

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

████████████████████
SIGNATURE CONFIRMATION

CASE ID # ██████████
CLIENT ID # ██████████
REQUEST # ██████████

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

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

On ██████████ the Appellant’s Conservator, ██████████ Esq. (the “Conservator”) requested an administrative hearing to contest Maximus’ decision to deny NF LOC for the Appellant.

On ██████████ the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ at ██████████

On [REDACTED] the Department of Social Services failed to appear at the administrative hearing.

On [REDACTED] OLCRAH issued a notice rescheduling the administrative hearing for [REDACTED] telephonically, at the Conservator's request.

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 via telephone conference.

The following individuals participated in the hearing:

- [REDACTED] Appellant
 - [REDACTED] Appellant's Witness
 - [REDACTED] Appellant's Conservator
 - [REDACTED] Social Services [REDACTED]
 - [REDACTED] Social Worker [REDACTED]
 - [REDACTED] Administrator [REDACTED]
 - [REDACTED] Director of Nursing [REDACTED]
- Charles Bryan, R.N., DSS Central Office Community Options Unit
Jean Denton, Maximus Representative
Sara Hart, Hearing Officer

The Hearing record remained open at the Appellant's request to provide the Appellant an opportunity to submit additional evidence and for a Departmental response. The Appellant provided additional evidence and the hearing record closed on [REDACTED] without response from the Department.

STATEMENT OF THE ISSUE

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

FINDINGS OF FACT

1. The Appellant is sixty-four (64¹) years old (DOB ██████████). (*Hearing Record*)
2. On ██████████ ██████████ Hospital admitted the Appellant for concerns of not being able to care for self, depression, anxiety, and hyponatremia. (*Appellant's Exhibit M: ██████████ Hospital History and Physical Report*)
3. Prior to her admittance to ██████████ Hospital, the Appellant resided in the home she co-owns with her spouse, located at ██████████ (*Hearing Record, Appellant's Testimony*)
4. On ██████████ ██████████ Hospital submitted a NF LOC form to Maximus. The NF LOC screen described the individual's ADL support needs as follows: The Appellant required supervision with bathing, dressing, eating, toileting, mobility, transfer, and continence. For IADLs, the Appellant required total assistance with meal preparation and physical assistance with medications. Maximus completed a Level I evaluation and approved a 90-day short-term NF LOC. (*Hearing Summary, Maximus' Testimony*)
5. The ADL Measures include bathing, dressing, eating, toileting, continence, transferring, and mobility. (*Exhibit 4: ADL Measures and Ratings*)
6. On ██████████ ██████████ ██████████ ██████████ ██████████ became the Appellant's court-appointed Conservator. (*Conservator's Testimony*)
7. On ██████████ the Appellant entered ██████████ ("████████"), a skilled nursing facility, from ██████████ Hospital with a primary diagnosis of Multiple Sclerosis. (*Hearing Record, Exhibit 6: CT Level of Care form, Appellant's Exhibit L: Admission Record*)
8. On ██████████ ██████████ submitted a NF LOC referral to Maximus. The NF LOC screen described the individual's current ADL support needs as follows: the Appellant required hands-on assistance with bathing and supervision with dressing, toileting, mobility, continence, and transfers. For IADLs, the Appellant required total assistance with meal preparation and verbal and physical assistance with medications. Maximus approved a 180-day short-term NF LOC through ██████████ ██████████. (*Hearing Summary*)
9. On ██████████ Dr. ██████████ Psychiatrist, completed a Physician Evaluation for Connecticut Probate Courts ("PC-370") for the ██████████ Probate Court. ██████████ indicated that the Appellant's capacity to make financial and personal decisions was not impaired and recommended that the Appellant's conservatorship be terminated. ██████████ did not indicate that the Appellant had a mental illness,

¹ Appellant's age on the date of the Administrative Hearing

addiction, or cognitive deficiency. ██████ noted *“During her initial evaluation on ██████, she was noted to have cognitive limitations. Her cognition has greatly improved since then. She currently does not have dementia. She does not have any condition that would affect her ability to seek or obtain medical care. She does not have any condition that would affect her ability to secure and maintain a safe living environment.”* (Appellant’s Exhibit P: PC-370 ██████)

