

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

██████████ 2015  
Signature Confirmation

Client ID # ██████████  
Request # 665886

**NOTICE OF DECISION**

**PARTY**

Attorney ██████████  
Conservator for ██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2014 the Department of Social Services (the "Department") sent Attorney ██████████ (the "Appellant"), conservator for ██████████ (the "Applicant") a Notice of Action ("NOA") denying Long Term Care Medicaid benefits for the months of ██████████ 2014 through ██████████ 2015.

On ██████████ 2015, the Appellant requested an administrative hearing to contest the denial of the Long Term Care Medicaid benefits as determined by the Department.

On ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2015.

On ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice rescheduling the administrative hearing for ██████████ 2015.

On ██████████ 2015, 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:

Attorney ██████████, the Appellant, Conservator for the Applicant ██████████  
Attorney ██████████, Attorney for the Applicant, authorized by the Appellant  
Michelle Dawson, Geer Nursing & Rehabilitation Facility, Accounts Receivable Division  
Bob Cimini, CFO, Geer Nursing & Rehabilitation Facility

Pamela Corbin-Riddick, ESW, Department's representative  
Amy Kreidel, Department's fair hearing liaison  
Maureen Foley-Roy, Hearing Officer

The hearing record remained open for the submission of additional evidence. On [REDACTED] 2015, the record closed.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department's decision to deny Long Term Care benefits was correct.

### **FINDINGS OF FACT**

1. On [REDACTED] 2014, the Applicant was admitted to the facility for long term care. (Exhibit H: LTC application)
2. On [REDACTED] 2014, a physician completed a Social Security Administration form regarding an individual's ability to manage benefits and indicated that due to her moderate dementia, the Applicant could neither manage her funds nor direct someone else to manage them for her. (Exhibit 2: Social Security Administration Physician Statement)
3. On [REDACTED] 2014, the facility staff completed an application for long term care for the Applicant with the assistance of the Applicant's former granddaughter in law, who was neither the power of attorney, nor conservator for the Applicant. (Exhibit H, Geer Accounts Receivable staff testimony)
4. The Applicant's assets consisted of \$456.53 in a bank account at Salisbury Bank and a life insurance policy with a cash value of \$3600. (Exhibit H)
5. On or about [REDACTED] 2014, the facility filed a petition for a conservator to be appointed for the Applicant as she had no family or friends to represent or assist her. (Geer CFO's testimony, Exhibit B1: Probate Application for Appointment of Conservator)
6. On [REDACTED] 2014, the Probate Court sent a special notice that a petition in the matter of the Applicant would be held [REDACTED] 2014 at the facility. (Appellant's Exhibit 3: Probate Court Order dated [REDACTED] 2014)
7. On [REDACTED] 2014, the Probate Court send a special notice that the hearing scheduled for [REDACTED] 2014 in the matter of the Applicant had been continued until [REDACTED] 2014. (Appellant's Exhibit 4: Probate Court order dated [REDACTED] 2014)

