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

[redacted] 2023
Signature Confirmation

Case ID # [redacted]
Client ID # [redacted]
Request # 203599

NOTICE OF DECISION
PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2022, Maximus Management Innovations LLC., ("Maximus"), the Department of Social Services contractor that administers approval of nursing home care, sent [redacted] (the "Appellant") a notice of action denying the Appellant nursing facility level of care ("NFLOC") as not being medically necessary.

On [redacted] 2022, the Appellant requested an administrative hearing to contest Maximus' decision to deny him NFLOC.

On [redacted] 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2022.

On [redacted] 2022, OLCRAH, at the Appellant's counsel's request, issued a notice rescheduling the administrative hearing for [redacted] 2022.

On [redacted] 2023, OLCRAH, at the Appellant's request, issued a notice rescheduling the administrative hearing for [redacted] 2023.

On [redacted] 2023, OLCRAH, at the Facility's counsel's request, issued a notice rescheduling the administrative hearing for [redacted] 2023.

On ██████ 2023, 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:
██████ Appellant's Brother and Conservator
██████ Appellant's Counsel
██████ Facility Social Worker
██████ Counsel for the Facility
Paul Cook, Maximus
Charles Bryan, Registered Nurse, Department of Social Services
Christopher Turner, Hearing Officer

The Appellant did not participate in the hearing due to his institutionalization

STATEMENT OF THE ISSUE

The issue is whether Maximus' decision to deny the nursing facility level of care for the Appellant as not being medically necessary was correct.

FINDINGS OF FACT

1. The Appellant is ██ years old and a recipient of long-term care support services under the Department's Husky D Medicaid program. (Record)

2. On ██████ 2020, the Appellant was admitted to ██████ (the "Facility") with the admitting diagnosis of fracture of unspecified parts of the lumbosacral spine and pelvis due to a fall from a balcony. (Exhibit 16: Face Sheet)

3. On ██████ 2020, the Facility submitted an NFLOC referral to Maximus. The NFLOC screen described the individual's current Activities of Daily Living ("ADLs") support needs as follows: The Appellant required hands-on assistance with bathing, dressing, toileting, mobility, transfers, and supervision with eating. For Instrumental Activities of Daily Living ("IADLs"), the Appellant required assistance with medication administration and minimal assistance with meal preparation. The Appellant was granted a short-term NFLOC approval of 180 days through ██████ 2021. (Record)

4. On ██████ 2021, the Facility submitted an NFLOC referral. The NFLOC screen described the individual's ADL support needs as follows: The Appellant required hands-on assistance with bathing and supervision with dressing and eating. For IADLs, the Appellant required assistance with medication administration and minimal assistance with meal preparation. The Appellant was granted a short-term NFLOC approval of 90 days through ██████ 2021. (Record)

5. On [redacted] 2021, the Facility submitted an NFLOC referral. The NFLOC screen described the individual's ADL support needs as follows: The Appellant required hands-on assistance with bathing, dressing, and supervision with eating. For IADLs, the Appellant required assistance with medication administration and minimal assistance with meal preparation.

6. On [redacted] 2021, Maximus requested the last two weeks of the Appellant's CNA flowsheets, recent MD note, clarification of discharge plan, and clarification of conflicting documentation. (Record)

7. On [redacted] 2021, Maximus did not receive the requested information from the Facility and as a result, canceled the NFLOC screen. (Record)

8. On [redacted] 2021, the Facility submitted an NFLOC referral. The NFLOC screen identified the individual's ADL support needs as follows: The Appellant required hands-on assistance with bathing, dressing, and supervision with eating. For IADLs, the Appellant required physical assistance with medications and supervision with meal preparation. The Appellant was granted a short-term NFLOC approval of 180 days through [redacted] 2022. (Record)

9. On [redacted], 2022, the Facility submitted an NFLOC referral. The NFLOC screen described the Appellant's ADL support needs as follows: The Appellant required supervision with bathing and dressing. For IADLs, the Appellant required assistance with medications, and continued supervision with meal preparation. This determination prompted a Medical Doctor Review. (Record)

10. On [redacted] 2022, Dr. Bill Regan from Maximus completed an assessment of the Appellant's medical condition and concluded the Appellant did not meet the medically necessary criteria for NFLOC. (Record)

11. On [redacted] 2022, Maximus issued a notice of action to the Appellant and the Facility that indicated short-term nursing facility placement is not medically necessary for the Appellant and that the Appellant's needs could be met in the community with proper support. (Record)

12. On [redacted] 2022, the Facility submitted an NFLOC referral. The NFLOC screen described the Appellant's existing ADL support needs as follows: The Appellant needed supervision with bathing and dressing. For IADLs, the Appellant required assistance with medications and continual supervision with meal preparation. This determination prompted a Medical Doctor Review. (Record)

