

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: 231608

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2024, 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 considered effective for him and is not clinically appropriate.

On ██████████ 2024, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received the Appellant's hearing request.

On ██████████, 2024, the OLCRAH scheduled an administrative hearing for ██████████ 2024. The OLCRAH granted the Appellant's request for a postponement.

On ██████████ 2024, 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
██████████, Facility Director of Social Services, Appellant Witness
Benille St. Jean, Community Options Unit, Department Representative
Jean Denton, RN, Maximus, Department Witness (by telephone)
Eva Tar, Hearing Officer

The hearing record closed ██████████, 2024.

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. (Exhibit 6)
2. The Appellant is a Medicaid recipient. (Exhibit 5)
3. Maximus is the Department's contractor for conducting level of care assessments for Medicaid recipients. (Exhibit 5)
4. On [REDACTED] 2022, the Facility, a skilled nursing facility, admitted the Appellant as a patient. (Exhibit 6)
5. Upon admittance to the Facility, the Appellant had the following diagnoses: [REDACTED]
[REDACTED] The Appellant has a history of [REDACTED] and other [REDACTED]. (Exhibits 6 and 11)
6. Maximus approved skilled nursing level of care for the Appellant at the Facility through [REDACTED], 2023. (Department Witness Testimony)
7. In 2023, the Appellant received [REDACTED]; the Appellant's [REDACTED] was operated upon and required numerous stitches to reseal. (Appellant Testimony) (Exhibit 11)
8. The Appellant sees his surgeon by video and in person to follow-up on his [REDACTED] and [REDACTED] issues. (Appellant Testimony) (Exhibit 11)
9. The Appellant's [REDACTED] has healed well; the scarring is minimal. (Department Representative Testimony)
10. The Appellant is treating the [REDACTED] with [REDACTED]. (Appellant Testimony)
11. On [REDACTED] 2023, the Appellant completed a Brief Interview for Mental Status (BIMS) score of 15, indicating that a patient is alert, is oriented, and is not mentally impaired. (Exhibit 13)
12. The Appellant is independent with the following activities of daily living ("ADLs"): showering, eating, dressing, mobility, toileting, continence, and transfer. The Appellant uses a cane. (Appellant Testimony) (Exhibit 10)
13. The Appellant was discharged from occupational therapy on [REDACTED] 2023 and from physical therapy on [REDACTED] 2023. (Exhibits 14 and 15)
14. On [REDACTED], 2023, [REDACTED] signed a *Practitioner Certification* attesting that the Appellant met Connecticut Code for nursing level of care. (Exhibit 7)

15. On [REDACTED] 2023, the Facility submitted to Maximus the following documents for review: Connecticut Level of Care screening along with Practitioner Certification, Physician's Order, L.T.C. Physician's Orders, Completed Care Details, Progress Note, Minimum Data Set, Physical Therapy Discharge Summary, and Occupational Therapy Discharge Summary. (Exhibits 6 through 15, inclusive)
16. On [REDACTED] 2024, William Regan, M.D., of Maximus reviewed the Facility's [REDACTED] 2023 submissions. (Exhibit 6)
17. On [REDACTED] 2024, 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)
18. The Appellant's current treatment at the Facility is [REDACTED] monitoring and visual checks, treatment that is typically provided to all the residents; he is not subject to major monitoring by Facility staff. The Appellant is self-directing for his medical consults and appointments. (Appellant Witness Testimony)
19. The Appellant has an active [REDACTED] and is monitoring the discharges. (Appellant Testimony)
20. The Appellant's medications are taken orally or as a nasal spray; he does not have medications that are administered intravenously. (Exhibit 8)
21. Follow-up for the [REDACTED] and for the [REDACTED] can be completed in the community; it does not require a skilled nursing setting. (Department Representative Testimony) (Department Witness Testimony)
22. The Appellant independently leaves the Facility to visit his minor daughter; the Appellant also meets with realtors outside of the Facility during the week to find housing. (Appellant Testimony)
23. 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, ... , provided the time for rendering a final decision shall be extended whenever the aggrieved person requests or agrees to an extension, or when the commissioner documents an administrative or other extenuating circumstance beyond the commissioner's control...."

On [REDACTED] 2024, the OLCRAH received the Appellant's hearing request. The OLCRAH granted the Appellant's request for a postponement which resulted in the hearing being delayed 41 days. 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 condition(s) are not unstable or are of such severity that they require continuous skilled nursing services and/or nursing supervision.

The Appellant current medical condition(s) 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 care as provided at the Facility 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 did not establish that his institutionalization at a skilled nursing facility currently 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: 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.