

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

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

Client ID # ██████████
Request # 634053

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
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PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") granting Long Term Care Medicaid ("LTC") benefits effective ██████████ 2013 and denying Long Term Care benefits for the months of ██████████ 2013 and ██████████ 2013.

On ██████████ 2014, ██████████, (the "Conservator") requested an administrative hearing to contest the effective date of the Long Term Care Medicaid benefits as determined by the Department.

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:

██████████, Conservator
Cindy Disco, Villa Maria Nursing & Rehabilitation, Nursing Home Representative
██████████, Attorney for the Appellant
Liza Morais, Department's Representative
Lisa Nyren, Hearing Officer

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

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to grant Long Term Care Medicaid benefits effective [REDACTED] 2013 was correct.

FINDINGS OF FACT

1. The Appellant is a resident of Villa Maria Nursing and Rehabilitation, a skilled nursing facility, since [REDACTED] 2012. (Conservator's Testimony and Nursing Home Representative's Testimony)
2. On [REDACTED] [REDACTED] 2013, the Conservator received her appointment as Conservator for the Appellant. (Conservator's Testimony)
3. The Probate Court denied the Conservator the fiduciary certificate until the Conservator secured a \$200,000.00 surety bond on [REDACTED] 2013. (Attorney's Testimony)
4. On [REDACTED] 2013, the Department received an application for Long Term Care Medicaid for the Appellant. (Hearing Summary and Exhibit 12: Notice of Action [REDACTED]/14)
5. On [REDACTED] 2013, the Appellant held an Individual Retirement Account with Merrill Lynch (the "IRA") valued at \$54,305.38. (Exhibit 7: IRA Statement [REDACTED] 13 – [REDACTED] 13, Exhibit 11: IRA Statement [REDACTED] 13 – [REDACTED] /13, Exhibit 14: EMS Assets 1 Screenprint, and Department Representative's Testimony)
6. On [REDACTED] 2013, the Appellant held a joint savings account ("account [REDACTED]") with her son at Putnam Savings Bank (the "bank") valued at \$911.23. (Exhibit 10: Bank Statement [REDACTED] /13, Exhibit 14: EMS Assets 1 Screenprint and Conservator's Testimony)
7. On [REDACTED] 2013, the IRA issued a check to the Conservator for \$40,179.83 surrendering the IRA account. (Exhibit 11: IRA Statement [REDACTED] 13 – [REDACTED] /13 and Conservator's Testimony)

8. On [REDACTED] 2014, the Conservator, on behalf of the Appellant, opened a checking account ("account [REDACTED]) at the bank and deposited the funds of \$40,179.83 from the IRA. (Exhibit 8: Bank Statement [REDACTED]/13)
9. On [REDACTED] 2013, the Conservator reduced the equity in account [REDACTED] by making a payment to the nursing facility totaling \$34,785.00, a payment to the funeral home of \$3,745.00 and two miscellaneous payments of \$750.00 and \$189.30. (Exhibit 8: Bank Statement [REDACTED]/13 and Exhibit A: Financial Documents)
10. On [REDACTED], 2013, the Conservator reduced the equity in account [REDACTED] by making a miscellaneous payment of \$60.68. (Exhibit 8: Bank Statement [REDACTED]/13 and Exhibit A: Financial Documents)
11. On [REDACTED] 2013, the funeral home cashed the check for \$3,745.00. (Exhibit A: Financial Documents)
12. As of [REDACTED], 2013, the value of the bank account [REDACTED] is \$4,394.85. (Exhibit 8: Bank statement [REDACTED]/14 and Exhibit A: Financial Documents)
13. As of [REDACTED] 2013, the value of the bank account [REDACTED] is \$911.31. (Exhibit 10: Bank Statement [REDACTED]/13)
14. The Medicaid asset limit is \$1,600.00. (Hearing Summary and Department's Representative Testimony)
15. For the month of [REDACTED] 2013, the Appellant's total assets exceed the Medicaid asset limit of \$1,600.00. (Hearing Summary)
16. For the month of [REDACTED] 2013, the Appellant's total assets exceed the Medicaid asset limit of \$1,600.00. (Hearing Summary)
17. On [REDACTED] 2014, the Department granted Medicaid for Long Term Care effective [REDACTED] 2013. (Department's Representative's Testimony and Hearing Summary)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes, authorizes the Commissioner of the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.

