

On [REDACTED] 2022, OLCRAH issued a notice rescheduling the location of the Administrative Hearing for [REDACTED] 2022, from in-person to phone.

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] Conservator
[REDACTED] Director of Social Services, [REDACTED]
Charles Bryan, DSS Central Office
Jean Denton, Ascend/Maximus
Jessica Gulianello, Hearing Officer

The Applicant, [REDACTED], was not present due to his refusal to participate in the proceedings.

The hearing record remained open until the close of business on [REDACTED] 2022, to allow Maximus time to submit additional information. Additional documents were received and on [REDACTED] 2022, the hearing record closed accordingly.

STATEMENT OF THE ISSUE

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

FINDINGS OF FACT

1. The Applicant is [REDACTED] years old (DOB: [REDACTED]) and a Medicaid recipient of long-term care support services. (*Exhibit 6: Level of Care Form, Hearing Record*)
2. On [REDACTED], 2022, the Applicant was discharged from Griffin Hospital and admitted to [REDACTED] ("the Facility") with the diagnoses of [REDACTED]
[REDACTED]
[REDACTED].
(*Hearing Record*)
3. On [REDACTED], 2022, 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 Applicant required hands-on assistance with bathing, mobility, and transfers and

supervision with dressing, eating/feeding, and toileting. For Instrumental Activities of Daily Living (“IADLs”), the Applicant required total assistance with meal preparation. The Appellant required a level one screening and Maximus granted a short-term NFLOC approval of 90 days through [REDACTED] 2022. (*Hearing Summary*)

4. On [REDACTED], 2022, the Facility submitted the NFLOC screening form referral to Maximus. The NFLOC screen described the individual’s current ADL support needs as follows: the Applicant required supervision with bathing. For IADL’s the Applicant required total assistance with meal preparation. Based on this information Maximus granted a short-term NFLOC approval for 120 days through [REDACTED] 2022. (*Hearing Summary*)
5. On [REDACTED] 2022, the Facility submitted the NFLOC screening form referral to Maximus. The NFLOC screen described the individual’s current ADL support needs as follows: the Applicant required supervision with bathing. For IADL’s the Applicant was capable of preparing meals with minimal assistance. 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, Bill Regan, M.D., reviewed the NFLOC screen, Practitioner Certification, Follow-up Question Report, Progress Note, Minimum Data Set, Physical Therapy Discharge Summary, Psychiatric Progress Notes, Behavioral Health Progress Note, Orders, and Initial History and Physical. Dr. Regan concluded the NFLOC was not medically necessary for the Applicant as he does not require the continuous nursing services delivered at the level of the NF. The Applicant’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 Applicant and the Facility indicating NLOC placement is not medically necessary for the Applicant. (*Exhibit 5: NOA, 9/29/2022*)
8. On [REDACTED] 2022, the Department received the Applicant’s hearing request. (*Hearing Record*)
9. The Applicant is independent with all his ADLs. He does not require hands-on assistance with bathing, dressing, eating, toileting, continence, transferring, or mobility. (*Exhibit 6: Level of Care, Exhibit 8: Follow-Up Question Report [REDACTED]/2022-[REDACTED]/2022, Exhibit 9: Minimum Data Set, Facility Testimony*)
10. The Applicant’s current prescription medications include, but are not limited to: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. (*Exhibit 17: Medication List*)

11. The Applicant does not require the use of any adaptive equipment for mobility. (*Facility Testimony*)
12. The Applicant is not currently receiving speech, occupational, or physical therapy services. (*Facility Testimony, Hearing Record*)
13. Neither the facility nor the Conservator submitted evidence to support the position that the Applicant needs constant and continuous care for a chronic condition equal to that of a nursing home level. (*Hearing Record*)
14. 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 Conservator requested an Administrative Hearing on [REDACTED] 2022. This decision, therefore, is due no later than [REDACTED] 2023, and is 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 Applicant 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.

Maximus correctly determined the Applicant does not have uncontrolled and/or unstable conditions requiring continuous skilled nursing services.

Maximus correctly determined that NF services are not clinically appropriate in terms of level of service or considered effective for the Applicant's illness, injury, or disease. Maximus correctly determined that NF services are not

medically necessary for the Applicant because he does not need substantial assistance with personal care on a daily basis.

Ascend correctly determined that the Applicant does not meet the medically necessary criteria for a NF LOC.

DECISION

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

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.