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

[redacted] 2017
Signature Confirmation

Client ID # [redacted]
Request # 810954

NOTICE OF DECISION

PARTY

[redacted]

[redacted] BACKGROUND

On [redacted] 2017, Ascend Management Innovations, LLC, ("Ascend"), the Department of Social Services' (the "Department") vendor that administers approval of nursing home care, sent [redacted] (the "Appellant") a notice stating that his request for a nursing facility level of care ("LOC") review has not been processed because the nursing facility failed to send the information requested by Ascend to complete the LOC review.

On [redacted] 2017, the Appellant requested an administrative hearing to contest Ascend's decision to deny nursing facility LOC.

On [redacted] 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2017.

On [redacted] 2017, in accordance with sections 17b-60, 17b-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
[redacted], Attorney for the Appellant, [redacted]
[redacted] Extern, [redacted]
[redacted] Appellant's Spouse
[redacted] Appellant's Sister
Christine Regan, RN, Director of Nursing, Regal Care of New Haven
Donna Williams, Social Worker, Regal Care of New Haven
Corrie Telford, Certified Nursing Assistant, Regal Care of New Haven
Connie Tanner, Operations Division Manager, Ascend, participated by telephone
Patricia Jackowski, RN, Community Nurse Coordinator, Department of Social Services
Charlain Ogren, LCWS, Community Options, Department of Social Services
Lisa Nyren, Fair Hearing Officer

The hearing record remained open for the submission of additional evidence. On [redacted] 2017, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether Ascend's decision to deny the nursing facility's request for a LOC determination on behalf of the Appellant was correct.

FINDINGS OF FACT

1. On [redacted] 2016, Regal Care of New Haven (the "facility"), a skilled nursing facility, admitted the Appellant to their facility. (Exhibit 8: Connecticut LTC Level of Care Determination Form)

2. Ascend is the Department's contractor that determines if a patient meets the nursing home LOC criteria to authorize Medicaid payment. (Hearing Record)

3. On [redacted] 2016, Medicaid issued payment for Long Term Care ("LTC") services to the facility for the period [redacted] 2016 through [redacted] 2016 on behalf of the Appellant. (Exhibit 38: Connecticut Medicaid Claim Search and Exhibit 39: Claim Search)

4. On [redacted] 2016, Medicaid issued payment for LTC services to the facility for the period [redacted] 2016 through [redacted] 2016 on behalf of the Appellant. (Exhibit 38: Connecticut Medicaid Claim Search and Exhibit 39: Claim Search)

5. [redacted] 2016, Medicaid issued two payments for LTC services to the facility for the period [redacted] 2016 through [redacted] 2016 on behalf of the Appellant. (Exhibit 38: Connecticut Medicaid Claim Search and Exhibit 39: Claim Search)

6. On [redacted] 2016, the facility submitted the Connecticut LTC Level of Care Determination Form to Ascend requesting a LOC approval for a short term stay of 60 – 90 days on behalf of the Appellant. (Exhibit 8: Connecticut LTC Level of Care Determination Form)

7. On [redacted] 2016, the facility submitted additional medical information to Ascend. (Social Worker's Testimony and Exhibit B: Fax Coversheet and Medical Documents)

8. On [redacted] 2016, the facility submitted additional medical information to Ascend. (Social Worker's Testimony and Exhibit B: Fax Coversheet and Medical Documents)

9. On [redacted] 2016, the facility submitted additional medical information to Ascend. (Social Worker's Testimony and Exhibit B: Fax Coversheet and Medical Documents)

10. On [redacted] 2016, Ascend denied the facility's request for a LOC approval on behalf of the Appellant citing the reason for denial as a technical denial. Ascend failed to issue the Appellant a notice of denial. (Exhibit 8: Connecticut LTC Level of Care Determination Form, Exhibit C: Ascend Connecticut Data Application, and Ascend's Testimony)

11. Technical denial refers to a cancelled LOC review by Ascend. Ascend's failure to complete a review due to the lack of supporting medical documentation results in a technical denial by Ascend rather than an approval or denial of services. (Ascend's Testimony)

12. On [redacted] 2017, Ascend issued a notice of closure to the Appellant. The notice stated Ascend did not process the LOC request submitted by the facility on [redacted] 2016 on behalf of the Appellant "because the facility did not send information requested by Ascend to support your need for nursing facility LOC." Ascend included appeal rights and a hearing request form with the notice of closure. (Exhibit 7: Notice of Closure)

13. On [redacted] 2017, the Appellant requested an administrative hearing to contest the denial of a LOC determination from Ascend. (Hearing Record)

14. On [redacted] 2017, Ascend issued a notice of action to the Appellant. The notice stated Ascend determined nursing facility LOC as medically

necessary beginning [redacted] 2017 and ending [redacted] 2017 and the Appellant eligible for long-term care services under Medicaid for 90 days as of the notice date. (Exhibit 6: Notice of Action [redacted]/17)

15. On [redacted] 2017, Ascend issued a notice of action to the Appellant. The notice stated Ascend determined nursing facility LOC as medically necessary beginning [redacted] 2016 and ending [redacted] 2017 and the Appellant eligible for long term care services under Medicaid for 76 days as of the notice date. (Exhibit 5: Notice of Action [redacted]/17)

