

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

██████████ 2023
Signature Confirmation

Case ID # ██████████
Client ID # ██████████
Request # 211084

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2023, Ascend Management Innovations LLC (“Maximus”), the Department of Social Services contractor that administers approval of nursing home care, sent, ██████████ ██████████, (the “Applicant”) and ██████████, (the “Conservator”) a notice of action (“NOA”) granting nursing facility (“NF”) level of care (“LOC”) with a short-term approval period of sixty (60) days with an effective date of ██████████, 2023, through ██████████, 2023.

On ██████████, 2023, the Applicant requested an Administrative Hearing to contest Maximus’s determination of the effective date of the NF LOC approval.

On ██████████, 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the Administrative Hearing for ██████████ ██████████ 2023, in person at ██████████ (the “Facility”).

On [REDACTED] 2023, the Conservator orally requested for the Administrative Hearing to be held by telephone.

On [REDACTED] 2023, the OLCRAH notified all parties of the updated location of the hearing.

On [REDACTED] 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 telephonically.

The following individuals participated in the hearing by telephonic conferencing:

- [REDACTED], Appellant's Conservator
- [REDACTED], Facility Attorney
- [REDACTED] Facility Director of Social Services
- [REDACTED], Facility RN
- Charlaine Ogren, DSS Community Options, LCSW
- Jean Denton, Maximus
- Jessica Gulianello, Hearing Officer

The Applicant, [REDACTED], refused to participate in the hearing and was not present.

The hearing record remained open until the close of business on [REDACTED] 2023, to allow Maximus time to submit additional information. Maximus, however, did not provide all the documents requested timely, and the hearing record was closed accordingly.

STATEMENT OF THE ISSUE

The Administrative Hearing was incorrectly scheduled for NF LOC denial. The issue to be decided, as confirmed during the proceedings, is if Maximus correctly determined the effective date of the Applicant's NF LOC approval.

FINDINGS OF FACT

1. The Appellant is [REDACTED] [REDACTED] years old (DOB: [REDACTED]) and a Medicaid recipient of long-term care support services. (*Exhibit 6: Summary of Findings, [REDACTED]/2023, Hearing Record*)
2. The Appellant's medical history includes but is not limited to: [REDACTED]
[REDACTED]
[REDACTED]. (*Exhibit 6: Summary of Findings, [REDACTED] 2023, Hearing Record*)

3. On [REDACTED] 2020, the Appellant was admitted to [REDACTED] Hospital with diagnosis of [REDACTED]. *(Hearing Summary, Maximus Testimony)*
4. On [REDACTED], 2020, [REDACTED] Hospital submitted the Nursing Facility Level of Care (“NFLOC”) screening form to Maximus. The NFLOC screen described the individual’s current Activities of Daily Living (“ADLs”) support needs as follows: the Applicant required total assistance with continence, hands on assistance with toileting, and supervisor with bathing and eating. For Instrumental Activities of Daily Living (“IADL’s”) the Applicant required continual supervision with meal preparation as well as physical and verbal assistance with medications. Maximus granted a short term NFLOC approval of [REDACTED] days through [REDACTED] 2020. *(Hearing Summary, Maximus Testimony)*
5. On [REDACTED] 2020, the Applicant was admitted to the Facility. *(Exhibit 6: Summary of Findings)*
6. On [REDACTED] 2022, the Facility submitted the NFLOC screening form to Maximus. The NFLOC screen described the individual’s current ADL support needs as follows: the Applicant required supervision with bathing, dressing, eating, toileting, mobility, transfer and continuance. For IADL’s the Applicant required continual supervision with meal preparation, as well as verbal and physical assistance with medications. Based on this information Maximus determined that a level I screen was required. *(Hearing Summary, Maximus Testimony)*
7. During the review of the level I screen Maximus determined that a level II Preadmission Screening and Resident Review (“PASRR”) on-site screen was required due to the Applicant’s psychiatric diagnoses. *(Maximus Testimony)*
8. On [REDACTED] 2022, Maximus submitted a referral requesting an on-site level II PASRR evaluation. *(Exhibit 18: Maximus Level II referral, [REDACTED]/2022, Maximus Testimony)*
9. On [REDACTED] 2023, the assigned assessor, [REDACTED], RN, conducted an on-site PASRR that included a review of the Applicant’s medical records (history and physical examination, psychiatric evaluation, nursing notes, and physicians orders), as well as an interview with the Applicant and the Facility social worker. *(Exhibit 6: Summary of Findings, [REDACTED]/2023, Maximus Testimony)*
10. On [REDACTED] 2023, the PASRR determination was finalized. The screening concluded that a NF placement setting was medically appropriate for the Applicant based on observation, diagnoses, LOC service needs, and frequency. *(Exhibit 6: Summary of Findings, [REDACTED]/2023, Maximus Testimony)*

