

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

██████████ 2022
Signature confirmation

Case: ██████████
Client: ██████████
Request: 193626

NOTICE OF DECISION

PARTY

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██████████
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PROCEDURAL BACKGROUND

On ██████████ 2022, the Department of Social Services (the “Department”) through its contractor, Maximus, issued ██████████ (the “Appellant”) a *Notice of Action* denying Medicaid approval for payment for nursing facility level of care.

On ██████████ 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received a request for an administrative hearing to appeal the level of care determination.

On ██████████ 2022, the OLCRAH scheduled an administrative hearing for ██████████ 2022.

On ██████████ 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 by teleconferencing. The following individuals participated:

██████████ Appellant
██████████ ██████████ social worker, Appellant Witness
Patricia Jackowski, RN, Department Representative
Jean Denton, RN, Maximus, Department Witness
Eva Tar, Hearing Officer

The hearing record closed ██████████ 2022.

STATEMENT OF ISSUE

The issue is whether Maximus correctly determined that the Appellant no longer medically requires care at the level provided to a resident of a skilled nursing facility.

FINDINGS OF FACT

1. The Appellant turns [REDACTED] years old in [REDACTED] 2022. (Appellant Testimony)
2. The Appellant is a Medicaid recipient. (Exhibit 5)
3. Maximus is the Department's contractor for conducting level of care screens for institutionalized Medicaid recipients. (Exhibit 5)
4. From [REDACTED] 2021 through [REDACTED] 2021, the Appellant was hospitalized at [REDACTED] and left against medical advice. (Exhibit 14)
5. On [REDACTED] 2021, [REDACTED] re-admitted the Appellant for pain in her thighs, headache, and reflux symptoms. (Exhibit 14)
6. On [REDACTED] 2021, [REDACTED] (the "Facility"), a skilled nursing facility, admitted the Appellant from [REDACTED]. (Exhibit 14)
7. Upon admission to the Facility, the Appellant had the following diagnoses and medical history: chronic kidney disease, bacteremia, COPD exacerbation, and community acquired pneumonia. (Exhibits 6 and 14)
8. On [REDACTED] 2022, Maximus granted the Appellant approval at skilled nursing level of care at the Facility through [REDACTED] 2022. (Department Witness Testimony)
9. On [REDACTED] 2022, the Facility submitted a *Practitioner Certification* attesting that the Appellant met the Connecticut Code for nursing level of care. (Exhibit 7)
10. On or around [REDACTED] 2022, the Facility submitted a **Connecticut Level of Care Form**, Completed Case Details, Physician's Orders, L.T.C. Physician's Order, Progress Notes, Minimum Data Set, Face Sheet, and the [REDACTED] Provider Discharge (for the [REDACTED] 2021 placement at the Facility) to Maximus for its assessment of the Appellant's required level of care. (Exhibits 6 through 14, inclusive)
11. On [REDACTED] 2022, a Maximus physician reviewed the Facility's submissions. (Department Witness Testimony)
12. On [REDACTED] 2022, Maximus issued a *Notice of Action* advising the Appellant that Medicaid had determined that she did not require continuous nursing services delivered at the level of a nursing facility and the services were not medically necessary for her. (Exhibit 5)
13. Since [REDACTED] 2021, the Appellant has remained at the Facility. (Appellant Testimony)

