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

[redacted] 2024
Signature Confirmation

Client ID [redacted]
Case ID [redacted]
Request # 236867

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2024, Maximus, the Department of Social Services' contractor that administers approval of nursing home care, sent [redacted] (the "Appellant") a notice denying [redacted] (the "facility") [redacted] 2024 prior authorization request for nursing facility level of care ("NFLOC") on behalf of the Appellant as not medically necessary.

On [redacted] 2024, the Appellant requested an administrative hearing to contest Maximus' decision to deny NFLOC.

On [redacted] 2024, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2024.

On [redacted] 2024, 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.

The following individuals were present at the hearing:

[redacted] Appellant
[redacted] Director of Social Services, [redacted]

[redacted] LCSW, [redacted]
[redacted] Attorney for [redacted]
Robert Mosteller, Lead Clinical Coordinator, Maximus
Paul Cook, RN, Program Director, Maximus
Jean Denton, LPN, Associate Program Manager, Maximus
Charles Bryan, RN, Department of Social Services
Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether Maximus' [redacted] 2024 decision to deny the facility's [redacted] 2024 request for NFLOC determination on behalf of the Appellant as not medically necessary was correct.

FINDINGS OF FACT

1. The Appellant is [redacted] years old born on [redacted]. (Hearing Record)

2. The Appellant's medical diagnosis includes schizophrenia, diabetes mellitus type II (DM2), gastroesophageal reflux disease (GERD), and hyperlipidemia (high cholesterol). (Hearing Record)

3. On [redacted] 2020, [redacted] ("psychiatric facility"), an inpatient psychiatric facility, admitted the Appellant with a diagnosis of schizophrenia and DM2. (Hearing Record)

4. On [redacted] 2020, the psychiatric facility submitted a Pre-Admission Screening and Resident Review ("PASRR") to Maximus requesting a pre-admission review on behalf of the Appellant for placement at [redacted] (the "facility"), a skilled nursing facility. The psychiatric facility confirmed the Appellant's schizophrenia diagnosis as a Major Mental Illness ("MMI"). The psychiatric facility lists the Appellant has difficulty interacting with others, hallucinations, excessive irritability and an altercation/physical violence, and threats within the last 30-days. The Appellant's medication includes Haldol, Haloperidol Decanoate, and Seroquel to treat her schizophrenia. (Exhibit A: Prehearing Evidence)

5. On [redacted] 2020, the psychiatric facility submitted a Connecticut LTC Level of Care Determination Form ("CTLOC form") to Maximus requesting approval for long-term care on behalf of the Appellant at the facility. The psychiatric facility lists the Appellant's medical diagnosis as schizophrenia and diabetes Type II without complication. The psychiatric facility

indicates the Appellant requires placement at the facility because her DM2 with sliding scale insulin needs are uncontrolled, unstable and/or chronic which requires skilled nursing services and/or nursing supervision on a daily basis or has chronic conditions requiring substantial assistance with personal care on a daily basis. The psychiatric facility writes, "medications – stable, needs daily management and supervision; labs – monitoring blood sugars; blood sugars – stable, insulin injections and blood sugar maintenance." The Appellant requires physical assistance with injections because adherence cannot be ensured with verbal or gestural support alone. The Appellant requires continual supervision or physical assistance with meal preparation. The Appellant is independent with all Activities of Daily Living ("ADLs") which includes bathing, dressing, eating, toileting, mobility, transfer, and continence. The Appellant has impaired judgement, unable to solve problems well or make appropriate decisions requiring daily supervision to prevent harm. (Exhibit A: Prehearing Evidence)

6. Maximus is the State of Connecticut's contractor that determines if a patient meets the NFLOC criteria to authorize payment under Medicaid for their stay at a facility. Maximus conducts both Level I NFLOC and onsite Level II PASRR mental health evaluations. (Ms. Denton's Testimony)

7. On [redacted] 2020, Maximus authorized a 60-day short term approval because the Appellant required substantive care on a daily basis that included sliding scale for insulin and had cognitive needs. Maximus referred the Appellant for a Level II review due to the Appellant's diagnosis of a MMI, schizophrenia. (Paul Cook Testimony, Robert Mosteller Testimony and Exhibit A: Prehearing Evidence)