8. On [REDACTED] 2014, the Probate Court send a special notice that the hearing scheduled for [REDACTED] 2014 in the matter of the Applicant had been continued until [REDACTED] 2014. ( Appellant's Exhibit 5: Probate Court order dated [REDACTED] 2014)
9. On [REDACTED] 2014, the Probate Court sent a certificate to the Applicant's newly appointed conservator naming her as fiduciary and "conservator" as appointed on [REDACTED] 2014. (Exhibit 6: Probate Court's Fiduciary Certificate)
10. On [REDACTED] 2014, the Applicant's conservator noted that the certificate sent by the Probate Court did not differentiate whether she had been appointed as conservator of person, estate or both. She made a notation on the certificate that it could not be used because it was incomplete and she contacted Probate Court in an effort to obtain correct documents. (Exhibit 6 and Conservator's testimony)
11. On [REDACTED] 2014, the Applicant's life insurance policy matured. (Exhibit D pg 5: Letter from Combined Life Insurance dated [REDACTED] 2014)
12. The terms of the life insurance policy stipulate that when the policy matured, the company had the option to defer payment for up to six months. (Exhibit D pg 16: copy of life insurance policy)
13. The Applicant's conservator did not know that the life insurance policy had matured. (Conservator's testimony)
14. On [REDACTED] 2014, the Probate Court faxed the Applicant's conservator a new fiduciary certificate and a probate court decree indicating that she had been appointed conservator of the both the Applicant's person and estate. (Appellant's exhibit 7: Probate Court Documents with fax notation of [REDACTED] 2014)
15. On [REDACTED] 2014, the Applicant's conservator faxed a letter to the Applicant's life insurance company requesting that the policy be terminated and proceeds forwarded. (Appellant's Exhibit 9: Letter and fax cover sheet dated [REDACTED] 2014)
16. On [REDACTED] 2014, the Applicant passed away. (Exhibit E: Email from DSS investigator dated [REDACTED] 2014 sent to eligibility worker with obituary)
17. On [REDACTED] 2014, the life insurance company sent the conservator a check for \$3,600 representing the maturity value of the policy and \$12.72 representing the interest accrued. (Exhibit D pg 5)
18. On [REDACTED] 2014, the Applicant's conservator deposited \$3612.72 into her IOLTA account and wrote checks for payments to the funeral home, the

conservator (herself) another attorney for probate charges and the facility. (Exhibit D: Insurance Policy Documents & Disbursement Checks.)

19. On [REDACTED] 2014, the Department denied the Applicant's application for Medicaid for Long Term Care because the Applicant's assets exceeded the allowable limit. (Exhibit I: Notice of Denial)

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes, authorizes the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual ("UPM") Section 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 § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
4. UPM § 4005.05 provides for the definition of available assets and states that an available asset is 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.
5. The Department was incorrect when it determined that the Applicant's life insurance policy was an available asset because the Applicant had been found to be unable to manage her own financial affairs and there was no one appointed to act on her behalf that could legally access her assets until [REDACTED] 2014.
6. UPM § 4015.05 A 1 provides that subject to the conditions described in this section, equity in an asset which is inaccessible to the assistance unit is not counted as long as the asset remains inaccessible.
7. UPM § 4015.05 B 2 provides that for all programs except Food Stamps, in order for an asset to be considered inaccessible, the assistance unit must cooperate with the Department, as directed, in attempting to gain access to the asset.
8. 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.
9. The Department incorrectly determined that the cash surrender value of the Applicant's life insurance policy was a counted asset because it was inaccessible and the conservator, once appointed, was cooperating in attempting to access that asset.
10. The Department incorrectly determined that the Applicant's assets exceeded the allowable limit.

11. The Department was incorrect when it denied the Applicant's application for Medicaid for Long Term care for exceeding the allowable limit.

### **DISCUSSION**

All of the regulations and policy address availability and accessibility of an applicant's assets. Available assets are defined as those that can be used for an individual's general or medical support. In this case, the Applicant's assets could not be used for her support because there was no one who could legally access them. A physician had determined that the Applicant was unable to manage her own affairs. Until [REDACTED], there were complications which prevented the appointment of another individual to represent the Applicant, at which time her life insurance policy had already matured. When the Conservator was appointed, she was diligent in attempting to have the Applicant's assets accessed and used for her support. I find that the Department was incorrect in denying the Applicant's application for Medicaid for Long Term Care because her assets exceeded the allowable limit when those assets were not available or accessible to the Applicant.

### **DECISION**

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

### **COMPLIANCE**

Compliance with this order shall be submitted to the undersigned by [REDACTED] 2015 and shall consist of documentation that the Department has reopened and processed the [REDACTED] 2014 application without consideration of the Applicant's assets, which were unavailable to be used for her general and medical support.

*Maureen Foley-Roy*  
Maureen Foley-Roy,  
Hearing Officer

Pc: Annette Lombardi, Operations Manager, DSS R.O. #62, Torrington  
Amy Kreidel, Fair Hearing Liaison, Waterbury  
Pamela Corbin-Riddick, DSS, Waterbury

### **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 06105-3725

### **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.