

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

██████████ 2020
Signature confirmation

Client: ██████████
Request: 146860

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████, 2019, the Department of Social Services (the “Department”) denied the ██████████
██████████ 2018 Medicaid application that had been filed on behalf of ██████████ (the “Decedent”).

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received a request for an administrative hearing to address the denial. ██████████ (the “Appellant”) filed the hearing request as Executor of the Estate of ██████████

On ██████████, 2019, the OLCRAH issued a notice scheduling an administrative hearing for ██████████ 2019. The OLCRAH granted the Appellant’s requests for postponements.

On ██████████ 2019, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The following individuals appeared:

██████████, Appellant
██████████, Appellant’s counsel
██████████, Appellant’s observer
Kenneth Smiley, Department’s representative
Eva Tar, Hearing Officer

The hearing record closed for evidence on ██████████ 2019. The hearing officer permitted the submission of written comment through ██████████ 2019.

STATEMENT OF ISSUE

The issue is whether the Department correctly denied the Decedent's [REDACTED] 2018 application on [REDACTED] 2019.

The Appellant petitions the Department to grant Medicaid coverage for the Decedent's care at a skilled nursing facility from [REDACTED] 2018 through [REDACTED] 2018.

FINDINGS OF FACT

1. On [REDACTED] 2008, [REDACTED] (the "Decedent") assigned her power of attorney to the Appellant. (Appellant Exhibit M)
2. From [REDACTED] 2017 through [REDACTED], 2018, the date of [REDACTED], the Decedent was a patient at [REDACTED] (the "facility,") a skilled nursing facility. (Appellant testimony)(Appellant Exhibits A and P)(Department Exhibit 1)(Hearing request)
3. On [REDACTED] 2018, the Department received a *Long-term Care/Waiver Application* (the "[REDACTED] 2018 application") signed by the Appellant on [REDACTED] 2018 under her authority as holder of the Decedent's power of attorney, requesting coverage for care in a facility. (Department Exhibit 1)(Appellant Exhibit A)
4. The [REDACTED] (the "law practice") assisted the Appellant in completing the [REDACTED] 2018 application and continued to represent the Appellant in subsequent contacts with the Department. (Department Exhibits 1, 3, 4, 5, 6, 7, 8, 9, and 10)(Appellant Exhibits A, B, G, H, I, J, K, O, and R)(APPELLANT'S POST-HEARING MEMORANDUM, [REDACTED])(Hearing request)
5. Subsequent to [REDACTED] 2018, the Appellant did not submit an application on the Decedent's behalf with the Department. (Department Exhibit 10)(Department response, [REDACTED])(Appellant testimony)
6. On [REDACTED] 2018, the Department denied the [REDACTED] 2018 application for the first time, issuing a *Notice of Action* citing failure to "return all of the required proofs by the date we asked." (Department Exhibit 11)
7. On [REDACTED] 2018, the Appellant's power of attorney terminated by operation of law,¹ with the Decedent's death.
8. On [REDACTED] 2019, in response to telephone inquiries by an employee of the law practice, a Department employee verbally agreed to reopen the [REDACTED] 2018 application. (Department Exhibit 9)(Appellant Exhibit R)
9. On or after [REDACTED] 2019, the Department reopened the [REDACTED] 2018 application. (Department Exhibits 9 and 10)(Department response, [REDACTED])

¹ Conn. Gen. Stat. § 1-350i (a).

