

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

██████████ 2017  
Signature Confirmation

Client # ██████████  
Request # 802620

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

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

On ██████████ 2016, the Appellant requested an administrative hearing to contest ASCEND's decision to deny nursing home LOC.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an 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  
Diane Hammersley, Director of Social Services, Westport Health Care Center,  
Westport Connecticut

Deborah Baker, LPN, Director of Nursing, Westport Health Care Center, East Windsor, Connecticut  
Ann Florian, RN, Westport Health Care Center, Westport, Connecticut  
Patricia Baker, Business Office Manager, Westport Health Care Center, Westport, CT  
Sheila McCloskey, RN, ASCEND Management Innovations Representative (via telephone)  
Patricia J. Jackowski, URN, DSS, Central Office  
Sybil Hardy, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue is whether ASCEND's decision that the Appellant does not meet the criteria for nursing facility LOC is correct.

### **FINDINGS OF FACT**

1. During [REDACTED] 2015, the Appellant was admitted to Bridgeport Hospital with a diagnosis of right lower leg pain and numbness. (Hearing Record, Exhibit 4: NOA, [REDACTED]/16)
2. The Appellant resided in a nursing facility. (Appellant's Testimony, Exhibit 5: Connecticut LTC Level of Care Determination Form )
3. The Appellant is 48 years old (DOB [REDACTED]/68) and separated from her spouse. (Appellant's Testimony)
4. The Appellant does not have a pending application for disability payments, but has contacted a lawyer for future assistance. (Appellant's Testimony)
5. The Appellant does not have an Authorized Representative ("AR"). (Appellant's Testimony)
6. Karin Michels-Ashwood, MD, (the "primary care physician") 64 Black Rock Avenue, Bridgeport, Connecticut is the Appellant's primary care physician. (Appellant's Testimony)
7. On [REDACTED] 2016, the Appellant was discharged from Bridgeport Hospital, Bridgeport, Connecticut to Westport Health Care Center (the "Nursing Facility") Westport, Connecticut for a 120-day short-term stay. (Hearing Record, Exhibit 5)
8. The Appellant was admitted to the Nursing Facility due to a need for care and evaluation of lower leg pain and numbness. (Exhibit 6: Level of Care Report)

9. The Appellant's was admitted to the Nursing Facility with a medical diagnosis of Paresthesia of the skin and a medical history of diabetes, morbid obesity, knee arthritis, low back pain, hyperlipidemia, neuropathy, constipation, and depression. (Hearing Record, Exhibit 5, Exhibit 6)
10. On [REDACTED], 2016, the Appellant had chronic medical conditions that required intensive nursing services. (Exhibit 6)
11. On [REDACTED] 2016, the Appellant was referred to Connecticut Mental Health Specialist, Inc. Farmington for a mental health consultation. (Exhibit 19: CMHS Authorization and Referral, [REDACTED]/16)
12. During [REDACTED] 2016, the Appellant applied for the Money Follows the Person ("MSP") program. (Appellant's Testimony)
13. On [REDACTED] 2016, the Appellant went to the hospital because she was experiencing pain, but was not admitted to the hospital. She returned to the Nursing Facility the same day. (Appellant's Testimony)
14. On [REDACTED], 2016, the Appellant began a scheduled physical therapy ("PT") cycle five times per week. (Exhibit 5)
15. On [REDACTED] 2016, the Appellant successfully discharged from physical therapy services after meeting both short term and long term goals. (Exhibit 14: Physical Therapy Discharge Summary)
16. Effective [REDACTED], 2016, the Appellant was independent with all her Activities of Daily Living (ADL's) and psychiatrically stable. (Exhibit 5, Exhibit 6)
17. The Appellant requires no medication supports. (Exhibit 5)
18. All Controlled medications are dispensed by the Nursing Facility staff only. (Hearing Record)
19. The Appellant currently takes the following medications daily: Escitalopram, Depakote DR, Lyrica, Oxycodone/APAP, Acetaminophen, Zolpidem, Premarin. (Exhibit 23: Physician's Orders, [REDACTED]/2016)
20. On [REDACTED] 2016, the Nursing Facility submitted a LOC Screening to ASCEND which described the Appellant's current activities of daily living ("ADLs") as follows: Independent in all her ADL's". (Hearing Record, Exhibit 5)

21. ASCEND found that the Appellant is independent of the following ADLs: bathing, dressing, eating, toileting, continence, transferring and mobility. (Exhibit 3: Connecticut ADL Measures and Measurements, Exhibit 5, Exhibit 6)
22. The ADL Measures include bathing, dressing, eating, toileting, continence, transferring and mobility (Exhibit 3)
23. The Appellant is capable of walking on her own, but sometimes uses the assist of a cane, walker or wheelchair. (Appellant's Testimony, Exhibit 7)
24. The Appellant is able to get around on her own using public transportation. (Appellant's Testimony)
25. The Appellant performs exercises on her own. (Appellant's Testimony)
26. The Appellant requires no assistance with meal preparation. (Appellant's Testimony, Hearing Record)
27. The Appellant is fully oriented to self, place, time and situation, and does not need prompting or cueing. (Exhibit 5)
28. The Appellant solves problems and makes decisions with no assistance. (Appellant's Testimony, Exhibit 5)
29. The Appellant communicates information intelligibly and understands information conveyed without assistance. (Exhibit 5)
30. The Appellant has no problems with her vision. (Exhibit 5)
31. The Appellant has no problems related to her behaviors due corroborated dementia. (Appellant's Testimony, Exhibit 5, Exhibit 21: CMHS Extended Follow Up Note)
32. Appellant is waiting for her apartment inspection to be completed before she can move into the apartment. (Appellant's Testimony)
33. The Appellant does not require the continuous and intensive nursing services that are delivered at the level of the Nursing Facility. (Appellant's Testimony, Exhibit 4, Exhibit 6)
34. On [REDACTED] 2016, Ascend issued a Notice of Action to the Appellant stating that she does not meet the medical criteria for nursing facility LOC and that nursing facility LOC is not medically necessary. (Exhibit 4).

35. On [REDACTED] 2016, the Appellant went to see her primary care physician who had no additional concerns regarding her medical condition and made no changes to her medications. (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 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. 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 Statutes 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 determined that the Appellant is independent with all her ADLs and her needs could be met through a combination of social and professional services outside of the nursing facility setting.
7. ASCEND correctly determined that the Appellant does not have a chronic medical condition requiring NF level of care.
8. ASCEND correctly determined that the Appellant does not require the continuous and intensive nursing care provided at the nursing facility level.

9. ASCEND correctly issued the Appellant a NOA denying nursing facility level of care.

**DECISION**

The Appellant's appeal is **DENIED**

  
Sybil Hardy  
Hearing Officer

Pc: Kathy Bruni, Manager, Alternate Care Unit, DSS, Central Office  
Patricia J. Jackowski, URN, Alternate Care Unit, DSS, Central Office  
Sheila McCloskey, Division Manager, ASCEND Management Innovations

### **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.