

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3730

██████████ 2019
Signature Confirmation

Case ID # ██████████
Client ID # ██████████
Request # 143951

NOTICE OF DECISION
PARTY

██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2019, Ascend Management Innovations LLC/Maximus, (“Ascend”), the Department of Social Services contractor that administers approval of nursing home care, sent ██████████ (the “Appellant”) a notice of action denying nursing facility (“NF”) level of care (“LOC”) after ██████████ 2019.

On ██████████ 2019, the Appellant requested an administrative hearing to contest Ascend’s decision to deny nursing home LOC after ██████████ 2019.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2019.

On ██████████ 2019, in accordance with sections 17b-60, 17-61, and 4-176e to 4-184 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

██████████ Appellant
██████████ Appellant’s Sister, and Advocate
██████████ Licensed Master Social Worker, ██████████
Allison Weingart, Community Options, DSS
Jaimie Feril, Ascend/Maximus (participated by telephone)
Christopher Turner, 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], a skilled nursing facility, with a 30-day hospital exemption. He had diagnoses of acute kidney failure, extrarenal uremia, dependence on renal dialysis, end-stage renal disease, gout, acute embolism and thrombosis of other specified deep vein of left lower extremity, hypertension, Schizoaffective Disorder, anemia, atherosclerotic heart disease of native coronary artery, Bipolar disorder, difficulty walking, generalized weakness, GERD, hyperlipidemia, and atrial fibrillation. The Appellant's medication needs at the time of admission included Depakote and Zyprexa both for schizoaffective disorder. (Exhibit 3: Hearing summary dated [REDACTED] 19; (Exhibit 7: Preadmission Screening and Resident Review ("PASSR"))
2. On [REDACTED] 2019, [REDACTED] submitted an NF LOC referral. The NF LOC screen described the individual's current Activities of Daily Living (ADL) support needs as follows: The Appellant required supervision with bathing, dressing, toileting, mobility, and transfers. For Instrumental Activities of Daily Living (IADL), the Appellant required continual supervision or physical assistance with multiple components of meal preparation. (Exhibit 6: LOC Determination form)
3. On [REDACTED] 2019, an ASCEND representative reviewed the completed LOC Determination form and referred the Appellant's case for a Level II review. (Exhibit 6)
4. On [REDACTED] 2019, an onsite Level II assessment of the Appellant and his medical condition was completed by ASCEND. The Appellant was found to be independent with all of his ADL's and that his needs could be met with community supports. The Level II assessment was 15 minutes in length. Page three of the PASRR indicates the Appellant faces safety issues and lacks natural supports while residing in the community. Page four box 13 of the PASRR shows the Appellant not needing any services or supports in order to be safe and healthy in the community. (Exhibit 7)
5. On [REDACTED] 2019, ASCEND reviewed the Appellant's face-to-face onsite assessment and all available evidence on the Appellant's medical condition. (Hearing summary)
6. On [REDACTED] 2019, Ascend issued a notice of action to the Appellant indicating he does not meet the medical criteria for nursing facility LOC. Consequently, he would not be eligible for nursing facility services funded by Medicaid after [REDACTED] 2019 without authorization from Ascend. (Exhibit 5: Notice of action)

7. On [REDACTED] 2019, the Department received the Appellant's administrative hearing request. (Record)
8. The Appellant is [REDACTED] years old (DOB [REDACTED]) and a Medicaid recipient. (Exhibit 6; Appellant's testimony)
9. The Appellant does not have a court-appointed legal guardian/conservator. (Testimony)
10. The Appellant lived on the third floor of a rooming house in [REDACTED] before his admission to the nursing home. The Appellant shared kitchen and bathroom facilities with the other residents. The Appellant had a visiting nurse come to his room five days a week. (Appellant's testimony)
11. The Appellant's primary care doctor, [REDACTED], indicated discharging the Appellant back to the community would be detrimental to his well-being. The Appellant has been diagnosed a paranoid schizophrenic, delusional with active symptoms. The doctor found the Appellant unable to manage ADL's such as personal hygiene, a renal diet, and medication administration. The Appellant requires hemodialysis treatments three times weekly and would require transportation to and from his treatments. The doctor believes a non-supervisory environment will pose a life-threatening situation for the Appellant. (Doctors letter dated [REDACTED] 19).
12. The testimony of the Appellant's sister concerning the Appellant's declining physical condition and mental health issues that make it difficult for her brother to be healthy in the community is credible. (Testimony)
13. As of the date of the hearing, a new referral to Ascend has not been submitted. (Social Worker's testimony)
14. A mental health waiver application has been submitted on behalf of the Appellant to the Department of Mental Health and Addiction Services. There is currently a waitlist for the mental health waiver program. (Appellant's Exhibit A)
15. The issuance of this decision is timely under Connecticut General Statutes 19a-535(h)(1) which requires that a decision be issued no later than thirty days after the termination of the hearing or not later than sixty days after the date of the hearing request, whichever occurs sooner. Thirty days from [REDACTED] 2019 is [REDACTED] 2019 and sixty days from [REDACTED] 2019 is [REDACTED] 2019. Therefore, this hearing decision is due no later than [REDACTED] 2019.

