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

2022
Signature confirmation

Case:
Client:
Request: 189746

NOTICE OF DECISION

PARTY

PROCEDURAL BACKGROUND

On 27, 2022, the Department of Social Services (the "Department") through Maximus, its Preadmission Screening and Resident Review ("PASRR") and level of care contractor, issued (the "Appellant") a *Notice of Level of Care Determination* cancelling the Appellant's HUSKY-D Medicaid level of care assessment.

On 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received the Appellant's faxed request for an administrative hearing.

On 2022, the OLCRAH scheduled a hearing for March 2, 2022; the hearing did not go forward on 2022. On 2022, the OLCRAH rescheduled the hearing to , 2022.

On 2022, 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 in person at /the "Facility") with testimony provided by one witness by telephone. The following individuals participated:

Appellant
Appellant Witness
Appellant Observer
Charles Bryant, RN, Department Representative
Jean Denton, LPN, Maximus, Department Witness (by telephone)
Eva Tar, Hearing Officer

The hearing record closed 2022.

STATEMENT OF ISSUE

The issue is whether Maximus' cancelation of the Appellant's HUSKY-D Medicaid level of care assessment is supported by federal and state statute and regulation.

FINDINGS OF FACT

1. The Appellant's insurance coverage is through HUSKY-D Medicaid; he does not have private insurance coverage. (Appellant Testimony)

2. The Appellant has a diagnosis of bipolar disorder, unspecified. (Exhibit 8)

3. On ███████, 2021, ███████████████ admitted the Appellant for treatment of a lumbar fracture. (Denton Testimony)

4. On ███████, 2021, the Facility, a skilled nursing facility that provides rehabilitation services, admitted the Appellant as a patient. (Exhibit 11)

5. The Appellant received a 30-Day Exempted Hospital Discharge for skilled nursing level of care approval through ████████ 2021. (Denton Testimony)

6. Once a 30-Day Exempted Hospital Discharge expires, a patient is required to undergo level of care screenings at different intervals to continue to receive medical coverage at a skilled nursing facility. (Denton Testimony)

7. It cannot be determined from the hearing record whether the Appellant continued to meet the requirements for skilled nursing or skilled rehabilitation services immediately following the ████████ 2021 expiration of his 30-Day Exempted Hospital Discharge.

8. On ████████ 2021, and ███████ 2022, the Facility requested a level of care screening from Maximus. (Hearing record)

9. The forms submitted by the Facility to Maximus for the level of care screening were incomplete and lacking information as to the Appellant's diagnoses and ability to complete activities of daily living ("ADLs"). (Denton Testimony) (Exhibit 7)

10. On or after ███████ 2022, Maximus received a signed *Practitioner Certificate* from the Facility, attesting that the Appellant met the Connecticut Code for nursing home level of care. (Exhibit 6)

11. On ███████ 2022, ███████, 2022, and ███████ 2022, Maximus asked the Facility to resubmit sections G, H, I of the *Minimum Data Set* form and records of the previous two weeks of assistance with the Appellant's ADLs. (Hearing record)

12. On ███████, 2022, the Facility submitted the CNA [Certified Nurses Aid] flow sheets to Maximus. (Exhibit 9) (Hearing record)

13. On or after [redacted] 2022, the Facility submitted to Maximus an incomplete *Minimum Data Set* form, the Appellant's Resident Progress Notes, and the Appellant's Physical Therapy records. (Exhibits 7, 8, and 10)

14. In [redacted] 2022, Facility had issues with uploading items from the Facility's computer system. The difficulty has since been resolved. ([redacted] Testimony)

15. On [redacted], 2022, Maximus issued a *Notice of Level of Care Determination* advising the Appellant that it had cancelled his level of care assessment, citing as its reason that the "your level of care screen was withdrawn by your health care professional." (Exhibit 5)

16. Through [redacted] 2022, the Facility provided the Appellant with physical therapy for his back injury. (Exhibit 11)

17. Maximus did not establish that the Facility withdrew its [redacted] 2021, and [redacted] 2022 requests for completion of the Appellant's level of care screening. (Hearing record)

18. 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] 2022, the OLCRAH received the Appellant's hearing request. The issuance of this hearing decision would have become due no later than [redacted] 2022. 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. 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." Conn. Gen. Stat. § 17b-262.

   "The department's uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance,* 214 Conn. 601, 573 A.2d 712 (1990)).

The Department has the authority under statute to administer the HUSKY-D Medicaid program and make regulations for the same.

2. Title 42 Section 409.31 (b) of the Code of Federal regulations provides:
   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.