8. On [redacted] 2020, Maximus completed a document based Level II PASRR. Due to the pandemic, a face to face interview with the Appellant and facility staff was not completed. The Appellant's psychiatric diagnosis includes schizoaffective disorder and schizophrenia, paranoid type. The Appellant's diagnosis includes diabetes, GERD, and hyperlipidemia. Maximus noted no prior PASRR history. Upon completion of the Level II PASRR, Maximus recommended a 60-day short term approval for NFLOC due to the Appellant's "need for labs and vitals monitoring, mood and behavior monitoring, diabetes management, and medication administration assistance related to diabetes, GERD hyperlipidemia, and serious mental illness." Maximus writes, "[The Appellant] could benefit from the services provided at the nursing facility such as 24-hours supervision, medical monitoring, medication administration assistance and the following recommendations:

   - Ongoing skilled nursing care with mental health support;

- Ongoing nursing care with involvement of cognitively appropriate activities;
- Ongoing evaluation of her psychotropic medication regimen to ensure continued maintenance of symptoms and mental health stability;
- Monitor closely for changes in mood, behavior, and cognition;
- Encourage participation in social and recreational activities to avoid isolation;
- Provide continuity of care by assigning one or two caregivers per shift;
- Ongoing psychiatric services by a psychiatrist to evaluation response to psychotropic medications and ongoing needs;
- Individual psychotherapy;
- Frequent brief contact by staff to ensure needs are being met;
- Training and education with community living skills and self-health care;
- Medication education;
- Behavior management plan;
- Safety and crisis plan.

(Exhibit A: Prehearing Evidence)

9. On [redacted] 2020, Maximus issued the psychiatric facility a Notice of Action for PASRR Time-Limited Short-Term Nursing Facility Approval. Based on a review of physical and mental status, nursing care needs, and functional abilities, Maximus determined the Appellant qualified for NFLOC for a "time-limited period only." Maximus approved a 60-day stay. Maximus also determined the Appellant did not require specialized services to treat her mental illness. Maximus defines specializes services for a serious mental illness as inpatient psychiatric services provided in a psychiatric hospital or a psychiatric unit of a general hospital. Maximus writes, "This is a time-limited approval. Further screening must occur if residence in the nursing facility is expected to extend longer than the number of approved days and no later than the last day of the approved stay." (Exhibit A: Prehearing Evidence)

10. On August 14, 2020, the facility admitted the Appellant from the psychiatric facility to a secure locked unit where the Appellant is monitored on all shifts. (Stipulated)

11. On August 30, 2022, the Appellant was admitted to the [redacted] after an altercation with a peer at the facility resulted in a visit to the [redacted] Emergency Department. The Appellant punched the peer in the face and broke the peer's nose. The treatment plan while inpatient at the [redacted] included but not limited to symptom surveillance, assessment/maintenance of safety of self/others, medication response assessment, medication modulation if required, early detection of exacerbation/relapse and early intervention for

limitation of morbidity. The Appellant participated in group psychotherapy, behavior therapies, sobriety management, group therapies, and patient education. On [redacted] 2022, the [redacted] discharged the Appellant back to the facility to continue her treatment. (Exhibit 15: After Visit Summary)

12. The [redacted] 2022 MDS results show the Appellant has difficulty focusing and disorganized thinking. ADL functional status, abilities, and goals as independent. (Exhibit 14: MDS)

13. On [redacted] 2022, the Appellant assaulted another resident by pushing the resident up against the wall after an interaction with the resident. (Exhibit 13: Progress Notes)

14. On [redacted] 2023, the Department of Mental Health and Addiction Services ("DMHAS") completed an assessment of the Appellant for the Nursing Home Diversion and Transition Program after receiving a referral from the facility. The Appellant and DMHAS toured two residential care homes and a public housing apartment. However, due to the Appellant's combative behaviors, appropriate placement needs could not be met without medication oversight. (Exhibit A: Pre-hearing Evidence)

15. On [redacted] 2023, DMHAS closed the Appellant's case due to recent altercations involving the Appellant at the facility. DMHAS recommended the Appellant remain at the facility. (Exhibit A: Pre-hearing Evidence)

