

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3730

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

Case ID # ██████████  
Client ID # ██████████  
Request # 196938

NOTICE OF DECISION  
PARTY

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██████████  
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PROCEDURAL BACKGROUND

On ██████████ 2022, Maximus Management Innovations LLC., (“Maximus”), the Department of Social Services contractor that administers approval of nursing home care, sent ██████████ (the “Appellant”) a notice of action denying the Appellant nursing facility level of care (“NFLOC”) as not being medically necessary.

On ██████████ 2022, the Appellant requested an administrative hearing to contest Maximus’ decision to deny him NFLOC.

On ██████████ 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2022.

On ██████████ 2022, in accordance with sections 17b-60, 17-61, and 4-176e to 4-184 inclusive of the Connecticut General Statutes, OLCRAH held an administrative hearing by telephone.

The following individuals were present at the hearing:

██████████ Appellant  
██████████ Facility Social Worker  
Paul Cook, Maximus  
Allison Weingart, Community Nurse Coordinator, Department of Social Services  
Tina Haskell, Hearing Officer, and Observer

Joseph Davey, Hearing Officer, and Observer  
Christopher Turner, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue is whether Maximus' decision to deny the nursing facility level of care for the Appellant as not being medically necessary was correct.

### **FINDINGS OF FACT**

1. The Appellant is [REDACTED] years old (DOB [REDACTED]) and a recipient of long-term care support services under the Department's Husky D Medicaid program. (Record)
2. On [REDACTED] 2020, the Appellant was admitted to [REDACTED] (the "Facility") with the admitting diagnoses of endocarditis, other postprocedural states, protein-calorie malnutrition, and opioid abuse. (Record)
3. On [REDACTED] 2020, the Facility submitted an NFLOC referral. The NFLOC screen described the individual's current Activities of Daily Living ("ADLs") support needs as follows: The Appellant required total assistance with bathing, dressing, eating, toileting, mobility, transfer, and continence. For Instrumental Activities of Daily Living ("IADLs"), The Appellant required physical assistance with medications, IV therapy, and no assistance with meal preparation. The Appellant was granted a short-term NFLOC approval of 90 days through [REDACTED] 2020. (Record)
4. On [REDACTED] 2020, the Facility submitted an NFLOC referral. The Appellant required no ADL assistance. For IADLs, the Appellant required set up assistance with medications and no assistance with meal preparation. The Facility did not send the information requested by Maximus to support the need for NFLOC. As a result, the NFLOC request was deemed incomplete and then withdrawn. (Record)
5. On [REDACTED] 2020, the Facility submitted an NFLOC referral. The NFLOC screen described the Appellant's current ADL support needs as follows: The Appellant required no assistance. For IADLs, The Appellant required set up assistance with medications and minimal assistance with meal preparation. The Appellant was granted a short-term NFLOC approval of 150 days through [REDACTED] 2021. (Record)

