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

[redacted] **2022**
SIGNATURE CONFIRMATION

[redacted]
Request # 190161

NOTICE OF DECISION

PARTY

[redacted]

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2022, Ascend Management Innovations/Maximus ("Ascend"), the Department of Social Service's (the "Department") contractor that administers approval of nursing home care, sent [redacted] (the "Appellant"), a Notice of Action ("NOA") denying nursing facility level of care ("NFLOC") indicating that he does not meet the NFLOC criteria.

On [redacted] 2022, [redacted], the Appellant's Conservator (the "Conservator"), requested an administrative hearing to contest Ascend's decision to deny NFLOC.

On [redacted] 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for [redacted] 2022.

On [redacted] 2022, 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 participated in the hearing:

[redacted], Appellant
[redacted], Conservator

[redacted] Social Worker, [redacted]
[redacted], Licensed Clinical Social Worker ("LCSW"), [redacted]
Jean Denton, Ascend Representative
Erin Scafe, Community Nurse Coordinator, Department's Representative
Carla Hardy, Hearing Officer

Due to the COVID-19 Pandemic, the hearing was held as a telephonic hearing.

The hearing record remained open for the submission of additional evidence from the Appellant, which was received. The hearing record closed on [redacted] 2022.

STATEMENT OF THE ISSUE

The issue to be decided is whether Ascend's decision that the Appellant does not meet the criteria for NFLOC is correct.

FINDINGS OF FACT

1. [redacted] (the "Conservator") is the Appellant's Conservator. (Testimony)

2. The Appellant is 71 years old (DOB [redacted]/50) and a Medicaid recipient. (Exhibit 5: Level of Care Determination)

3. On [redacted] 2020, the Appellant was admitted to the [redacted] ("IOL") with a diagnosis of bipolar disorder. (Hearing Record)

4. On [redacted] 2020, the [redacted] submitted a Nursing Facility Level of Care ("NFLOC") screening form to Ascend. The screening described the Appellant as requiring the following supports with his Activities of Daily Living ("ADLs"): supervision with bathing, dressing, eating, and continence. The Appellant required assistance with the following Instrumental Activities of Daily Living ("IADLs"): physical assistance with medications and total assistance with meal preparation. Ascend approved him for a short-term, 90-day stay. The approval expired on [redacted] 2021. (Hearing Summary)

5. The ADL Measures include bathing, dressing, eating, toileting, continence, transferring and mobility. (Exhibit 3: ADL Measures and Ratings)

6. On [redacted] 2020, the Appellant was admitted to [redacted] (the "nursing facility"), a nursing facility. The facility is located at [redacted], Connecticut. (Hearing Record)

7. On [redacted] 2021, the nursing facility submitted the NFLOC screening to Ascend. The screening described the Appellant as requiring the following supports with his ADLs: supervision with bathing and eating. The Appellant required assistance with the following IADLs: verbal assistance with medications and supervision with meal preparation. The Appellant was approved for a short-term, 120-day stay. The approval expired on [redacted] 2021. (Hearing Record)

8. On [redacted] 2022, the facility submitted the NFLOC screening to Ascend. The screening described the Appellant as requiring support with one ADL, supervision with bathing. He required support with the following IADLs: medication setups and minimal assistance with meal preparation. The Appellant required a Medical Doctor Review. (Hearing Record)

9. After reviewing the Appellant's NFLOC screen, Practitioner Certification, Psychological Services Evaluation and Treatment Note, Minimum Data Set, Provider Progress Notes, Physician Orders, and Consultation Form and Report, Ascend's medical doctor concluded that nursing facility level of care is not medically necessary for the Appellant because he does not require the continuous nursing services delivered at the level of nursing facility. Ascend found that the Appellant required supervision with bathing but was independent with his other ADLs. It was determined that his needs could be met in a less restrictive setting. (Hearing Record)

10. The Appellant is not receiving physical, occupational, speech or respiratory therapies. (Conservator's Testimony)

11. The Appellant was receiving physical therapy in the previous Ascend approval. (Ascend Representative's Testimony)

12. The Appellant's physical therapy terminated in [redacted] 2021. (Social Worker's Testimony)

13. The Appellant's current medications include Metformin, Lipitor, Depakote, Atorvastatin, Divalproex Sod, Eliquis, Jardiance, Levothyroxine, Metoprolol Succ, Trazadone, and Acetaminophen. (Appellant's Exhibit A: Medication List; Social Worker's Testimony)

14. The Appellant receives Social Security retirement benefits. The monthly amount is not known at the time of the hearing. (Social Worker's Testimony)

15. The Appellant is working with the Department's Money Follows the Person program. He has found an apartment, but it needs to pass inspection. (Conservator's Testimony)

16. On [redacted] 2022, Ascend issued a notice of action ("NOA") to the Appellant indicating that he does not meet the medical criteria for NFLOC because it is not considered effective for him and is not clinically appropriate in terms of level. His needs can be met through a combination of medical, psychiatric, and social services delivered outside of the nursing facility, and as a result, he is not eligible for Medicaid coverage of nursing facility services. (Exhibit 4: NOA, [redacted]22)

17. 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 Conservator requested an administrative hearing on [redacted] 2022. Therefore, this decision is due not later than [redacted] 2022. However, the record remained open until [redacted] 2022, causing a 3-day delay. Therefore, this decision is due not later than [redacted] 2022.

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. 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:

    (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.”

4. Conn. Gen. Stats. § 17b-259b provides the definition of "Medically necessary" and "medical necessity". (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 requires supervision with bathing and is independent his other ADLs.**

7. **Ascend correctly determined that the Appellant does not have a chronic medical condition requiring substantial assistance with personal care.**

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 that it is not clinically appropriate for the Appellant to reside in a nursing facility.**

10. **Ascend correctly determined that nursing facility services are not medically necessary for the Appellant, because his medical needs could be met with services offered in the community.**

11. **On [redacted], correctly denied the Appellant's request for approval of long-term care Medicaid.**

DECISION

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

Carla Hardy
Carla Hardy
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.

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.