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

[redacted]
SIGNATURE CONFIRMATION

CASE ID # [redacted]
CLIENT ID # [redacted]
Request # [redacted]

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

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

On [redacted], the Appellant requested an administrative hearing to contest Maximus' decision to deny NF LOC.

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

On [redacted], 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 at [redacted].

The following individuals participated in the hearing:

[redacted], Appellant
[redacted] Appellant's Witness
[redacted], Appellant's Witness
[redacted], [redacted] Healthcare Business Office
[redacted] Healthcare Administrator
[redacted] Healthcare Director of Therapy
[redacted] Healthcare Nursing Supervisor
[redacted] Healthcare Nurse
[redacted] Healthcare Nurse
Stacy Bent, R.N., DSS Central Office Community Unit
Jean Denton, Maximus Representative via telephone
Sara Hart, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether Maximus' decision to deny the Appellant's NFLOC as not being medically necessary was correct.

FINDINGS OF FACT

1. The Appellant is [redacted] ([redacted] years old (DOB [redacted]). *(Hearing Record)*

2. On [redacted], the Appellant entered [redacted] ("[redacted]"), a skilled nursing facility, from [redacted] with an admitting diagnosis of acquired absence of other left toes, unspecified abnormalities of gait and mobility, other symptoms and signs involving the musculoskeletal system, type 2 diabetes mellitus without complications, hyperlipidemia, hypertension, disorder of the circulatory system, anemia, anxiety, heart block, heart failure, muscle weakness, insomnia, major depression, peripheral vascular disease, need for assistance with personal care, and muscular dystrophy. ([redacted] *Testimony, Hearing Summary)*

3. On [redacted], ALHC submitted a NFLOC 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 set-up assistance with medications and total assistance with meal preparation. *(Exhibit 6: CT LOC Form)*

4. On [redacted], Maximus' medical doctor, Bill Regan, M.D., reviewed the NFLOC screen, Practitioner Certification, Progress Notes, ADLs, Psychiatric Evaluation & Consult, Physical Therapy Notes, Minimum Data Set, and Clinical Physician Order. Dr. Reagan determined that NF LOC was not medically necessary, and that the Appellant did not require the continuous nursing services delivered at the level of the NF. The Appellant's ADL support needs were independent for dressing, eating, toileting, continence, transferring, and mobility with supervision needed for bathing.

For IADL's, the Appellant required total assistance with meal preparation, and set-up assistance for medication support. The reviewing doctor determined that her needs could be met in a less restrictive setting. *(Exhibit 6, Hearing Summary)*

5. On [redacted], Maximus issued a notice of action to the Appellant and facility indicating short-term NF placement is not medically necessary for the Appellant. *(Exhibit 5: NOA* [redacted]

6. On [redacted], the Department received the Appellant's hearing request. *(Hearing Record)*

7. At the time of the [redacted], submission of the NFLOC form, 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 set-up assistance for medication support and total assistance with meal preparation. *(Exhibit 6)*

8. The Appellant uses a walker and a wheelchair as adaptive equipment for assistance with locomotion. *(Appellant's Testimony)*

9. On [redacted], the Appellant fell while on a leave of absence from the facility. *(*[redacted] *Testimony)*

10. On [redacted], the Appellant underwent surgery due to schemia of the right lower extremity. The Appellant remained hospitalized overnight and returned to [redacted] on [redacted]. *(*[redacted] *Testimony,* [redacted] *Testimony, Appellant's Exhibit A: Discharge Summary)*

11. [redacted] discharged the Appellant from physical and occupational therapy services at the time of the [redacted], NFLOC screening. ALHC reevaluated the Appellant's physical and occupational therapy service needs upon the Appellant's post-operative return to the facility on [redacted]. *(Hearing Record,* [redacted] *Testimony)*

12. Neither the facility nor the Appellant submitted evidence to support the position that the Appellant required constant and continuous care for a chronic condition equal to that of a nursing home level at the time of the [redacted] NFLOC submission. *(Hearing Record)*

13. The Appellant has experienced a significant decline in her health since the [redacted] NFLOC submission. *(Appellant's Testimony,* [redacted] *Testimony)*

14. On [redacted], [redacted] submitted an updated NFLOC form for review. *(*[redacted] *Testimony)*

15. As of the date of the [redacted] hearing, Maximus had the [redacted], NFLOC submission under review. *(*[redacted] *Testimony)*

16. The Appellant applied for HUSKY C at the end of [redacted] and wishes to return home with the assistance of a live-in caregiver. *(Appellant's Testimony,* [redacted] *Testimony,* [redacted] *Testimony)*

17. The issuance of this decision is timely under Section 17b-61(a) of the Connecticut General Statutes, which requires that the agency issue a decision within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [redacted]; therefore, this decision is due no later than [redacted].

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.

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

   Maximus correctly determined that NF services were not clinically appropriate in terms of level of service or considered effective for the Appellant's illness, injury, or disease. Maximus correctly determined that NF services were not medically necessary for the Appellant because she did not need substantial assistance with personal care on a daily basis.

   Maximus correctly determined that the Appellant did not meet the medically necessary criteria for a NF LOC based on the information provided on the [redacted], NF LOC submission, and correctly issued a NOA denying NF LOC on [redacted]

DISCUSSION

At the time of Maximus' [redacted], assessment the Appellant was found not to have any uncontrolled and/or unstable conditions requiring continuous skilled nursing services and/or nursing supervision requiring extensive daily assistance with personal care.

During the hearing, the Appellant and her witnesses provided testimony regarding the Appellant's alleged decline in health after the [redacted] NFLOC submission. The facility provided testimony that additional evaluations were completed upon the Appellant's post-surgical return on [redacted], and that a new NFLOC referral was submitted on [redacted]. Maximus provided supporting testimony indicating that the new NFLOC submission was under review and that further documentation was requested from ALHC to complete the determination.

Maximus was correct when it denied NFLOC for the Appellant based on the information available at the time of the [redacted] denial; however, testimony and evidence presented at the hearing indicate a change in the Appellant's health status, and the facility is encouraged to submit the requested information to Maximus for further review and a subsequent determination.

DECISION

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

Sara Hart
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.