

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

██████████, 2014
Signature Confirmation

Client ID # ██████████
Request # 602547

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the “Department”) sent (the “Appellant”) a Notice of Action (“NOA”) granting her application for Long Term Care Medicaid benefits (“L01”) effective ██████████ 2013.

On ██████████, 2014, the Appellant requested an administrative hearing to contest the Department’s determination of the effective date of her eligibility for the program.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2014.

On ██████████ 2014, 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.

The following individuals were present at the hearing:

- ██████████, Appellant’s Son and Power of Attorney
- ██████████. Appellant’s Attorney
- Ledi Trifoni, Department’s Representative
- Leyla Miranda, Departments Representative
- Shelley Starr, Hearing Officer

The hearing record was held open for the submission of additional evidence. On [REDACTED] 2014, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's determination of Medicaid effective date of [REDACTED] 2013 is correct

FINDINGS OF FACT

1. The Appellant and her spouse are long term residents at the Alzheimer's Resource Center. The Appellant was admitted to the facility in [REDACTED] 2011 and her spouse was admitted to the facility in [REDACTED] 2012. (POA Testimony)
2. The Appellant's spouse is the owner and insured of John Hancock Life Insurance Policy # [REDACTED]. Effective [REDACTED] 2013, the policy has a face value of \$5,000.00 and a Cash Value of \$4,928.43. (Hearing Record and Appellant's Exhibit A: page 18)
3. On [REDACTED], 2013, the Appellant's spouse completed the Metlife policy request to surrender and terminate policy # [REDACTED] with proceeds to be issued by check. (Appellant's Exhibit A: page 30 Metlife Full Policy Surrender Request, [REDACTED]/13)
4. On [REDACTED] 2013, Metlife policy # [REDACTED] was cashed in for its surrender value, and a check in the amount of \$4,928.43 was issued to the Appellant's spouse. (Appellant's Exhibit A: page 18 Metlife check [REDACTED]/13)
5. On [REDACTED] 2013, the Metlife cash surrender proceeds of \$4,928.43 was deposited into TD checking account # [REDACTED], which is jointly owned by the Appellant and her spouse. (Exhibit 1: TD bank statements [REDACTED] 13-[REDACTED]/13)
6. Both parties stipulated the Metlife policy proceeds would be awarded to the Appellant in order to qualify her spouse for Medicaid assistance for [REDACTED] 2013 and ongoing months. (Hearing Record and POA Testimony)
7. On [REDACTED] 2013, a check in the amount of \$3,836.35 from the Metlife surrender proceeds, was issued to the Alzheimer's Resource Center. (Appellant's Exhibit A: page 21, check image # [REDACTED])
8. Sometime in [REDACTED] 2013, the Bose Stereo System was purchased for the Appellant's spouse using the remaining life insurance cash surrender proceeds. (POA Testimony)

9. On [REDACTED] 2013, the Appellant and her spouse applied for long term care assistance through the (L01) Medicaid program. (Hearing Record)

10. The Appellant's assets in the month of [REDACTED] 2013 computed at \$6,377.95.

| | | |
|---------------------------------|---------------|-------------|
| *TD Joint checking # [REDACTED] | \$500.00 /2 = | \$ 250.00 |
| * Appellant's Resident Trust | | \$ 1,199.52 |
| *Metlife Policy # [REDACTED] | | \$ 4,928.43 |
| | | <hr/> |
| | | \$ 6,377.95 |

The Appellant's assets in the month of [REDACTED] 2013 computed at \$ 5,082.17.

| | |
|----------------------------------|-------------|
| **TD Joint checking # [REDACTED] | \$ 3,959.85 |
| *Appellant's Resident Trust | \$ 1,122.32 |
| | <hr/> |
| | \$ 5,082.17 |

**The TD checking # [REDACTED] balance of \$3,959.85 is solely countable as the Appellant's due to the agreement the Metlife proceeds would be awarded to the Appellant. (Hearing Record and Appellant's Exhibit A)

11. On [REDACTED] 2014, the Department granted the Appellant L01 Medicaid with an effective date of [REDACTED]/13; the first month in which the Appellant was under assets. The Appellant was denied L01 Medicaid for months [REDACTED] 2013 through [REDACTED] 2013 due to over assets. (Hearing Summary and Appellant's Exhibit A: page 23 Notice of Approval for Long Term Care Medicaid, [REDACTED]/14)

12. As of [REDACTED] 2014, the presented issue at the Centers for Medicare and Medicaid Services ("CMS") has not approved the state's proposal to not determine someone ineligible for Medicaid solely on the basis of the cash value of a life insurance policy worth less than \$10,000 provided the individual is pursuing surrender of the policy and that, upon surrendering such policy, all proceeds of the policy are used to pay for the institutionalized individual's long term care. (Hearing Summary and Exhibit 4: Department Correspondence)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

2. Uniform Policy Manual (“UPM”) § 4030.30 discusses the treatment of life insurance policies as assets.

UPM § 4030.30(A) provides that for all programs: 1. The owner of a life insurance policy is the insured unless otherwise noted on the policy, or if the insurance company confirms that someone else, and not the insured, can cash in the policy; and 2. Policies such as term insurance policies having no cash surrender value are excluded assets.

