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

[redacted] **2017**
SIGNATURE CONFIRMATION

Request # 812166
Client ID # [redacted]

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

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

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

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

On [redacted] 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. The following individuals were present at the hearing:

[redacted] Appellant
Carrie Ann Henry, Social Worker, Chelsea Place Care Center
Karen May, Bookkeeper, Chelsea Place Care Center

Elizabeth Orejuela, RN, Alternate Care Unit, DSS
Jaimie Johnson, RN, ASCEND (participated by telephone)
Marci Ostroski, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether Ascend's decision that the Appellant does not meet the criteria for nursing facility LOC was correct.

FINDINGS OF FACT

1. On [redacted] 2016, the Appellant was admitted to Mount Sinai Rehabilitation Hospital. The Appellant's medical diagnoses at admission were Traumatic Brain Injury and multiple fractures following a pedestrian versus motor vehicle accident. (Hearing Summary).

2. On [redacted] 2016, Mount Sinai Rehabilitation Hospital submitted the Nursing Facility Level of Care ("NF LOC") screen for approval of level of care. Ascend granted a 90 day short term approval. (Hearing Summary).

3. On [redacted] 2016, the Appellant was admitted to Chelsea Place Care Center. (Hearing Summary).

4. On [redacted] 2016, the Appellant began receiving speech therapy. (Exhibit 13: Speech Therapy Progress Notes)

5. On [redacted] 2015, Chelsea Place Care Center submitted another NF LOC evaluation form to Ascend. Ascend determined that a Level II Onsite Assessment was needed. (Hearing Summary).

6. On [redacted] 2016, Ascend completed the Level II Onsite Assessment and granted a 60 day short term approval for level of care. (Hearing Summary)

7. On [redacted] 2016, Chelsea Place Care Center submitted another LOC evaluation form to Ascend which described the Appellant's current activities of daily living ("ADL") support needs as follows: the Appellant required supervision with bathing and dressing. He required continual supervision or physical assistance with multiple components of meal preparation. Based on the information provided a Level I preadmission screen was completed. Based on the results of the Level I screen, the Appellant required an Onsite LOC Evaluation (Hearing Summary).

8. On [redacted] 2016, Ascend conducted a Medical Onsite Review (Hearing Summary).

9. On [redacted] 2016, Ascend determined that the nursing facility placement was not medically necessary for the Appellant as it was not clinically appropriate in terms of level of services provided and was not considered effective for his condition. His chronic medical conditions were stabilized and there was no record that rehabilitative services were ordered. The Appellant did not require the intensive and continuous nursing services as are delivered at the level of the nursing facility. His needs could be met through a combination of medical, psychiatric and social services delivered in a less restrictive setting (Exhibit 8: Level of Care Report).

10. The ADL Measures include bathing, dressing, eating, toileting, continence, transferring and mobility (Exhibit 4: Connecticut ADL Measures and Measurements).

11. The Appellant is independent in all of the ADL's (Appellant's Testimony, Hearing Summary).

12. As of [redacted] 2016, the Appellant's medical diagnoses/history included: subdural hematoma, subarachnoid hemorrhage, facial lacerations, (L) posterior rib FX, grade II splenic laceration, traumatic brain injury, dysphasia, chest pain, diabetes melilitus, asthma. (Appellant's Exhibit A: Physician's Order Sheet, Exhibit 6: Level of Care Determination).

13. As of [redacted] 2016, the Appellant's daily medications included: Symbicort, Ipratopium-Albuterol. The Appellant's PRN medications included Milk of Magnesia, Bisac-Evac, enema, Acetamenophen, Proair HFA, and Acephen (Appellant's Exhibit A: Physician's Order Sheet).

14. Chelsea Place Care Center provided set ups all of the Appellant's medications (Hearing Summary).

15. The Appellant was not receiving occupational or physical therapy services (Appellant's Testimony).

16. The Appellant was discharged from speech therapy on [redacted] 2016. (Exhibit C: Speech Therapy Treatment Notes)

17. The Appellant's chronic medical conditions are stabilized (Exhibit 8: Level of Care Report).

18. The Appellant has been diagnosed with anxiety disorder and major depression. (Exhibit 6: Level of Care Determination, Appellant's testimony)

19. On [redacted] 2016, Ascend issued a Notice of Action to the Appellant stating 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. (Exhibit 5: NOA, [redacted]/16)

20. On [redacted] 2016, the Appellant was discharged to his own apartment. The Appellant is currently residing alone and is receiving weekly outpatient support services through Community Health Services and twice weekly physical therapy through Mount Sinai. (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 Statures 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 used clinical criteria and guidelines solely as screening tools.

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

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

9. Ascend correctly determined that the Appellant does not have uncontrolled and/or unstable medical conditions requiring continuous skilled nursing services and /or nursing supervision.

10. Ascend correctly determined it is not clinically appropriate that the Appellant reside in a nursing facility.

11. Ascend correctly determined that nursing facility services are not medically necessary for the Appellant, because his medical needs could be met with services offered in the community.

12. Ascend correctly determined that it is not medically necessary for the Appellant to reside in a skilled nursing facility and on [redacted] 2016, correctly denied his request for continued approval of long-term care Medicaid.

DISCUSSION

The Appellant does not meet the medical criteria for nursing facility LOC because he does not have a chronic/unstable medical condition requiring skilled nursing care and is not in need of substantial assistance with his personal care needs on a daily basis. Ascend was correct to deny nursing facility level of care.

DECISION

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

Marci Ostroski
Hearing Officer

Pc: Kathy Bruni, Manager, Alternate Care Unit, DSS, Central Office
Charlaine Ogren, Alternate Care Unit, DSS, Central Office
Amy Dumont, Alternate Care Unit, DSS, Central Office
Brenda Providence, Alternate Care Unit, DSS, Central Office
Charles Bryan, Alternate Care Unit, DSS, Central Office
Emily Cook, Ascend Management Innovations
Angela Gagan, Ascend Management Innovations
Joi Shaw, Ascend Management Innovations
Connie Tanner, Ascend Management Innovations
Jaimie Johnson, 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.