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

[redacted] **2017**
Signature Confirmation

Request # 798924
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 Services contractor that administers approval of nursing home care, sent [redacted] (the "Appellant") a notice denying Nursing Facility ("NF") Level of Care ("LOC") because he does not meet the medical criteria, as defined in section 17b-259b of the Connecticut General Statues.

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

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

On [redacted] 2016, the OLCRAH issued a notice rescheduling an administrative hearing for [redacted] 2016.

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
Sheila Dowdy, RN, Unit Manager for Autumn Lake
Joanna Rocco, Social worker for Autumn Lake
Melva Cooper, RN, Alternate Care Unit, DSS
Sheila McCloskey, ASCEND (participated by telephone)
Swati Sehgal, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether Ascend correctly determined that skilled nursing facility placement is not medically necessary for the Appellant.

FINDINGS OF FACT

1. On [redacted] 2016, the Appellant was admitted to Autumn Lake Health care, a skilled nursing facility. (Exhibit 5: LTC Level Of Care Determination Form)

2. The Appellant's medical diagnoses were left acute, multiple, nondisplaced, longitudinal fracture of left patella, unspecified fall and alcohol abuse, past medical history is significant for gastroesophageal reflux disease, tachycardia, diverticulitis, sciatica, depression, anxiety and Cdiff . (Exhibit 5)

3. The Appellant is 52 years old (DOB [redacted]/64) and a Medicaid recipient. (Exhibit 5; Appellant's testimony)

4. The Appellant has applied and has been accepted for the Money Follows the person program ("MFP"). (Appellant's and Autumn Lake's testimony)

5. On [redacted] 2016, Autumn Lake Health Care submitted a Nursing Facility Level of Care ("NF LOC") evaluation form to Ascend. Ascend approved the Appellant for 120 days of short term care due to his continued need for assistance with dressing, bathing, eating/feeding, toileting, continence, mobility and transfer In addition, the Appellant required complete physical assistance with meal preparation. (Summary)

6. On [redacted] 2016, Autumn Lake Health Care submitted a second NF LOC screen to Ascend. (Exhibit 2)

7. On [redacted] 2016, Dr. Susan Rieck, Ascend's Medical Director, conducted a review of the Appellant's medical condition. Dr. Rieck concluded that nursing facility placement for the Appellant was not medically necessary based on the Appellant's stabilized condition and his demonstrated independence with all of his ADL's. Dr. Reick found the Appellant's needs could be met through a combination of medical and psychiatric follow up, as well as social services delivered outside of the nursing facility setting. (Summary, Exhibit 4: Notice of Action and Exhibit 5)

8. On [redacted] 2016, Ascend issued a notice of action to the Appellant specifying that he does not meet the medical criteria for nursing facility LOC and as a result, he would not be eligible for nursing facility services funded by Medicaid effective [redacted] 2016. (Summary; and Exhibit 4)

9. The Appellant's current medications include Folic Acid, Vitamin B-1, Gabapentin, Omeprazole and Lipitor. (Exhibit 13: Physician's order sheet; Appellant's testimony)

10. The Appellant is fully oriented to self, place, and time. (Exhibit 10; and Appellant's testimony)

11. The Appellant does not have an uncontrolled chronic medical condition requiring continuous skilled nursing services and does not need substantial assistance with personal care on a daily basis. (Exhibit 12: Personal Care record; and Appellant's 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 regulation 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. 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)

4. Section 17b-259b of the Connecticut General Statutes provides (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.

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

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

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

8. Ascend correctly determined that the Appellant does not have an uncontrolled and/or unstable medical conditions requiring continuous skilled nursing services and/or nursing supervision and it is not clinically appropriate that the Appellant reside in a nursing facility.

9. Ascend correctly determined that nursing facility services are not medically necessary for the Appellant and properly denied his request for continued approval of long-term care Medicaid because his medical needs could be met with community based assistance.

DISCUSSION

The Appellant entered Autumn Lake Health care on [redacted] 2016, after hospitalization for nondisplaced longitudinal fracture of left patella. Following the care received in the nursing facility, his condition has improved and stabilized. The Appellant testified that he does not need assistance with his ADL's.

The Appellant does not meet the medical criteria for nursing facility LOC, and is not eligible for continued nursing facility services funded by Medicaid because the Appellant does not have a chronic/unstable medical condition requiring skilled nursing services, and is not in need of assistance with his personal care on a daily basis. The type of help that the Appellant requires can be administered in a community setting through professional medical and social services.

DECISION

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

Swati Sehgal
Swati Sehgal
Hearing Officer

Cc: Kathy Bruni, Manager, Alternate Care Unit, DSS, Central Office
Melva Cooper, Alternate Care Unit, DSS, Central Office
Sheila McCloskey, Ascend Management Innovations
Joanna Rocco, Social Worker for Autumn Lake Health Care.

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 06105-3725. 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.