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

[redacted] **2023**
Signature Confirmation

Case ID # [redacted]
Client ID # [redacted]
Request # 213747

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2023, Maximus Management Innovations LLC., ("Maximus"), the Department of Social Services' contractor that administers approval of nursing home care services, sent [redacted] (the "Appellant") a Notice of Action ("NOA") denying the Appellant's request for nursing facility level of care ("NFLOC") as not medically necessary.

On [redacted], 2023, the Appellant requested an administrative hearing to contest Maximus' denial of his request for NFLOC.

On [redacted] 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2023.

On [redacted] 2023, due to Maximus' computer issue, OLCRAH had to postpone the hearing.

On [redacted] 2023, OLCRAH issued a notice rescheduling the administrative hearing for [redacted] 2023.

On [redacted] 2023, 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. The following individuals participated in the hearing:

[redacted], Appellant
[redacted], Social Worker, [redacted]
[redacted], Administrator, [redacted]
[redacted], Social Services Director, [redacted]
[redacted], RN, Manager, [redacted]
[redacted], Physical Therapist, [redacted]
[redacted], Director of Nursing, [redacted]
[redacted], Business Manager, [redacted]
Jean Denton, Clinical Supervisor, Maximus
Stacy Bent, RN, DSS Community Options
Kristin Haggan, Fair Hearing Officer

The record remained open for the submission of additional evidence from the Facility. On [redacted] 2023, the Facility submitted documents, and the hearing record closed.

STATEMENT OF THE ISSUE

The issue is whether Maximus correctly denied the Appellant's request for NFLOC as not medically necessary.

FINDINGS OF FACT

1. The Appellant is [redacted] years old (DOB: [redacted]. (*Hearing Record)*

2. The Appellant lived alone in his apartment until [redacted], 2021. While living alone, he was unable to manage his diabetes, and as a result, he had five toes amputated. *(Appellant's Testimony)*

3. On [redacted] 2021, the Appellant entered the [redacted] with diagnoses of gangrene, bipolar, seizures, and sepsis. *(Facility's Testimony)*

4. On [redacted] 2021, the [redacted] transferred the Appellant to [redacted] ("the Facility") with a diagnosis of sepsis. (*Hearing Record, Facility's Testimony, Appellant's Testimony*)

5. On [redacted] 2022, the Facility submitted the NFLOC screening form to Maximus. The NFLOC screening form described the Appellant's current Activities of Daily Living ("ADL") support needs as follows: The Appellant required supervision with bathing, dressing, toileting, mobility, and transfer. For Instrumental Activities of Daily Living ("IADL"), the Appellant required continual supervision with meal preparations, injections, and physical and verbal assistance with medications. The Appellant required a level one screening, and Maximus granted a [redacted]-day short-term approval, which expired on [redacted] 2022. (*Hearing Record, Facility's Testimony*)

6. On [redacted] 2022, the Facility submitted the NFLOC screening form to Maximus. The NFLOC screening form described the Appellant's current ADL support needs as follows: The Appellant required supervision with bathing. For IADL, the Appellant required set-up assistance with medications and total assistance with meal preparation. The Appellant required a level one screening, and Maximus granted a [redacted]-day short-term approval, which expired on [redacted], 2022. (*Hearing Record, Facility's Testimony)*

7. On [redacted] 2023, the Appellant fell, which resulted in an acute fracture of his right fourth rib. The Facility did not provide documentation of the fall to Maximus at the time of the most recent NFLOC screening. *(Exhibit 20: Reportable Event Form and DPH Report, Exhibit 21: Facility Fall Report, Exhibit 22: Radiology Results Report, Facility's Testimony, Appellant's Testimony)*

8. On [redacted] 2023, the Facility submitted the NFLOC screening form to Maximus. The NFLOC screen described the Appellant's current ADL support needs as follows: The Appellant required supervision with bathing. For IADL, the Appellant required set-up assistance with medications and minimal assistance with meal preparations. Maximus recommended a Medical Doctor Review. Maximus' medical doctor reviewed the NFLOC screen, practitioner certification, psychiatric evaluation and consultation, order Summary report, progress notes, documentation survey report, physical and occupational therapy notes, and minimum data set. Maximus' medical doctor determined that nursing facility ("NF") level of care is not medically necessary for the Appellant because he does not require the continuous nursing services delivered at the NF level, and he could meet his needs in the community with the appropriate supports. (*Hearing Record, Exhibit 7: Practitioners Certificate, Exhibit 12: Psychiatric Evaluation and Consultation, Exhibit 10: Order Summary Report, Exhibit 8: Progress Note, Exhibit 9: Documentation Survey Report, Exhibit 11: Occupation Therapy Report, Exhibit 14: Physical Therapy Note, Exhibit 13: Minimum Data Set*)

9. On [redacted] 2023, Bill Regan, MD, reviewed all available information relating to the Appellant's medical conditions and total needs and determined that NFLOC is not medically necessary. He determined that the Appellant could meet his needs through the combination of medical, psychiatric, and social services delivered outside of the NF setting. He also determined that the Appellant would need intermittent assistance through home health, visiting nurse, or some other venue to monitor his condition. (*Hearing Record)*

10. On [redacted], 2023, Maximus sent the Appellant an NOA denying NFLOC. The notice stated that based on a review of the Appellant's case, NFLOC is not medically necessary because: "It is not considered effective for the Appellant and is not clinically appropriate in terms of level. The Appellant does not require continuous nursing services delivered at the level of the NF. His needs could be met in a less restrictive setting through a combination of medical, psychiatric, and social services delivered outside of the nursing facility setting. He would need intermittent assistance through

home health, visiting nurse, or some other venue to monitor his condition." (*Hearing Record, Exhibit 5: NOA*)

