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

[redacted] **2019**
SIGNATURE CONFIRMATION

Request # 142163
Client ID # [redacted]

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted], 2019, Ascend Management Innovations LLC/Maximus, ("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") granting a 60 day short term nursing home level of care ("LOC") commencing on [redacted] 2019, and ending on [redacted], 2019.

On [redacted], 2019, the Appellant requested an administrative hearing to contest Ascend's decision to discontinue nursing home LOC effective [redacted], 2019.

On [redacted] 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for [redacted] 2019.

On [redacted], 2019, 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
[redacted]

[redacted]
Pat Jackowski, Registered Nurse, Community Nurse Coordinator, Department of Social Services
Theresa Allen, Registered Nurse, Community Nurse Coordinator, Department of Social Services
Jaimie Feril, Registered Nurse, Ascend/Maximus (participated by telephone)
Paul Took, Supervisor in Training, Observer, Ascend/Maximus
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 after [redacted], 2019, was correct.

FINDINGS OF FACT

1. On [redacted] 2019, the Appellant was admitted to [redacted] from [redacted] with diagnoses of alcoholic seizures, depression, peripheral neuropathy, status post fall, rib fracture, syncope, and resting tachycardia. (Hearing Summary, Appellant's testimony).

2. The Appellant has also been diagnosed with osteoarthritis of his right hip and avascular necrosis. These diagnoses do not impact his need for assistance with his Activities of Daily Living (ADLs"). (Appellant's testimony, Ex. B: [redacted] MRI)

3. On [redacted] 2019, the Appellant commenced physical therapy for pain management. ([redacted] Registered Nurse Testimony, [redacted] Director of Rehab testimony)

4. The ADL Measures include bathing, dressing, eating, toileting, continence, transferring and mobility (Ex. 1: Connecticut ADL Measures and Measurements).

5. On [redacted], 2019, [redacted] submitted a Nursing Facility ("NF") Level of Care ("LOC") evaluation form to Ascend. The screen described the Appellant's current Activities of Daily Living ("ADL") needs as requiring supervision with bathing and eating/feeding. (Hearing Summary, Ex. 2: CT LTC Level of Care Determination Form)

6. On [redacted], 2019, Ascend granted a 60 day short term approval for NF LOC to expire on [redacted], 2019. Ascend determined that long term nursing facility Level of Care was not medically necessary because it is not clinically appropriate in terms of

level of services provided and is not effective for his condition. (Hearing Summary, Ex. 2: CT LTC Level of Care Determination Form)

7. On [redacted] 2019, Ascend issued a Notice of Action granting the 60 day time limited level of care until [redacted], 2019. The Notice further stated that the nursing facility would be responsible for requesting further authorization if it believed the Appellant needed to stay in the facility additional days. (Ex. 4: Notice of Action, [redacted]/19)

8. On [redacted] 2019, the Appellant was discharged from physical therapy as he had met his physical therapy goals and his pain management had been addressed. ([redacted] Registered Nurse Testimony, [redacted] Director of Rehab testimony)

9. On [redacted] 2019, Ascend spoke with a representative from [redacted] who reported that the Appellant was independent in his ADLs and that the APRN would not submit a request for additional Level of Care approval beyond [redacted], 2019. (Hearing Summary, [redacted] [redacted] [redacted] Supervising Social Worker testimony)

10. The Appellant experiences pain when walking for long periods of time and uses adaptive equipment such as a cane and hand rails. He needs assistance with shopping and meal preparation and household chores such as changing bedding. (Appellant's testimony)

11. The Appellant is independent in all of the ADL's. He does not require hands on assistance with bathing, dressing, eating, toileting, continence, transferring or mobility (Ex. 2: CT LTC Level of Care Determination Form, Appellant's Testimony, [redacted] Director of Rehab testimony, [redacted] Supervising Social Worker testimony)

12. [redacted] provides set ups for all of the Appellant's medications and meals per facility policy. (Ex. 2: CT LTC Level of Care Determination Form, Appellant's testimony, Director of Social Services testimony)

13. [redacted] policy requires that the Appellant is supervised during bathing but he does not receive hands on assistance. ([redacted] Director of Rehab testimony)

14. The Appellant is not currently receiving speech, occupational, or physical, therapy services or other MD ordered services. (Appellant's testimony, [redacted] [redacted] [redacted] Supervising Social Worker Testimony).

15. The Appellant's needs could be met through a combination of medical, psychiatric, and social services delivered in a less restrictive setting. ([redacted] Director of Rehab testimony).

16. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [redacted] 2019. This decision, therefore, was due no later than [redacted], 2019. (Hearing Record)

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 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.

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 uncontrolled and/or unstable medical conditions requiring continuous skilled nursing services and /or nursing supervision.

9. Ascend correctly determined it is not clinically appropriate in terms of level of services and considered effective for the individual's illness, injury or disease; that the Appellant reside in a nursing facility long term.

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

11. Ascend correctly evaluated the Appellant's needs at the time of the submission of information in [redacted]2019, and granted a short term approval for Level of Care.

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DISCUSSION

Ascend's action to approve short term nursing home level of care is upheld. The evidence and testimony clearly reflect that although the Appellant does have medical issues and physical challenges, he does not require hands on assistance with his ADLs and therefore does not have justification for continued long term care approval.

The Appellant argued that Ascend did not have all of his diagnoses documented and that they could therefore not make an accurate determination of his level of care. While some of his diagnoses were not considered for the evaluation, Ascend made its determination based on the Appellant's ADL support needs. The Appellant testified that his other diagnoses did not impact his ADL needs; therefore, the omission of some diagnoses did not impact the determination.

DECISION

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

Marci Ostroski
Hearing Officer

Pc: Pat Jackowski, Community Options Unit, Department of Social Services
Shirlee Stoute, Community Options Unit, Department of Social Services
Paul Chase, Community Options Unit, Department of Social Services
Laurie Filippini, Community Options Unit, Department of Social Services
Pam Adams, Community Options Unit, Department of Social Services
Angela Gagen, Ascend Management Innovations/Maximus
Joi Shaw, Ascend Management Innovations/Maximus
Connie Tanner, Ascend Management Innovations/Maximus
Jaimie Feril, Ascend Management Innovations/Maximus

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.