UPM § 4030.30(C) provides that for the AABD and MAABD programs: 1. If the total face value of all life insurance policies owned by the individual does not exceed \$1500.00, the cash surrender value of such policies is excluded. In computing the face value of life insurance, the Department does not count insurance such as term insurance which has no cash surrender value; and 2. Except as provided above, the cash surrender value of life insurance policies owned by the individual is counted toward the asset limit.

The Department correctly determined that the Metlife insurance policy # [REDACTED] had a face value exceeding \$1500.00, and that the policy’s cash surrender value was therefore counted toward the asset limit.

3. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1600.00.

The Department correctly determined that the \$4,928.43 cash surrender value of the Metlife policy # [REDACTED] exceeded the Medicaid asset limit of \$1600.00.

4. UPM § 1560.10 discusses Medicaid beginning dates of assistance and provides that the beginning date of assistance for Medicaid may be one of the following:
 - A. The first day of the first, second or third month immediately preceding the month in which the Department receives a signed application when all non-procedural eligibility requirements are met and covered medical services are received at any time during that particular month; or
 - B. The first day of the month of application when all non-procedural eligibility requirements are met during that month; or
 - C. The actual date in a spenddown period when all non-procedural eligibility requirements are met. For the determination of income eligibility in spend-down, refer to Income Eligibility Section 5520; or
 - D. The first of the calendar month following the month in which an individual is determined eligible when granted assistance as a Qualified Medicare Beneficiary (Cross Reference: 2540.94). The month of eligibility determination is considered to be the month that the Department receives all information and verification necessary to reach a decision regarding eligibility.

The Department correctly determined that the Appellant met the eligibility requirement of having assets under the limit as of [REDACTED] 2013 date when the Metlife policy proceeds of \$3,836.35 was issued to the Alzheimer's Resource Center on [REDACTED] 2013 and the combined resident trust and TD checking account balances were under the \$1,600.00 asset limit in the month of [REDACTED], 2013.

5. Section 17b-261(c) provides that for the purposes of determining eligibility for the Medicaid program, an available asset is one that is actually available to the applicant or one that the applicant has the legal right, authority or power to obtain or to have applied for the applicant's general or medical support. If the terms of a trust provide for the support of an applicant, the refusal of a trustee to make a distribution from the trust does not render the trust an unavailable asset. Notwithstanding the provisions of this subsection, the availability of funds in a trust or similar instrument funded in whole or in part by the applicant or the applicant's spouse shall be determined pursuant to the Omnibus Budget Reconciliation Act of 1993, 42 USC 1396p

UPM § 4005.05 (A) provides that the Department counts the assistance unit's equity in an asset toward the asset limit if the asset is not excluded by state or federal law and is either available to the unit, or deemed available to the unit.

UPM § 4005.05 (B)(2) provides that under all programs except Food Stamps, the Department considers an asset available when actually available to the individual or when the individual has the legal right, authority or power to obtain the asset, or to have it applied for, his or her general or medical support.

UPM § 4005.05 (D) provides that an assistance unit is not eligible for benefits under a particular program if the units equity in counted assets exceeds the asset limit for the particular program.

The Department correctly determined that the Metlife policy # [REDACTED] was an available asset and that the applicant had the legal right, authority or power to obtain the asset.

6. Section 17b-2(8) Programs administered by the Department of Social Services 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.

Section 17b-261(h) provides to the extent permissible under federal law, an institutionalized individual, as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3), shall not be determined ineligible for Medicaid solely on the basis of the cash value of a life insurance policy worth less than ten thousand dollars provided (1) the individual is pursuing the surrender of the policy, and (2)

upon surrendering such policy all proceeds of the policy are used to pay for the institutionalized individual's long-term care.

The Department correctly determined the Metlife policy [REDACTED] as countable because ("CMS") has not informed the Department that the provisions of 17b-261(h) are permissible under the federal law, the provisions in the subsection cannot be implemented.

The Department correctly determined that the Appellant did not meet the eligibility requirement of having assets under the limit in [REDACTED] 2013 through [REDACTED] 2013.

The Department correctly determined that the Appellant's Medicaid eligibility begin date is [REDACTED] 2013, the first day of the month in which assets were reduced.

DISCUSSION

After reviewing the evidence and testimony presented, I find the Department's determination of the Medicaid effective date to be correct.

The record reflects that the Appellant's assets were within the Medicaid limits effective [REDACTED] 2013, the month in which the life insurance policy proceeds were liquidated to the Nursing Home for cost of care and with the purchase of the Bose Stereo System. Prior to [REDACTED] 2013, the cash surrender value of the life insurance policy was available and exceeded the Medicaid limit.

The Appellant's counsel argues that based on CGS 17b-261(h) the value of the life insurance policy should not be considered because the appellant was pursuing the surrender and the proceeds were to be used to pay for long term care.

I disagree and find that this statute has limitations based on Federal approval. At this point, the Department does not know whether this rule is permissible under federal law. It appears that the Department has sought Federal approval to implement the statute, but has not yet obtained it.

Accordingly, the Department cannot implement this provision yet and must continue to apply the regulations that are currently in place.

In addition, I find that the life insurance cash value asset was clearly accessible as it took less than a three week duration of time for the appellant to receive the cash surrender once it was requested and cashed in.

DECISION

The Appellant's appeal is DENIED.



Shelley Starr
Hearing Officer

CC: Phil Ober, Operations Manager, DO 52 New Britain

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, 55 Elm Street, 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 his 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.