11. On [redacted], 2023, the Appellant's doctor wrote a letter stating that he disagreed with the denial of NFLOC services as he feels the Appellant did not manage his unstable blood sugar levels well when he was living on his own, and that he is still not managing them well enough at the NF. He stated that due to the Appellant's recent fall, the need for ongoing therapy services, his significant history of heart disease, and his psychiatric and diabetic history, the Appellant would benefit from remaining in a controlled environment at the NF. (*Exhibit 15: Letter from* [redacted])

12. On [redacted] 2023, the Appellant began physical therapy ("PT"). The Facility did not submit a record of this to Maximus as the documents that they provided at the time of his most recent NFLOC were submitted to Maximus prior to when the Appellant started PT. The Appellant has been certified to attend PT 3-5 times per week through [redacted] 2023. *(Exhibit 19: PT Evaluation and Plan of Treatment, Facility's Testimony)*

13. The Appellant suffers from brittle diabetes. His sugar levels are constantly fluctuating throughout the day. His sugar levels tend to plummet at night. The Appellant is on an insulin medication called Lantus for his diabetes. He takes a standard amount during the day but is on a sliding scale at night. (*Appellant's Testimony, Facility's Testimony*)

14. The Appellant takes a large number of medications daily to manage his diabetes, hypotension, blood pressure, constipation, gastroesophageal reflux disease ("GERD"), seizures, depression, and bipolar disorder. (*Appellant's Testimony, Facility's Testimony, Exhibit 17: Order Summary Report*)

15. The Appellant does not need help with bathing, eating, toileting, continence, or transferring. He needs help with meal preparations and dressing. He needs some help with mobility as he is unsteady on his feet at times. *(Appellant's Testimony, Facility's Testimony)*

16. At the hearing, Maximus stated that it had not received a copy of the Appellant's current PT order, records of his blood sugar levels, and documents regarding his recent fall. Maximus requested that the Facility provide it with these verifications. (*Hearing Record*)

17. The issuance of this decision is timely under Section 17b-61(a) of the Connecticut General Statutes, which provides that the agency shall issue a decision within 90 days of receipt of a request for a fair hearing. The Appellant requested an administrative hearing on [redacted] 2023. OLCRAH scheduled the administrative hearing for [redacted], 2023, but postponed the hearing due to Maximus' computer issues. OLCRAH rescheduled the hearing to [redacted], 2023. The undersigned held the hearing on [redacted] 2023. The hearing record remained open for [redacted] so the Facility could

submit additional documents. The hearing record closed on [redacted], 2023; therefore, this decision is due no later than [redacted] 2023.

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes provides the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

2. Section 17b-262-707(a) of Regulations of Connecticut State Agencies 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*.

    Section 17b-262-707(b) of the Regulations of Connecticut State Agencies 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 NF services.

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. (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 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.

Title 42 of the Code of Federal Regulations § 440.230(d) provides for sufficiency of amount, duration, and scope and states that the agency may place appropriate limits on a service based on such criteria as medical necessity or utilization control procedures.

Based on the information the Facility provided to Maximus at the time of the Appellant's most recent NFLOC, Maximus correctly determined the Appellant did not have uncontrolled and/or unstable and/or chronic conditions requiring continuous skilled nursing services.

Based on the information the Facility provided to Maximus at the time of the Appellant's most recent NFLOC, Maximus correctly determined that NF services were not clinically appropriate in terms of level of service or considered effective for the Appellant's condition.

Based on the information the Facility provided to Maximus at the time of the Appellant's most recent NFLOC, Maximus correctly determined that NF services were not medically necessary for the Appellant because he did not need substantial assistance with personal care on a daily basis. The Appellant could have met his needs through a combination of medical, psychiatric, and social services provided through intermittent home health, visiting nurse, or some other venue outside of the NF setting.

Based on the information the Facility provided to Maximus at the time of the

Appellant's most recent NFLOC, Ascend correctly denied the Appellant's request for NFLOC as not medically necessary.

DISCUSSION

When Maximus completed the NFLOC screening on [redacted] 2023, it correctly concluded that the NF level of care was not medically necessary for the Appellant at that time as he only required supervision with bathing, set-up assistance with medications, and minimal assistance with meal preparations, which could be provided to the Appellant outside of the NF setting. However, during the hearing, the Facility reported that the Appellant's condition has since declined.

After the hearing, the Facility provided additional documents regarding a recent fall that resulted in a rib fracture, a new order for PT, recent blood sugar levels, and medical records documenting the numerous health conditions and medications the Appellant takes for them.

The Appellant's doctor provided a letter stating that the Appellant takes many medications for numerous health conditions, and he cannot manage them on his own. The doctor feels that the Appellant should remain in an NF.

The Facility and the Appellant stated that they feel he should remain in the NF setting as he needs round-the-clock care to continue his PT, manage his medications, and maintain his health.

Based on the information that was received during the hearing and documents that the Facility submitted after the hearing, it would be in the best interest of all parties for [redacted] to submit a new NFLOC form to Maximus.

DECISION

The Appellant's appeal is **DENIED**.

Kristin Haggan
Kristin Haggan
Fair Hearing Officer

CC: hearings.commonops@ct.gov
AscendCTadminhearings@maximus.com
jeandenton@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, 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 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 the 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 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. 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 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.