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

2016
Signature Confirmation

Client ID #
Request # 766944

NOTICE OF DECISION

PARTY

PROCEDURAL BACKGROUND

On 2016, Ascend Management Innovations LLC, ("Ascend") the Department of Social Services' (the "Department") vendor that administers approval of nursing home care, sent (the "Appellant") a Notice of Denial stating that the Appellant does not meet the medical criteria for skilled nursing level of care.

On 2016, the Appellant requested an administrative hearing to contest Ascend's decision.

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

On 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:

, Appellant
Sheila McCloskey, Ascend Management Innovations, (By telephone)
Lisa Umanita, Director of Social Services,
Charles Bryan, URN, DSS
Melva Cooper, URN, DSS
Roberta Gould, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether Ascend's decision that skilled nursing facility level of care is not medically necessary for the Appellant is correct.

FINDINGS OF FACT

1. On [redacted] 2016, the Appellant was admitted to [redacted] Center because of a right tibia fracture, abnormality of gait and mobility, and pain in his lower leg. (Exhibit 3: Level of Care report and Department's summary)

2. On [redacted] 2016, Ascend approved a 60 day stay for nursing facility level of care for the Appellant. (Department's summary)

3. The Appellant was receiving rehabilitation services, nursing services and pain management services at the facility. (Department's summary)

4. The approval for the Appellant's 60 day stay expired on [redacted] 2016. (Hearing record)

5. On [redacted] 2016, [redacted] submitted a new screening form to Ascend that included the Appellant's ADL progress notes, Minimum Data Set, and Level 1 Preadmission screen. (Department's summary)

6. The Appellant's leg fracture has healed, but he is still in pain. (Exhibit 3, Appellant's testimony and Facility staff testimony)

7. The Appellant has a cane and a walker to assist him with walking. (Appellant and Facility's staff testimony)

8. The Appellant is independent with all activities of daily living ("ADL's"): bathing, dressing, eating, toileting, transferring, mobility and continence. He does require assistance with taking medications. (Exhibit 4: Level of Care determination form and Department's summary)

9. The Appellant is currently taking Vicodin and a muscle relaxer for pain management. (Appellant's testimony and Facility's staff testimony)

10. On [redacted] 2016, Susan Rieck, M.D., Medical Director for Ascend, reviewed the Appellant's medical records and determined that nursing facility placement was not medically necessary for him because he does not require the continuous and intensive care provided at the nursing facility level. (Exhibit 2: Notice of Action dated [redacted] 2016 and Department's summary)

11. The Appellant does not have a home in the community. (Appellant's and Facility staff testimony)

12. The Appellant is working with Money Follows the Person program ("MFP") to find permanent housing in the community. (Appellant's testimony)

13. The Appellant receives Medicaid assistance, but currently has no source of income. He has applied for Supplemental Security Income ("SSI") and plans to apply for SNAP and financial assistance from the Department when he is discharged. (Appellant's testimony)

14. Facility staff does not believe that the Appellant's medical conditions are at a level that requires a skilled nursing facility. (Facility staff testimony)

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. State regulations provide that nothing in subparagraph A above shall require the transfer of any patient admitted to the facility prior to October 1, 1981. Conn. Agencies Regs. § 19-13-D8t(d)(1)(B).

6. State regulations provide 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).

7. Section 17b-259b of the Connecticut General Statutes states that "Medically necessary" and "medical necessity" defined. Notice of denial of services. Regulations.(a) For the 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 medial 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 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.

8. The Appellant is independent with all seven of his activities of daily living.

9. The Appellant does not have uncontrolled and/or unstable conditions requiring continuous skilled nursing services or nursing supervision.

10. The Appellant does not have a chronic medical condition requiring substantial assistance with personal care on a daily basis.

11. It is not clinically appropriate that the Appellant reside in a nursing facility.

12. Ascend was correct in its determination that the Appellant does not meet the medical criteria for a nursing facility level of care.

13. Ascend Management Innovations was correct in its determination that it is not medically necessary for the Appellant to reside in a skilled nursing facility because it is not clinically appropriate in terms of type, frequency, timing, site, extent and duration and is not considered effective for the individual's illness, injury or disease.

DISCUSSION

There was no testimony or evidence presented that a skilled nursing facility is the appropriate place for the Appellant. All parties agree that a skilled nursing facility is not medically necessary for the Appellant at this time. The Appellant currently does not have an appropriate place to live and needs assistance with seeking further medical attention for continued pain in his lower leg. The Appellant does have chronic but stable medical conditions. Ascend was correct in its determination that the Appellant does not meet the medical criteria for a nursing facility at this time. Also, the Appellant testified at the hearing that he is currently working with MFP to locate permanent housing, has applied for SSI and plans to apply for SNAP and financial benefits upon his discharge from the facility.

DECISION

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

Roberta Gould
Roberta Gould
Hearing Officer

PC: K. Bruni, Manager, Alternate Care Unit, DSS
Charles Bryan, URN, Alternate Care Unit, DSS
Melva Cooper, URN, Alternate Care Unit, DSS
Angela Gagan, Ascend
Sheila McCloskey, Ascend
Joi Shaw, Ascend
Connie Tanner, Ascend

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 06105-3725.

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.