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

[redacted]
[redacted]
REQUEST# 215182

NOTICE OF DECISION

PARTY

[redacted]
[redacted]
[redacted]

PROCEDURAL BACKROUND

On [redacted], 2023, Maximus Manager Innovations LLC ("Maximus"), the Department of Social Service's (the "Department") contractor that administers approval of nursing home care, sent [redacted] (the "Appellant"), a Notice of Action ("NOA") denying nursing facility level of care ("NFLOC") indicating that he does not meet the NFLOC criteria.

On [redacted] 2023, the Appellant requested an administrative hearing to contest Maximus's decision to deny 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, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an in-person administrative hearing. The following individuals participated in the hearing:

[redacted], Appellant
Kerry-Ann Henry, [redacted] Social Worker
Felicia Richards, Assistant Director of Nursing, [redacted]
Jean Denton, Maximus Representative
Charlaine Ogren, Community Options, Department's Representative
Melissa Prisavage, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether Maximus's decision that the Appellant does not meet the criteria for NFLOC is correct.

FINDINGS OF FACT

1. The Appellant is [redacted]-years-old [DOB [redacted]]. (Appellant's Testimony)

2. On [redacted], 2022, the Appellant was admitted to [redacted] with a diagnosis of anemia. (Hearing Record)

3. The Appellant's medical history includes lactic acidosis, malnutrition, constipation, hyponatremia, IVDA, heroine cocaine abuse, thyroid nodule, hypomagnesemia, hypokalemia, chronic depression, obesity, non-alcoholic liver disease, ETOH abuse, anemia, acquired cyst of the kidney, PNA, MSSA bacteremia, septic emboli latent, S/P paraspinal asymptomatic anemia, thrombocytopenia, duodena ulcers, and acromioclavicular joint separation of right shoulder. (Hearing Record)

4. On [redacted] 2022, [redacted] submitted an NFLOC screening form to Maximus. The screening described the Appellant as requiring the following hands-on support with his Activities of Daily Living ("ADLs"): bathing, dressing, toileting, mobility, and transfers. The Appellant required assistance with the following Instrumental Activities of Daily Living ("IADLs"): minimal assistance with meal preparation, and no assistance with medications. Based on this information, Maximus approved the Appellant for a 60-day, short-term approval that expired on [redacted], 2022. (Hearing Record)

5. The ADL Measures include bathing, dressing, eating, toileting, continence, transferring, and mobility. (Exhibit 4: ADL Measures and Ratings)

6. On [redacted], 2022, [redacted] submitted an NFLOC screening form to Maximus. The screening described the Appellant as requiring the following supervision with his ADLs: bathing, dressing, and eating. The Appellant required the assistance with the following IADLs: continual supervision with meal preparation, and physical assistance with medications. Based on this review, Maximus approved the Appellant for a 60-day, short-term approval that expired on [redacted], 2023. (Hearing Record)

7. On [redacted] 2023, [redacted] submitted an NFLOC screening form to Maximus. The screening described the Appellant as requiring the following supports with his ADLs: supervision with bathing, dressing, and eating. The Appellant required assistance with the following IADLs: continual supervision with meal preparation, and verbal and physical assistance with medications. Based on this review, Maximus approved the Appellant for a 60-day, short-term approval that expired on [redacted], 2023. (Hearing Record)

8. On [redacted] 2023, [redacted] submitted an NFLOC screening form to Maximus. The screening described the Appellant as requiring the following supports with his ADLs: supervision with bathing, dressing, and eating. The Appellant required assistance with the following IADLs: continual supervision with meal preparation, and verbal and physical assistance with medications. Based on this review, Maximus recommended a medical doctor conduct a review. During the review it was noted that the Appellant was independent with all of his ADLs and that the Appellant's needs could be met in the community with appropriate supports. (Hearing Record)