16. On [redacted] 2017, Medicaid issued five payments for LTC services to the facility for the period [redacted] 2016 through [redacted] 2017 on behalf of the Appellant. (Exhibit 39: Claim Search)

17. Ascend rescinded its decision to deny the Appellant's request for a LOC review and determined that the Appellant met the medically necessary criteria for nursing home level of care with no lapse in coverage because as of [redacted] 2017, the facility has received payment for LTC services provided to the Appellant since his admission on [redacted] 2016 through [redacted] 2017. (Facts # 3-5 & 16)

CONCLUSIONS OF LAW

1. Connecticut General Statute § 17b-2(6) provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

2. State statute provides that 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. Stats. § 17b-259b(a)].

3. State regulation provides that the department shall review the medical appropriateness and medical necessity of medical goods and services provided to Medical Assistance Program clients both before and after making payment for such good and services. [Conn. Agency Regs. § 17b-262-527].

4. State regulation provides that prior authorization, to determine medical appropriateness and medical necessity, shall be required as a condition of payment for certain Medical Assistance Program goods or services as set forth in the regulations of the department governing specific provider types and specialties. The department shall not make payment for such goods and services when such authorization is not obtained by the provider of the goods or services. [Conn. Agency Regs. §17b-262-528(a)].

5. State regulation provides that in order to receive payment from the department a provider shall comply with all prior authorization requirements. The department in its sole discretion determines what information is necessary in order to approve a prior authorization request. Prior authorization does not, however, guarantee payment unless all other requirements for payment are met. [Conn. Agency Regs. 17b-262-528(d)].

6. State regulation provides that payment for nursing facility services is available to all persons eligible for the Medicaid program subject to the conditions and limitations that apply to these services. [Conn. Agency Regs. 17b-262-704].

7. State regulation provides that the department shall pay a provider only when the department has authorized payment for the client's admission to that nursing facility. [Conn. Agency Regs. § 17b-262-707(b)].

8. The Appellant meets the medically necessary criteria as determined by Ascend because the Department issued LTC payments to the facility on behalf of the Appellant from [redacted] 2016 through [redacted] 2017.

9. State statute provides that 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. Stats. 17b-259b(c)].

Uniform Policy Manual ("UPM") § 1570.05(G)(2) provides that at the time of application and at the time of any action affecting the assistance unit's benefits, the Department informs the requester, in writing, of the following:

a. The requester's right to a Fair Hearing; and
b. The method by which the request obtains a Fair Hearing; and
c. That the requester may be self-representative, may use legal counsel, a relative, friend, or other spokesperson; and
d. The address of the local Legal Aid office, if there is free legal representative available.

10. UPM § 1555.25(A) provides that assistance units incurring a change in circumstances are notified of actions taken by the Department which affect eligibility or benefit level.

11. UPM § 1570.10(B)(4)(b) provides that in the Medicaid program, the Department sends adequate notice no later than the date of the action, under the following situations, as well as under those described in paragraph 1: the unit member's physician prescribes a change in the unit member's level of care.

12. Ascend failed to issue a proper notice of action to the Appellant upon the denial of the LOC review on [redacted] 2016. Ascend failed to notify the Appellant that, upon request, Ascend, as the Department's contractor shall provide a copy of the specific guideline or criteria, or portion thereof, other than the medical necessity definition, that it considered in making the determination of medical necessity. In addition, Ascend failed to notify the Appellant of his right to a Fair Hearing, the method by which the Appellant obtains a Fair Hearing, that the Appellant may be self-representative, may use legal counsel, a relative, friend, or other spokesperson and the address of the local Legal Aid office, if there is free legal representative available.

13. Ascend failed to issue proper notice when it sent the Appellant the notice of closure on [redacted] 2017. Ascend failed to notify the Appellant that, upon request, Ascend, as the Department's contractor shall provide a copy of the specific guideline or criteria, or portion thereof, other than the medical necessity definition, that it considered in making the determination of medical necessity. In addition, Ascend failed to notify the Appellant of his right to a Fair Hearing, the method by which the Appellant obtains a Fair Hearing, that the Appellant may be self-representative, may use legal counsel, a relative, friend, or other spokesperson and the address of the local Legal Aid office, if there is free legal representative available.

14. Ascend reversed its decision to deny nursing home LOC, completed a LOC review, and approved nursing home LOC, authorizing Medicaid payments with no lapse in coverage.

15. UPM § 1570.25 (C) provides in part that the administrative duties of Fair Hearing Official is to determine the issue of the hearing, consider all relevant issues, and render a Fair Hearing decision in the name of the Department, in accordance with the criteria in this chapter, to resolve the dispute.

16. Ascend voided the action that led to the Appellant's request for an administrative hearing.

17. There is no action to be adjudicated.

DECISION

The Appellant's appeal is dismissed.

Lisa A. Nyren
Fair Hearing Officer

CC: [redacted]
Melanie Dillon, Staff Attorney, Department of Social Services
Kathy Bruni, Director, Community Options, Department of Social Services
Charlaine Ogren, LCSW, Community Options, Department of Social Services
Ascend Management Innovations, LLC

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.