   7 C.F.R. § 409.31 (b).

   "To be considered a skilled service, the service must be so inherently complex that it can be safely and effectively performed only by, or under the supervision of, professional or technical personnel." 42 C.F.R. § 409.32 (a).

   It is reasonable to conclude that on [redacted], 2021, the Appellant met the level of care requirements for skilled nursing and/or skilled rehabilitation services, based on the issuance of a 30-Day Exempted Hospital Discharge.

3. Title 42, Section 409.31 of the Code of Federal Regulations ("C.F.R.") addresses the level of care requirement with respect to the Medicaid program. Subsection (a) of this section provides the definition for *skilled nursing and skilled rehabilitation services:* "As used in this section, *skilled nursing and skilled rehabilitation services* means services that: (1) Are ordered by a physician; (2) Require the skills of technical or professional personnel such as registered nurses, licensed practical (vocational) nurses, physical therapists, occupational therapists, and speech pathologists or audiologists; and (3) Are furnished directly by, or under the supervision of, such personnel."

   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).

   The Facility correctly submitted a *Practitioner Certification* to Maximus in accordance with Conn. Agencies Regs. § 19-13-D8t (d)(1)(A)(i).

4. Title 42, Section 483.132 (c) of the Code of Federal Regulations provides:
   At a minimum, the data relied on to make a determination must include:
   (1) Evaluation of physical status (for example, diagnoses, date of onset, medical history, and prognosis);
   (2) Evaluation of mental status (for example, diagnoses, date of onset, medical history, likelihood that the individual may be a danger to himself/herself or others); and
   (3) Functional assessment (activities of daily living).

   42 C.F.R. § 483.132 (c).

   As the Department's contractor for completing nursing facility level of care screenings, Maximus acted within its scope of authority when it requested revised and completed forms from the Facility.

5. Title 42, Section 483.132 (a) of the Code of Federal Regulations provides for evaluating the need for nursing facility services and nursing facility level of care (PASARR/NF):
   Basic rule. For each applicant for admission to a NF and each NF resident who has MI or IID, the evaluator must assess whether -
   (1) The individual's total needs are such that his or her needs can be met in an appropriate community setting;
   (2) The individual's total needs are such that they can be met only on an inpatient basis, which may include the option of placement in a home and community-based services waiver program, but for which the inpatient care would be required;
   (3) If inpatient care is appropriate and desired, the NF is an appropriate institutional setting for meeting those needs in accordance with § 483.126; or
   (4) If the inpatient care is appropriate and desired but the NF is not the appropriate setting for meeting the individual's needs in accordance with § 483.126, another setting such as an ICF/IID (including small, community-based facilities), an IMD providing services to individuals aged 65 or older, or a psychiatric hospital is an appropriate institutional setting for meeting those needs.

   42 C.F.R. § 483.132 (a).

   In accordance with 42 C.F.R. § 483.132 (a), Maximus was required to complete the Appellant's level of care determination following the [redacted] 2021 expiration of his 30-Day Exempted Hospital Discharge.

   Maximus erred when it unilaterally cancelled the Appellant's HUSKY-D Medicaid level of care assessment.

   Maximus' cancelation of the Appellant's HUSKY-D Medicaid level of care assessment is not supported by federal and state statute and regulation.

DISCUSSION

To receive authorization for HUSKY-D Medicaid payment of provided services, a skilled nursing facility submits medical documentation of the specifics of a patient's admission, diagnosis, and on-going treatment to Maximus for review. Maximus completes a level of care assessment that finds whether it is medically necessary, as "medically necessary is defined at Conn. Gen. Stat. §17b-259b, for the patient to remain institutionalized at a skilled nursing facility or whether the patient's medical and physical needs can be met in a less restrictive setting. A *Notice of Action* is issued that notifies the patient whether the HUSKY-D Medicaid program will pay for his care at the skilled nursing facility, based on his required level of care.

In the Appellant's case, Maximus terminated the process early by cancelling its level of care evaluation. By so doing, Maximus placed the Appellant in a bureaucratic limbo—i.e., HUSKY-D Medicaid coverage for the Appellant's on-going stay at the Facility was neither granted nor denied.

Maximus erred when it unilaterally cancelled the Appellant's level of care evaluation. Maximus will remedy its error by completing the Appellant's level of care assessment and issuing a *Notice of Action* to the Appellant.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. Maximus will complete the Appellant's level of care assessment.

2. Within 21 calendar days of the date of this Decision, or [redacted] 2022, compliance with this order is due to the undersigned.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

Cc: hearings.commops@ct.gov
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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.