

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: 198355

NOTICE OF DECISION

PARTY

██████████
██
██
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PROCEDURAL BACKGROUND

On ██████████ 2022, the Department of Social Services (the “Department”) through Maximus, its medical review contractor, issued ██████████ (the “Appellant”) a *Notice of Action* denying Medicaid coverage for his care at ██████████ (the “Facility”).

On ██████████ 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received the Appellant’s faxed hearing request.

On ██████████, 2022, the Facility transferred the Appellant to ██████████
██”).

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

On ██████████ 2022, Maximus issued a *Notice of Action* approving the Appellant Medicaid coverage for his care at ██████████.

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
██████████, ██████████ employee, Appellant Witness
Janice Ricciuti, 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 skilled nursing level of care was medically necessary for the Appellant in [REDACTED] 2022.

FINDINGS OF FACT

1. The Appellant's date of birth is [REDACTED]. (Dept. Exhibit 6)
2. The Appellant is a Medicaid recipient. (Dept. Exhibits 5 and 7)
3. Maximus is the Department's contractor for conducting skilled nursing level of care screening for Medicaid recipients. (Dept. Exhibits 5 and 7)
4. On [REDACTED], 2021, the Facility, a skilled nursing facility, admitted the Appellant with the following diagnoses: [REDACTED]
[REDACTED]. (Dept. Exhibits 3 and 26)
5. On [REDACTED], 2021, the Appellant reported during a psychosocial evaluation that he had [REDACTED]; he presented as [REDACTED]. (Dept. Exhibit 25)
6. Maximus granted the Appellant approval through [REDACTED] 2022 for Medicaid coverage of his stay at the Facility. (Dept. Exhibit 3)
7. On [REDACTED] 2022, the Appellant required the following help with his activities of daily living (ADLs): one person physical assist with bed mobility, one-person assist with bathing, supervision with moving from seated to a standing position, supervision with surface-to-surface transfer, one-person physical assist for walking in a room, supervision in walking in a corridor; one-person physical assist in locomotion in and off the unit, one-person physical assist with dressing, supervision with eating, supervision with toilet use, and supervision with personal hygiene. (Dept. Exhibit 11)
8. On [REDACTED], 2022, a physician attested in writing that the Appellant met the Connecticut Code for nursing home level of care. (Department Exhibit 8)
9. On [REDACTED], 2022, the Appellant's prescriptions included: [REDACTED]
[REDACTED]
[REDACTED] (Dept. Exhibit 9)
10. At the Facility, the Appellant received his [REDACTED] by injection twice per day, before breakfast and dinner. (Appellant Testimony)
11. At the Facility, the Appellant received his pain medication four times a day or every six hours. (Appellant Testimony)

12. In [REDACTED] 2022, the Appellant weighed 286 pounds. (Appellant Testimony)
13. The Appellant suffers chronic back pain and neuropathy or numbness in his feet. (Appellant Testimony) (Hearing record)
14. While at the Facility, the Appellant occasionally used a wheelchair; when not using a wheelchair, he always used a four-pronged cane to walk. (Appellant Testimony)
15. While at the Facility, the Appellant suffered frequent falls by “sliding down” due to the numbness in his feet. The Appellant had difficulty getting back up on his own after his falls, due to his weight. (Appellant Testimony)
16. The Appellant was embarrassed and self-conscious about his weight around the Facility’s female employees. He did not ask the staff for help even when he needed it due to that embarrassment. (Appellant Testimony)
17. The Appellant unsuccessfully attempted to use a washcloth to clean himself rather than ask for help from the Facility staff to clean himself. He had difficulty reaching and cleaning his legs due to his weight. (Appellant Testimony)
18. While at the [REDACTED], the Appellant had one or two incidents of incontinence as he would try to walk to the bathroom without help and his feet would catch on the corner of his bed. (Appellant Testimony)
19. [REDACTED] did not train the Appellant to self-administer his [REDACTED] injections and did not train him in the dosage requirements. (Appellant Testimony)
20. The Appellant received some psychiatric oversight while at the [REDACTED]; a psychiatrist would come in to adjust his [REDACTED] medication. (Appellant Testimony)
21. The Appellant cannot keep track of his medications on his own; the Appellant has difficulty focusing. (Appellant Testimony)
22. On [REDACTED] 2022, the Facility submitted a request for continued approval of skilled nursing level of care to Maximus by providing a Nursing Facility Level of Care screen, *Practitioner Certificate*, Face Sheet, Progress Notes, Gastroenterology Referral, lab results, *ADL Assistance and Support* for [REDACTED]-2022 through [REDACTED]-2022, Physician’s Orders, Interim Physician’s Orders, Nurses’ Notes, Psychosocial Evaluation, and Minimum Data Set. (Dept. Exhibits 6, and 8 through 26, inclusive)
23. 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 continuous nursing services were not medically necessary. (Dept. Exhibit 5)
24. On [REDACTED], 2022, the Facility transferred the Appellant to [REDACTED], a skilled nursing facility. (Department Witness Testimony) (Maximus Exhibit 3)

25. Prior to his [REDACTED], 2022 transfer to [REDACTED], the Facility attempted to discharge the Appellant to at least two assisted living facilities, but the assisted living facilities declined to admit the Appellant as a resident. One indicated to the Appellant that his medical conditions required services that it did not provide. (Appellant Testimony)
26. On [REDACTED] 2022, Maximus issued a *Notice of Action* approving the Appellant's Medicaid coverage for nursing facility level of care services as a resident of [REDACTED], effective [REDACTED] 2022. (Dept. Exhibit 7)
27. The Appellant's testimony as to his dependency in [REDACTED] 2022 on the Facility's staff for the administration of his injectable [REDACTED] twice daily, that he was not provided with instruction as to how to measure and self-administer the [REDACTED], his multiple episodes of "sliding down" to the floor when attempting to ambulate with a cane, his embarrassment and concealment of his difficulties with ambulation from the Facility's female staff, and his falling in his room when catching the corner of his bed with his numb foot resulting in incidents of incontinence was credible.
28. Section 17b-61 (a) of the Connecticut General Statutes provides in part: "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 Appellant's faxed 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.

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).

In █████ 2022, the Appellant’s Type II diabetes was an uncontrolled, unstable, and/or chronic medical condition that required nursing supervision with respect to his twice daily administration of injectable █████.

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).

“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).

In █████ 2022, skilled nursing services were clinically appropriate in terms of type and frequency with respect to treatment of the Appellant’s medical conditions.

In █████ 2022, due to the neuropathy in his feet, the Appellant reasonably required hands-on assistance for the completion of some ADLs, particularly those ADLs related to ambulation and transfers from his bed to a standing position.

Skilled nursing level of care was medically necessary for the Appellant in █████ 2022, as the term “medically necessary” is defined at Conn. Gen. Stat. § 17b-259b (a).

DECISION

The Appellant’s appeal is GRANTED.

ORDER

1. Maximus will approve the Facility's [REDACTED] 2022 request for approval of the Appellant's skilled nursing level of care through the date of his transfer to [REDACTED] r.
2. Within 14 calendar days of the date of this Decision, or [REDACTED] 2022, documentation of compliance with this Order is due the undersigned.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

cc: Janice Ricciuti, 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.