

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

██████████ 2017  
Signature confirmation

Client: ██████████  
Request: 777600

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2016, the Department of Social Services (the "Department"), through ASCEND Management Innovations ("ASCEND"), ██████████ (the "Appellant") a *Notice of Action* that stated that upon review of his case, ASCEND had found that nursing facility level of care was not medically necessary, effective ██████████ 2016.

On ██████████ 2016, the Appellant faxed a handwritten request to the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") for an administrative hearing to dispute ASCEND's determination.

On ██████████ 2016, the OLCRAH issued a notice scheduling an administrative hearing for ██████████ 2016. The Appellant requested postponements of the administrative hearing; the OLCRAH granted these requests.

On ██████████ 2017, 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 at Regal Care West, a skilled nursing facility.

At the ██████████ 2017 administrative hearing, the following individuals were sworn in:

██████████ Appellant  
Natalia Brantley, LPN, Regal Care West employee, Appellant's witness  
Marjorie Simpson, LNHA, Regal Care West employee, Appellant's witness  
Hector Caraballo, LPN, Regal Care West employee, Appellant's witness

Paul Bishins, LNHA, Regal Care West administrator<sup>1</sup>  
 Charles Bryan, RN, Department's representative  
 Karen Salwocki, RN, Department's representative  
 Jaimie Johnson, RN, ASCEND employee, Department's witness (by telephone)  
 Eva Tar, Hearing Officer

The administrative hearing record closed [REDACTED] 2017.

### **STATEMENT OF ISSUE**

The issue to be decided is whether ASCEND correctly determined that skilled nursing level of care in a facility was no longer medically necessary for the Appellant.

### **FINDINGS OF FACT**

1. The Appellant's date of birth is [REDACTED] 1959. (Appellant's testimony)(ASCEND's Exhibit 9: Physician's Orders)
2. The Appellant is not a conserved person. (Appellant's witness's testimony)(ASCEND's Exhibit 5: Level of Care Determination Form)
3. On [REDACTED] 2014, the Appellant was admitted to Regal Care West, a skilled nursing facility. (ASCEND's Exhibit 9)
4. ASCEND is the Department's medical reviewer with respect to level of care determinations for Medicaid recipients. (Department's witness's testimony)(ASCEND's Exhibit 4: *Notice of Action*)
5. ASCEND determined that the Appellant met the necessary medical criteria for skilled nursing level of care through [REDACTED] 2016. (ASCEND's Exhibit 4)
6. The Appellant has the following diagnoses: diabetes mellitus, hypertension, peripheral vascular disease, hyperlipidemia, folic acid deficiency, right carpal tunnel syndrome, right below-the-knee amputation, neuropathy, obesity, substance abuse, depression, insomnia, and chronic pain. (ASCEND's Exhibit 4)(ASCEND's Exhibit 9)
7. The Appellant is 6'1" tall and weighs 315 pounds. (Appellant's testimony)
8. The Appellant has a leg prosthesis. (Appellant's testimony)
9. The Appellant does not use his leg prosthesis as using it aggravates his back pain. He acknowledges that in order for the back pain to lessen when using the prosthesis, he needs to use the prosthesis more frequently. (Appellant's testimony)

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<sup>1</sup> After Mr. Paul Bishins was identified and sworn in, the Appellant objected to his participation in the proceeding, citing concerns regarding medical privacy. Mr. Bishins removed himself from the room prior to the admittance of the summary and exhibits into the hearing record. Mr. Bishins did not observe or participate in the February 17, 2017 administrative hearing.

10. The Appellant uses a wheelchair, which he is able to maneuver and propel. (ASCEND's Exhibit 7: Nurses Notes)
11. The Appellant has issues with his memory. (Appellant's testimony)
12. The Appellant has difficulty understanding correspondence he receives. He can read it, but he doesn't understand it. The Appellant asks for help when he has difficulty understanding correspondence. (Appellant's testimony)
13. The Appellant has a history of periodic flaring of cellulitis. (Appellant's testimony)(Appellant's witness's testimony) (ASCEND's Exhibit 15: Wound History Screen)
14. The Appellant's cellulitis is treated with antibiotics until it subsides. (Appellant's witness's testimony)
15. The Appellant occasionally gains weight with fluid retention. (Appellant's witness's testimony)
16. The Appellant is given diuretics to treat his fluid retention in his limbs. (Appellant's witness's testimony)
17. The Appellant was followed for wound care for an ulceration in his buttocks. (Appellant's witness's testimony)(ASCEND's Exhibit 15)(ASCEND's Exhibit 17: Nursing Home Wound Note)(ASCEND's Exhibit 21: Nursing Home Wound Note)
18. The Appellant's wounds have been treated. (Appellant's witness's testimony)
19. The Appellant occasionally has incontinence at night, when he is sleeping. (Appellant's testimony)(ASCEND's Exhibit 10: Resident Personal Care Record)
20. The Appellant uses adult pull-ups for his incontinence. (Appellant's testimony)
21. After a bout of incontinence, the Appellant needs help with appropriate hygiene care, to clean him up. (Appellant's testimony)
22. The Appellant is able to dress himself; he doesn't change clothes daily as he doesn't have that many clothes to change into. (Appellant's testimony)
23. Some days the Appellant needs help with his transfers; it depends on the day and how he is feeling. (Appellant's testimony)
24. The Appellant is able to use utensils to feed himself. (Appellant's testimony)
25. The Appellant's medication is pre-poured or handed to him. He receives cues at scheduled times to take his medications as he may not remember to take them at the right times. (Appellant's witness's testimony)

