



The following individuals were present at the hearing:

██████████, Appellant

Charles Bryan, RN, Community Nurse Coordinator, DSS

Benille St. Jean, Community Nurse Coordinator, DSS, (observer)

██████████, Social Worker, ██████████

Jaimie Johnson, RN, Ascend Management Innovations Representative (via telephone)

Shelley Starr, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether Ascend's decision that the Appellant does not meet the skilled nursing level of care criteria was correct.

### **FINDINGS OF FACT**

1. On ██████████, 2018, the Appellant was admitted to ██████████ (the "Nursing Facility") from ██████████ (the "hospital") for an anticipated short term stay. (Hearing Summary; Exhibit 6: Connecticut Level of Care Determination Form).
2. The Appellant's medical diagnosis at time of admission were: acute hypoxic respiratory failure due to flash pulmonary edema, hypertensive emergency with flash pulmonary edema due to cocaine use, acute chronic heart failure with reduced ejection fraction of 25 – 35%, chronic kidney disease stage III with discharge creatine 1.7, and history of polysubstance abuse including cocaine and opiates. (Hearing Summary; Exhibit 6: Connecticut LTC Level of Care Determination Form)
3. The Appellant is █ years old (██████████) and a Medicaid recipient. (Appellant's Testimony; Exhibit 6: Connecticut LTC Level of Care Determination Form)
4. Prior to the Appellant's admission to ██████████, █ has been homeless without a permanent residence for the past several years. (Appellant's Testimony)

██████████ The Appellant does not have a primary care physician (PCP) and utilizes the services of the nursing facility physician ██████████. (Appellant's Testimony; Exhibit 5, Exhibit 11: ██████████)

6. On [REDACTED], 2018, [REDACTED] submitted a Level of Care screening for the Appellant to Ascend describing the Appellant's current Activities of Daily Living (ADL) support needs as requiring supervision with bathing, dressing, toileting, mobility, and transfers. For IADL, the Appellant was capable of preparing meals with minimal assistance. Ascend determined that the Appellant met the criteria for short-term nursing facility stay of 60 days. This approval expired on [REDACTED], 2018. (Hearing Summary)
7. The ADL Measures include bathing, dressing, eating, toileting, continence, transferring and mobility. (Exhibit 4: ADL Measure and Measurements)
8. On [REDACTED] 2018, [REDACTED] submitted a Level of Care screening to Ascend which described the Appellant's current activities of daily living as independent with the Appellant requiring supervision with bathing. For IADL's the Appellant was capable of preparing meals with minimal assistance. (Hearing Summary)
9. On [REDACTED] 2018, an on-site medical Level of Care review was conducted. It was determined that the Appellant was independent with [REDACTED] ADL's and that his needs could be met in the community with appropriate supports. (Hearing Summary)
10. On [REDACTED], 2018, Ascend's Medical Director, [REDACTED] M.D., determined that the Appellant did not meet the nursing facility level of care because his medical conditions have stabilized and [REDACTED] is independent with his ADL's. Ascend determined that [REDACTED] needs could be met through a combination of medical, psychiatric and social services delivered, in a less restrictive setting and that it was not medically necessary for him to receive nursing facility level of care. (Hearing Record; Exhibit 6: Level of Care Report dated [REDACTED] 2018)
11. Ascend determined that the Appellant is independent of all ADLs: dressing, eating, toileting, continence, transferring and mobility. The Appellant requires assistance with bathing activity. (Hearing Summary; Exhibit 5: [REDACTED], 2018 Notice of Action; Exhibit 6: Level of Care Report dated [REDACTED] 2018.)
12. The Appellant does not require the use of any mobility devices or equipment. (Appellant's Testimony; Exhibit 6: Level of Care Report )
13. The Appellant is capable of preparing meals with minimal assistance. (Appellant's Testimony; Exhibit 6: Level of Care Report)
14. The Appellant is fully oriented to self, place, time and situation, and does not need prompting or cueing. (Appellant's Testimony; Exhibit 6: Level of Care Report)

15. The Appellant solves problems and makes decisions with minimal assistance. (Exhibit 6: Level of Care Report)
16. The Appellant communicates information intelligibly and understands information conveyed without assistance. (Exhibit 6: Level of Care Report)
17. The Appellant has no problems with his vision. (Exhibit 6 Level of Care Report)
18. The Appellant has no problems related to his behaviors due to corroborated dementia. (Exhibit 6: Level of Care Report)
19. The Appellant does not require the continuous and intensive nursing services that are delivered at the level of the Nursing Facility. (Hearing Record)
20. On [REDACTED], 2018, Ascend issued a Notice of Action to the Appellant stating that he does not meet the medical criteria for nursing facility Level of Care and that nursing facility Level of Care is not medically necessary. (Exhibit 5: Notice of Action dated [REDACTED] 2018).

### **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).

4. 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.

5. Ascend correctly determined that the Appellant is independent with ■ ADLs and his needs could be met through a combination of social and professional services outside of the nursing facility setting.
6. Ascend correctly determined that the Appellant does not have a chronic medical condition requiring nursing facility level of care.
7. Ascend correctly determined that it is not clinically appropriate that the Appellant reside in a nursing facility.
8. Ascend correctly determined that nursing facility services are not medically necessary for the Appellant and correctly issued the Appellant a Notice of Action denying nursing facility level of care.

### **DECISION**

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

  
Shelley Starr  
Hearing Officer

cc: Charles Bryan RN, Community Options Unit, DSS Central Office  
Angela Gagen, Ascend  
Joi Shaw, Ascend  
Connie Tanner, Ascend  
Jaime Johnson, Ascend  
Facility Administrator, ■

### **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.