

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

██████████ 2016
Signature Confirmation

Client ID # ██████████
Request # 736605

NOTICE OF DECISION

PARTY

██████████
c/o ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2015, Ascend Management Innovations, LLC, (“Ascend”), the Department of Social Services (“Department”) vendor that administers approval of nursing home care, sent ██████████ (the “Appellant”) a notice stating that nursing facility level of care is not medically necessary and the Appellant is not eligible for Medicaid coverage of nursing facility services.

On ██████████ 2015, the Appellant requested an administrative hearing to contest the Ascend’s decision to deny nursing facility level of care.

On ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2015 by telephone.

On ██████████ 2015, 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:

██████████, Appellant (Participated via telephone)

██████████ ██████████, Clinical Social Worker, ██████████ ██████████ ██████████
 (Participated via telephone)
 Connie Tanner, Utilization Review Division Manager, Ascend Management
 Innovations (Participated via telephone)
 Amy Dumont, LCSW, Alternate Care Unit, Department of Social Services
 Charles Bryan, RN, Alternate Care Unit, Department of Social Services
 Brenda Providence, RN, Alternate Care Unit, Department of Social Services
 Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

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

FINDINGS OF FACT

1. In 2010, the Appellant entered Department of Corrections ("DOC") Osborn Correctional Institution where he remained until his transfer to ██████████ Correctional Institute. (Hearing Record)
2. On ██████████ 2015, the Appellant transferred to the inpatient psychiatric unit at ██████████ (the "facility") level five, highest level, before the DOC transferred him to his own cell at ██████████ as a level four on ██████████ 2015. (Social Worker's Testimony and Exhibit 3: Level 1 PASRR)
3. The Appellant's date of birth is ██████████ 1950, age 65. (Exhibit 3: Level 1 PASRR)
4. On ██████████ 2015, ██████████, DOC Physician ("DOC Physician") completed a Practitioner Certification form. The DOC Physician certified that the Appellant meets Connecticut code for nursing home level of care. (Exhibit 4: Practitioner Certification)
5. On ██████████ 2015, ██████████, DOC Clinical Social Worker completed a Connecticut Level One ("1") Pre-Admission Screening and Resident Review ("PASRR") of the Appellant's medical condition. The Appellant's diagnosis includes suspected bipolar disorder, suspected personality disorder, and alcohol dependence. Symptoms include self-injurious behavior and difficulty interacting with others. The Appellant's psychiatric history includes inpatient hospitalization on ██████████ 2015.

Prescribed psychoactive medications are Depakote and Remeron for bipolar disorder. The Appellant's diagnosis includes spina bifida. The Appellant's mobility is limited. (Exhibit 3: Level 1 PASRR)

6. On [REDACTED] 2015, Ascend received a request for nursing facility placement from the DOC on behalf of the Appellant. DOC noted the following functional supports were required: hands on assistance with bathing, toileting and continence, and supervision with dressing, mobility, and transfer. DOC noted the Appellant required total physical assistance with meal preparation. (Hearing Summary)
7. On [REDACTED] 2015, Ascend received Level 1PASRR, Practitioner Certification signed by [REDACTED], MD (the "doctor"), Physical Exam Report, Chronic Disease Visit Follow-up, Clinical Progress Notes for the period [REDACTED] [REDACTED] 2015 through [REDACTED] [REDACTED] 2015, Medication Administration Record, and an Inmate Medical Summary. (Exhibit 3: PASRR, Exhibit 4: Practitioner Certification, Exhibit 5: Physical Exam Report, Exhibit 6: Chronic Disease Visit Follow-up, Exhibit 7: Clinical Record, Exhibit 8: Medication Administration Record, and Exhibit 9: Inmate Medical Summary)
8. The Appellant has a medical diagnosis of bilateral lower extremity burns, spina bifida, wound care, lower extremity paralysis, neurogenic bladder, colostomy, hypothyroidism and ringworm of the chest wall. (Exhibit 2: Notice of Action and Hearing Summary)
9. Bilateral lower extremity burns refers to the Appellant's burns to his lower feet. (Ascend Representative's Testimony and Appellant's Testimony)
10. Spina bifida is a birth defect where the spinal column does not close all the way which can result in damage to the spinal cord and nerves and lead to paralysis in some cases. (Ascend Representative's Testimony and Appellant's Testimony)
11. Lower extremity paralysis caused by spina bifida because the Appellant is missing three vertebrae impacts the Appellant's mobility (Ascend Representative's Testimony and Appellant's Testimony)
12. Neurogenic bladder is the dysfunction of the bladder, which "tricks" the Appellant causing incontinence, frequent urination and urgency and/or retention issues.
13. Colostomy is a surgical procedure, which provides an alternative channel for feces to leave the body. (Hearing Record)

