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

[redacted] **2021**
Signature Confirmation

Case ID # [redacted]
Client ID # [redacted]
Request # 175085

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2021, Ascend Management Innovations LLC, ("Ascend"), the Department of Social Services (the "Department") contractor that administers approval of nursing home care, sent [redacted] (the "Appellant") a Notice of Action ("NOA") denying nursing home level of care stating that she does not meet the nursing facility level of care criteria.

On [redacted], 2021, the Appellant requested an administrative hearing to contest Ascend's decision to deny nursing home level of care.

On [redacted] 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2021. The hearing was scheduled to be held telephonically due to the COVID-19 pandemic.

On [redacted], 2021, 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 for the hearing:

[redacted], Appellant
[redacted]
Brenda Providence, RN, Department's Representative
Jean Denton, Ascend Management Innovations

Swati Sehgal, Hearing Officer

STATEMENT OF THE ISSUE

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

FINDINGS OF FACT

1. The Appellant is a Medicaid recipient. (Hearing record)

2. The Appellant's date of birth is [redacted]. (Exhibit 3: Level of Care Determination Form dated [redacted] 2021)

3. On [redacted], 2019, the Appellant was admitted to [redacted] ("the facility") from [redacted] Hospital. The Appellant had diagnosis of Dissociative and Conversion Disorder. (Hearing Summary)

4. The Appellant's Activities of Daily Living ("ADL") support needs were, supervision with toileting, bathing and dressing. The Appellant required assistance with Instrumental Activities of Daily Living ("IADL"), specifically setup and physical assistance with medications and meal preparation. (Hearing Summary)

5. On [redacted] 2020, the facility submitted the Nursing Facility Level of Care ("NFLOC") screening form to Ascend. The Appellant received a short-term 180-day approval based on the assessment. The Approval expired on [redacted] 2020. (Hearing Summary)

6. On [redacted] 2021, the facility submitted the NFLOC form to Ascend. The Appellant's ADL support needs were supervision with eating, bathing, dressing, eating/feeding, toileting, mobility, transfer, and continence. For IADL the Appellant required set up assistance with medication and minimal assistance with meal preparation. The Appellant received a short-term 90-day approval. This approval expired on [redacted], 2021. (Hearing Summary)

7. On [redacted] 2021, the facility submitted another NFLOC screening form to the Ascend. The screen described the Appellant as independent with her ADL. For her IADLs she required minimal assistance with meal preparation and required verbal assistance with medications. Based on this information the Appellant required a Medical doctor Review. (Hearing Summary)

8. On [redacted] 2021, Ascend's medical doctor reviewed all available information and determined the Appellant as independent in all her ADLs. The medical

doctor determined the Appellant does not meet medical necessity criteria. The Appellant does not require the continuous nursing services delivered at the level of the facility. The Appellant will be able to get her needs met through a combination of medical, psychiatric, and social services delivered outside of the facility setting. She would need intermittent assistance through home health, visiting nurse of some other venue to monitor her condition. (Hearing Summary and Exhibit 3)

9. The Appellant is independent with her ADLs including dressing, eating, toileting, continence, transferring and mobility. (Appellant testimony, Hearing Summary, Exhibit 3)

10. On [redacted] 2021, Ascend issued a Notice of Action, Denial of Nursing facility Level of Care. (Exhibit 2: NOA, [redacted] 2021)

11. The Appellant is independent with all her ADL's. The Appellant is currently receiving medication administration at the facility. (Appellant's testimony)

12. 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] 2021. Therefore, this decision is due not later than [redacted] 2021 Ascend and is therefore timely.

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. Conn. Agencies Regs. Section 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. Conn. Agencies Regs. Section 17b-262-707(b) provides that the Department shall pay a provider only when the department has authorized payment for the client's admission to that nursing facility.

4. Conn. Agencies Regs. § 19-13-D8t(d)(1)(A) provides that Patients shall be admitted to the facility only after a physician certifies the following:

(a) That a patient admitted to a chronic and convalescent nursing home has uncontrolled and/or unstable conditions requiring continuous skilled5 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 chronic conditions which require minimal skilled nursing services, nursing supervision, or assistance with personal care on a daily basis.

5. 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.

Ascend Correctly used clinical and guidelines solely as screening tools.

Ascend Correctly determined that the Appellant does not have uncontrolled and/or unstable conditions requiring nursing services.

Ascend correctly determined that the Appellant has the physical ability to complete her ADL's. She does not need substantial assistance with personal care daily including eating, toileting, bathing, eating, transferring, mobility and dressing.

Ascend Correctly determined that It is not clinically appropriate that the Appellant reside in a nursing facility.

Ascend Management Innovations correctly determined that it is not medically necessary for the Appellant to reside in a skilled nursing facility, because her 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.

DECISION

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

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Swati Sehgal
Hearing Officer

Pc: hearings.commops@ct.gov
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 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, 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 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.