16. Between [redacted] 2020 and [redacted] 2024, the facility submitted numerous requests for NFLOC to Maximus for the Appellant's continued stay at the facility. Maximus denied the facility's requests as cancelled due to a technical denial on three occasions, withdrawn on three occasions, and denied on four occasions as not medically necessary. (Hearing Record)

17. As of [redacted] 2024, the results of an interdisciplinary rehabilitation screening with the Appellant found cognition alert and orientated, receptive language and expressive language within normal limits and ADL's independent or within functional limits. No changes noted since prior screening on [redacted] 2023. (Exhibit 11: Interdisciplinary Rehabilitation Screening)

18. On [redacted] 2024, the Appellant met with [redacted], APRN, [redacted] to discuss medications and treatment. The APRN writes, [The Appellant] is very ill patient with chronic cognitive distortions and lack of insight. Judgement is historically very poor. She has history of outward directed violence and, as such, is in need for a mood stabilizing agent. She needs to adhere to treatment regimen as prescribed although she is

known for sporadic medication compliance. Active listening and counseling provided. Will continue encouraging." (Exhibit 10: Prescriber's Notes and Exhibit A: Pre-hearing Evidence)

19. [redacted] [redacted] is the facility's provider for comprehensive behavioral health services for their patients at the facility. [redacted] [redacted] staff at the facility include APRN, Psych APRN, and LCSW. The Appellant receives weekly psychiatric services with [redacted] [redacted] staff. (Director of Social Services Testimony)

20. As per ADL flowsheets for the period [redacted] [redacted] 2024 through [redacted] [redacted] 2024, the Appellant is independent in the following activities: bed mobility, transfers, walk in room and corridor, locomotion on and off unit, dressing, toilet use, and personal hygiene. The Appellant is independent with bathing except on five occasions, the Appellant required setup or clean up assistance. The Appellant requires supervision and/or set up help when eating. (Exhibit 8: ADL Flowsheets)

21. As of [redacted] [redacted] 2024, physician's orders for the Appellant include medication schedule, finger stick for blood sugar 3xs/day before meals, carbohydrate controlled and low fat diet, physical therapy and occupational therapy evaluation if needed, life enrichment activities, resident care plan approval, may go out on trips with recreation staff, supervised smoking, skin check weekly on shower day, and certified for skilled nursing facility LOC. Reference regular medication schedule below. Other medications listed as PRN/as needed. (Exhibit 9: Physician's Orders)

Medication-tablets/capsules	6am	9am	1pm	5pm	9pm
Atorvastatin 20 mg					X
Benztropine 0.5mg		X	X	X	
Clonazepam 0.5mg					X
Divalproex 500mg					X
Divalproex ER 250mg		X			
Gabapentin 300mg		X	X	X	
Haloperidol 20mg		X		X	
Jardiance 10mg		X			
Lisinopril 10mg		X			
Metformin 1000mg		X		X	
Omeprazole	X				
Senna x/docus. Sod 8.6-50mg					X

Medication-Injections	1/day	2/day
Humalog 10ml vial		X
Lantus 100U/ml	X	

22. The Appellant requires assistance when managing her medications. The facility continues to administer insulin injections as the Appellant is unable to do this on her own. The facility monitors the Appellant's insulin and blood sugars daily. (Hearing Record)

23. On [redacted] 2024, the facility submitted a request for NFLOC on behalf of the Appellant to Maximus. The facility submitted the CTLOC form. The facility indicates the Appellant's diagnosis of diabetes mellitus with sliding scale insulin needs require continuing nursing services at the facility. The facility lists nursing supports as: check and monitor vitals, monitor for pain, monitor for altered mood status, skin checks, monitor diabetic management and finger sticks three times per day. Medical diagnosis listed: IBS, schizophrenia, DM2 uncontrollable, GERD, obesity, finger pain, hyperlipidemia, agitation, insulin dependent delusions, hallucinations, homicidal ideation. The Appellant remains independent in all ADL. The Appellant is fully aware and oriented with occasional prompting if disorientated. The Appellant remains in a secured unit at the facility and monitored on all shifts. (Exhibit 6: CTLOC Form)

