

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVE.
HARTFORD, CT 06105-3725

■■■ ■■ 2022
Signature Confirmation

Client ID ■■■■■■■■
Case ID ■■■■■■■■
Request # 190728

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ■■■■■ ■■ 2022, Maximus, the Department of Social Services' (the "Department") vendor that administers approval of nursing home care, sent ■■■■■ ■■■■■■■■■ the "Appellant") a notice denying ■■■■■ ■■■■■ ■■■■■ (the "facility") ■■■■■ ■■ 2022 prior authorization request for nursing facility level of care ("LOC") as not medically necessary.

On ■■■■■ ■■ 2022, the Appellant requested an administrative hearing to contest Maximus's decision to deny nursing facility LOC.

On ■■■■■ ■■ 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ■■■■■ ■■ 2022.

On ■■■■■ ■■ 2022, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189 inclusive of the Connecticut General Statutes, OLCRAH held an administrative hearing via teleconference due to COVID-19 concerns.

The following individuals called in for the hearing:

■■■■■■■■■■ Appellant
■■■■■■■■■■ Director of Social Services, ■■■■■■■■■
■■■■■■■■■■, Facility Social Worker, ■■■■■■■■■

Jean Denton, LPN, Maximus Representative
Brenda Providence, Department of Social Services Representative
Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether Maximus's [REDACTED] [REDACTED] 2022 decision to deny the facility's [REDACTED] [REDACTED] 2022 request for a LOC determination on behalf of the Appellant as not medically necessary was correct.

FINDINGS OF FACT

1. The Appellant has a medical history which includes the following: fistula of intestine, unspecified severe protein-calorie malnutrition, Type 2 diabetes, chronic hepatitis C, Hypo-osmolality and hyponatremia, anxiety disorder, bipolar disorder, cocaine abuse, and COVID-19. (Exhibit 6: LOC Determination Form)
2. On [REDACTED] [REDACTED] 2020, [REDACTED] (hospital) admitted the Appellant with a diagnosis of splenic laceration. (Exhibit 3: Hearing Summary)
3. On [REDACTED] [REDACTED] 2020, the facility, a skilled nursing facility, admitted the Appellant with an admitting diagnosis sepsis due to streptococcus pneumoniae. (Exhibit 6: LOC Determination Form and Exhibit 3: Hearing Summary)
4. Maximus is the Department's contractor that determines if a patient meets the nursing home LOC criteria to authorize Medicaid payment. (Hearing Record)
5. On [REDACTED] [REDACTED] 2021, the facility requested a LOC determination for the Appellant's stay at the facility. Maximus determined the Appellant met LOC criteria and authorized a short-term approval of 90 days for the Appellant's stay at the facility. (Maximus Representative's Testimony, Exhibit 3: Hearing Summary, and Exhibit 13: Provider Progress Notes)
6. On [REDACTED] [REDACTED] 2021, the facility requested a LOC determination for the Appellant's stay at the facility. Maximus determined the Appellant met LOC criteria and authorized a short-term approval of 180 days which expired on [REDACTED] [REDACTED] 2021. (Maximus Representative's Testimony and Exhibit 3: Hearing Summary)

