

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

██████████ 2023
Signature confirmation

Case: ██████████
Client ██████████
Request: 213769

NOTICE OF DECISION

PARTY

██████████
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PROCEDURAL BACKGROUND

On ██████████, 2023, Maximus, the Department of Social Service's (the "Department") medical review contractor, issued ██████████ (the "Appellant") a *Notice of Action* denying Medicaid coverage for services at nursing facility level of care.

On ██████████, 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received the Appellant's hearing request.

On ██████████ 2023, the OLCRAH scheduled an administrative hearing for ██████████ 2023.

On ██████████, 2023, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing at ██████████ (the "Facility"). The following individuals participated:

██████████, Appellant
██████████, MSW, Appellant Witness
██████████, ADMS, Appellant Witness
Benille St. Jean, RN, Community Options, Department Representative
Paul Cook, RN, Maximus, Department Witness (by telephone)
Eva Tar, Hearing Officer

The hearing record closed ██████████ 2023.

STATEMENT OF ISSUE

The issue is whether Maximus correctly determined that the Appellant no longer medically requires care at the level provided to a resident of a skilled nursing facility.

FINDINGS OF FACT

1. The Appellant's date of birth is [REDACTED] (Exhibit 6)
2. The Appellant is 6'2" and weighs approximately 324 pounds. (Appellant Testimony)
3. The Appellant is a Medicaid recipient. (Exhibit 5)
4. Maximus is the Department's contractor for conducting Pre-Admission Screen Resident Reviews (PASRRs) level of care assessments for Medicaid recipients. (Department Witness Testimony)
5. On [REDACTED], 2022, the Facility, a skilled nursing facility, admitted the Appellant from [REDACTED]. ([REDACTED] Testimony) (Exhibit 6)
6. Maximus approved the Appellant for skilled nursing level of care at the Facility through [REDACTED], 2023. (Exhibits 3 & 6)
7. On [REDACTED], 2022, the Appellant had a Brief Interview for Mental Status (BIMS) of 15, a score indicating that a patient is alert, is oriented, and has no short-term memory issues. (Exhibits 6 and 11)
8. On [REDACTED], 2023, the Appellant's EKG registered a first-degree heart block. (Department Representative Testimony)
9. Many people live in the community with first-degree heart block. (Department Representative Testimony)
10. On [REDACTED], 2023, [REDACTED], APRN, signed a *Practitioner Certification* attesting that the Appellant met Connecticut Code for nursing level of care. (Exhibit 7)
11. On or around [REDACTED], 2023, the Facility submitted a Nursing Facility Level of Care screening along with a Minimum Data Set [REDACTED]/22), *Practitioner Certification* [REDACTED] 23), Progress Notes [REDACTED] 23), Completed Care AHT ([REDACTED]/23), Departmental Notes [REDACTED] 23), and Physicians Orders [REDACTED]/23) to Maximus for approval of the Appellant's level of care. (Department Witness Testimony) (Exhibits 6 through 12, inclusive)
12. On [REDACTED] 2023, the Appellant had the following diagnoses and medical history:
[REDACTED]
[REDACTED]. (Exhibit 6)

13. The Appellant has lumps in his legs and thighs. (Appellant Testimony)
14. The Appellant gets tired easily and has pain in his legs when he walks. (Appellant Testimony)
15. The Appellant does not use a cane, walker, or wheelchair. (Appellant Testimony)
16. The Appellant has refused painkillers. (Appellant Testimony)
17. At one point, the Appellant received physical therapy at the Facility to help with his mobility and using stairs; the Appellant has since been discharged from physical therapy. (Appellant Testimony)
18. The Appellant currently does not receive physical therapy, rehabilitative services, occupational therapy, or speech therapy at the Facility. ██████████ Testimony) (Exhibit 6)
19. The Appellant does not use a CPAP machine. (Appellant Testimony)
20. The Appellant is independent with the following activities of daily living (“ADLs”): showering, eating, mobility, toileting, and transfer. (Appellant Testimony)
21. The Appellant’s current medications are: Torsemide (water pill), magnesium, and gas pills during the day. He also uses medicated cream on his legs for skin issues. (Appellant Testimony)
22. The Facility provides the Appellant with room, board, and medication administration. (Topulos Testimony)
23. The Facility’s patient notes provide that if the Appellant has trouble breathing or has chest pain, staff is advised to send the Appellant to the emergency room. (██████████ Testimony)
24. On ██████████ 2023, Maximus issued a *Notice of Action* advising the Appellant that he did not require continuous nursing services delivered at the level of a nursing facility, and continuous nursing services were not medically necessary. (Exhibit 5)
25. Connecticut General Statutes § 17b-61 (a) provides: “The Commissioner of Social Services or the commissioner's designated hearing officer shall ordinarily render a final decision not later than ninety days after the date the commissioner receives a request for a fair hearing pursuant to section 17b-60....” On ██████████ 2023, the OLCRAH received the Appellant’s hearing request. The issuance of this hearing decision would have become due by no later than ██████████ 2023. This final decision is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes in part designates the Department of Social Services as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

“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-261b (a).

“The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program....” Conn. Gen. Stat. § 17b-262.

The Department has the authority under State statute to administer the Medicaid program and make regulations for the same.

Maximus, as the Department’s contractor, acted within its scope of authority when it reviewed the Facility’s █████ 2023 submissions to determine whether the Appellant’s medical needs fulfilled the Medicaid level of care criteria for patients of skilled nursing facilities.

2. Section 17b-262-707 (a) of the Regulations of Connecticut State Agencies discusses when the Department will pay for an admission to a skilled nursing facility.

“Patients shall be admitted to the facility only after a physician certifies the following: (i) that a patient admitted to a chronic and convalescent nursing home has uncontrolled and/or unstable and/or chronic conditions requiring continuous skilled nursing services and/or nursing supervision or has chronic conditions requiring substantial assistance with personal care, on a daily basis.” Conn. Agencies Regs. § 19-13-D8t (d)(1)(A)(i).

“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.” Conn. Gen. Stat. § 17b-259b (b).

Based on the hearing record, the Appellant’s medical conditions are not unstable or are of such severity that they require continuous skilled nursing services and/or nursing supervision.

The Appellant medical conditions do not require substantial assistance, i.e., regular hands-on intervention, with his ADLs.

It is reasonable to conclude that the Appellant’s current medical treatment as provided at the Facility—i.e., providing him with his oral medications—may be provided to him in a less restrictive setting than a skilled nursing facility.

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.

Conn. Gen. Stat. § 17b-259b (a).

Continuous skilled nursing services are not clinically appropriate in terms of type and frequency with respect to treatment of the Appellant's medical conditions.

The Appellant failed to establish that his institutionalization at a skilled nursing facility is medically necessary, as the term "medically necessary" is defined at Conn. Gen. Stat. § 17b-259b (a).

Maximus correctly determined that the Appellant no longer medically requires care at the level provided to a resident of a skilled nursing facility.

DECISION

The Appellant's appeal is DENIED.

Eva Tar-electronic signature

Eva Tar

Hearing Officer

Cc: [REDACTED], [REDACTED]
Benille St. Jean, DSS-Community Options
hearings.commops@ct.gov
AscendCTadminhearings@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 or law, 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 request 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: Department of Social Services, Director, Office of Legal Counsel, Regulations, and Administrative Hearings, 55 Farmington Avenue, Hartford, CT 06105.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to 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, provided that 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. A copy of the petition must also be served on 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 in accordance with § 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.

