

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

██████████ 2021  
Signature Confirmation

Client ID # ██████████  
Request # 164537

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2020, Ascend Management Innovations LLC, (“Ascend”), the contractor that administers approval of nursing home care for the Department of Social Services (the “Department”), sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) denying nursing facility (“NF”) level of care (“LOC”) because he did not meet the medical criteria, as defined in section 17b-259b of the Connecticut General Statutes.

On ██████████ 2020, the Appellant requested an administrative hearing to appeal Ascend’s decision to deny NF LOC.

On ██████████ ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2020. The hearing was scheduled to be held telephonically, due to the COVID-19 pandemic.

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. The Appellant did not object to a telephonic hearing. The following individuals were present at the hearing:

██████████ the Appellant  
Paul Cook, MSN, RN, representing Ascend  
Charlaine Ogren, LCSW, representing the Department

Judith Hoheb, Business Office Manager for [REDACTED]  
Nadine Atkinson-Roberts, Minimum Data Set Coordinator for [REDACTED]  
James Hinckley, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue is whether the Department's contractor, Ascend, correctly determined that institutionally based nursing care as provided at the NF LOC was not medically necessary for the Appellant.

### **FINDINGS OF FACT**

1. The Appellant is age [REDACTED] (DOB [REDACTED]) and is a recipient of Medicaid. (Hearing record)
2. More than one year ago, the Appellant was found unconscious on the floor. He was later determined to have suffered two brain bleeds, one on each side of his frontal lobe. (Appellant's testimony)
3. On [REDACTED] 2020, the Appellant was admitted to [REDACTED], a skilled nursing facility, with diagnoses of acute respiratory failure with hypoxia, alcohol dependence, hyperkalemia, emphysema, hypoglycemia, abnormalities of gait and mobility, generalized weakness, dysthymic disorder, epileptic seizure related to extremities, hypertension, conduction disorder and metabolic encephalopathy. (Hearing Record)
4. On [REDACTED] 2020, the facility submitted a Nursing Facility Level of Care (NFLOC) screening form to Ascend. The NFLOC screen described the Appellant's Activities of Daily Living ("ADL") support needs as independent with all ADLs including bathing, dressing, eating, toileting, continence, transferring and mobility. (Hearing Record)
5. After initial evaluation of the NFLOC screen, Ascend determined the Appellant met criteria for PASRR MI (Preadmission Screening and Resident Review – Mental Illness) inclusion with the primary diagnosis of bipolar disorder. His case was referred to an Ascend M.D. for a final decision on the NF LOC request. (Ex. 5: Connecticut LTC Level of Care Determination Form and Ascend outcomes)
6. On [REDACTED] [REDACTED] 2020, after review of the NFLOC screen, Practitioner Certification, ADL Report, Minimum Data Set, Physician Progress Notes, Physician's Orders List and Psychiatric APRN Notes, Ascend's physician concluded that NF LOC was not necessary for the Appellant. (Ex. 5)
7. The Ascend physician's rationale for the decision included that the Appellant "does not require the continuous nursing services delivered at the level of the

NF. His needs could be met in a less restrictive setting. His needs could be met through a combination of medical, psychiatric and social services delivered outside of the NF setting. He would need intermittent assistance through home health, visiting nurse or some other venue to monitor his condition. He is noted to be able to complete ADL's without assistance." \*Ex. 5)

8. On [REDACTED] 2020, Ascend issued an NOA to the Appellant denying NF LOC. The reason for the denial was that after a comprehensive assessment of the Appellant and his medical condition, NF LOC was not medically necessary because it was not considered effective for him and was not clinically appropriate in terms of level. (Ex. 4: NOA)
9. The Appellant has noticed cognitive changes since he suffered a brain injury over a year ago, and believes the changes are progressing. He has intermittent problems with memory and with anger control. (Appellant's testimony)
10. Section C of the Minimum Data Set, *Cognitive Patterns*, noted that the Appellant was able to repeat three words, was able to correctly name the year, month and day of the week, and was able to later recall the three words from the earlier question without cueing. The Appellant also exhibited no acute change in mental status such as inattention, disorganized thinking or altered level of consciousness. (Ex. 9: Minimum Data Set)
11. Notes from the psychiatric APRN indicated that the Appellant self-reported as "doing well" on his medications with no difference in mood. He denied having anxiety and was able to sleep. The notes also indicated he was oriented x4, had intact short-term and long-term memory, good attention/concentration and no changes in condition since last visit. The Appellant's mood/affect was described as "pleasant" and he exhibited no abnormal thoughts of homicidality/suicidality. (Ex. 10: Psychiatric Notes)

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes (Conn. Gen. Stat.) authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Section 17b-262-707(a) of the Regulations of Connecticut State Agencies (Regs., Conn. State Agencies) provides as follows:

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. Ascend conducted the proper PASRR and PASRR MI Level 2 screens for the Appellant.**

4. "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 substantial assistance with personal care, on a daily basis; ..." Regs., Conn State Agencies § 19-13-D8t(d)(1)(A)

5. Conn. Gen. Stat. § 17b-259b(a) provides as follows:

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.

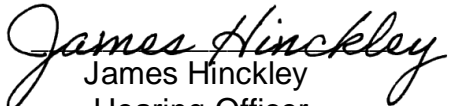
6. **The Appellant did not have uncontrolled and/or unstable medical conditions requiring substantial assistance with personal care on a daily basis.**
7. **NF LOC was not medically necessary for the Appellant because it was not considered effective for his condition. It was not clinically appropriate in terms of type and extent. The Appellant's needs could have been met in a less restrictive setting through a combination of medical, psychiatric and social services delivered outside of a facility setting.**
8. **The Department, through its agent, Ascend, was correct when it denied approval of NF LOC for the Appellant, because NF LOC was not medically necessary for him.**

### **DISCUSSION**

The Appellant's medical condition did not require NH LOC. The cognitive changes he reported were not disbelieved or dismissed, but there is no evidence that they have manifested as functional impairments. He was able to perform all ADLs independently. Therefore, he did not require the intensive level of health services provided in a facility setting, and could have received the services he needed in a less restrictive setting.

### **DECISION**

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

  
James Hinckley  
Hearing Officer

cc: [hearings.commops@ct.gov](mailto:hearings.commops@ct.gov)  
[AscendCTadminhearings@maximus.com](mailto:AscendCTadminhearings@maximus.com)

### **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 Legal Counsel, Regulations, and Administrative Hearings, 55 Farmington Avenue, Hartford, CT 06105.

### **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, 165 Capitol Avenue, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105. 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 his 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.