND

On ██████████ ██████████ 2022, Ascend Management Innovations LLC (“Maximus”), the Department of Social Services contractor that administers approval of nursing home care, sent ██████████ (the “Appellant”) a notice of action (“NOA”) denying nursing facility (“NF”) level of care (“LOC”) as not being medically necessary.

On ██████████ 2022, the Appellant requested an Administrative Hearing to contest Maximus’s decision to deny NF LOC.

On ██████████ 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the Administrative Hearing for ██████████ 2022.

On ██████████ 2022, Maximus requested the Administrative Hearing scheduled for ██████████ ██████████ 2022, be rescheduled due to a scheduling conflict.

On ██████████ 2022, OLCRAH issued a notice rescheduling the Administrative Hearing for ██████████ 2022.

On [REDACTED] 2022, in accordance with sections 17b-60, 17-61, and 4-176e to 4-184 inclusive, of the Connecticut General Statutes, OLCRAH held an Administrative Hearing by telephonic conferencing.

The following individuals participated in the hearing:

[REDACTED] Appellant
[REDACTED] Facility Representative
[REDACTED] Facility Representative
Ellen Troyan, DSS Central Office
Stacy Bent- Department Observer
Jean Denton, Ascend/Maximus
Jessica Gulianello, Hearing Officer

The hearing record remained open to allow the Facility and Maximus to submit information. Additional documents were received and on [REDACTED] 2022, the hearing record closed.

STATEMENT OF THE ISSUE

The issue is whether Maximus correctly denied the Appellant's request for NF LOC approval.

FINDINGS OF FACT

1. The Appellant is [REDACTED] and a Medicaid recipient of long-term care support services. (*Exhibit 6: Level of Care Form, Hearing Record, Appellant's Testimony*)
2. On [REDACTED] 2021, the Appellant was admitted to [REDACTED] with a diagnosis of [REDACTED]. The Appellant received a [REDACTED]- day exempted [REDACTED] discharge. (*Hearing Summary*)
3. On [REDACTED] 2021, [REDACTED] ("the Facility") submitted the Nursing Facility Level of Care ("NFLOC") screening form referral to Maximus. The NFLOC screen described the individual's current Activities of Daily Living ("ADLs") support needs as follows: the Appellant required supervision with bathing, dressing, toileting, and mobility. For Instrumental Activities of Daily Living ("IADLs"), the Appellant required physical assistance with medications and total assistance with meal preparation. The Appellant required a level one screening and Maximus granted a short-term NFLOC approval of [REDACTED] days through [REDACTED] 2021. (*Hearing Summary*)

4. On [REDACTED] 2021, The Facility again submitted the NFLOC screening form referral to Maximus. The NFLOC screen described the individual's current ADL support needs as follows: the Appellant required supervision with bathing. For IADLs the Appellant required physical assistance with medications and no assistance with meal preparation. The Appellant required a level one screening and Maximus granted a short-term NFLOC approval of [REDACTED] days through [REDACTED] 2021. *(Hearing Summary)*
5. On [REDACTED] 2022, The Facility again submitted the NFLOC screening form referral to Maximus. The NFLOC screen described the individual's current ADL support needs as follows: the Appellant required no assistance. For IADLs the Appellant required physical assistance with medications and minimal assistance with meal preparation. Based on this information Maximus determined a Medical Doctor Review was required. *(Exhibit 6: Level of Care Form, Hearing Summary)*
6. On [REDACTED] 2022, Maximus's medical doctor, [REDACTED], M.D., reviewed the [REDACTED]
[REDACTED]
[REDACTED] and [REDACTED] Dr. [REDACTED] concluded the NFLOC was not medically necessary for the Appellant as she does not require the continuous nursing services delivered at the level of the NF. The Appellant's needs could be met in a less restrictive setting. *(Exhibit 6: Level of Care Form, Hearing Summary)*
7. On [REDACTED] 2022, Maximus issued an NOA to the Appellant and the Facility indicating short-term NF placement is not medically necessary for the Appellant. *(Exhibit 5: NOA)*
8. On [REDACTED] 2022, the Department received the Appellant's hearing request. *(Hearing Record)*
9. The Appellant was independent with all of her ADLs. She did not require hands on assistance with bathing, dressing, eating, toileting, continence, transferring, or mobility. The Appellant required verbal assistance for medication support. *(Exhibit 10: [REDACTED], Exhibit 6: Level of Care)*
10. The Appellant's current prescription medications include, but are not limited to:
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
(Exhibit 13: Medication list dated [REDACTED]/2022, Exhibit B: Medical list dated [REDACTED]/2022)
11. The Appellant uses a [REDACTED] and a [REDACTED] as adaptive equipment for mobility. *(Exhibit 8: Physical Therapy Notes, Appellant's Testimony)*