24. On [redacted] 2024, the facility submitted the following documents to Maximus for review: Practitioner's Certification, ADL flowsheets, physician's orders, prescriber's notes, interdisciplinary rehab screening, 2022 progress notes, [redacted] 2022 minimum data set ("MDS"), after visit summary, and ADL Supervision Sheet for [redacted] through [redacted] without year. Refer to Finding of Facts #s 11, 12, 13, 17, 18, 20, & 21. (Hearing Record)

25. On [redacted] 2024, Maximus determined the Appellant does not meet NFLOC because it is not medically necessary. Although the Appellant receives skilled nursing services in the form of sliding scale insulin injections and requires physical assistance with taking medications and adherence cannot be ensured with verbal or gestural supports, Maximus determined the Appellant medically stable. Maximus cites the Appellant is independent with ADLs, does not receive OT/PT services, no assistance with meal preparation, alert and oriented with occasional disoriented to situation, needs cues to remember past events but can make decisions with minimal assistance. (Exhibit 6: CTLOC Form and Exhibit A: Pre-hearing Evidence)

26. On [redacted] 2024, Maximus issued the Appellant a Notice of Action informing her the request for NFLOC has been denied for the reason not medically necessary. Maximus writes, "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 and Exhibit A: Pre-hearing Evidence)

27. On [redacted] 2024, Maximus withdrew the Level I PASRR review and issued a Notice of PASRR Level I Screen Outcome. The notice stated, the Level 1 PASRR was withdrawn and identified suspected or confirmed PASRR condition as not applicable. Maximus writes, "Maximus, on behalf of the Connecticut Department of Social Services, conducts PASRR Level I screens and Level II evaluations, as required by federal law, 42 U.S. C. § 1396r(e)(7). Because you were believed to have a serious mental illness, we were required under federal law to evaluate your need for care in a nursing facility and the types of services you may need to meet your specific needs. The purpose of this notice is to inform you that your Level I screen was withdrawn by your health care professional." (Exhibit A: Pre-hearing Evidence)

28. The facility did not withdraw the Level I or Level II PASSR requests as indicated in the Maximus [redacted] 2024 notice. (VP Psychosocial Services Testimony)

29. If Maximus determines a resident of a skilled nursing facility does not meet continued NFLOC, Maximus does not complete a Level I or Level II PASRR review. (Jean Denton Testimony and Robert Mosteller Testimony)

30. Maximus has never conducted a Level II PASRR review with the Appellant since [redacted] 2020, the date of Maximus' first and only Level II PASRR review. Maximus has never met with the Appellant face to face. The [redacted] 2020 Level II PASRR review was document based due to the pandemic. (Stipulated)

31. The facility seeks approval of NFLOC because the Appellant's medical condition has not changed since her admission to the facility at which time Maximus approved NFLOC based on the Appellant's medical condition even though the Appellant was found independent with ADLs. Due to the Appellant's schizophrenia diagnosis and the need for medication management, the Appellant has met medical necessity as outlined under the NFLOC criteria A which states, "presence of uncontrolled and/or unstable and/or chronic condition requiring continuous skilled nursing services as evidence by diagnosis(es), therapies/services/observation requirements, and frequency." (Attorney for the Facility Testimony)

32. 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] 2024. Therefore, this decision is due not later than [redacted] 2024.

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the 2024 Supplement to the Connecticut General Statutes ("Conn. Gen. Stat.") provides as follows:

   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. "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)

3. Title 42 Section 483.100 of the Code of Federal Regulations ("CFR") provides as follows:

   The requirements of §§ 483.100 through 483.138 governing the State's responsibility for preadmission screening and annual resident review (PASARR) of individual with mental illness and intellectual disability are based on section 1919(e)(7) of the Act.