10. On [REDACTED] 2019 and [REDACTED] 2019, the Department issued W-1348LTC *Verification We Need* requests to the law practice, asking for proof of the Decedent's gross pension and statements for [REDACTED] (-[REDACTED]) from [REDACTED] 2017 through [REDACTED] 2017 and from [REDACTED] 2017 through [REDACTED] 2017. (Department Exhibits 4 and 6)(Appellant Exhibits G and K)
11. On [REDACTED] 2019, an employee of the law practice notified the Department that she had "requested the additional information you need from the [REDACTED] and [REDACTED] account, but the [power of attorney] ceased, so I am unable to obtain these documents." (Appellant Exhibit I)
12. On [REDACTED] 2019, a member of the law practice notified the Department that "we are unable to obtain the [REDACTED] final account information as the daughter's [power of attorney] ceased on her death." (Appellant Exhibit J)
13. On [REDACTED] 2019, an employee of the law practice notified the Department that it was "working on obtaining the paperwork regarding the pension and the [REDACTED] Account" but anticipated a delay as the power of attorney was "no longer effective." (Department Exhibit 7)
14. On [REDACTED] 2019, the Department issued a W-1348LTC *Verification We Need* to the law practice, requesting proof of the Decedent's gross pension and statements for [REDACTED] (-[REDACTED]) from [REDACTED] 2017 through [REDACTED] 2017 and from [REDACTED] 2017 through [REDACTED] 2017. The deadline for the submission of proof was [REDACTED] 2019. (Department Exhibits 8 and 10)
15. On Page 3 of the [REDACTED] 2019 W-1348LTC: *Verification We Need*, the Department stated in bold typeface with a larger font size: "This notice serves as your final extension and the information is due back within 11 days." (Department Exhibit 8)
16. As of [REDACTED], 2019, the Department had not received the documents requested on the [REDACTED] 2019 W-1348LTC *Verification We Need*. (Department Exhibit 10)
17. On [REDACTED] 2019, the Department denied the [REDACTED] 2018 application for the second time, issuing a *Notice of Action* to the Decedent citing failure to "return all of the required proofs by the date we asked." (Department Exhibits 10 and 12)
18. On [REDACTED] 2019, the Department issued a duplicate of the [REDACTED] 2019 *Notice of Action* to the Appellant and to the law practice. (Department Exhibit 12)
19. On [REDACTED], 2019, the facility billed the Appellant \$23,315.63 for care provided to the Decedent from [REDACTED] 2018 through [REDACTED] 2018. (Appellant Exhibit O)
20. On [REDACTED] [REDACTED] 2019, the [REDACTED] Probate Court appointed the Appellant as the Executor of the Decedent's Estate. (Hearing request)
21. The hearing record is silent as to the date the Appellant first petitioned the Probate Court for appointment as Executor of the Decedent's Estate and that date's proximity to [REDACTED], the date of the Decedent's [REDACTED]

22. Connecticut General Statutes § 17b-61 (a), as amended on passage by Section 309 of *Public Act No. 19-117 (January Session)*, in part provides that a final decision shall be rendered not later than 90 days from the date the Commissioner receives a request for a fair hearing, provided the time for rendering a final decision shall be extended whenever the aggrieved person requests or agrees to an extension, or when the Commissioner documents an administrative or other extenuating circumstance beyond the Commissioner's control.

On [REDACTED], 2019, the OLCRAH received the Appellant's hearing request. This final decision initially would have become due by [REDACTED] 2020. However, the OLCRAH granted the Appellant's requests for postponements of the initially scheduled hearing date of [REDACTED] 2019.

The hearing record closed for evidence on [REDACTED] 2019. At the request of Appellant's counsel, the hearing officer extended the close of the hearing record through [REDACTED] 2019 for the submission of a brief or written statement. The hearing officer permitted the Department through [REDACTED] 2019 to submit a reply.

The multiple delays due to postponement of the administrative hearing date and the extension of the close of the hearing record for comment correspondingly extended the deadline for the issuance of a final decision to [REDACTED] 2020. This final decision is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes designates the Department as the state agency for the administration of so identified state and federal programs.

"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-261b (a).

"The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program...." Conn. Gen. Stat. § 17b-262.

"The department's uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; [Richard v. Commissioner of Income Maintenance, 214 Conn. 601, 573 A.2d 712 \(1990\)](#)).

"The fair hearing official: ... c. determines the issue of the hearing...." Uniform Policy Manual ("UPM") § 1570.25 C.2.c.

2. "An individual is considered institutionalized if he or she is receiving: a. LTCF [long-term care facility] services...." UPM § 3029.05 B. 2. a.

The Decedent was institutionalized from [REDACTED] 2017 through [REDACTED] 2018.

3. Section 17b-261 (a) of the Connecticut General Statutes provides in part that:
Medical assistance shall be provided for any otherwise eligible person whose income, ... , is not more than one hundred forty-three per cent, ... , of the benefit amount paid to a person with no income under the temporary family assistance program in the appropriate region of residence and if such person is an institutionalized individual as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3), *and has not made an assignment or transfer or other disposition of property for less than fair market value for the purpose of establishing eligibility for benefits or assistance under this section. Any such disposition shall be treated in accordance with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). Any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, person authorized to make such disposition pursuant to a power of attorney or other person so authorized by law shall be attributed to such applicant, recipient or spouse....*

Conn. Gen. Stat. § 17b-261 (a) (emphasis added).

“Prior to making an eligibility determination the Department conducts a thorough investigation of all circumstances relating to eligibility and the amount of benefits.” UPM § 1505.40 A. 1.

“There is a period established, subject to the conditions described in this chapter, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back date specified in 3029.05 C. This period is called the penalty period, or period of ineligibility.” UPM § 3029.05 A.

