

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

██████████ 2020
SIGNATURE CONFIRMATION

Request # 152445
Client ID # ██████████
Case ID # ██████████

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2020, Ascend Management Innovations LLC/Maximus, (“Ascend”), the Department of Social Service’s (the “Department”) contractor that administers approval of nursing home care, sent ██████████ (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 ██████████, 2020, the Appellant requested an administrative hearing to contest Ascend’s decision to discontinue nursing home LOC.

On ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling an administrative hearing for ██████████ 2020.

On ██████████, 2020, 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 by telephone. The following individuals participated in the hearing:

██████████, Appellant
██████████ Appellant’s witness

Jamie Nelson, MDS Coordinator, [REDACTED]
 Donna Stango, Administrator, [REDACTED]
 Sylvia Faucher, Director of Rehab, [REDACTED]
 Charlaine Ogren, Licensed Clinical Social Worker, Department of Social Services
 Paul Cook, Registered Nurse, 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, was correct.

FINDINGS OF FACT

1. On [REDACTED] 2019, the Appellant was admitted to [REDACTED] (the "facility") formerly known as [REDACTED] with diagnoses of cutaneous abscess of back, pain in right knee, cellulitis of trunk, acute pharyngitis, type II diabetes mellitus, hyperlipidemia, disorder of lipoprotein metabolism, and hypertension.. (Hearing Summary, Appellant's testimony).
2. On [REDACTED] 2019, the facility 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 hands on assistance with bathing. (Hearing Summary)
3. The ADL Measures include bathing, dressing, eating, toileting, continence, transferring and mobility (Ex. 4: Connecticut ADL Measures and Measurements).
4. Ascend granted a 90 day short term approval for NF LOC to expire on [REDACTED] 2019. (Hearing Summary)
5. On [REDACTED] 2019, the facility submitted another NF LOC evaluation form to Ascend. The screen described the Appellant's ADL needs as hands on assistance with bathing and for Instrumental Activities of Daily Living ("IADLs") he required continual supervision or physical assistance with meal preparation. (Hearing Summary)
6. Ascend granted a 90 day short term approval for NF LOC to expire [REDACTED], 2019. (Hearing Summary)
7. On [REDACTED], 2019, the facility submitted another NF LOC evaluation form to Ascend. The screen described the Appellant's ADL needs as supervision with bathing and for IADLs he was able to prepare meals with minimal assistance. (Hearing Summary)

8. Ascend granted a 60 day short term approval for NF LOC to expire [REDACTED] 2019. (Hearing Summary)
9. On [REDACTED] 2019, the facility submitted another NF LOC evaluation form to Ascend. The screen described the Appellant's ADL needs as supervision with bathing and for IADLs he was able to prepare meals with minimal assistance. (Hearing Summary)
10. Ascend granted a 60 day short term approval for NF LOC to expire [REDACTED], 2020. (Hearing Summary)
11. On [REDACTED], 2020, the facility submitted another NF LOC evaluation form to Ascend. The screen described the Appellant's ADL needs as supervision with bathing and for IADLs he was able to prepare meals with minimal assistance. Ascend determined that the Appellant required a Medical Onsite Review. (Hearing Summary)
12. On [REDACTED] 2020, Ascend completed the Medical Onsite Review with the Appellant. The reviewer, a Registered Nurse ("RN"), met with the Appellant and facility staff and reviewed his medical record as part of the review. The review determined that the Appellant was independent in all of his ADL and IADL needs. He ambulated independently. He was continent of bowel and bladder, his wounds had healed, and he was independent with medication management. The reviewer determined that he did not need skilled nursing services and was an inappropriate fit for a skilled nursing facility (Ex. 7: Connecticut Medical Level of Care Evaluation)
13. Based on the Medical Onsite Review, Ascend recommended that a medical doctor review the determination. On [REDACTED] 2020, Ascend's medical doctor, Bill Regan, M.D., reviewed the NF LOC screen, Medical Onsite Review, Practitioner's Certification, Clinical Physician Orders, Minimum Data Set, and Treatment Administration Record. Dr. Regan determined that nursing facility level of care was not medically necessary; the Appellant did not require the continuous nursing services delivered at the level of the Nursing Facility. His needs could be met in a less restrictive setting. He was noted to be able to complete his ADL's without assistance. (Hearing Summary, Ex. 6: Level of Care Report)
14. On [REDACTED] 2020, Ascend issued a Notice of Action to the Appellant and the facility stating that he does not meet the medical criteria for nursing facility LOC because it is not considered effective for him and is not clinically appropriate in terms of level, and as a result, he would not be eligible for nursing facility services funded by Medicaid. (Ex. 5: NOA, [REDACTED]/20)
15. At the Appellant's most recent physical therapy evaluation, he was able to independently ambulate and transfer. He exhibited good balance and was able to

dress himself independently. (Director of Rehab, ██████████ ██████████, testimony)

16. The Appellant uses adaptive equipment such as a walker and hand rails for ambulation. (Appellant's testimony)
17. 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. 6: CT LTC Level of Care Determination Form, Appellant's Testimony, ██████████, Director of Rehab testimony)
18. The facility provides set ups for all of the Appellant's medications and supervision for bathing per facility policy, but he does not receive any hands on assistance with ADLs. (Ex. 6: CT LTC Level of Care Determination Form, Appellant's testimony, ██████████ Director of Rehab testimony)
19. The Appellant is not currently receiving speech, occupational, or physical, therapy services or other MD ordered services. (Appellant's testimony, ██████████ ██████████ Administrator testimony).
20. 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. Per Commissioner Gifford of the Department of Social Services order dated April 13, 2020; this time frame has been extended to 120 days, pursuant to Governor Lamont's Executive Order 7M issued ██████████ 2020. The Appellant requested an administrative hearing on ██████████ 2020. This decision, therefore, was due no later than ██████████ 2020 and is therefore timely. (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 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 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 determined that it is not medically necessary for the Appellant to reside in a skilled nursing facility and on [REDACTED] 2020, correctly denied his request for continued approval of long-term care Medicaid.

DECISION

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

Marci Ostroski
Marci Ostroski
Hearing Officer

Pc: Charlaine Ogren, Community Options Unit, Department of Social Services
Hearings.commops@ct.gov
Angela Gagen, Ascend Management Innovations/Maximus
Paul Cook, 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.