

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

██████████ 2024  
Signature confirmation

Case: ██████████  
Client: ██████████  
Request: 227018

**NOTICE OF DECISION**

**PARTY**

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████████████████████  
████████████████  
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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* asserting that skilled nursing level of care services were no longer medically necessary or clinically appropriate.

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
- ██████████, MFT, Facility Director of Social Services, Appellant Witness
- ██████████, LPN, Facility MDS Coordinator, Appellant Witness
- ██████████, RN, Facility Director of Nursing, Appellant Witness
- ██████████, Facility Administrator, Appellant Witness
- Mya Tillman, RN, Community Options Unit, Department Representative
- Robert Moasteller, 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 skilled nursing level of care in an institutional setting.

## FINDINGS OF FACT

1. The Appellant is [REDACTED] years old. (Appellant Testimony)
2. The Appellant is a Medicaid recipient. (Exhibit 6)
3. Maximus is the Department's contractor for conducting level of care assessments for Medicaid recipients. (Department Witness Testimony) (Exhibit 5)
4. On [REDACTED] 2023, the [REDACTED] Emergency Department admitted the Appellant after he was involved in an altercation. He presented with a [REDACTED]. (Exhibit 14)
5. On [REDACTED] 2023, the Appellant was operated on for irrigation and debridement of his [REDACTED]. (Exhibit 14)
6. On [REDACTED] 2023, the Appellant received surgical stabilization of his [REDACTED]. (Exhibit 14)
7. On [REDACTED], 2023, the Facility, a skilled nursing facility, admitted the Appellant from [REDACTED] [REDACTED], for short-term rehabilitation. (Exhibits 6 and 14)
8. On [REDACTED], 2023, the Appellant had the following diagnoses: [REDACTED] [REDACTED]. (Exhibit 6)
9. Maximus approved skilled nursing level of care for the Appellant at the Facility through [REDACTED] [REDACTED] 2023. (Department Witness Testimony)
10. On [REDACTED], 2023, the Appellant's physical therapy sessions ended. ([REDACTED] Testimony)
11. From [REDACTED], 2023 through [REDACTED] 2023, the Appellant received occupational therapy at the Facility. (Exhibit 10) [REDACTED] Testimony)
12. On [REDACTED] 2023, [REDACTED], APRN, signed a *Practitioner Certification* attesting that the Appellant met Connecticut Code for nursing level of care. (Exhibit 7)
13. On [REDACTED] 2023, the Appellant had a Brief Interview for Mental Status (BIMS) score of [REDACTED], indicating that a patient is alert, is oriented, and is not mentally impaired. (Exhibit 9) (Plagesse Testimony) (Freeman Testimony)
14. Once a week or so, the Appellant occasionally meets with a psychiatrist at the Facility to deal with the death of his Facility roommate while in the room they shared. The Appellant's most recent meeting with the psychiatrist occurred approximately two weeks prior to this hearing. (Appellant Testimony)

15. The Appellant's [REDACTED] has healed. (Appellant Testimony)
16. The Appellant uses a cane for mobility. He does not use a wheelchair, walker, or other assistive device. (Appellant Testimony)
17. The Appellant is independent with the following activities of daily living ("ADLs"): showering, eating, dressing, mobility, toileting, continence, and transfer. (Appellant Testimony) (Exhibit 8)
18. The Appellant sometimes has Facility staff help him put on his socks. The Appellant otherwise is able to dress himself, by putting on his pants, shirts, and slip on shoes. (Appellant Testimony)
19. The Appellant has prescriptions for the following oral medications: [REDACTED]. The Appellant takes the following over-the-counter medications: [REDACTED]. (Exhibit 11)
20. The Appellant receives his medications three times per day from Facility staff. (Appellant Testimony)
21. The Facility provides all of its patient with one-on-one medication oversight as a universal precaution, since the Facility is a mixed-use facility with dementia patients. ([REDACTED] Testimony)
22. On [REDACTED] 2023, the Facility submitted a Nursing Facility Level of Care screening along with a Level 1 screen, *Practitioner Certification*, ADL Flow Sheets, Minimum Data Set, Occupational Therapy Notes, Medication Order History, Progress Notes, Referral Form, and Discharge Summary. (Exhibit 4 and Exhibits 6 through 14, inclusive)
23. On [REDACTED] 2023, William Regan, M.D., of Maximus reviewed the Appellant's medical records as submitted by the Facility and determined that the Appellant did not meet Connecticut's nursing facility level of care. (Exhibit 6)
24. On [REDACTED] 2023, Maximus issued a *Notice of Action* advising the Appellant that nursing facility level of care was not medically necessary or clinically appropriate for him. (Exhibit 5)
25. The Appellant regularly leaves the Facility during the day to visit his mother. The Appellant is able to walk to the local bus stop, use the bus, and get off the bus at the correct stop. (Appellant Testimony)
26. The Appellant's [REDACTED] continues to affect his [REDACTED]; he feels [REDACTED] and believes additional physical therapy would help. (Appellant Testimony)
27. 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 [REDACTED] 2023, the OLCRAH received the Appellant's

hearing request. The issuance of this hearing decision would have become due by no later than [REDACTED] 2024. 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 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).

**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 current medical conditions do not require substantial assistance, i.e., regular daily hands-on intervention to perform 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 three times per day—may be provided to him in a less restrictive setting than a skilled nursing facility, should the Appellant be unable to self-regulate his prescriptions.**

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 skilled nursing level of care in an institutional setting.**

**DECISION**

The Appellant’s appeal is DENIED.

*Eva Tar-electronic signature*  
Eva Tar  
Hearing Officer

Cc: Mya Tillman, DSS-Community Options  
[hearings.commops@ct.gov](mailto:hearings.commops@ct.gov)  
[AscendCTadminhearings@maximus.com](mailto: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.