12. The Appellant is not currently receiving speech, occupational, or physical therapy services. (*Appellant's Testimony, Hearing Record*)
13. During the hearing proceedings the Appellant reported she was hospitalized following the Medical Doctor Review and her hospitalization subsequently resulted in a change in condition including medication and breathing treatments. (*Appellant's Testimony*)
14. Maximus advised a new NFLOC appeared to be medically appropriate based on the Appellant's testimony. (*Hearing Record*)
15. On [REDACTED] 2022, Maximus conducted face-to-face interviews with the Appellant and a social worker from the Facility and reviewed the Appellant's medical record including [REDACTED] and [REDACTED] as well as [REDACTED] evaluation/notes. (*Exhibit 14: [REDACTED]*)
16. The Appellant has several medical conditions that are being monitored regularly by the Facility including: [REDACTED]
[REDACTED]. (*Exhibit 14: [REDACTED]*)
17. The Appellant requires the assistance of a [REDACTED] and [REDACTED]. (*Exhibit 14: PASRR*)
18. The Appellant has several [REDACTED] conditions that are being monitored regularly by the Facility including [REDACTED]
[REDACTED]. The Appellant required a level [REDACTED] screening and Maximus granted a short-term NFLOC approval of [REDACTED] days through [REDACTED] 2022. (*Exhibit 14: [REDACTED]*)
19. On [REDACTED] 2022, Maximus issued the Appellant and the Facility a NOA confirming the Appellant received a short-term approval for [REDACTED] days without [REDACTED] services through [REDACTED] 2022. (*Exhibit 15: NOA*)
20. On [REDACTED] 2022, the OLCRAH issued an Appeal Resolution Notice to the Appellant requesting a response by [REDACTED] 2022, if the NOA issued on [REDACTED] 2022, by Maximus, satisfactorily resolved the issue of the hearing. (*Exhibit 16: Appeal Resolution Notice*)
21. On [REDACTED] 2022, the Appeal Resolution notice mailed to the Appellant was returned to the OLCRAH by the United States Postal Service ("USPS") as follows: Return to Sender, Note Deliverable as Addressed, Unable to Forward. (*Exhibit 17: Return Mail, dated [REDACTED]/2022*)
22. The issuance of this decision is timely under Connecticut General Statutes ("Conn. Gen. Stat.") 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] 2022. The hearing, however, which was originally scheduled for [REDACTED] 2022, was rescheduled to [REDACTED] 2022, at the request of Maximus. This decision, therefore, remained due no later than [REDACTED] 2022. However, the record, which had been anticipated to close on [REDACTED] 2022, did not close for the admission of evidence until [REDACTED] 2022, at the Appellant's request. Because this [REDACTED]-day delay in the close of the hearing record arose from the Appellant's request, this final decision was not due until [REDACTED] 2022, and is therefore timely. (*Hearing Record*)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes provides the Department of Social Services is designated as the state agency for the administration of (6) the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Section 17b-262-707(a) of Regulations of Connecticut State Agencies 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-D8t(d)(1) of the Regulations of Connecticut State Agencies. This certification of the need for care shall be made before the department authorizes 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 a mental illness or mental retardation as identified by the *preadmission MI/MR screen*.

Section 17b-262-707(b) of the Regulations of Connecticut State Agencies provides the Department shall pay a provider only when the department has authorized payment for the client's admission to that nursing facility.

The Appellant is a resident of a long-term care facility authorized to receive payment for NF services.

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. (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 determining medical necessity.

Title 42 of the Code of Federal Regulations § 440.230 provides for sufficiency of amount, duration, and scope. (d) The agency may place appropriate limits on a service based on such criteria as medical necessity or utilization control procedures.

DISCUSSION:

During the hearing proceedings, the Appellant disclosed she had recently been [REDACTED] and it was determined a new NFLOC referral was appropriate based on the changes in her medical condition.

Maximus conducted interviews with the Appellant and a Social Worker from the Facility on [REDACTED] 2022, and completed the [REDACTED] on [REDACTED] 2022. The [REDACTED] revealed the presence of [REDACTED] requiring continuous skilled nursing services, as evidenced by [REDACTED], and frequency.

Following the submission of additional evidence, Maximus correctly determined the Appellant has a [REDACTED] condition equal to that of a nursing home level and needs constant and continuous care. Maximus correctly

issued the Appellant an NOA on [REDACTED] 2022, granting a short-term NFLOC approval of [REDACTED] days through [REDACTED] 2022.

It should be noted, that if the Appellant disagrees with the short-term approval, she has the right to appeal the determination based on the NOA issued on [REDACTED] 2022.

DECISION

The Appellant's appeal is **Dismissed as Moot.**

Jessica Gulianello

Jessica Gulianello
Hearing Officer

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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, law, and 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 requested 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 the 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 the 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 if 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 to 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 following §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.