

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: 232012

NOTICE OF DECISION

PARTY

██████████  
██  
██  
██

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 medically necessary.

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.

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 ██████████ (the “Facility”), a skilled nursing facility. The following individuals participated:

██████████, Appellant  
Charles Bryan, RN, Community Options Unit, Department Representative  
Robert Moasteller, RN, Maximus, Department Witness (by telephone)  
Eva Tar, Hearing Officer

At the hearing, Maximus petitioned for a delay to the close of the hearing record for the submission by the Facility of additional documents and to permit Maximus to hire a nurse to

examine the Appellant in person. The Appellant agreed to the extension of the close of the hearing record through [REDACTED], 2024.

Maximus did not submit the results of its review and did not request an extension for good cause. The hearing record closed [REDACTED] 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's date of birth is [REDACTED]. (Exhibit 6)
2. The Appellant is a Medicaid recipient. (Exhibits 5 and 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, [REDACTED] admitted the Appellant. (Department Witness Testimony)
5. On [REDACTED] 2023, the Facility admitted the Appellant from [REDACTED]. (Exhibit 6)
6. Maximus approved skilled nursing level of care for the Appellant at the Facility through [REDACTED] 2023. (Department Witness Testimony)
7. The Appellant's diagnoses on admittance to the Facility were: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]. (Exhibit 11)
8. The Appellant has [REDACTED]  
[REDACTED]. (Exhibit 8)
9. The Appellant is missing the [REDACTED].
10. The Appellant has a [REDACTED]; the protrusion spans approximately [REDACTED] from the surface of his abdomen.

11. The Appellant has [REDACTED] scheduled for either [REDACTED] 2024 or [REDACTED] 2024. (Appellant Testimony)
12. The Appellant's physician advised the Appellant that the [REDACTED] surgery must occur prior to treating the [REDACTED] surgically. (Appellant Testimony)
13. The Appellant uses a wheelchair; he has a [REDACTED] but has difficulty using it. (Appellant Testimony)
14. The Appellant has issues when he walks short distances; he uses the wall for balance and rests. (Appellant Testimony)
15. The Appellant is unable to safely navigate stairs. (Appellant Testimony)
16. The Appellant has pain from his [REDACTED] when he bends, reaches downward, or moves. (Appellant Testimony)
17. From [REDACTED] 2023 through [REDACTED] 2023, the Appellant received physical therapy at the Facility. (Exhibit 11)
18. On [REDACTED] 2023, an APRN signed a *Practitioner Certification* attesting that the Appellant met Connecticut Code for nursing level of care. (Exhibit 7)
19. The Appellant completed a Brief Interview for Mental Status (BIMS) score of 15, indicating that a patient is alert, is oriented to year, month, and day, and is not mentally impaired as to short-term recall. (Exhibit 12)
20. The Appellant is independent or requires supervision with the following activities of daily living ("ADLs"): bed mobility, transfer, locomotion, eating, and toilet use. (Exhibit 10)
21. The Appellant requires limited assistance with dressing and personal hygiene. (Exhibit 10)
22. The Appellant receives physical assistance with his medications, due to [REDACTED] injections. (Exhibit 6)
23. The Appellant requires setup for using a shower-chair for hygiene. He is able to move from his wheelchair to the shower chair once the chair is set into place but is unable to set up the shower chair and the necessary floor covering. (Appellant Testimony)
24. On [REDACTED], 2023, the Facility submitted to Maximus for review a Nursing Facility Level of Care screening along with the following documents: Level I screen, Practitioner Certification, Progress Notes, Flow Chart, Physician Order Report, Physical Therapy Discharge Summary, and Minimum Data Set. (Department Witness Testimony) (Exhibits 6 through 12, inclusive)

25. On ██████████ 2024, 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)
26. On ██████████ 2024, Maximus issued a *Notice of Action* advising the Appellant that nursing facility level of care was not medically necessary for his care. (Exhibit 5)
27. More clinical information and an "eyes on" examination by a nurse hired by Maximus is required in order to determine whether the Appellant's medical conditions of his hernia and imminent hip surgery require skilled nursing services. (Department Witness Testimony)
28. 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 ██████████ 2024, the OLCRAH received the Appellant's hearing request. The Appellant agreed to a 22-day extension of the close of the hearing record. The issuance of this hearing decision would have become due by no later than ██████████ 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.

“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).

**Maximus may use clinical policies, medical policies, and clinical criteria as guidelines for determining medical necessity.**

**Maximus requires additional time to review the Appellant’s emergent medical conditions of ██████ and imminent ██████ to determine whether the Appellant continues to require skilled nursing level of care.**

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).

**Based on the hearing record, skilled nursing services in at least the short term are appropriate in terms of type and frequency with respect to treatment of the Appellant’s emergent medical conditions.**

**The Appellant established 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).**

**DECISION**

The Appellant's appeal is REMANDED to Maximus for further action.

**ORDER**

1. Maximus will grant the Appellant skilled nursing level of coverage for 60 days from the date of this Decision.
2. Maximus will notify the Appellant in writing of the expiration date of the coverage.
3. Should the Appellant continue to require skilled nursing level of coverage after the expiration of the coverage, the Facility is advised to submit an updated, comprehensive Nursing Facility Level of Care paperwork to Maximus for review.
4. Within 14 calendar days of the date of this Decision, or [REDACTED] 2024, documentation of compliance with this Order is due to the undersigned.

*Eva Tar-electronic signature*  
Eva Tar  
Hearing Officer

Cc: Charles Bryan, 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.