4. "An individual is considered to have a mental disorder if the individual has a serious mental disorder as defined in § 483.102(b)(1)." 42 CFR 483.20(k)(3)(i)

5. Federal regulation provides as follows:

   An individual is considered to have a serious mental illness (MI) if the individual meets the following requirements on diagnosis, level of impairment and duration illness.
   - i. Diagnosis. The individual has a major mental disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, revised in 1987. This mental disorder is-
     - a. A schizophrenic, mood, paranoid, panic or other severe anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder; or another mental disorder that may lead to a chronic disability; but
     - b. Not a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, or a non-primary diagnosis of dementia unless the primary diagnosis is a major mental disorder as defined in paragraph (b)(1)(i)(A) of this section.
   - ii. Level of impairment. The disorder results in functional limitations in major life activities within the past 3 to 6 months that would be appropriate for the individual's developmental stage. An individual typically has at least one of the following characteristics on a continuing or intermittent basis:

A. Interpersonal functioning. The individual has serious difficulty interacting appropriately and communicating effectively with other persons, has a possible history of altercations, evictions, firing, fear of strangers, avoidance of interpersonal relationships and social isolation;
B. Concentration, persistence, and pace. The individual has serious difficulty in sustaining focused attention for a long enough period to permit the completion of tasks commonly found in work settings or in work-like structured activities occurring in school or home settings, manifests difficulties in concentration, inability to complete simple tasks within an established time period, makes frequent errors, or requires assistance in the completion of these tasks; and
C. Adaptation to change. The individual has serious difficulty in adapting to typical changes in circumstances associated with work, school, family, or social interaction, manifests agitation, exacerbated signs and symptoms associated with the illness, or withdrawal from the situation, or requires intervention by the mental health or judicial system.

iii. Recent treatment. The treatment history indicates that the individual has experienced at least one of the following:
A. Psychiatric treatment more intensive than outpatient care more than once in the past 2 years (e.g., partial hospitalization or inpatient hospitalization); or
B. Within the last 2 years, due to the mental disorder, experienced an episode of significant disruption to the normal living situation, for which supportive services were required to maintain functioning at home, or in a residential treatment environment, or which resulted in intervention by housing or law enforcement officials.

42 CFR 483.102(b)(1)

The Appellant's schizophrenia diagnosis meets the criteria under federal regulations as a serious mental illness based on diagnosis, level of impairment, and treatment history and therefore subject to PASARR requirements as outlined by federal and state laws.

6. "As a condition of approval of the State plan, the State must operate a preadmission screening and annual resident review program that meets the requirements of §§ 483.100 through 438.138." 42 CFR § 483.104

Federal regulation provides as follows:

The State mental health and intellectual disability authorities may delegate by subcontract or otherwise the evaluation and determination functions for which they are responsible to another entity only if-

i. The State mental health and intellectual disability authorities retain ultimate control and responsibility for the performance of their statutory obligations;
ii. The two determinations as to the need for NF services and for specialized services are made, based on a consistent analysis of the data; and
iii. The entity to which the delegation is made is not a NF or an entity that has a direct or indirect affiliation or relationship with the NF.

42 CFR 483.106(e)

Maximus is the State of Connecticut's contractor that provides PASARR Level 1 screening, NFLOC determinations, and PASARR Level II mental health determinations.

7. State statute provides as follows:

No nursing facility shall admit any person, irrespective of source of payment, who has not undergone a preadmission screening process by which the Department of Mental Health and Addiction Services determines, based upon an independent physical and mental evaluation performed by or under the auspices of the Department of Social Services, whether the person is mentally ill and, if so, whether such person requires the level of services provided by a nursing facility and, if such person is mentally ill and does require such level of services, whether the person requires specialized services. A person who is determined to be mentally ill and not to require nursing facility level services shall not be admitted to a nursing facility. In order to implement the preadmission review requirements of this section and to identify applicants for admission who may be mentally ill and subject to the requirements of this section, nursing facilities may not admit any person, irrespective of source of payment, unless an identification screen developed, or in the case of out-of-state residents approved, by the Department of Social Services has been completed and filed in accordance with federal law. The Commissioner of Social Services may require a nursing facility to notify, within one business day, the Department of Social Services of the admission of a person who is mentally ill and meets the admission requirements of this subsection.