7. On [REDACTED] [REDACTED] 2022, the facility submitted the Connecticut Level of Care Form ("LOC determination form") to Maximus requesting a LOC approval on behalf of the Appellant for a continued stay at the facility beginning [REDACTED] [REDACTED] 2021. (Exhibit 6: LOC Determination Form)
8. On [REDACTED] [REDACTED] 2022, the facility submitted supporting documentation with the LOC determination form. The supporting documents included the Practitioner Certification signed on [REDACTED] [REDACTED] 2022 attesting the Appellant meets nursing home LOC, Physician's Orders, Resident Flow Sheets, Progress Notes, Psychological Services Progress Note, [REDACTED] Lab Services, Nurse's Notes, Minimum Data Sets ("MDS"), and Face Sheet. (Exhibit 6: LOC Determination Form and Maximus Representative's Testimony)
9. The MDS describes the functional status of the Appellant. The Appellant is independent in bed mobility, transfers, dressing, eating, toileting, but requires set up assistance with personal hygiene and bathing. The facility notes no impairment with balance during transition and walking and no limitations in range of motion. The Appellant used a cane in the past but relies on a wheelchair to move about the facility. The Appellant can transfer from a seated to standing position, including moving on and off the toilet and transfers between bed and chair. The facility conducted a Brief Interview for Mental Status ("BIMS") with the Appellant noting no changes in cognitive functioning. (Exhibit 8: MDS and Appellant's Testimony)
10. The resident flow sheets for the period [REDACTED] [REDACTED] 2022 through [REDACTED] [REDACTED] 2022 indicate the Appellant independent with no help or staff oversight at any time in bed mobility, dressing, and toilet use. Supervision was provided for part of the time when transferring from bed to chair or standing position. Supervision was provided when eating, bathing, and personal hygiene. The Appellant ambulates using a wheelchair. (Exhibit 9: ADL Flow Sheets)
11. The Appellant has a diagnosis of depression with insomnia which are treated with Doxepin and Prozac. (Exhibit 11: Psychological Service Progress Notes)
12. As of [REDACTED] [REDACTED] 2022, the Appellant's medications include Gabapentin, polyethylene glycol, Lasix, Insulin glargine, Oxycodone, Oxycontin, Albuterol, atorvastatin, Doxepin, famotidine, fluoxetine, metformin, pantoprazole, Tamsulosin, Trulicity, and senna. (Exhibit 8: Physicians Orders)
13. The Appellant does not receive physical therapy, occupational therapy, or speech therapy. (Hearing Record)

14. Upon review of the LOC form, the Practitioner Certification, Physician's Orders, Resident Flow Sheets, Progress Notes, Psychological Services Progress Note, [REDACTED] Lab Services, Nurse's Notes, MDS, and Face Sheet, Maximus determined the Appellant did not meet nursing facility LOC criteria. Maximus determined nursing facility LOC is not medically necessary for the Appellant because he does not require the continuous nursing services delivered at the level of the nursing facility. Maximus determined the Appellant's needs could be met in a less restrictive setting. (Exhibit 3: Hearing Summary, Exhibit 5: Notice of Action, Exhibit 6: LOC Determination Form, Exhibit 7: Practitioner Certification, Exhibit 8: Physicians Orders, Exhibit 9: Resident Flow Sheets, Exhibit 10: Progress Notes, Exhibit 11: Psychological Services Progress Notes, Exhibit 12: [REDACTED] Lab Services, Exhibit 13: Nurse's Notes, Exhibit 14: MDS, and Exhibit 15: Face Sheet)
15. On [REDACTED] [REDACTED] 2022, Maximus issued a notice of action to the Appellant. The notice stated Maximus determined that "nursing facility level of care is not medically necessary for you at this time. ... We decided, based on a comprehensive assessment of you and your medical condition, that nursing facility level of care is not medically necessary because it is not considered effective for you and is not clinically appropriate in terms of level." (Exhibit 5: Notice of Action)
16. The Appellant is compliant with his medications as managed by the facility. (Appellant's Testimony)
17. The Appellant was diagnosed with COVID-19 and COVID-19 pneumonia in [REDACTED] 2022. The Appellant has pain in his back and legs making it difficult to get out of bed. Since his COVID-19 diagnosis the Appellant lacks energy and remains in pain. (Appellant's Testimony)
18. X-rays show the Appellant recovered from the COVID-19 pneumonia. (Facility Representative's Testimony)
19. The Appellant is independent with the following activities of daily living ("ADL's"): dressing, eating/feeding, toileting, mobility, transfers, and continence. The Appellant requires some assistance or supervision when bathing. (Exhibit 6: LOC Form)
20. The Appellant is independent with IADL's except that medication management is provided by the facility. The Appellant incurs some limitations due to recurring back and leg pain. (Appellant's Testimony)

21. The nursing facility routinely monitors the Appellant's medical condition through daily vital sign checks, lab work as prescribed, and medication management. (Nursing Facility Representative's Testimony)
22. The Appellant was admitted overnight to the hospital on [REDACTED] 2022 and discharged on [REDACTED] 2022 for hypotension, low blood pressure. (Nursing Facility Representative's Testimony)
23. The Appellant wishes to extend his stay at the facility a few more months to address his diabetes, weight gain, back and leg pain and water retention. (Appellant's Testimony)
24. The issuance of this decision is timely under Connecticut General Statutes § 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED] 2022. Therefore, this decision is due not later than [REDACTED] 2022.