6. On [REDACTED] 2021, the Facility submitted an NFLOC referral. The NFLOC screen detailed the Appellant's current ADL support needs as follows: The Appellant required supervision with bathing. For IADLs, the Appellant required physical assistance with medications and minimal assistance with meal preparation. Maximus requested clarification of barriers to discharge, potential discharge date, request to submit the last two weeks of CNA flow sheets, and any other documents that support medical necessity. Maximus did not receive any additional documentation to support the need for NFLOC. Consequently, the NFLOC request was deemed withdrawn and incomplete. (Record)
7. On [REDACTED] 2022, the Facility submitted an NFLOC referral. The NFLOC screen described the Appellant's current ADL support needs as follows: The Appellant required supervision with bathing. For IADLs, the Appellant required physical assistance with medications and continual supervision with meal preparation. Maximus requested clarification of barriers to discharge, potential discharge date, request to submit the last two weeks of CNA flow sheets, and any other documents that support medical necessity. Maximus did not receive any additional documentation to support the need for NFLOC and the NFLOC request was deemed withdrawn and incomplete. (Record)
8. On [REDACTED] 2022, the Facility submitted an NFLOC referral. The NFLOC screen described the Appellant's current ADL support needs as follows: The Appellant required supervision with bathing. For IADLs, the Appellant needed physical assistance with medications and continual supervision with meal preparation. Accordingly, a medical review referral was made. (Record)
9. On [REDACTED] 2022, Dr. Bill Regan from Maximus completed an assessment of the Appellant's medical condition and concluded the Appellant did not meet the medically necessary criteria for NFLOC. Dr. Regan determined the Appellant's needs could be met in a less restrictive setting. Dr. Regan determined the needs of the Appellant could be met in a community setting with intermittent assistance through home health care and other support measures. (Exhibit 6: LOC Determination)
10. On [REDACTED] 2022, Maximus issued a notice of action to the Appellant and the Facility that indicated short-term nursing facility placement is not medically necessary for the Appellant. (Exhibit 5: Notice)
11. The Appellant's current prescription and nonprescription medications include but are not limited to: Acetaminophen; Aspirin; Atorvastatin; Famotidine; Fish Oil; Gabapentin; Melatonin; Metoprolol; Suboxone; Trazodone. (Exhibit 8: Physician's orders)
12. There was no evidence submitted by the Facility or the Appellant to support the position that the Appellant needs constant and continuous care for a chronic condition equal to the level provided in a nursing home. (Record)

13. The issuance of this decision is timely under Connecticut General Statutes (“Conn. Gen. Stat.”) 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] 2022, with the decision due no later than [REDACTED] 2022.

### **CONCLUSIONS OF LAW**

1. Conn. Gen. Stat. § 17b-2 provides the Department of Social Services is designated as the state agency for the administration of (6) the Medicaid program pursuant to Title XIX of the Social Security Act.

Conn. Gen. Stat. § 17b-261b (a) provides 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-262 (a) provides the Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program. Such regulations shall include provisions requiring the Department of Social Services (1) to monitor admissions to nursing home facilities, as defined in section 19a-521, and (2) to prohibit the admission by such facilities of persons with primary psychiatric diagnoses if such admission would jeopardize federal reimbursements.

**The Department has the authority under statute to administer the HUSKY-D Medicaid program and make regulations for the same.**

2. Regulations of Connecticut State Agencies (“Regs., Conn. State Agencies”) § 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 before the department authorizes 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 a mental illness or mental retardation as identified by the *preadmission MI/MR screen*.

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

**The Appellant is a resident of a long-term care facility authorized to receive payment for nursing home services.**

- 3. Title 42 of the Code of Federal Regulations ("C.F.R.") § 409.31 (b) provides for specific conditions for meeting the level of care requirements. (1) The beneficiary must require skilled nursing or skilled rehabilitation services, or both, on a daily basis. (2) Those services must be furnished for a condition – (i) For which the beneficiary received inpatient hospital or inpatient CAH services, or (ii) Which arose while the beneficiary was receiving care in an SNF or swing-bed hospital for a condition for which he or she received inpatient hospital or inpatient CAH services; or (iii) For which, for an M + C enrollee described in [§ 409.20\(c\)\(4\)](#), a physician has determined that a direct admission to an SNF without an inpatient hospital or inpatient CAH stay would be medically appropriate. (3) The daily skilled services must be ones that, as a practical matter, can only be provided in an SNF, on an inpatient basis.

**The Appellant has previously met the NFLOC criteria before the issuance of the [REDACTED] 2022, notice of action denying such approval.**

- 4. 42 C.F.R. § 483.102 provides for the screening or reviewing of all individuals with mental illness or intellectual disability who apply to or reside in Medicaid certified NFs regardless of the source of payment for the NF services, and regardless of the individual's or resident's known diagnoses.

42 C.F.R. § 483.104 provides as a condition of approval of the State Plan, the State must operate a preadmission screening and annual resident review program that meets the requirements of §§ 483.100 through 438.138.