10. On ██████ ██████ Ph.D., completed a Neuropsychological evaluation of the Appellant and determined a diagnosis of Unsp. Neurocognitive Disorder, Generalized Anxiety Disorder, and Adjustment Disorder with depressive features. (Appellant’s Exhibit C: *Psychiatric Evaluation*)
11. On ██████ a physical therapist and an occupational therapist from ██████ conducted in-home evaluations with the Appellant at her home, located at ██████. The Appellant demonstrated independence in all measures except car transfers and phone access. The Appellant was noted to not have a telephone at the home and the evaluators recommended the Appellant obtain Life Alert and/or a telephone. Additional recommendations from the home evaluations included the removal of throw rugs to reduce tripping hazards and assistance with laundry, meal, and grocery deliveries. (Exhibit 12: *Physical Therapy Notes*, Exhibit 13: *Occupational Therapy Notes*, Appellant’s Exhibit Q: *Home Functional Assessment*)
12. On ██████ the Appellant had a Brief Interview for Mental Status (BIMS) score of 15, indicating that the Appellant was alert, oriented, and had no short-term memory issues. (Exhibit 11: *Minimum Data Set*, Maximus’ Testimony)
13. On ██████ the Appellant wandered off ██████ property unauthorized. She walked several feet off the ██████ property and voiced frustration with her continued admittance at ██████. The Appellant refused to return to ██████ and was subsequently transported by ambulance to ██████ Hospital. (Appellant’s Testimony, ██████ Testimony)
14. On ██████ the ██████ Hospital crisis unit determined the Appellant was not at risk of harm to herself or others and she returned to LHS. (Appellant’s Exhibit A: *Progress Notes*)
15. On ██████ ██████ submitted a NF LOC referral to Maximus. The NF LOC screen described the individual’s current ADL support needs as follows: the Appellant required supervision with bathing. For IADLs, the Appellant required supervision with meal preparation and no assistance with medications. (Hearing Summary, Exhibit 6)
16. On ██████ Maximus’ medical doctor, Bill Regan, M.D., reviewed the NF LOC screen, Practitioner Certification, CNA Flow Sheets, History and Physical, Minimum Data Set, Patient discharge instructions, and Occupational and Physical Therapy Notes. 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, mobility, and bathing. A Medical on-site review was determined to not be necessary, and the reviewing doctor determined that her needs could be met in a less restrictive setting. (*Hearing Summary, Maximus' Testimony*)

17. 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]*)
18. On [REDACTED] the Department received the Conservator's hearing request. (*Hearing Record*)
19. On [REDACTED] Dr. [REDACTED] completed another PC-370 for [REDACTED] Probate Court. Dr. [REDACTED] again indicated that the Appellant's capacity to make financial and personal decisions was not impaired and recommended termination of the Appellant's conservatorship. Dr. [REDACTED] did not indicate that the Appellant had a mental illness, addiction, or cognitive deficiency. (*Appellant's Exhibit R: PC-370 [REDACTED]*)
20. On [REDACTED] the [REDACTED] Hospital Department of Psychiatry evaluated the Appellant and determined her to not be a risk to herself or others. (*Appellant's Exhibit N: [REDACTED] Hospital Record*)
21. The Appellant receives medication management and supervision with bathing per LHS policy for all facility residents. She is independent with her ADLs and is not receiving any type of restorative therapy at the facility. ([REDACTED] *Testimony, Exhibit 9: CNA Flow Sheet*)
22. The Appellant is compliant with her medications at the facility and will sometimes request medication adjustments, as well as request to speak with providers with medication concerns. ([REDACTED] *Testimony*)
23. The Appellant was diagnosed with Lupus in [REDACTED] and Relapsing-Remitting Multiple Sclerosis ("RRMS") in [REDACTED]. She ceased driving approximately 23 years ago due to optic neuritis. (*Appellant's Testimony*)
24. The Appellant walks with an unsteady gait due to her RRMS diagnosis and uses a cane as adaptive equipment for assistance with locomotion and a shower chair when bathing. (*Appellant's Testimony*)
25. The Appellant wishes to leave [REDACTED] and return to her home. The Appellant believes that community supports, including Meals on Wheels, homemaker services, and transportation assistance are sufficient to meet her needs in the community. (*Appellant's Testimony*)

26. Neither the facility nor the Appellant's Conservator submitted evidence to support the position that the Appellant requires constant and continuous care for a chronic condition equal to that of a nursing home level. (*Hearing Record*)
27. 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's Conservator requested an administrative hearing on [REDACTED] with this decision due [REDACTED]. The hearing record remained open through [REDACTED] at the Appellant's request; therefore, this decision is due no later than [REDACTED].

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes ("Conn. Gen. Stat.") 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 has the authority to administer the Medicaid program and make regulations for the same.

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 and upon admission, was authorized to receive payment for NF services.

3. Title 42 of the Code of Federal Regulations ("C.F.R.") Section 409.31(b) provides for specific conditions for meeting 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 a 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 a 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 a SNF, on an inpatient basis.

At the time of her admission to the Facility, the Appellant met the NF LOC criteria.

4. Conn. Gen. Stat. § 17b-259b(a) 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(b) provides 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.

42 C.F.R. § 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.

The Appellant completes her ADLs independently and does not require substantial assistance with personal care.

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.

5. Conn. Gen. Statutes § 17b-259b(c) provides 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.

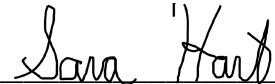
Maximus correctly determined that the Appellant did not meet the medically necessary criteria for a NF LOC based on the information provided on the [REDACTED] [REDACTED] NF LOC submission, and correctly issued a NOA denying NF LOC on [REDACTED]

DISCUSSION

The Appellant's Conservator argued that the Appellant's medical conditions require 24-hour skilled nursing care. The Appellant herself disputed the Conservator's assertion and offered credible and detailed testimony regarding her medical diagnoses and functional ADL needs. The Appellant wishes to reside in a less restrictive setting in the community with appropriate support. The evidence and testimony presented for this hearing support the Appellant's and Maximus' position that NF LOC is not medically necessary for the Appellant.

DECISION

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

A handwritten signature in cursive script that reads "Sara Hart". The signature is written in black ink and is positioned above a horizontal line.

Sara Hart
Hearing Officer

Cc: hearings.commonops@ct.gov
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.