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

[redacted] 2022
Signature confirmation

Case: [redacted]
Client: [redacted]
Request: 194356

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2022, the Department of Social Services (the "Department") through its contractor, Maximus, issued [redacted] (the "Appellant") a *Notice of Action* denying Medicaid coverage for nursing facility level of care services.

On [redacted] 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received a hearing request from [redacted], the Appellant's conservator of person and estate.

On [redacted] 2022, the OLCRAH scheduled 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 by teleconferencing. The following individuals participated:

[redacted] Appellant
[redacted], Conservator
[redacted] social worker, Appellant Witness
Allison Weingart, RN, Community Options, Department Representative
Jean Denton, LPN, Maximus, Department Witness
Eva Tar, Hearing Officer

The hearing record closed [redacted] 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 is [redacted] years old. (Dept. Exhibit 6)

2. The Appellant is a Medicaid recipient. (Dept. Exhibit 5)

3. Maximus is the Department's contractor for conducting level of care screens associated with institutionalized Medicaid recipients. (Dept. Exhibit 5) (Department Witness Testimony)

4. From [redacted] 2021 through [redacted] 2021, the Appellant was a patient at [redacted] (Dept. Exhibit 3)

5. On [redacted] 2021, [redacted] (the "Facility"), a skilled nursing facility, admitted the Appellant. (Dept. Exhibit 9)

6. Upon admission to the Facility, the Appellant had the following diagnoses and medical history: COVID-19 acute respiratory disease, acute kidney failure unspecified, iron deficiency anemia, hyperlipidemia unspecified, other fatigue, eosinophilia unspecified, and hypertension. (Dept. Exhibit 6)

7. Maximus granted the Appellant approval at skilled nursing level of care at the Facility through [redacted] 2022. (Department Witness Testimony)

8. On [redacted] 2022, the Appellant had a Brief Interview for Mental Status (BIMS) score of 13 points, signifying intact cognition. (Dept. Exhibits 6 and 10)

9. On [redacted] 2022, the Facility submitted the following to Maximus for its assessment of the Appellant's level of care: a Connecticut Level of Care form, a Practitioner Certification signed by an APRN, Resident Personal Care Record, physician's Orders, Minimum Data Set (MDS), and Resident Progress Notes. (Dept. Exhibits 6, 7, 8, 9, 10, and 11)

10. On [redacted] 2022, a Maximus physician reviewed the Facility's [redacted] 2022 submissions. (Dept. Exhibit 6)

11. On [redacted] 2022, Maximus issued a *Notice of Action* advising the Appellant that Medicaid had determined that he did not require continuous nursing services delivered at the level of a nursing facility, and the continuous nursing services were not medically necessary. (Dept. Exhibit 5)

12. The Appellant does not use assistive devices of any kind. (Appellant Witness Testimony)

13. The Appellant is independent in the following activities of daily living ("ADLs"): eating/feeding, mobility, transfer, and continence. (Dept. Exhibit 6)

14. Facility staff remind the Appellant to bathe and change his clothes. (Appellant Witness Testimony) (Dept. Exhibit 10)

15. The Appellant will go to the bathroom by himself and use it when asked to do so; he is mobile, continent, and does not use adult diapers. (Appellant Witness Testimony)

16. The Appellant ambulates independently. (Appellant Witness Testimony)

17. The Appellant has these prescriptions: amlodipine (5 mg/daily); aripiprazole (20 mg/at bedtime), ergocalciferol/vitamin D2 (50,000 mcg/per week), gemfibrozil (600 mg/every 12 hours), and thiamine HCL/vitamin B1 (100 mg/day). (Dept. Exhibit 9)

18. The Appellant's medications are taken orally; he does not receive medications intravenously. (Appellant Witness Testimony) (Dept. Exhibit 9)

19. The Facility administers a COVID-19 nasal swab to the Appellant in accordance with Centers for Disease Control guidelines. (Dept. Exhibit 9)

20. The Appellant received occupational therapy only at the very beginning of his stay at the Facility and last received psychiatric services at the Facility on [redacted] 2022. (Appellant Witness Testimony)

21. The Facility currently does not provide the Appellant with psychiatric services, physical therapy, occupational therapy, or other special services. (Appellant Witness Testimony)

22. Since [redacted] 2022, the Appellant has demonstrated no issues or problems related to his kidney; on that date he received Miralax to treat constipation. (Appellant Witness Testimony)

23. 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 Conservator's [redacted] 2022 postmarked 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 reviewing 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 or his 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 and administering a nasal swab to test for COVID-19—may be provided to him 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: [redacted]
Allison Weingart, DSS-Community Options
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.