

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: 201217

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

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

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

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 at ██████████ (the "Facility"), in ██████████, Connecticut.

The following individuals participated:

██████████, Appellant  
Erin Scafe, RN, Community Options, Department Representative  
Paul Cook, RN, Maximus, Department Witness (by telephone)  
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's date of birth is [REDACTED]. (Appellant Testimony)
2. The Appellant is a Medicaid recipient. (Exhibit 5)
3. Maximus is the Department's contractor for conducting Pre-Admission Screen Resident Reviews (PASRRs) level of care assessments for Medicaid recipients. (Department Witness Testimony)
4. On [REDACTED] 2022, [REDACTED] admitted the Appellant with a diagnosis of [REDACTED]. (Department Witness Testimony)
5. On [REDACTED] 2022, the Facility, a skilled nursing facility, admitted the Appellant from [REDACTED]. (Department Witness Testimony)
6. From [REDACTED] 2022 through [REDACTED], 2022, the Appellant was a patient at [REDACTED] for [REDACTED]. (Department Representative Testimony) (Exhibit 18)
7. The Appellant returned to the Facility upon his discharge from [REDACTED]. (Appellant Testimony)
8. On [REDACTED], 2022, the Appellant had the following diagnoses and medical history: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (Exhibits 10 and 18)
9. The Appellant's medical history also includes: [REDACTED]  
[REDACTED]. (Exhibit 6)
10. At the time of his readmittance to the Facility, the Appellant required daily oral medications, nasal spray, insulin on a sliding scale, pain monitoring, and [REDACTED]. (Exhibit 10)
11. From [REDACTED], 2022 through [REDACTED] 2022, the Appellant received occupational therapy at the Facility; the Appellant was discharged from occupational therapy having met his goals. (Exhibit 14)
12. From [REDACTED], 2022 through [REDACTED], 2022, the Appellant received physical therapy at the Facility; the Appellant was discharged from physical therapy having met his goals. (Exhibit 13)

13. On [REDACTED] 2022, the Appellant has a BIMS [Brief Interview for Mental Status] of 15, indicating the absence of short-term memory impairment. (Exhibit 16)
14. On [REDACTED] 2022, an X-ray examination of the Appellant's chest returned normal. The X-ray identified no concerns for the Appellant's lungs, heart, spine, ribs, clavicles, shoulders, and soft tissue structures of the upper abdomen. (Exhibit 12)
15. Maximus granted the Appellant approval at skilled nursing level of care at the Facility through [REDACTED] 2022. (Department Witness Testimony)
16. On [REDACTED] 2022 and [REDACTED], 2022, the Facility submitted Nursing Facility Level of Care (NFLOC) screening forms along with the Appellant's medical records to Maximus for review of the Appellant's level of care. (Department Witness Testimony) (Exhibits 6 through 19)
17. On [REDACTED], 2022, Maximus issued a *Notice of Action* advising the Appellant that Medicaid had determined that the Appellant did not require continuous nursing services delivered at the level of a nursing facility, and continuous nursing services were not medically necessary. (Exhibit 5)
18. The Appellant uses the following assistive devices: a rolling walker, a shower chair, and a socks gripper for dressing. (Appellant Testimony)
19. The Appellant is independent with his activities of daily living ("ADLs"): showering, eating, mobility, transfer, and toileting. (Appellant Testimony) (Exhibits 8 and 12)
20. The Appellant will ask for help from Facility staff with shaving and putting on his shirts when he has difficulty raising his arms, but he does not require that help every day. (Appellant Testimony)
21. With respect to his [REDACTED] treatment, the Appellant currently undergoes [REDACTED]. (Appellant Testimony)
22. The Appellant takes the remainder of his medications orally. (Appellant Testimony)
23. The Appellant receives treatment for [REDACTED] at the Facility once per week, dependent on the [REDACTED] schedule. (Appellant Testimony)
24. 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...."
25. On [REDACTED], 2022, the OLCRAH received the Appellant's [REDACTED] 2022 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.**

**Maximus, as the Department’s contractor, acted within its scope of authority when it reviewed the Facility’s ██████ 2022 and ██████, 2022 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).

**Based on the hearing record, the Appellant’s medical conditions are not unstable or are of such severity that it required continuous skilled nursing services and/or nursing supervision.**

**The Appellant medical condition does not require substantial assistance, i.e., regular hands-on intervention, with 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., the supervision by medical staff regarding his ██████ care, providing him with his oral medications, and his ██████ treatment approximately once per week—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, based on its review of the Facility's [REDACTED] 2022 and [REDACTED] 2022 submitted medical records.**

**DECISION**

The Appellant's appeal is DENIED.

*Eva Tar-electronic signature*  
Eva Tar  
Hearing Officer

Cc: Erin Scafe, DSS-Community Options  
[hearings.commops@ct.gov](mailto:hearings.commops@ct.gov)  
[AscendCTadminhearings@maximus.com](mailto: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.

