

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

██████████ 2017
Signature Confirmation

Request # 801390
Client ID # ██████████

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████, 2016, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying his application for Medicaid for payment of Long Term Care because he did not provide the Department with all the information it requested.

On ██████████, 2016, the Appellant, through his daughter and authorized representative, ██████████ (his "Representative"), requested an administrative hearing to contest the Department's decision to deny his application for Medicaid.

On ██████████, 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2017.

On ██████████, 2016, at the Representative's request, OLCRAH issued a notice rescheduling the hearing for ██████████, 2017.

On ██████████, 2017, in accordance with sections 17b-60, 17b-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 daughter and authorized representative

██████████, Appellant's daughter
██████████, Appellant's granddaughter
██████████ Appellant's grandson
Paula Wilczynski, Department's Representative
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department was correct when it denied Medicaid for the Appellant because he failed to provide required verifications.

FINDINGS OF FACT

1. The Appellant is 79 years old, and has lived his entire life in Puerto Rico. (Testimony)
2. The Appellant has been estranged from his family living in the U.S. for many years. (Testimony)
3. During the summer of 2016, the Appellant's family in the U.S. was notified that the Appellant had suffered a stroke while living in Puerto Rico, and required medical care. (Testimony)
4. Shortly after the Appellant suffered the stroke, his family travelled to Puerto Rico and arranged for the Appellant to come to the U.S. to receive medical care. (Testimony)
5. No member of the Appellant's family is power of attorney or conservator for the Appellant. (Testimony)
6. The Appellant has no other family willing to help him. (Testimony)
7. On ██████████ 2016, the Appellant entered a long term care nursing facility. (Ex. 1: Application form)
8. The Appellant is not expected to ever be able to return from the nursing facility to the community. (Testimony)
9. On ██████████ 2016, the Appellant's daughter and Representative filed an application for Medicaid to pay for long term care. (Ex. 1)
10. The Appellant owns property located at ██████████
██████████ (the "Property"), which was his primary residence prior to when he entered the nursing facility. (Hearing Record)

11. The Department sent three requests to the Appellant's Representative, on [REDACTED] 2016, on [REDACTED] 2016, and on [REDACTED], 2016, notifying her that the Appellant was required to place the Property for sale as a program requirement for long term care Medicaid, and that failure to provide the Department with proof that the Property was placed for sale could result in the denial of the application. (Ex. 2, Ex. 3, Ex. 4: W-1348LTC *We Need Verification From You* forms)
12. The Appellant's current state of health is such that he is probably incapable of handling his own affairs. (Representative's testimony)
13. The Appellant did not place the property for sale. (Representative's testimony, Hearing Record)
14. The Representative did not place the Property for sale; the Representative is not Conservator or Power of Attorney for the Appellant and is not authorized to act on the Appellant's behalf regarding the matter, or even authorized to learn details regarding the Property or the Appellant's equity in the Property. (Representative's testimony, Hearing Record)
15. The Appellant's equity in the Property is unknown. (Hearing Record)
16. The Mortgage on the Property has not been paid since the Appellant took ill, and the bank holding the mortgage is demanding payment of overdue monthly installments and threatening foreclosure proceedings if the past due mortgage payments are not brought current. (Appellant's Ex. A, Ex. A-1: Letter from law firm representing Banco Popular de P.R. [Original letter in Spanish, and English translation])
17. On [REDACTED], 2016, the Department sent a NOA to the Appellant denying his application for Medicaid because his former home property had not been placed for sale, as required by program rules. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-2 and § 17b-260 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.

Uniform Policy Manual ("UPM") § 4005.05(A) provides that for every program administered by the Department, there is a definite asset limit.

UPM § 4005.05(B)(1) 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:

- a. available to the unit; or
- b. deemed available to the unit

Connecticut General Statutes § 17b-261 (c) defines an "available asset" for purposes of determining eligibility for the Medicaid program as "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."

UPM § 4000.01 defines an "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.

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.

The Appellant's Property is an available asset for Medicaid. The Appellant is the legal owner of the Property and has the legal authority to obtain its value.

UPM § 4030.20(A)(1) provides in part that home property owned by a member of the assistance unit is not counted in the determination of the unit's eligibility for assistance as long as the unit uses the property as its principal residence.

UPM § 4030.20(D) provides in part that if an individual enters a long term care facility and the home is not being lawfully resided in by the individual's spouse, or child who is under age 21 or blind or disabled, or their sibling who meets certain conditions, the home's status as an excluded asset depends upon the expectation of the individual to return to the home.

- a. If the individual can reasonably be expected to return to the home, the home continues to be excluded as home property.
- b. If the individual cannot reasonably be expected to return to the home, the home is considered non-home property, and is subject to the policies and procedures described in this chapter.

The Appellant's Property lost its status as home property when the Appellant entered the nursing facility, because the home is not being lawfully resided in by any relative of acceptable degree of relationship, and because there is no expectation that the Appellant will ever return home from the nursing facility.

For purposes of Medicaid eligibility, the Appellant's Property is considered non-home property.

UPM § 4030.65(D)(1)(c) provides that for Long Term Care Medicaid, non-home property that was the recipient's primary residence prior to entering the nursing home is excluded for as long as the individual is making a bona fide effort to sell it.

Neither the Appellant nor his Representative has shown proof to the Department that a bona fide effort is being made to sell the Property. The Appellant's Property, even though it was formerly his primary residence, cannot be excluded because a bona fide effort is not being made to sell it.

The value of the Appellant's Property is counted toward the asset limit because it is a legally available asset that is not excluded by law from being treated as an asset.

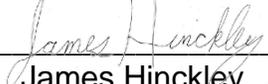
The Department was correct when it denied the Appellant's Medicaid application on [REDACTED], 2016, because the Appellant did not verify that he met the eligibility requirements to qualify for the program; the Department was unable to verify whether the Appellant was within the asset limit.

DISCUSSION

The Appellant is the sole individual with legal control over his affairs at this time. If there is reason to believe the Appellant is incapable of handling his own affairs, the possibility of appointing a conservator should be investigated.

DECISION

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


James Hinckley
Hearing Officer

cc: Tyler Nardine, SSOM, Middletown



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, law, and 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, if 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.