11. On [REDACTED], Maximus issued a NOA indicating that the Applicant was approved for a short term NFLOC without specialized services for an approval period of sixty (60) days with an effective date of [REDACTED] 2023, through [REDACTED] 2023. *(Exhibit 5: NOA, [REDACTED]/2023, Maximus Testimony)*
12. On [REDACTED] 2023, the Applicant requested a hearing to contest the effective date of the NFLOC approval. *(Exhibit A: Hearing Request)*
13. The Applicant's prescription medications include, but are not limited to: [REDACTED]
[REDACTED]
[REDACTED]. *(Physicians Orders, [REDACTED] 2022)*
14. The Applicant requires the use of a [REDACTED] for mobility at the Facility. *(Exhibit 6: Summary of Findings, [REDACTED]/2023)*
15. The Applicant requires intermittent [REDACTED] due to difficulty [REDACTED]
[REDACTED]. *(Exhibit 6: Summary of Findings, [REDACTED]/2023)*
16. There is no evidence to support that the Applicant is currently receiving speech, occupational, or physical therapy services. *(Hearing Record)*
17. 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] 2023. This decision is due no later than [REDACTED] 2023, 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.
3. 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.

4. 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 completed a referral requesting a level II PASRR evaluation based on the Applicant's [REDACTED] diagnoses.

The PASRR determination was completed on [REDACTED] 2023.

On [REDACTED] 2023, Maximus correctly issued the Applicant and the Conservator a NOA advising that the Applicant was approved for a short – term NFLOC without specialized services for the [REDACTED] period beginning [REDACTED] 2023, through [REDACTED], 2023, based on the PASRR determination.

DISCUSSION

The hearing record reflects that Maximus approved the Applicant for a short-term NFLOC that expired on [REDACTED] 2020, based on the NFLOC screening form submitted by [REDACTED] Hospital on [REDACTED] 2020, and the Applicant was subsequently admitted to the Facility on [REDACTED] 2020.

On [REDACTED] 2022, the Facility submitted a NFLOC screening to Maximus. Maximus conducted a medical doctor review of all the information provided by the Facility review and concluded that NFLOC was not medically necessary for the Applicant. The Conservator alleged that she was notified of the denial; however, Maximus refuted the Conservator's testimony and asserted that a NOA was sent to the Conservator at the address of [REDACTED] advising of the denial of NFLOC for the Applicant due to lack of medical necessity. The OLCRAH did not receive a hearing request in the 60 days following the issuance of the NOA to dispute the denial; therefore, I find the denial to be outside of the scope of this hearing.

On [REDACTED] 2022, the Facility again submitted a NFLOC screening to Maximus. Maximus conducted a medical doctor review of all the information provided by the Facility and concluded that NFLOC was not medically necessary for the Applicant. The Conservator again alleged that she was not notified of the denial; however, Maximus again refuted the Conservator's testimony and asserted that a NOA was sent to the Conservator at the previously noted address advising of the denial of

NFLOC for the Applicant due to lack of medical necessity. Again, the OLCRAH did not receive a hearing request in the 60 days following the issue of the NOA to dispute the denial; therefore, I find the denial to again be outside of the scope of this hearing.

The Facility Attorney referenced Carr v. Becerra (3:22-cv-00988 U.S. District Court for the District of Connecticut, filing date [REDACTED]/2020 - case ongoing). The Plaintiffs challenged an Interim Final Rule that required states to trim their Medicaid rolls in violation of the “Families First Coronavirus Response Act” passed by Congress in [REDACTED] 2020. In exchange for receiving federal funding states are prohibited under from involuntarily terminating anyone in the state from Medicaid during the federally declared COVID-19 public health emergency. The Attorney acknowledged this case may apply to a different class of individuals. The referenced case applies to individuals who lost Medicaid enrollment. The Applicant remains enrolled in Medicaid.

Based on the most recent NFLOC screening Maximus correctly determined the Applicant to be eligible for NFLOC with an effective date of [REDACTED] 2023, following the PASRR determination that a NF placement setting is medically appropriate for the Applicant.

DECISION

The Appellant’s appeal is DENIED.

Jessica Gulianello

Jessica Gulianello
Hearing Officer

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AscendCTadminhearings@maximus.com
Jeandenton@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, 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.