2. Uniform Policy Manual (“UPM”) § 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit’s eligibility for benefits.
3. UPM § 4000.01 defines available asset as cash or any item of value which is actually available to the individual or which the individual has the legal right, authority or power to obtain, or to have applied for, his or her general or medical support.
4. UPM § 4005.05(B) speaks to the asset limit and states in part:
 1. 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:
 - a. Available to the unit; or
 - b. Deemed available to the unit.
 2. 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.
5. UPM § 4030.05(A)(1) provides for types of bank accounts to including savings accounts.
6. UPM § 4030.05(A)(2) provides for types of bank accounts to include checking accounts.
7. The Department correctly included the Appellant’s account [REDACTED] as an available asset.
8. The Department correctly included the Appellant’s IRA as an available asset.
9. The Department correctly included the Appellant’s account [REDACTED] as an available asset.
10. UPM § 4000.01 defines asset limit as the maximum amount of equity in counted assets which an assistance unit may have and still be eligible for a particular program administered by the Department.
11. UPM § 4005.05(D)(1) provides that the Department compares the assistance unit’s equity in counted assets with the program asset limit when determining whether the unit is eligible for benefits.

12. UPM § 4001.01 defines equity value is the fair market value of an asset minus encumbrances.
13. UPM § 4001.01 defined encumbrance as a legal claim against an asset which a person must pay off in order to convert the asset to cash.
14. UPM § 4026.05 provides for the amount of assets counted in determining the assistance unit's eligibility is calculated in the following manner:
 - A. The Department determined the amount of the assistance unit's available non-excluded assets by subtracting the value of the following assets owned by the assistance unit:
 1. Those assets considered to be inaccessible to the assistance unit at the time of determining eligibility; and
 2. Assets which are excluded from consideration.
15. As of [REDACTED] 2013, the Department correctly determined the counted equity value of account [REDACTED] as \$911.23.
16. As of [REDACTED] 2013, the Department correctly determined the counted equity value of the IRA as \$54,305.38.
17. As of [REDACTED] 2013, the Appellant's total countable assets equal \$55,216.61. ($\911.23 account [REDACTED] + $\$54,305.38$ IRA = $\$55,216.61$)
18. As of [REDACTED] 2013, the Department correctly determined the counted equity value of account [REDACTED] as \$911.31.
19. As of [REDACTED] 2013, the Department correctly determined the counted equity value of the IRA as \$00.00.
20. As of [REDACTED] 2013, the Department incorrectly determined the counted equity value of the account [REDACTED] as \$4,394.85. The correct counted equity value is \$649.85. ($\$4,394.85$ ending balance [REDACTED] - $\$3,745.00$ outstanding check/encumbrance = $\$649.85$ equity value)
21. As of [REDACTED] 2013, the Appellant's total countable assets equal \$1,561.16. ($\649.85 account [REDACTED] + $\$911.31$ account [REDACTED] = $\$1,561.16$)
22. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid under the Medical Aid for the Aged, Blind, and Disabled program ("MAABD") for a needs group of one is \$1,600.00.
23. UPM § 4005.05(D)(2) provides that an assistance unit is not eligible for benefits under a particular program if the equity in counted assets exceeds the asset limit for the particular program, unless the assistance

unit is categorically eligible for the program and the asset limit requirement does not apply (cross reference: 2500 Categorical Eligibility Requirements).

24. UPM § 4005.15(A)(2) provides that in the Medicaid program at the time of application, the assistance unit is ineligible until the first day of the month in which it reduces its equity in counted assets to within the asset limit.
25. The Department correctly determined the Appellant had assets that exceeded the Medicaid asset limit of \$1,600.00 for the month of [REDACTED] 2013.
26. The Department incorrectly determined the Appellant had assets that exceeded the Medicaid asset limit of \$1,600.00 for the month of [REDACTED] 2013.
27. For the month of [REDACTED] 2013, the Department correctly denied the Appellant's application for LTC Medicaid.
28. For the month of [REDACTED] 2013, the Department incorrectly denied the Appellant's application for LTC Medicaid.
29. The Department incorrectly determined the first month of eligibility under the Long Term Care Medicaid Program as [REDACTED] 2013. The correct date of Medicaid eligibility is [REDACTED] 2013.

DISCUSSION

On [REDACTED] 2014, the Department discovered an error in the asset calculation and incorrectly included savings account [REDACTED] in the determination of total assets for [REDACTED] and [REDACTED] 2013. Documentation located in the case record by the Department indicates the Appellant is not an owner of this account. There is no impact on my decision.

DECISION

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

ORDER

1. The Department must grant LTC Medicaid effective [REDACTED] 2013 and issue a corrective notice.
2. Compliance is due [REDACTED] 2014.

Lisa A. Nyren

Lisa A. Nyren
Hearing Officer

PC: Tonya Cook-Beckford, Field Operations Manager, RO #42

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, 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 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.