

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

██████████ 2022
Signature Confirmation

Client ID # ██████████
Request # 182292

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2021, 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 ██████████ 2021, the Appellant requested an administrative hearing to appeal Ascend’s decision to deny NF LOC.

On ██████████ ██████████ 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2021. At the Appellant’s request, the hearing was scheduled to be held telephonically, due to the COVID-19 pandemic.

On ██████████ 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 at the hearing:

██████████ Appellant
Jean Denton, Ascend’s representative
Alison Weingart, Community Nurse Coordinator for the Department

James Hinckley, Hearing Officer

The hearing record was held open for time to accept additional evidence from the Appellant. On [REDACTED] 2021, the hearing record closed.

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 28 (DOB [REDACTED]/1993) and is a recipient of Medicaid. (Hearing record)
2. The Appellant has a history of epilepsy and seizure activity since 2007/2008. (Appellant's testimony, Ex. 10: Form W-300A)
3. On [REDACTED], 2020, the Appellant was riding a motor scooter and was injured in a hit and run collision involving a stolen moving truck. (Appellant's testimony)
4. The Appellant suffered a severe right knee injury in the accident. His injuries included a traumatic open fracture of his right patella and a fracture of his right tibial plateau. He has a chronic sprain of his MCL (medial collateral ligament) and severe patellar tendinosis (chronic tendonitis). The Appellant ambulates with the assistance of a cane. (Hearing Record)
5. The Appellant suffered a traumatic brain injury ("TBI") in the accident. His injuries included bilateral subarachnoid hemorrhages. He has ongoing cognitive deficits that include forgetfulness and slowed processing. He reported at a medical visit, "There is still a lot of stuff I forget, and don't remember I forget." (Hearing Record)
6. On [REDACTED] 2020, the Appellant was admitted to [REDACTED] ("[REDACTED]"). (Hearing Record)
7. On [REDACTED] 2020, [REDACTED] 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: hands on assistance with bathing, dressing, toileting, mobility and transfer, and supervision with eating and continence. His instrumental activities of daily living ("IADL") support needs included set up assistance with medications and minimal assistance with meal preparation. (Hearing Record)

8. Based on an assessment of the Appellant's needs upon admission to the NF, Ascend granted him short-term approval for NF LOC for 90 days. The approval period expired on [REDACTED] 2021. (Hearing Record)
9. On [REDACTED] 2021, [REDACTED] submitted an NFLOC screening form to Ascend. The NFLOC screen described the Appellant's ADL support needs as: hands on assistance with bathing, dressing, eating, toileting, mobility, transfer and continence. His IADL support needs included set ups with medications and total assistance with meal preparation. (Hearing Record)
10. Based on an assessment of the Appellant's needs from his [REDACTED] 2021 NFLOC screen, Ascend granted him short-term approval for NF LOC for 90 days. The approval period expired [REDACTED] 2021. (Hearing Record)
11. On [REDACTED] 2021, [REDACTED] submitted an NFLOC screening form to Ascend. The NFLOC screen described the Appellant's ADL support needs as: hands on assistance with dressing, eating, toileting and continence, and supervision with mobility and transfer. His IADL support needs included set ups, verbal and physical assistance with medications; and continual supervision or physical assistance with meal preparation. (Hearing Record)
12. Based on an assessment of the Appellant's needs from his [REDACTED] 2021 NFLOC screen, Ascend granted him short-term approval for NF LOC for 150 days. The approval period expired [REDACTED] 2021. (Hearing Record)
13. On [REDACTED] 2021, [REDACTED] submitted an NFLOC screening form to Ascend. The NFLOC screen described the Appellant's ADL support needs as: supervision with bathing, dressing, mobility, mobility, eating, toileting, continence and transfer. His IADL support needs included set ups, verbal and physical assistance with medications; and continual supervision or physical assistance with meal preparation. (Hearing Record)
14. Based on the information from the [REDACTED] 2021 NFLOC screen, Ascend determined that a medical doctor review was required. (Hearing Record)
15. On [REDACTED] 2021, after review of the NFLOC screen, Practitioner Certification, Minimum Data Set, Provider Progress Notes, Physician Order Report and Point of Care ADL Category Report, Ascend's medical doctor concluded that the medical documentation did not support NF LOC for the Appellant. No therapy orders were in place. No skilled nursing services were being provided. The Appellant was oriented in all four (4) spheres. He did not require the continuous nursing services delivered at the level of the nursing facility because his needs could be met in a less restrictive setting. (Ex. 5: Level of Care determination form completed by William Regan, MD)

16. On [REDACTED] 2021, 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 determined to not be medically necessary for the Appellant because it was not considered effective and was not clinically appropriate in terms of level. The rationale for the decision included that the Appellant did not require the continuous nursing services delivered at the level of the NF and that his needs could be met in a less restrictive setting through a combination of medical, psychiatric and social services delivered outside of the NF setting. The Appellant was noted to be able to complete ADLs without assistance. (Ex. 4: NOA)
17. The Appellant does not require hands on assistance with any ADLs. (Appellant's testimony)
18. The Appellant sometimes requests supervision during activities such as bathing and toileting because he is concerned about the possibility of slipping and falling as a result of the instability of his knee, and because he is concerned that he might have a seizure. (Appellant's testimony)
19. The Appellant has not slipped and fallen while at [REDACTED]. (Appellant's testimony)
20. The Appellant has not had any recent seizure activity. (Appellant's testimony)
21. The Appellant has continued cognitive problems resulting from his TBI, including slow processing and trouble remembering. (Appellant's testimony)

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. "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)
4. 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.

5. The Appellant did not have uncontrolled and/or unstable medical conditions requiring substantial assistance with personal care on a daily basis.
6. 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. 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.
7. 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.

DECISION

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

James Hinckley

James Hinckley
Hearing Officer

cc: 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 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.