CONCLUSIONS OF LAW

1. Connecticut General Statutes (“Conn. Gen. Stat.”) § 17b-2 provides the Department of Social Services is designated as the state agency for the administration of (6) the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Regulations of Connecticut State Agencies (“Regs., Conn. State Agencies”) § 17b-262-707 (a) provides 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*.
3. United States Code (“U.S.C.”) 42 § 1396r(e)(7)(A) (i) provides in relevant part that effective January 1, 1989, the State must have in effect a preadmission screening program, for making determinations (using any criteria developed under subsection (f)(8)) described in subsection (b)(3)(F) for mentally ill and mentally retarded individuals (as defined in subparagraph (G)) who are admitted to nursing facilities on or after January 1, 1989.

42 U.S.C. § 1396r(e)(7)(B)(ii) provides for mentally ill residents as of April 1, 1990. In the case of each resident of a nursing facility who is mentally ill, the State mental health authority must review and determine (using any criteria developed under subsection (f)(8) and based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority) – (I) whether or not the resident, because of the resident’s physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an inpatient psychiatric hospital for individuals under age 21 (as described in section 1396d(h) of this title) or of an institution for mental diseases

providing medical assistance to individuals 65 years of age or older; and (II) whether or not the resident requires specialized services for mental illness.

42 U.S.C. § 1396r(e)(7)(B)(iii) provides a review is required upon a change in a resident's condition. A review and determination under clause (i) or (ii) must be conducted promptly after a nursing facility has notified the State mental health authority or State mental retardation or developmental disability authority, as applicable, under subsection (b)(3)(E) with respect to a mentally ill or mentally retarded resident, that there has been a significant change in the resident's physical or mental condition

42 U.S.C. § 1396r(e)(7)(G)(i) defines an individual is considered to be "mentally ill" if the individual has a serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health) and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder) or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness.

ASCEND's PASRR review of the Appellant's mental health condition was not comprehensive in that it was accomplished in 15 minutes. In addition, page three of the PASRR review indicates the Appellant faces safety issues and lacks natural supports while residing in the community. However, page four box 13 of the PASRR shows the Appellant not needing any services or supports in order to be safe and healthy in the community.

4. Regs., Conn. State Agencies § 19-13-D8t(d)(1)(A) provides 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;
 - (ii) That a patient admitted to a rest home with nursing supervision has controlled and/or stable conditions that require minimal skilled nursing services, nursing supervision or assistance with personal care on a daily basis.
5. Conn. Gen. Stat. § 17b-259b provides (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.

The evidence and testimony presented from the Appellant's sister, his primary care doctor, the facility and ASCEND concerning the Appellant's ability to safely and successfully return to the community conflicts. As a result, a decision to evaluate whether the Appellant meets the level of care criteria to remain at the facility is not feasible.

DISCUSSION

The PASSR completed by ASCEND was 15-minutes in length. Given the complexities of the Appellant's medical condition and mental health illness, the PASRR review falls short of a sufficient amount of time to determine if the Appellant meets the criteria for approval of continuous nursing home care. It is more likely than not, based on the Appellant's deteriorating medical condition, both mental and physical, he has an uncontrolled and/or unstable conditions requiring continuous skilled nursing services and/or nursing supervision requiring substantial assistance with personal care on a daily basis. Although it is likely the Appellant's medical needs could be met with services provided in a community setting at a later date, the Appellant's mental health issue prevents this scenario from taking place at this time.

DECISION

The Appellant's appeal is remanded back to ASCEND for further action.

ORDER

ASCEND is ordered to reevaluate the Appellant's mental health condition and complete a thorough evaluation of the Appellant's changing medical and mental health needs in keeping with regulation. Compliance with this order is due within 14 days from the date of the decision and will consist of a copy of the PASRR.



Christopher Turner
Hearing Officer

Cc: 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
Allison Weingart, 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
[REDACTED] Appellant's Sister, and Advocate

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, law, and 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 the 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 if 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.