26. The Appellant attends intermittent appointments with on-site psychiatric staff, for the purpose of changing the Appellant's medications or adjusting dosages. (Appellant's witness's testimony)
27. In response to the Appellant's concerns that his medications are not working correctly, his bloodwork and labs are monitored. (Appellant's witness's testimony)
28. Regal Care West staff test the Appellant's blood sugar three times per day, before each meal. (Appellant's testimony)(Appellant's witness's testimony)
29. The Appellant has a Lantus pen/dial-up that he uses for his diabetes; he has a standing order of 12 units per day. (Appellant's testimony)(Appellant's witness's testimony)
30. If his blood sugar levels requires it, Regal Care West staff will draw up insulin into a syringe and hands it to the Appellant for him to self-administer the injection. (Appellant's testimony)
31. The Appellant does not have a lockbox for his medications. (Appellant's testimony)(Appellant's witness's testimony)
32. The Appellant does not receive physical therapy at Regal Care West. (Appellant's witness's testimony)
33. On ██████ 2016, the Appellant scored 14 out of a 15 on a *Minimum Data Set (MD8) Resident Assessment and Care Screening*, with respect to his responses to a Brief Interview for Mental Status (BIMS). A score of 15 is a perfect score regarding: 1) repetition of three words, 2) temporal orientation, and 3) recall. A score of 0 means that the individual was unable to recall or answer correctly the questions. (ASCEND's Exhibit 29: *Minimum Data Set (MD8)*)
34. In the period from ██████ 2016 through ██████ 2016, the Appellant was independent in bed mobility; transfers; locomotion; dressing; personal hygiene; and bathing/shower. (ASCEND's Exhibit 10)
35. In the three-week period from ██████ 2016 through ██████ 2016, the Appellant had less than a dozen episodes of incontinence. (ASCEND's Exhibit 10)
36. On ██████ 2016, a Regal Care West APRN signed a *Practitioner Certification*, attesting that the Appellant meets the Connecticut Code for nursing home level of care. (ASCEND's Exhibit 6: *Practitioner Certification*)
37. On ██████ 2016, Regal Care West submitted to ASCEND a *Connecticut LTC Level of Care Determination Form* a request for authorization on the Appellant's behalf for chronic and convalescent nursing home level of care for between 80 and 180 days. (ASCEND's Exhibit 5)
38. On ██████ 2016, a Regal Care West LPN found that the Appellant was fully capable of self-administering his medication, with the exception that he would be able with

assistance to correctly state the common side effects of each of his medications. (ASCEND's Exhibit 13: *Self-Administration of Medications Evaluation*)

39. On ██████ 2016, the Appellant signed a *Self-Administration of Medication & Consent* form, acknowledging that he had a right to self-administer drugs prescribed by his doctor, unless the interdisciplinary team had determined it would not be safe due to impairment in his judgment, physical, or visual ability to carry out this responsibility. (ASCEND's Exhibit 12: *Self-Administration of Medication & Consent*)
40. William M. Regan, M.D., an ASCEND psychiatrist, reviewed the Appellant's medical information as submitted by Regal Care West. (ASCEND's Exhibit 4)
41. On ██████ 2016, William M. Regan, M.D. determined that the Appellant's needs could be met through a combination of medical, psychiatric, and social services delivered in a less restrictive setting. He opined that the Appellant would benefit from some supervision and home health services, from psychiatric consultation with regular periodic review of psychotropic medications by a psychiatrist, and from case management services to ensure that he is followed closely and that the services are leveraged on his behalf. (ASCEND's Exhibit 4)(Hearing record)
42. On ██████ 2016, ASCEND issued a *Notice of Action* to the Appellant, stating that nursing facility level of care was not medically necessary for him at that time. (ASCEND's Exhibit 4)
43. The Appellant's medical needs may be met in the community, with the appropriate supports, after the formulation of a treatment plan utilizing visiting nurses, personal care assistants, and homemakers is put into place. (Department's representative's testimony)
44. Regal Care West staff acknowledges that the individual services currently provided by the facility to the Appellant on a daily or on an as-needed basis could be provided in a community. (Appellant's witness's testimony)
45. Regal Care West staff is concerned that the Appellant may not be a good candidate for services provided in a community, due to his memory lapses. (Appellant's witness's testimony)
46. The Appellant has visited potential apartments in the community in conjunction with the Money Follows the Person program. (Appellant's testimony)(ASCEND's Exhibit 7)