42 C.F.R. § 483.112 provides for the preadmission screening of applicants for admission to NFs. (a) **Determination of need for NF services.** For each NF applicant with MI or IID, the State mental health or intellectual disability authority (as appropriate) must determine, in accordance with § 483.130, whether, because of the resident's physical and mental condition, the individual requires the level of services provided by a NF. (b) **Determination of need for specialized services.** If the individual with mental illness or intellectual disability is determined to require a NF level of care, the State mental health or intellectual disability authority (as appropriate) must also determine, in accordance with § 483.130, whether the individual requires specialized services for the mental illness or intellectual disability, as defined in § 483.120.

42 C.F.R § 483.128 (a) provides the State's PASRR program must identify all individuals who are suspected of having MI or IID as defined in §483.102. This identification function is termed Level I. Level II is the function of evaluating and determining whether NF services and specialized services are needed. The State's performance of the Level I identification function must provide at least, in the case of first-time identifications, for the issuance of written notice to the individual or resident and his or her legal representative that the individual or resident is suspected of having MI or IID and is being referred to the State mental health or intellectual disability authority for Level II screening.

42 C.F.R. § 483.132 (a) provides that for each applicant for admission to a NF and each NF resident who has MI or IID, the evaluator must assess whether: (1) The individual's total needs are such that his or her needs can be met in an appropriate community setting; (2) The individual's total needs are such that they can be met only on an inpatient basis, which may include the option of placement in a home and community-based services waiver program, but for which the inpatient care would be required; (3) If inpatient care is appropriate and desired, the NF is an appropriate institutional setting for meeting those needs in accordance with §483.126; or; (4) If the inpatient care is appropriate and desired but the NF is not the appropriate setting for meeting the individual's needs in accordance with §483.126, another setting such as an ICF/IID (including small, community-based facilities), an IMD providing services to individuals aged 65 or older, or a psychiatric hospital is an appropriate institutional setting for meeting those needs.

42 C.F.R. § 483.132 (b) provides for *Determining appropriate placement.* In determining appropriate placement, the evaluator must prioritize the physical and mental needs of the individual being evaluated, considering the severity of each condition.

42 C.F.R. § 483.132 (c) provides at a minimum, the data relied on to decide must include: (1) Evaluation of physical status (for example, diagnoses, date of onset, medical history, and prognosis); (2) Evaluation of mental status (for example, diagnoses, date of onset, medical history, likelihood that the individual may be a danger to himself/herself or others); and (3) Functional assessment (activities of daily living)

**Maximus properly completed a Level I evaluation of the Appellant per Federal regulations.**

**Maximus' review of the Appellant's medical condition shows the Appellant only needs supervision with bathing and does not pose a danger to himself or others.**

5. Conn. Gen. Stat. § 17b-259b provides (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, 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 (b) provides 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 (c) provides 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 determining medical necessity.

42 C.F.R. § 440.230 provides for sufficiency of amount, duration, and scope. (d) The agency may place appropriate limits on a service based on such criteria as medical necessity or utilization control procedures.

**The Appellant does not have uncontrolled and/or unstable conditions requiring continuous skilled nursing services and/or nursing services on an everyday basis.**

**The Appellant has the physical ability to complete all but one of his ADLs. He does not need daily assistance with personal care including eating, toileting, continence, transferring, mobility, and dressing.**

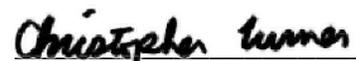
**Maximus was correct in its determination that the Appellant does not meet the medically necessary criteria for nursing facility level of care.**

### **DISCUSSION**

The Appellant's current medical condition, both mental and physical, indicates that he does not have any uncontrolled and/or unstable conditions requiring continuous skilled nursing services and/or nursing supervision requiring substantial assistance with personal care on an ongoing basis. Given this, Maximus' decision to end the Appellant's NFLOC approval is upheld.

### **DECISION**

The Appellant's appeal is denied.



Christopher Turner  
Hearing Officer

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### **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, law, and 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 requested 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 the 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 the 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 if 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 06105-3725. A copy of the petition must also be served to 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 following §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.