14. The Appellant's pneumonia and blood infection have cleared up. (Appellant Testimony)
15. The Appellant is independent in the following activities of daily living ("ADLs"): bathing, dressing, eating, toileting, continence, transferring, and mobility. (Appellant Testimony) (Exhibit 8)
16. The Appellant takes her own showers; she does not require help or assistance from Facility staff. (Appellant Testimony)
17. The Appellant uses oxygen at the Facility. (Appellant Testimony) (Exhibit 9)
18. The Appellant has used an oxygen tank since she was [REDACTED] years old. (Appellant Testimony)
19. The Appellant's personal oxygen tank is in storage until she finds housing. (Appellant Testimony)
20. The Appellant has these prescriptions: amlodipine (1x/day), breo ellipta (1x/day), enulose (2x/day), methadone (1x/day), montelukast (1x/day), omeprazole (1x/day), senna w/docus sodium (1x/day), trazodone (1x/day), acetaminophen (as needed), calcium antacid (as needed), fluticasone (as needed), guaifenesin (as needed), ipratr-albut (as needed), and lactulose (as needed). (Exhibit 9)
21. With the exceptions of fluticasone and ipratr-albut which are inhaled or used with a nebulizer, the Appellant's medications are taken orally. (Exhibit 9)
22. The Appellant receives her medications from a Facility staff member. (Appellant Testimony)
23. The Facility does not provide the Appellant with psychiatric services, physical therapy, occupational therapy, or other services. At this time, the Facility provides the Appellant with recreational activity, should the Appellant choose to participate. (Appellant Witness Testimony)
24. The Appellant has an out-patient surgery scheduled for [REDACTED] 2022 to treat a blood clot in her left leg. (Appellant Testimony)
25. In preparation for the [REDACTED] 2022 surgery, the Appellant is required to wear compression stockings. The Appellant does not have additional requirements to meet to prepare for the surgery. (Appellant Testimony)
26. Connecticut General Statutes § 17b-61 (a) provides: "The Commissioner of Social Services or the commissioner's designated hearing officer shall ordinarily render a final decision not later than ninety days after the date the commissioner receives a request for a fair hearing pursuant to section 17b-60...." On [REDACTED] 2022, the OLCRAH received the faxed administrative hearing request. The issuance of this hearing decision would have become due by no later than [REDACTED] 2022. This final decision is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes in part designates the Department of Social Services as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

“The Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department.” Conn. Gen. Stat. § 17b-261b (a).

“The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program....”

The Department has the authority under State statute to administer the Medicaid program and make regulations for the same.

Maximus, as the Department’s contractor for level of care screens, acted within its scope of authority when it reviewed the Facility’s submissions to determine whether the Appellant’s medical condition(s) fulfilled the Medicaid level of care criteria for patients of skilled nursing facilities.

2. Section 17b-262-707 (a) of the Regulations of Connecticut State Agencies discusses when the Department will pay for an admission to a skilled nursing facility.

“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 and/or chronic conditions requiring continuous skilled nursing services and/or nursing supervision or has chronic conditions requiring substantial assistance with personal care, on a daily basis.” Conn. Agencies Regs. § 19-13-D8t (d)(1)(A)(i).

“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.” Conn. Gen. Stat. § 17b-259b (b).

The Appellant does not demonstrate an uncontrolled, unstable, and/or chronic medical condition of such severity that it required continuous skilled nursing services and/or nursing supervision.

The Appellant does not have a chronic condition requiring substantial assistance or hands-on assistance with personal care, i.e., her ADLs, on a daily basis.

It is reasonable to conclude that the Appellant’s current medical treatment as provided at the Facility—i.e., a Facility employee dispensing oral medication daily—may be provided to her in a less restrictive setting than a skilled nursing facility.

The Appellant’s continued placement at the Facility is not the least restrictive means to medically treat the Appellant.

3. Section 17b-259b (a) of the Connecticut General Statutes provides:

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.

Conn. Gen. Stat. § 17b-259b (a).

Continuous skilled nursing services are not clinically appropriate in terms of type and frequency with respect to treatment of the Appellant’s medical conditions.

The Appellant failed to establish that his institutionalization at a skilled nursing facility is medically necessary, as the term “medically necessary” is defined at Conn. Gen. Stat. § 17b-259b (a).

Maximus correctly determined that the Appellant no longer medically requires care at the level provided to a resident of a skilled nursing facility.

DECISION

The Appellant’s appeal is DENIED.

Eva Tar-electronic signature
Eva Tar
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 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.