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

[redacted] **2022**
SIGNATURE CONFIRMATION

CASE # [redacted]
CLIENT ID # [redacted]
REQUEST # [redacted]

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2022, Ascend Management Innovations LLC ("Ascend"), the Department of Social Services ("Department") contractor that administers approval of nursing home care, sent [redacted] ("Appellant") a Notice of Action ("NOA") denying nursing home level of care stating he does not meet the nursing facility level of care criteria.

On [redacted] 2022, the Appellant through [redacted] requested an administrative hearing to contest Ascends decision to deny nursing home level of care.

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

[redacted], Appellant (in person)
[redacted] Appellant's Legal Representation (via telephone)
[redacted] Paralegal, [redacted] (via telephone)
[redacted] Social Worker, [redacted] (in person)
Jean Denton, LPN, Clinical Supervisor, Maximus Representative (via telephone)
Stacey Bent, RN, Department of Social Services (in person)
Joseph Alexander, Administrative Hearing Officer (in person)

The hearing record was left open an additional [redacted] ([redacted]) days to allow for the submission of documentation from both the Facility and the Appellant's legal representative.

The hearing record closed on [redacted], 2022.

STATEMENT OF THE ISSUE

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

FINDINGS OF FACT

1. The Appellant is [redacted] ([redacted] years old ([redacted] and a recipient of Husky D-Medicaid coverage for low-income adults. (Ex. 6: Level of Care Determination)

2. On [redacted], 2021, the Appellant was admitted to [redacted] ("Facility") with a diagnosis of hepatic failure. (Dept. Ex. 6: Level of Care Determination, Hearing Record)

3. On [redacted], 2021, the Facility submitted the Nursing Facility Level of Care ("NFLOC") screening form to Maximus for review. The NFLOC described the Appellant current Activities of Daily Living ("ADL") as requiring no assistance. For Instrumental Activities of Daily Living ("IADL") the Appellant required verbal assistance with medications and required continual supervision with meal preparation. Based on this information the Appellant received a [redacted] ([redacted] day short-term approval. The approval expired on [redacted] 2022. (Ex. 4: ADL Measures and Ratings, Hearing Record)

4. On [redacted] 2022, the Facility submitted a NFLOC screening form to Maximus. The Appellant's ADLs were described as requiring hands on assistance with bathing, mobility and transfer, and supervision with dressing, eating, and toileting. The Appellant's IADLs were described as requiring verbal assistance with medications and continual supervision with meal preparation. Based on the Appellant's support needs, he received a [redacted] ([redacted]) day short-term approval. The approval expired on [redacted], 2022. (Ex. 4: ADL Measures and Ratings, Hearing Record)

5. On [redacted], 2022, the Facility submitted a NFLOC screening form to Maximus. The Appellant's ADLs were described as requiring hands on assistance with bathing. For IADLs the Appellant did not require assistance with medication or meal preparation. The Appellant received a [redacted] ([redacted]) day short-term approval. The approval expired on [redacted] 2022. (Ex. 4: ADL Measures and Ratings, hearing Record)

6. For the period of [redacted], 2022, through [redacted], 2022, the Appellant received Physical Therapy. (Dept. Ex. 8: Physical Therapy PT Discharge Summary)

7. On [redacted] 2022, the Facility submitted a NFLOC screening form to Maximus. The Appellant's ADLs were described as requiring hands on assistance with bathing. For IADLs, the Appellant did not require assistance with medication or meal preparation. Based on this, Maximus recommended a medical doctor review the information. During the review it was noted the Appellant's needs could be met in the community with appropriate supports. (Ex. 4: ADL Measures and Ratings, Hearing Record)

8. On [redacted], 2022, Dr. Bill Regan MD, through Maximus, used all available information related to the Appellant's medical and total needs to determine that nursing facility level of care was not medically necessary for the Appellant because it was not clinically appropriate in terms of the level of services provided and was not considered effective for his condition as he did not require continuous and intensive nursing care provided at the nursing facility level. It was concluded that the Appellant's needs could be met through a combination of medical and psychiatric follow up, as well as social services provided outside of the nursing facility setting. (Hearing Record)

9. On [redacted], 2022, Maximus sent a NOA to the Appellant informing him that he did not meet the nursing facility level of care criteria. (Dept. Ex. 5: Notice of Action)

10. On [redacted] 2022, OLCRAH received the Appellant's hearing request form. (Dept. Ex. 2: Hearing Request)

11. On [redacted] 2022, the Appellant's legal representative submitted a copy of an email correspondence with the Department concerning the Appellant's eligibility for cash assistance and him residing in the community. (Appellant Ex. A)

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 that of a nursing home level. (Hearing 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 [redacted] days of the request for an administrative hearing. The administrative hearing was requested on [redacted] 2022, making this decision due by [redacted], 2022. However, the hearing record was left open an additional four days for the submission of information making this decision due by [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.

   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 state statute to administer the HUSKY-D Medicaid program and make regulations.

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 19-13D8t(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 that a patient admitted to a chronic or convalescent nursing home has uncontrolled and/or unstable conditions requiring continuous skilled services and/or nursing supervision or has a chronic condition requiring substantial assistance with personal care, on a daily basis."

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

4. Conn. Gen. Stats. § 17b-295b provides for the definition of "medically necessary" and "medical necessity" as follows: (a) For purposed 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 maintain the individual's achievable health and independent functioning as provided such services are: (1) Consistent with generally acceptable 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 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.

Maximus correctly used clinical criteria and guidelines solely as screening tools.

Maximus correctly determined the Appellant does not have a chronic medical condition requiring substantial assistance with personal care.

Maximus correctly determined the Appellant does not have uncontrolled and/or unstable medical conditions requiring continuous skilled nursing services and/or nursing supervision.

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

Maximus correctly determined that nursing facility services are not medically necessary for the Appellant because her medical needs could be met with services offered in the community.

DISCUSSION

During the hearing the Appellant's legal representative argued the Appellant needs to remain in the Facility because there is no way to get the Appellant into a less restrictive setting due to the Appellant not meeting the requirements for the "Money Follows the Person" program and there are no waiver programs available which could place the Appellant within the community. If the Appellant were to be discharged into the community he would likely be placed into a shelter and would not receive the comprehensive medical, psychiatric, and social services he requires.

The Facilities Social Worker testified the Appellant had been admitted to [redacted] on [redacted] 2022, for a psychological evaluation due to having suicidal ideations and was discharged back to the Facility the same day. In addition, the Appellant received a diagnosis of auditory hallucinations on [redacted] 2022, which required the addition of a new medication to his regiment as well as ongoing monitoring by Facility staff.

The hearing record was left open to allow for the submission of evidence substantiating the Social Workers testimony, however nothing had been provided as of the date the hearing record closed. The Hearing Officer received no communication requesting further extension to the closing of the record.

With no evidence to support the claim that the Appellant's needs cannot be met within the community through a combination of medical and psychiatric follow up, as well as social services provided outside of the nursing facility setting, I find the Appellant does not require continuous skilled nursing services/nursing supervision.

DECISION

The Appellant's appeal is **DENIED**

Joseph Alexander

Joseph Alexander
Administrative Hearing Officer

CC: hearings.commops@ct.gov
AscendCTadmihearings@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 §4-1181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, 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 06105-3725.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court with **45** days of the mailing of this decision, or **45** days after the agency denies 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 fooled 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 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 her 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.