14. Hypothyroidism is when your thyroid does not produce enough hormones. (Hearing Record)
15. Ringworm of the chest wall is a fungal infection located on the Appellant's chest wall. (Appellant's Testimony)
16. Ascend completed a Level I preadmission screening and requested an onsite Level II Evaluation. (Hearing Summary)
17. On [REDACTED] 2015, Patricia Noeker, LCSW and Ascend Independent Contractor ("Ascend Assessor") met with the Appellant at the facility and completed the Level II Evaluation. (Exhibit 2: Notice of Action and Hearing Summary)
18. The Ascend Assessor determined the Appellant was independent with four out of seven Activities of Daily Living ("ADL"), needing hands on assistance with bathing, supervision with dressing and transferring. Ascend found the Appellant independent with eating, toileting, continence, and mobility. Ascend Assessor found the Appellant independent with medication administration with set ups. (Hearing Summary and Exhibit 2: Notice of Action)
19. The Ascend Assessor found the Appellant's primary diagnosis of bipolar disorder meets PASRR Mental Illness inclusion criteria. The Appellant has secondary diagnoses of mood disorder and borderline personality disorder. The Appellant continues to demonstrate depressive features, disorganized behaviors, and poor judgment. His self-injurious behaviors pose a risk to himself and require greater supervision that a nursing facility could provide. Ascend determined the Appellant would require additional psychiatric stabilization before re-evaluation for care at the level of a nursing facility. (Exhibit 2: Notice of Action)
20. Ascend determined the Appellant could benefit from physical therapy evaluation, support group for recovery from substance abuse, case management to explore supportive community living, yearly psychiatric evaluations, ongoing medication evaluations, and a behaviorally-based treatment plan upon his discharge from the institution. (Exhibit 2: Notice of Action)
21. On [REDACTED] 2015, Ascend Physician, Susan Rieck MD, found that nursing facility services were not medically necessary because such services are not considered effective and are not clinically appropriate in terms of type, level, duration, extent, setting and amount of care. Ascend determined the Appellant may benefit from ongoing evaluation and treatment to reduce risk of harm to self. Ascend requested a comprehensive psychiatric evaluation with medication review, clearance

for safety, psychotherapy and behavioral health evaluation with clearance for safety and a plan should the Appellant display self-harming behaviors, and clear documentation of legal history and risk behaviors be submitted to Ascend for any future requests for nursing home placement. Ascend denied the Appellant's request for nursing services. (Hearing Summary and Exhibit 2: Notice of Action)