Conn. Gen. Stat. § 17b-359(b)

8. "A review and determination must be conducted for each resident of a Medicaid NF who has mental illness or intellectual disability not less often than annually." 42 CFR § 483.114(c)(1)

Federal regulation provides as follows:

Requirement. The State PASARR program must require-

1. Preadmission screening of all individuals with mental illness or intellectual disability who apply as new admissions to Medicaid NFs on or after January 1, 1989;
2. Initial review, by April 1, 1990, of all current residents with intellectual disability or mental illness who entered Medicaid NFs prior to January 1, 1989; and
3. At least annual review, as of April 1, 1990, of all residents with mental illness or intellectual disability, regardless of whether they were first screened under the preadmission screening or annual resident review requirements.

42 CFR § 483.106(a)

Federal regulation provides as follows:

Responsibility for evaluations and determinations. The PASARR determinations of whether an individual requires the level of services provided by a NF and whether specialized services are needed-for individuals with mental illness, must be made by the State mental health authority and be based on an independent physical and mental evaluations performed by a person or entity other than the State mental health authority.

42 CFR § 483.106(d)(1)

State statute provides as follows:

The Department of Mental Health and Addiction Services, in consultation with the Department of Social Services, may no less than annually review, within available appropriations, the status of each resident in a nursing facility who is mentally ill to determine whether the resident requires (1) the level of services provided by a nursing facility, or (2) specialized services for mental illness. Nursing facilities shall grant to the Department of Mental Health and Addiction Services and the Department of Social Services access to nursing facility residents and their medical records for the purposes of this section.

Conn. Gen. Stat. 17b-359(e)

Maximus incorrectly determined PASARR reviews are not required if NFLOC is denied. At minimum, Level II annual reviews are required

for NF residents diagnosed with a mental illness in order to make a determination of NFLOC and specialized services.

9. Federal regulation provides as follows:

PASARR determination criteria. Basis for determinations. Determinations made by the State mental health or intellectual disability authority as to whether the NF level of services and specialized services are needed must be based on an evaluation of data concerning the individual as specified in paragraph (b) of this section. 42 CFR § 483.130

"Determinations may be- Individualized determinations based on more extensive individualized evaluations as required in § 483.132, § 483.134, or § 483.136 (or, in the case of an individual having both IID and MI, §§ 483.134 and 483.136). 42 CFR § 483.130(b)(2)

Federal regulation provides as follows:

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 CFR § 483.132(a)

"In determining appropriate placement, the evaluator must prioritize the physical and mental needs of the individual being evaluated, taking into account the severity of each condition." 42 CFR § 483.132(b)

Federal regulation provides as follows:

At a minimum, the data relied on to make a determination must include:

1. Evaluation of physical status (for example, diagnoses, date of inset, 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 CFR § 483.132(c)

"Based on the data compiled in § 483.132 and, as appropriate, in §§ 483.134 and 483.136, the State mental health or intellectual disability authority must determine whether an NF level of services is needed. 42 CFR § 483.132(d)

10. Federal regulation provides as follows:

The purpose of this section is to identify the minimum data needs and process requirements for the State mental health authority, which is responsible for determining whether or not the applicant or resident with MI, as defined in § 483.102(b)(1) of this part, needs a specialized services program for mental illness as defined in § 483.120.

42 CFR § 483.134(a)

Federal regulation provides as follows: Data. Minimum data collected must include-

1. A comprehensive history and physical examination of the person. The following areas must be included (if not previously addressed):
   i. Complete medical history;
   ii. Review of all body systems;
   iii. Specific evaluation of the person's neurological system in the areas of motor functioning, sensory functioning, gait, deep tendon reflexes, cranial nerves, and abnormal reflexes; and
   iv. In case of abnormal findings which are the basis for a NF placement, additional evaluations conducted by appropriate specialists.
2. A comprehensive drug history including current or immediate past use of medications that could mask symptoms or mimic mental illness.
3. A psychosocial evaluation of the person, including current living arrangements and medical and support systems.
4. A comprehensive psychiatric evaluation including a complete psychiatric history, evaluation of intellectual functioning, memory functioning, and orientation, description of current attitudes and overt behaviors, affect, suicidal or homicidal ideation, paranoia, and degree

of reality testing (presence and content of delusions) and hallucinations.

