

**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 # [REDACTED]  
CLIENT ID # [REDACTED]  
REQUEST # [REDACTED]**

**NOTICE OF DECISION**

**PARTY**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**PROCEDURAL BACKGROUND**

On [REDACTED], 2023, Maximus Management Innovations LLC (“Maximus”), the Department of Social Services (the “Department”) contractor that administers approval of nursing home care, sent [REDACTED] (the “Appellant”) a Notice of Action (“NOA”) approving nursing facility level of care (“NFLOC”) for one hundred and twenty days which will expire on [REDACTED], 2023.

On [REDACTED], 2023, the Appellant’s Conservator, [REDACTED], requested an administrative hearing to contest the expiration of the Appellant’s NFLOC approval effective [REDACTED], 2023.

On [REDACTED] 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (the “OLCRAH”) issued a notice scheduling the administrative hearing for [REDACTED], 2023, to be conducted in-person at [REDACTED] (the “Facility”).

On [REDACTED] 2023, the administrative hearing was held with the following individuals:  
[REDACTED] Appellant  
[REDACTED] Director of Social Work, [REDACTED]  
Benille St. Jean, Community Nurse Coordinator, Community Options, DSS  
Jean Denton, Maximus Representative  
Joseph Alexander, Administrative Hearing Officer, DSS OLCRAH

The Appellant's Conservator was not present at the hearing. The hearing officer determined the Appellant was capable of representing herself and her interests without the assistance of the Conservator.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the expiration of the approval of NFLOC effective [REDACTED], 2023, is correct.

### **FINDINGS OF FACT**

1. The Appellant is [REDACTED] years old [REDACTED] and a recipient of the Husky D Medicaid program. (Exhibit 6: Level of Care Determination)
2. On [REDACTED] 2023, the Appellant was admitted to [REDACTED] with the admitting diagnoses of failure to thrive (Adult). (Hearing Record)
3. On [REDACTED], 2023, [REDACTED] submitted a Nursing Facility Level of Care ("NFLOC") screening form to Maximus describing the Appellant's Activities of Daily Living ("ADL") support needs as requiring total assistance with bathing, toileting, and mobility, and hands on assistance with dressing, transfers, and continence. The Appellant's Instrumental Activities of Daily Living ("IADL") were described as requiring total assistance with meal preparation and physical assistance with medications. Based on this information the Appellant received an emergency categorical seven-day short term approval which was scheduled to expire on [REDACTED], 2023. (Hearing Record)
4. On [REDACTED] 2023, the Appellant was admitted to [REDACTED] (the "Facility"). (Exhibit 6: Level of Care Determination)
5. On [REDACTED], 2023, the Facility submitted a NFLOC screening form to Maximus describing the Appellant's ADL support needs as requiring hands on assistance with bathing, dressing, toileting, and continence as well as requiring total assistance with transfers and mobility, and supervision with eating. The Appellant's IADL support needs were described as requiring total assistance with meal preparation, and verbal or gestural assistance with medication supports. Based on this information the Appellant received a one-hundred-and-twenty-day short term approval scheduled to expire on [REDACTED], 2023. (Exhibit 6: Level of Care Determination)
6. 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], 2023, making this decision due by [REDACTED] 2023.

## CONCLUSIONS OF LAW

1. Section 17b-262 of the Connecticut General Statutes (“Conn. Gen. Stat.”) provides that 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.

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 for the same.**

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

Regs., Conn. State Agencies §17b-262-707 (b) 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 nursing home services.**

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

**The Appellant has met the NFLOC screening requirements through [REDACTED] 2023.**

4. The Department's Uniform Policy Manual ("UPM") "is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 177 (1994) (citing Conn. Gen. Stat. 17-3f(c) [now 17b-10]; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A. 2d 712(1990)).
5. UPM § 1570.25(C)(2)(k) provides for the administrative duties of the fair hearing official. The fair Hearing official renders a fair hearing decision in the name of the Department, in accordance with the criteria in this chapter, to resolve a dispute.

6. UPM § 1570.25(F)(2)(a) provides that the Department considers decisions by the Department regarding eligibility for benefits in both initial and subsequent determinations.

**The Appellant has been approved for NFLOC through [REDACTED] 2023.**

**As the Appellant is eligible to receive nursing facility services through [REDACTED], 2023, she has not experienced any loss of benefits or services. Therefore, there is no practical relief that can be afforded through an administrative hearing.**

### **DISCUSSION**

Based on the Appellant's testimony, her dispute is not with the approval of NFLOC through [REDACTED], 2023, or said approvals subsequent end effective [REDACTED], 2023. Rather, the Appellant's dispute is with the Facility itself. The Appellant is dissatisfied with the quality of services she receives and lack thereof. The Appellant made clear her desire to be transferred to a different Facility. While the Appellant's NFLOC will remain active through [REDACTED] 2023, regardless of the Facility she resides in, the undersigned hearing officer has no authority to determine at which Facility the Appellant resides. Therefore, the undersigned hearing officer has determined no practical relief can be afforded to the Appellant through the administrative hearing itself. The Appellant's issue is moot.

**DECISION**

The Appellant's appeal is **dismissed as MOOT.**

*Joseph Alexander*  
**Joseph Alexander**  
**Administrative Hearing Officer**

CC: [hearings.commops@ct.gov](mailto:hearings.commops@ct.gov)  
[AscendCTadmihearings@maximus.com](mailto: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 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 06105-3725. 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.