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statute ("Conn. Gen. Stat.") provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Section 17b-262-707(a) of the Regulations of Connecticut State Agencies ("Regs., Conn. State Agencies") provides as follows:

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.
3. "The Department shall pay a provider only when the department has authorized payment for the client's admission to that nursing facility." Regs., Conn. State Agencies § 17b-262-707(b)
4. State regulation provides as follows:

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 person care, on a daily basis.

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

5. State statute provides as follows:

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)

6. State Statute provides as follows:

Clinical policies, medical policies, clinical criteria or any other generally accepted clinical practice guidelines used to assist in evaluating the medical necessity of a required health service shall be 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)

7. State Statute provides as follows:

The Department of Social Services shall amend or repeal any definitions in the regulations of Connecticut state agencies that are inconsistent with the definition of medical necessity provided in subsection (a) of this section, including the definitions of medical appropriateness and medically appropriate, that are used in administering the department's medical assistance program. The commissioner shall implement policies and procedures to carry out the provisions of this section while in the process of adopting such policies and procedures in regulation form, provided notice of intent to adopt the regulations is published in the Connecticut Law Journal not later than twenty days after implementation. Such policies and procedures shall be valid until the time the final regulations are adopted.

Conn. Gen. Stat. § 17b-259b(d)

8. "The department shall review the medical appropriateness and medical necessity of medical goods and services provided to Medical Assistance Program clients both before and after making payment for such good and services." Regs., Conn. State Agencies § 17b-262-527

9. State regulation provides as follows:

Prior authorization, to determine medical appropriateness and medical necessity, shall be required as a condition of payment for certain Medical Assistance Program goods or services as set forth in the regulations of the department governing specific provider types and specialties. The department shall not make payment for such goods and services when such authorization is not obtained by the provider of the goods or services.

Regs., Conn. State Agencies. §17b-262-528(a)

10. "Prior authorization shall be granted by the department to a provider to furnish specified goods or services within a defined time period as set forth in the regulations of the department governing specific provider types and specialties." Regs., Conn. State Agencies § 17b-262-528(b)

11. State regulation provides as follows:

In order to receive payment from the department a provider shall comply with all prior authorization requirements. The department in its sole discretion determines what information is necessary in order to approve a prior authorization request. Prior authorization does not, however, guarantee payment unless all other requirements for payment are met.

Regs., Conn. State Agencies § 17b-262-528(d)

12. State statute provides as follows:

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.

Conn. Gen. Stat. § 17b-259b(c)

13. Maximus correctly determined the Appellant does not require continuous skilled nursing services for an uncontrolled or unstable chronic condition or supervision for a chronic condition requiring substantial assistance daily. Although the Appellant reports recurring back and leg pain which makes it difficult to transfer, the Appellant is not participating in any therapies, occupational or physical, currently. The nursing home currently provides some assistance or supervision when bathing, medication management, daily vital sign checks, and lab work as needed to monitor the Appellant's condition, however, these services do not require skilled nursing services as these services can be provided outside of a skilled nursing facility. Additionally, the Appellant remains independent with dressing, eating, toileting, mobility, transfers, continence, and ambulation with the use of a wheelchair. The hearing record does not support continuous skilled nursing services.

Maximus correctly denied the facility's request for LOC review on behalf of the Appellant as not medically necessary, as defined by section 17b-259b(a) of the Connecticut General Statute.

Maximus was correct in its determination that the Appellant does not meet the medical criteria for nursing home level of care.

DECISION

The Appellant's appeal is denied.

Lisa A. Nyren
Lisa A. Nyren
Fair Hearing Officer

CC: DSS Community Options Division
MaximusCTadminhearings@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 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, 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.