5. A function assessment of individual's ability to engage in activities of daily living and the level of support that would be needed to assist the individual to perform theses activities while living in the community. The assessment must determine whether this level of support can be provided to the individual in an alternative community setting or whether the level of support needed is such that NF placement is required.
6. The functional assessment must address the following areas: Self-monitoring of health status, self-administering and scheduling of medical treatment, including medication compliance, or both, self-monitoring of nutritional status, handline money, dressing appropriately, and grooming.

42 CFR § 483.134(B)

"If the history and physical examination are not performed by a physician, then a physician must review and concur with the conclusions." 42 CFR § 483.134(c)(1)

Federal regulation provides as follows: The State may designate the mental health professions who are qualified-

i. To perform the evaluations required under paragraph (b)(2)-(6) of this section including the-
   A. Comprehensive drug history;
   B. Psychosocial evaluation;
   C. Comprehensive psychiatric evaluation;
   D. Functional assessment; and
ii. To make the determination required in paragraph (d) of this section.

42 CFR § 483.134(c)(2)

"Based on the data compiled, a qualified mental health professional, as designated by the State, must validate the diagnosis of mental illness and determine whether a program of psychiatric specialized services is needed." 42 CFR § 483.134(d)

11. 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)

“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)

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)

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 evidence 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. Agency Regs. § 17b-262-707(a)

On [redacted] 2024, Maximus incorrectly denied the facility's request for prior authorization for NFLOC without completing a Level II PASARR. Maximus failed to comply with PASARR requirements as outlined under federal regulations and state statutes which require the State's mental health authority to complete annual level II resident reviews for NF residents with a mental health disability which include both NF level of services and specialized services. During the nearly [redacted] years the Appellant has resided in the facility, Maximus failed to complete the annual Level II resident reviews (PASARR). Federal regulation states individualized determinations for NFLOC are based on extensive evaluations as outlined under 42 CFR §§ 483.132 and 483.134. Maximus must assess the Appellant's total needs, the appropriate setting in which her needs could be met based on data obtained through comprehensive evaluations of physical status, mental status, and functional assessment. It is noted, on [redacted] 2023, DMHAS recommended the Appellant remain at the facility. Maximus must also determine whether of not the Appellant requires a specialized services program for mental illness which includes but not limited to a comprehensive history and physical examination, drug history, psychosocial evaluation, psychiatric history, and functional assessment.

12. "Notice of determination. The State mental health or intellectual disability authority must notify in writing the following entities of a determination

made under this subpart: the evaluated individual and his or her legal representative." 42 CFR § 483.130(k)(1)

Federal regulation provides for the contents of notice as follows:

Each notice of the determination made by the State mental health or intellectual disability authority must include-

1. Whether a NF level of services is needed;
2. Whether specialized services are needed;
3. The placement options that are available to the individual consistent with these determinations; and
4. The rights of the individual to appeal the determination under subpart E of this part.

42 CFR § 483.130(l)

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)

Maximus failed to comply with notice of the determination requirements as provided by federal regulations. Maximus' Notice of Action is defective as the denial of NFLOC is based on incomplete information due to the lack of the Level II PASARR; it failed to address whether specialized services are needed; and the notice failed to include placement options that may be available to the Appellant based on Maximus' determination.

DECISION

The Appellant's appeal is granted.

ORDER

1. Maximus must rescind their [redacted] 2024 notice of action denying NFLOC to the Appellant.

2. Maximus must complete a new evaluation to determine NFLOC on behalf of the Appellant. The new evaluation should include an assessment of the Appellant's total needs based on physical and mental status as well as functional assessment in accordance with 42 CFR § 483.132.

3. Maximus must determine whether or not the Appellant needs a specialized services program based on an comprehensive and complete evaluation of the Appellant in accordance with 42 CFR § 483.134.

4. Maximus must issue a new notice of action to the Appellant which states whether the Appellant meets NFLOC, whether specialized services are needed, placement options available to the Appellant and appeal rights according to notice requirements under 42 CFR 483.130.

5. Compliance is due [redacted] 2024 and should include a copy of the new notice of action.

Lisa A. Nyren
Lisa A. Nyren
Fair Hearing Officer

CC: Community Options Division, Department of Social Services
Maximus, AscendCTadminhearings@maximus.com
[redacted]

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.