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

[redacted] **2016**
SIGNATURE CONFIRMATION

Request # 760407
Client ID # [redacted]

NOTICE OF DECISION
PARTY

[redacted]
C/o [redacted]
[redacted]
[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2016, Ascend Management Innovations LLC, ("Ascend"), the Department of Social Service's (the "Department") contractor that administers approval of nursing home care, sent [redacted] (the "Appellant") a Notice of Action ("NOA") denying nursing home level of care ("LOC") stating that he does not meet the nursing facility level of care criteria.

On [redacted] 2016, the Appellant requested an administrative hearing to contest Ascend's decision to deny nursing home LOC.

On [redacted] 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for [redacted] 2015.

On [redacted] 2016, OLCRAH issued a notice changing the location of the administrative hearing to [redacted].

On [redacted] 2016, 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:

[redacted] Appellant
Ann Phipps, Social Worker, [redacted]

Brenda Providence, RN, Alternate Care Unit, DSS
Elizabeth Orejuela, RN, Alternate Care Unit, DSS
Sheila McCloskey, RN, Clinical Reviewer, ASCEND (Via telephone)
Veronica King, Hearing Officer

STATEMENT OF THE ISSUE

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

FINDINGS OF FACT

1. On [redacted] 2015, the Appellant was admitted to the Facility ("[redacted]"), which is a skilled nursing facility. (Exhibit 4: CT Long Term Care (LTC) Level of Care Determination Form and Hearing Record)

2. The Appellant was admitted to the Facility with a medical diagnosis of Alcoholic Hepatitis/Cirrhosis, Barretts, PMR, Schizotpal traits, Lung Abscess, Left Upper Lobe Mass, Cellulitis, and Hypotension. (Exhibit 4 and Hearing Record)

3. On [redacted] 2016, Ascend approved a short term 60 day stay for nursing facility level care for the Appellant. This approval expired on [redacted] 2015. (Hearing Record)

4. On [redacted] 2015, the Facility submitted the Nursing Facility Level of Care ("NF LOC") screening form to Ascend. The NF LOC screen stated that the Appellant required supervision with bathing, dressing, toileting, mobility, and continence. The Appellant was capable of preparing meals with minimal assistance. The Appellant was approved for short-term 180 days. This approval expired on [redacted] 2016. (Hearing Record)

5. On [redacted] 2016, the Facility submitted another NF LOC screening form to Ascend. The NF LOC screen stated that the Appellant required no assistance with his activities of daily living ("ADLs") and for instrumental activities of daily living ("IADLs"), the Appellant requires minimal assistance preparing meals. (Hearing Record and Exhibit 4)

6. After the submission of the [redacted] 2016, NF LOC screening form; Ascend requested a Medical Onsite assessment. (Hearing Record)

7. On [redacted] 2016, a Medical Onsite assessment was completed. The assessment was conducted by individual interview, individual record and interview with the staff. (Exhibit 14: Medical Level of care Evaluation and hearing Record)

8. The Medical Onsite assessment states: "Mr. [redacted] is alert and oriented, ambulates independently without devices, independent with ADL's, and homeless at present time. Score 26 on cognitive testing, needs prompting for memory issues. ETOH dementia diagnosed on psych assessment. Mr. [redacted] is not on any psych meds and stated that he didn't take any medication at all at home. Recommending psych eva/therapy/monitoring for schiztype dx and case manager. Nursing intervention ordered for present issues: bladder scans for urinary retention, abd girth measured and monitored regularly, weekly weights and fluid restriction, lower leg edema and cellulitis, wbc monitoring for leukocytosis, monitoring of severe constipation". (Exhibit 14)

9. On [redacted] 2016, Ascend determined that nursing facility services are not medically necessary for the Appellant as his needs could be met through a combination of medical and social services delivered outside of the nursing facility setting. (Hearing Record and Exhibit 2: Notice of Action dated [redacted] 2016)

10. The Appellant is no longer receiving weekly bladder scans. (Exhibit 15: Letter from Ann Phipps -Social Worker, dated [redacted] 2016)

11. The Appellant is 61 years old (DOB [redacted]/55). (Exhibit 4)

12. The Appellant is independent with all ADL's: bathing, dressing, eating, toileting, transferring, mobility and continence. He does require assistance with taking medications. (Hearing Record and Appellant's Testimony)

13. The Appellant currently is not attending any rehabilitative therapy services.(Hearing Record and Appellant's testimony)

14. The Appellant is fully oriented to self, place, and time. (Hearing Record)

15. The Appellant does not have a home in the community. (Hearing Record)

16. The Appellant is working with Money Follows the Person program ("MFP") to find permanent housing in the community. (Hearing Record)

17. The Appellant receives Medicaid assistance, but currently has no source of income. He has applied for Supplemental Security Income ("SSI") and is working with the MFP caseworker to possibly go into a rest home. (Hearing Record and Exhibit 16: Letter from MFP caseworker received on [redacted] 2016)

18. Ascend determined that the Appellant does not meet Connecticut Minimum Admission Criteria for nursing facility LOC. (Hearing Record)

19. Ascend determined that nursing facility services are not medically necessary for the Appellant as his needs could be met through a combination of medical and social services delivered outside of the nursing facility setting. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.