9. On [redacted], 2023, Dr. William Regan MD, the medical doctor for Maximus, assessed the Appellant's medical condition using the following: NFLOC screen, Practitioner Certification, Face Sheet, Evaluation, Physician Order, Completed Care Details, Occupational Therapy Note, Interdisciplinary Rehabilitation Screening, Change on Condition Therapy Screen, Minimum Data Screen, and Progress Note. Dr. Regan determined that nursing facility level of care was not medically necessary for the Appellant as it is not clinically appropriate in terms of the level of services provided and is not considered effective for his condition. Dr. Regan found 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)

10. On [redacted], 2023, Maximus issued a NOA to the Appellant informing him that he does not meet the criteria necessary for nursing facility level of care. (Hearing Record)

11. The Appellant's current medications include Lidocaine, Melatonin, Methadone, Tylenol, Motrin, Meloxicam, and Saline Nasal Spray. (Exhibit 13: Physician's Orders, Social Worker's Testimony)

12. The Appellant does not use any assistive devices for mobility. (Appellant's Testimony)

13. The Appellant is still suffering from pain in his shoulder and recent shakiness in his legs. He is independent with all of his ADLs. (Appellant's Testimony)

14. The Appellant's medical condition has not declined since his last medical review, but occasionally the Appellant has more severe pain in his shoulder which results in requiring assistance. (Social Worker's Testimony)

15. The Social Worker is going to request a consult for possible physical therapy for the Appellant's shakiness in his legs. (Social Worker's Testimony)

16. The issuance of this decision is timely under Connecticut General Statutes 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], 2023. Therefore, this decision is due no later than [redacted], 2023.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes ("Conn. Gen. Stat") authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.

2. Regulations of Connecticut State Agencies ("Regs., Conn. State Agencies") § 17b-262-707(a) provides 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 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.

3. Regs., Conn. State Agencies. § 17b-262-707(b) 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 [redacted] [redacted] facility resident and was correctly authorized to receive payments for nursing facility services.

4. Regs., Conn. State Agencies § 19-13-D8t(d)(1)(A) provides 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; (ii) That a patient admitted to a rest home with nursing supervision has controlled and/or stable chronic conditions which require minimal skilled nursing services, nursing supervision, or assistance with personal care on a daily basis.

5. Title 42 of the Code of Federal Regulations ("C.F.R.") Section 409.31(b) provides for specific conditions for meeting 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 impatient hospital or inpatient CAH services; or (ii) Which arose while the beneficiary was receiving care in a 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 a 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 a SNF, on an inpatient basis.

The Appellant previously met the NFLOC criteria before the notice of action denying that approval on [redacted], 2023.

6. 42 C.F.R. § 483.128(a) provides the State's PASARR 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.

7. 42 C.F.R. § 483.128(k) provides for both categorical and individualized determinations, findings of the evaluation must be interpreted and explained to the individual and, where applicable, to a legal representative designated under State law.

8. 42 C.F.R. § 483.132(a) 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.

9. 42 C.F.R. 483.132(b) provides in determining appropriate placement, the evaluator must prioritize the physical and mental needs of the individual being evaluated, taking into account the severity of each condition.

10. 42 C.F.R. 483.132(c) provides at a minimum, the data relied on to make a determination 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's review of the Appellant's condition showed that he requires only supervision for all ADLs.

The facility testified that the Appellant's condition has not declined since the NFLOC screening was submitted.

11. Conn. Gen. Stat. § 17b-259b(a) 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.

12. Conn. Gen. Stat. § 17b-259b(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.

13. 42 C.F.R. § 440.230(d) provides for the Sufficiency of amount, duration, and scope. The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures.

Maximus correctly determined that the Appellant does not require substantial assistance with his ADLs.

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

Maximus correctly determined that 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 his medical needs can be met with services offered in the community.

On [redacted], 2023, Maximus correctly denied the Appellant's request for approval of long-term care Medicaid.

DECISION

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

Melissa Prisavage

Melissa Prisavage
Fair Hearing Officer

CC: Kerry-Ann Henry, Social Worker, [redacted]
Community Options, hearings.commops@ct.gov
Maximus, 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 Administrative Hearings and Appeals, 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.