13. On [redacted] 2022, Dr. Regan completed an assessment of the Appellant's medical condition and concluded the Appellant did not meet the medically necessary criteria for NFLOC. Dr. Regan determined the Appellant's needs could be met in a

less restrictive setting with assistance through home health care and other support measures. (Exhibit 5: NFLOC Determination)

14. On , 2022, Maximus issued a notice of action to the Appellant and Facility that indicated short-term nursing facility placement is not medically necessary for the Appellant. (Exhibit 5: Notice)

15. On the day of the hearing, counsel for the Facility and counsel for the Appellant agreed the NFLOC issue had been resolved. (Testimony)

16. 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 2022, with the decision due no later than 2023. However, due to three delays resulting in an -day extension of time, this decision is due no later than 2023, since 2023, is a .

CONCLUSIONS OF LAW

1. Conn. Gen. Stat. § 17b-2 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.

   Conn. Gen. Stat. § 17b-261b (a) provides the Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department.

   Conn. Gen. Stat. § 17b-262 (a) provides the Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program. Such regulations shall include provisions requiring the Department of Social Services (1) to monitor admissions to nursing home facilities, as defined in section 19a-521, and (2) to prohibit the admission by such facilities of persons with primary psychiatric diagnoses if such admission would jeopardize federal reimbursements.

   "The department's uniform policy manual ("UPM") is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance,* 214 Conn. 601, 573 A.2d 712 (1990)).

   The Department has the authority under state statute to administer the HUSKY-D Medicaid program and make regulations for the same.

2. 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-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*.

   Regs., Conn. State Agencies §17b-262-707 (b) 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 nursing home services.

3. Title 42 of the Code of Federal Regulations ("C.F.R.") § 409.31 (b) provides for specific conditions for meeting the level of care requirements. (1) The beneficiary must require skilled nursing or skilled rehabilitation services, or both, on a daily basis. (2) Those services must be furnished for a condition – (i) For which the beneficiary received inpatient hospital or inpatient CAH services, or (ii) Which arose while the beneficiary was receiving care in an SNF or swing-bed hospital for a condition for which he or she received inpatient hospital or inpatient CAH services; or (iii) For which, for an M + C enrollee described in § 409.20(c)(4), a physician has determined that a direct admission to an SNF without an inpatient hospital or inpatient CAH stay would be

medically appropriate. (3) The daily skilled services must be ones that, as a practical matter, can only be provided in an SNF, on an inpatient basis.

The Appellant has previously met the NFLOC criteria before the issuance of the [redacted] 2022, notice of action denying such approval.

4. 42 C.F.R. § 483.102 provides for the screening or reviewing of all individuals with mental illness or intellectual disability who apply to or reside in Medicaid certified NFs regardless of the source of payment for the NF services, and regardless of the individual's or resident's known diagnoses.

   42 C.F.R. § 483.104 provides as a condition of approval of the State Plan, the State must operate a preadmission screening and annual resident review program that meets the requirements of §§ 483.100 through 438.138.

   42 C.F.R. § 483.112 provides for the preadmission screening of applicants for admission to NFs. (a) ***Determination of need for NF services.*** For each NF applicant with MI or IID, the State mental health or intellectual disability authority (as appropriate) must determine, in accordance with § 483.130, whether, because of the resident's physical and mental condition, the individual requires the level of services provided by a NF. (b) ***Determination of need for specialized services.*** If the individual with mental illness or intellectual disability is determined to require a NF level of care, the State mental health or intellectual disability authority (as appropriate) must also determine, in accordance with § 483.130, whether the individual requires specialized services for the mental illness or intellectual disability, as defined in § 483.120.

   Maximus properly completed a Level I evaluation of the Appellant per Federal regulations.

5. UPM § 1570.05(A) provides that the purpose of the Fair Hearing process is to allow the requester of the Fair Hearing to present his or her case to an impartial hearing officer if the requester claims that the Department has either acted erroneously or has failed to take necessary action within a reasonable period.

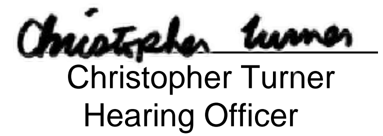
   UPM § 1570.25 (C)(2)(k) provides that the Fair Hearing Official renders a Fair Hearing decision in the name of the Department, in accordance with the Department's policies and regulations, to resolve the dispute.

   Given that the Appellant has been approved for NFLOC, the issue is no longer in question.

   There is no practical relief that can be offered through an administrative hearing.

DECISION

The Appellant's appeal is dismissed as moot.



Christopher Turner
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.