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes designates the Department of Social Services as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Section 17b-262-707 (a) of the Regulations of Connecticut State Agencies provides: The department shall pay for an admission that is medically necessary and medically appropriate as evidenced by the following:

- (1) certification by a licensed practitioner that a client admitted to a nursing facility meets the criteria outlined in section 19-13-D8t(d)(1) of the Regulations of Connecticut State Agencies. This certification of the need for care shall be made prior to the department's authorization of payment. The licensed practitioner shall use and sign all forms specified by the department;
  - (2) the department's evaluation and written authorization of the client's need for nursing facility services as ordered by the licensed practitioner;
  - (3) a health screen for clients eligible for the Connecticut Home Care Program for Elders as described in section 17b-342-4(a) of the Regulations of Connecticut State Agencies;
  - (4) a preadmission MI/MR screen signed by the department; or an exemption form, in accordance with 42 CFR 483.106(b), as amended from time to time, for any hospital discharge, readmission or transfer for which a preadmission MI/MR screen was not completed; and
  - (5) a preadmission screening level II evaluation for any individual suspected of having mental illness or mental retardation as identified by the preadmission MI/MR screen.
3. General Conditions.
- (1) Patient admission.
    - (A) 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 and/or chronic conditions requiring continuous skilled nursing services and/or nursing supervision or has chronic conditions requiring substantial assistance with personal care, on a daily basis;
      - (ii) That a patient admitted to a rest home with nursing supervision has controlled and/or stable chronic conditions which require minimal skilled nursing services, nursing supervision, or assistance with personal care on a daily basis. Conn. Agencies Regs. § 19-13-D8t (d)(1)(A).
4. 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).

5. 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).
6. 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).
7. The Appellant does not have an uncontrolled and/or unstable and/or chronic medical conditions requiring continuous skilled nursing services and/or nursing supervision.
8. Continuous skilled nursing services are not clinically appropriate in terms of type and frequency with respect to treatment of the Appellant's medical conditions.
9. The Appellant is independent with the following activities of daily living: bathing, dressing, eating, toileting, and mobility (with the use of his assistive equipment: i.e. his wheelchair or his leg prosthesis).
10. The Appellant is somewhat independent with the following activities of daily living: transferring.
11. The Appellant is not independent with the following activity of daily living: incontinence.
12. The Appellant does not require substantial assistance with personal care on a daily basis to perform his activities of daily living.
13. The Appellant's institutionalization at a skilled nursing facility is primarily for his convenience or for the convenience of his health care providers.
14. The Appellant's institutionalization at a skilled nursing facility is not the least restrictive means to medically treat the Appellant's medical conditions.
15. ASCEND correctly determined on ██████████ 2016 that skilled nursing level of care in a facility was no longer medically necessary for the Appellant.
16. ASCEND correctly denied the Regal Care West's ██████████ 2016 request for continued approval of Medicaid coverage of the Appellant's short-term care skilled nursing services as provided by Regal Care West.

### **DISCUSSION**

At the ██████████ 2017 administrative hearing Regal Care West staff expressed concern that the Appellant may not be a good candidate for services provided in a community, due to memory issues and an alleged cognitive impairment. There is no indication in the hearing record that the Appellant has been diagnosed with dementia or some other cognitive

impairment. He is not a conserved person.

At the [REDACTED] 2017 administrative hearing, it should be noted that the Appellant aptly participated in this proceeding and competently represented his own interests. He objected to the presence of one individual and gave an acceptable reason in support of his objection. He demonstrated that he knew when to ask for clarification, asking appropriate questions. He questioned the inclusion of a set of exhibits and their relevance. He answered questions regarding his daily routine, stated his concerns as to the changes in milligrams/dosages of his medications, described his symptoms, and provided other specifics regarding his individual treatment. He requested additional time to provide a written statement for the hearing record in the event that he recalled a point he had neglected to make at the hearing.

After a careful review of the hearing record, it is evident that institutionalization in a skilled nursing facility is not the least restrictive method by which to meet the Appellant's medical needs. His medical conditions do not require *continuous* skilled nursing services or *continuous* nursing supervision for treatment. With comprehensive community supports in place, the Appellant's medical needs and intermittent need for hands-on care could be met.

It is not medically necessary, as the term is defined by state statute, that the Appellant be institutionalized in a skilled nursing facility.

### **DECISION**

The Appellant's appeal is DENIED.

*Eva Tar-electronic signature*  
Eva Tar  
Hearing Officer

Cc: Charles Bryan, DSS-Central Office  
Kathy Bruni, DSS-Central Office  
Emily Cook, ASCEND  
Joi Shaw, ASCEND  
Connie Tanner, ASCEND  
Jaimie Johnson, 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 Legal Counsel, Regulations, and Administrative Hearings, 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.