2. State regulations provide that "the department shall pay for an admission that is medically necessary and medically appropriate as evidenced by the following:

    (1) certification by a licensed practitioner that a client admitted to a nursing facility meets the criteria outlined in section 19-13-D8t(d)(1) of the Regulations of Connecticut State Agencies. This certification of the need for care shall be made prior to the department's authorization of payment. The licensed practitioner shall use and sign all forms specified by the department;
    (2) the department's evaluation and written authorization of the client's need for nursing facility services as ordered by the licensed practitioner;
    (3) a health screen for clients eligible for the Connecticut Home Care Program for Elders as described in section 17b-342-4(a) of the Regulations of Connecticut State Agencies;
    (4) a preadmission MI/MR screen signed by the department; or an exemption form, in accordance with 42 CFR 483.106(b), as amended from time to time, for any hospital discharge, readmission or transfer for which a preadmission MI/MR screen was not completed; and
    (5) a preadmission screening level II evaluation for any individual suspected of having mental illness or mental retardation as identified by the preadmission MI/MR screen." Conn. Agencies Regs. Section 17b-262-707 (a).

3. "The Department shall pay a provider only when the department has authorized payment for the client's admission to that nursing facility." Conn. Agencies Regs. Section 17b-262-707(b).

4. State regulations provide that "Patients shall be admitted to the facility only after a physician certifies the following:

(i) That a patient admitted to a chronic and convalescent nursing home has uncontrolled and/or unstable conditions requiring continuous skilled nursing services and /or nursing supervision or has a chronic condition requiring substantial assistance with personal care, on a daily basis."

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

5. Section 17b-259b of the Connecticut General Statures states that "Medically necessary" and "medical necessity" defined. Notice of denial of services. Regulations. (a) For purposes of the administration of the medical assistance programs by the Department of Social Services, "medically necessary" and "medical necessity" mean those health services required to prevent, identify, diagnose, treat, rehabilitate or ameliorate an individual's medical condition, including mental illness, or its effects, in order to attain or maintain the individual's achievable health and independent functioning provided such services are: (1) Consistent with generally-accepted standards of medical practice that are defined as standards that are based on (A) credible scientific evidence published in peer-reviewed medical literature that is generally recognized by the relevant medical community, (B) recommendations of a physician-specialty society, (C) the views of physicians practicing in relevant clinical areas, and (D) any other relevant factors; (2) clinically appropriate in terms of type, frequency, timing, site, extent and duration and considered effective for the individual's illness, injury or disease; (3) not primarily for the convenience of the individual, the individual's health care provider or other health care providers; (4) not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the individual's illness, injury or disease; and (5) based on an assessment of the individual and his or her medical condition. (b) Clinical policies, medical policies, clinical criteria or any other generally accepted clinical practice guidelines used to assist in evaluating the medical necessity of a requested health service shall be used solely as guidelines and shall not be the basis for a final determination of medical necessity. (c) Upon denial of a request for authorization of services based on medical necessity, the individual shall be notified that, upon request, the Department of Social Services shall provide a copy of the specific guideline or criteria, or portion thereof, other than the medical necessity definition provided in subsection (a) of this section, that was considered by the department or an entity acting on behalf of the department in making the determination of medical necessity.

6. Ascend correctly used clinical criteria and guidelines solely as screening tools.

7. Ascend correctly determined that the Appellant is independent with all of his ADLs.

8. Ascend correctly determined that the Appellant does not have a chronic medical condition requiring substantial assistance with personal care on daily basis.

9. Ascend correctly determined that the Appellant does not have uncontrolled and/or unstable medical conditions requiring continuous skilled nursing services and /or nursing supervision.

10. Ascend correctly determined It is not clinically appropriate that the Appellant reside in a nursing facility.

11. Ascend correctly determined that nursing facility services are not medically necessary for the Appellant, because his medical needs could be met with services offered in the community.

12. Ascend correctly determined that it is not medically necessary for the Appellant to reside in a skilled nursing facility and on [redacted] 2016, correctly denied his request for continued approval of long-term care Medicaid.

DISCUSSION

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

The Appellant entered [redacted] on [redacted] 2015, after the care received in the nursing facility his health status has improved and stabilized. The Appellant testified that he is not receiving nor does he need any supervision with his ADL's, he also testified that he is only residing at the Facility because he is waiting for his application for Social Security Disability and to secure his eligibility or the Money Follow the Person program.

The Appellant does have chronic but stable medical conditions. The issue is that he no longer requires the LOC provided by the nursing facility. The type of

services that the Appellant requires can be administered in the community setting through medical and social services.

DECISION

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

Veronica King
_____
Veronica King
Hearing Officer

Cc: Kathy Bruni, Manager, Alternate Care Unit, DSS, Central Office
Brenda Providence, Alternate Care Unit, DSS, Central Office
Sheila McCloskey, Ascend Innovations
Connie Tanner, Ascend Innovation

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.