22. On [REDACTED] 2015, Ascend issued a Notice of Action, PASRR Denial of Nursing Facility Level of Care Need for Specialized Services. The notice stated 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 type, level, duration, extent, setting, and amount of care. (Exhibit 2: Notice of Action)
23. The Appellant takes the following medications: multivitamin, sennosides (laxative), zinc sulfate, acetaminophen, Vitamin C, Depakote (bipolar disorder), docusate sodium (Colace), levothyroxine (Suntroid), Mirtazapine (Remeron) . (Exhibit 8: Medication Administration Record and Appellant's Testimony)
24. The Appellant uses a wheelchair independently. The Appellant can walk independently using the wheelchair as support. Prior to his incarceration, the Appellant walked independently using crutches. DOC did not allow the use of crutches at the facility and issued the Appellant a wheelchair, which was stolen. The Appellant relied on walls and furniture for mobility before DOC replaced the wheelchair. (Appellant's Testimony)
25. The Appellant is independent with ADLS including bathing if handicap accessible, eating, dressing, toileting, continence, transferring and mobility. (Appellant's Testimony)
26. Incarceration placed limitations on the Appellant: supervised bathing by DOC staff, meals prepared by DOC staff, transferring and mobility impacted with loss of crutches and stolen wheelchair. (Appellant's Testimony)
27. Prior to incarceration, the Appellant changed his colostomy bag independently and continues to change his colostomy bag during incarceration. (Appellant's Testimony)
28. The Appellant did not receive rehabilitative services or any services while incarcerated. (Appellant's Testimony)
29. On [REDACTED] 2014, the Appellant ingested 20 aspirin tablets at once while at [REDACTED] Institution because he needed respite from the stress of being institutionalized and dormitory life. DOC transferred him to

- the medical unit and monitored him overnight before he returned to his cell. (Social Worker's Testimony)
30. The Appellant purposely burned his feet while at ██████ seeking the attention of staff and a transfer from his unit. DOC transferred him to the burn unit in ██████ for medical treatment where he spent nine days in the burn center. (Appellant's Testimony)
 31. On ██████ ██████ 2015, the Appellant entered ██████ Correctional Psychiatric Unit as a level five, highest level, before being transferred to his own cell at Garner as a level four. (Social Worker's Testimony)
 32. The Appellant's spina bifida and missing three vertebrae is the cause for his lower extremity paralysis and neuropathy in his legs and feet. The Appellant felt no pain when he burned his feet. (Appellant's Testimony)
 33. The Appellant's burns on his feet healed and he requires no current wound care. (Appellant's Testimony)
 34. The Appellant's ringworm infection healed and he requires no current medical care. (Appellant's Testimony)
 35. The Appellant is compliant with medications administered at the facility. (Appellant's Testimony)
 36. Prior to incarceration, the Appellant lived independently in the community. (Appellant's Testimony)
 37. Prior to incarceration, the Appellant sought treatment at Rushford to deal with his alcohol addiction. (Appellant's Testimony)
 38. The Appellant seeks occupational therapy and physical therapy services to gain strength and mobility so he may return to independent living in the community. (Appellant's Testimony)
 39. The Appellant is credible.

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. § 17b-262-707(a)]
3. State Regulations provide that 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. § 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)(i)]
5. State Statute provides for purposes of the administration of the medical assistance programs by the Department of Social Services, "medically necessary" and "medical necessity" mean those health services required to prevent, identify, diagnose, treat, rehabilitate or ameliorate an individual's medical condition, including mental illness, or its effects, in order to attain or maintain the individuals' 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 individuals illness, injury or disease; and (5) based on an assessment of the individual and his or her medical condition. [Conn. Gen. Stats. § 17b-259b(a)]
6. State Statute provides 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. Stats. § 17b-259b(b)]
 7. 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 on a daily basis.
 8. State Regulations provided that no patient shall be admitted to a facility without compliance with the above requirements, except in the event of an emergency, in which case the facility shall notify the Department within 72 hours after such admission. [Conn. Agencies Regs. § 19-13-D8t(d)(1)(C)]
 9. The Appellant's request for institutionalization to a skilled nursing facility is not medically necessary, as defined by section 17b-259b(a) of the Connecticut General Statutes.
 10. Ascend 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: Kathy Bruni, Alternate Care Unit
Amy Dumont, Alternate Care Unit
Brenda Providence, Alternate Care Unit
Charles Bryan, Alternate Care Unit
Connie Tanner, Ascend Management Innovations, LLC

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.