

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

██████████ 2018  
SIGNATURE CONFIRMATION

Request # 117423

Client ID # ██████████

NOTICE OF DECISION  
PARTY

██████████  
██  
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████████████████████

PROCEDURAL BACKGROUND

██████████ 2018, Ascend Management Innovations LLC, (“Ascend”), the Department of Social Service’s (the “Department”) contractor that administers approval of nursing home care, sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) denying nursing home level of care (“LOC”) stating that she does not meet the nursing facility level of care criteria.

██████████, 2018, the Appellant requested an administrative hearing to contest Ascend’s decision to deny nursing home LOC.

██████████, 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling an administrative hearing for ██████████, 2018.

██████████, 2018, 2018, 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. The following individuals were present at the hearing:

██████████, the Appellant  
Carly DePaul, director Social Services, Western Rehab  
Charlaine Ogren, LCSW, Alternate Care Unit, DSS  
Connie Tanner, RN, Clinical Reviewer, ASCEND (Via telephone)  
Veronica King, Hearing Officer

The hearing record remained open for the submission of additional information. [REDACTED], 2018, the hearing record closed.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether Ascend's decision that the Appellant does not meet the criteria for nursing facility LOC was correct.

### **FINDINGS OF FACT**

1. [REDACTED], 2017, the Appellant was admitted to Danbury Hospital with diagnosis of alcohol withdrawal with seizures. (Hearing Record)
2. [REDACTED], 2017, Danbury Hospital submitted the Nursing Facility Level of Care ("NF LOC") screening form to Ascend. The NF LOC screen stated that the Appellant required hands on assistance with the following activities of daily living ("ADLs"): bathing, dressing, toileting, mobility and transfer, and supervision with eating/feeding and continence. For instrumental activities of daily living ("IADLs"), the Appellant was capable of preparing meals with minimal assistance. Based upon the information provided, the Appellant was approved for short-term 90 days. This approval expired on [REDACTED] 2018. (Hearing Record)
3. [REDACTED], 2017, the Appellant was admitted to the Facility ("Western rehab Care Center"), which is a skilled nursing facility, from Danbury Hospital. (Exhibit 11: Minimum data set and Hearing Record)
4. [REDACTED], 2018, the Facility submitted the NF LOC screening form to Ascend. The NF LOC screen stated that the Appellant required supervision with dressing. For IADLs, the Appellant required continual supervision or physical assistance with multiple components of meal preparation. Based upon the information provided, a Level I screen was completed. Based upon the Level I screen, an on-site assessment was required. (Hearing Record and Exhibit 5: Connecticut LTC Level of care Determination form, Exhibit 4: Connecticut Level I form)
5. The on-site medical assessment took place on [REDACTED], 2018. The Appellant was noted to be independent with all of her ADLs and received support with meals preparation. The Appellant was not noted to have any current MD ordered services and all her medications are by month and 1-2 times a day. The medical on-site assessment says: "This individual has chronic conditions and does not required substantial assistance with personal care on daily basis. No rehabilitative services are presently prescribed. No significant cognitive needs are identified. Medication support is provided in the Facility. Set-up support may be appropriate in the community for safety and compliance. (Exhibit 6: Level of Care Report, [REDACTED]/18)

6. The Ascend's Medical Director reviewed all available information relating to the Appellant's medical and total needs and determined that the Appellant currently does not require the continuous and intensive nursing care as provided at the nursing facility. (Hearing Record)
7. ██████████, 2018, Ascend sent the Appellant a NOA denying LOC stating that nursing facility services are not medically necessary for the Appellant as her needs could be met through a combination of medical, psychiatric, and social services delivered in a less restrictive setting outside of the nursing facility setting. (Exhibit 3: Notice of Action, ██████████/18)
8. The Appellant is ██████████ old (DOB ██████████). (Appellant's Testimony)
9. The Appellant currently is noted to have her medical conditions stabilized. (Hearing Record and Appellant's Testimony)
10. The Appellant currently is not attending any rehabilitative therapy services. (Appellant's testimony)
11. The Appellant is fully oriented to self, place, and time. (Hearing Record)
12. The Appellant has no financial resources, no income, and no permanent housing at this time. (Hearing Record and Appellant's Exhibit A: Psychologist's letter, ██████████18)
13. The Appellant is working with Money Follows the Person ("MFP") program to transition into a subsidized rental apartment in the community or have her go to a Sober House to help her find a safe placement. (Exhibit A and Hearing Record)

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. State regulations provide 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 prior to the department's authorization of 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 mental illness or mental retardation as identified by the preadmission MI/MR screen." Conn. Agencies Regs. Section 17b-262-707 (a).
3. "The Department shall pay a provider only when the department has authorized payment for the client's admission to that nursing facility." Conn. Agencies Regs. Section 17b-262-707(b).
  4. State regulations provide that "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 conditions requiring continuous skilled nursing services and /or nursing supervision or has a chronic condition requiring substantial assistance with personal care, on a daily basis."

Conn. Agencies Regs. § 19-13-D8t(d)(1)(A).

5. Section 17b-259b of the Connecticut General Statutes states that "Medically necessary" and "medical necessity" defined. Notice of denial of services. Regulations. (a) 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. (b) 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. (c) 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 making the determination of medical necessity.

6. Ascend correctly used clinical criteria and guidelines solely as screening tools.
7. Ascend correctly determined that the Appellant does not have a chronic medical condition requiring substantial assistance with personal care on daily basis.
8. Ascend correctly determined that the Appellant does not have uncontrolled and/or unstable medical conditions requiring continuous skilled nursing services and /or nursing supervision.
9. Ascend correctly determined that continuous skilled nursing services are not clinically appropriate in terms of level of care, type and frequency with respect to treatment of the Appellant's medical conditions.
10. Ascend correctly determined that nursing facility services are not medically necessary for the Appellant, because her medical needs could be met with services offered in a less restrictive setting.
11. Ascend correctly determined that it is not medically necessary for the Appellant to reside in a skilled nursing facility and on March 14, 2018, correctly denied her request for continued approval of long-term care Medicaid.

### **DISCUSSION**

The Appellant does not meet the medical criteria for nursing facility LOC and is not eligible for continued nursing facility services because the Appellant does not have a chronic/unstable medical condition requiring skilled nursing care and is not in need of substantial assistance with her personal care needs on a daily basis.

The Appellant entered Western Rehab on [REDACTED] 2018, after the care received in the nursing facility her health status has improved and stabilized. The Appellant does have chronic but stable medical conditions. The type of services that the Appellant requires can be administered in the community setting through medical and social services. It is not medically necessary, as the term is defined by state statute, that the Appellant be institutionalized in a skilled nursing facility.

### **DECISION**

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

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Veronica King  
Hearing Officer

Cc: Charlaine Ogren, DSS Alternative Care Unit, Central Office  
Connie Tanner, Ascend Management Innovations

### **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 Administrative Hearings and Appeals, 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, 55 Elm Street, 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.