Section 17b-261 (a) of the Connecticut General Statutes establishes that there is no Medicaid eligibility for long-term care for an institutionalized individual who has made an assignment or transfer or other disposition of property for less than fair market value for the purposes of establishing Medicaid eligibility.

4. “Look-Back Date for Transfers. The look-back date for transfers of assets is a date that is 60 months before the first date on which both the following conditions exist: 1. the individual is institutionalized; and 2. the individual is either applying for or receiving Medicaid.” UPM § 3029.05 C.

██████████ 2013 was the “look-back date for transfers,” as that phrase is defined at Section 3029.05 C. of the Uniform Policy Manual, with respect to the ██████████ 2018 application.

The Department acted within its authority to review applications for potentially disqualifying transfers when it requested documentation of the financial activity on the Decedent’s accounts, as having occurred within the 60-month period prior to ██████████ 2018.

5. “Regardless of the standard of promptness, no eligibility determination is made when there is insufficient verification to determine eligibility when the following has occurred: (1) the Department has requested verification; and (2) at least one item of verification

has been submitted by the assistance unit within a time period designated by the Department, but more is needed.” UPM § 1505.40 B. 5. a.

“Additional 10 day extensions for submitting verification shall be granted, as long as after each subsequent request for verification at least one item of verification is submitted by the assistance unit within each extension period.” UPM § 1505.40 B. 5. b.

Section 1505.35 D. 2. of the Uniform Policy Manual provides:

The Department determines eligibility within the standard of promptness for the AFDC, AABD, and MA programs except when verification needed to establish eligibility is delayed and one of the following is true:

- a. the client has good cause for not submitting verification by the deadline; or
- b. the client has been granted a 10 day extension to submit verification which has not elapsed; or
- c. the Department has assumed responsibility for obtaining verification and has had less than 10 days; or
- d. the Department has assumed responsibility for obtaining verification and is waiting for material from a third party.

UPM § 1505.35 D.2.

The Department had not assumed responsibility for obtaining verification needed to establish the Decedent’s eligibility to participate in the Medicaid program, as evidenced by the Department’s requests for verification from the Appellant during the pendency of the ██████ 2018 application.

The Department’s 10-day extension to the deadline for submission of documentation, as memorialized in the ██████ 2019 W-1348LTC *Verification We Need*, met the criteria provided by Section 1505.35 D.2. of the Uniform Policy Manual.

6. “If good cause is established, the unit may be given additional time to complete the required actions without loss of entitlement to benefits for a current or retroactive period.” UPM § 1555.10 A. 1.

“Good cause may include, but is not limited to: a. illness; b. severe weather; c. death in the immediate family; d. other circumstances beyond the unit’s control.” UPM § 1555.10 B.2.

“The eligibility determination is delayed beyond the ... MA [Medicaid] processing standard if because of *unusual circumstances beyond the applicant’s control*, the application process is incomplete and one of the following conditions exists: (1) eligibility cannot be determined; or (2) determining eligibility without the necessary information would cause the application to be denied.” UPM § 1505.40 B. 4. a. (emphasis added).

Section 1-350i (a) of the Connecticut General Statutes provides:

A power of attorney terminates when:

- (1) *The principal dies;*
- (2) The principal becomes incapacitated, if the power of attorney is not durable;
- (3) The principal revokes the power of attorney;

- (4) The power of attorney provides that it terminates;
- (5) The purpose of the power of attorney is accomplished;
- (6) The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns and the power of attorney does not provide for another agent to act under the power of attorney; or
- (7) The power of attorney is terminated by a court pursuant to subsection (b) of section 1-350g.

Conn. Gen. Stat. § 1-350i (a) (emphasis added).

Sections 45a-273 through 45-470, inclusive, of the Connecticut General Statutes addresses decedents' estates.

The termination of power of attorney with the death of its principal is not an unusual circumstance.

It is reasonable to conclude that the steps required to gain authority through the Probate Court related to attaining a deceased person's financial records would not have been unusual, arcane, or esoteric knowledge to the law practice that was facilitating the ██████████ 2018 application.

The Appellant did not have good cause to fail to secure the requested financial records and provide them to the Department by its ██████████ 2019 deadline.

The Department correctly denied the Decedent's ██████████ 2018 application on ██████████ 2019, as it had not received the requested financial records by its ██████████, 2019 deadline.

DISCUSSION

The Appellant argues that the Department's assignment of a second "case number" to the ██████████ 2018 application generates additional notice requirements.

To the contrary, the Department's assignment of a "case number" to an application is neither a benign or adverse action; it is merely internal recordkeeping. Therefore, the Department's assignment of two "case numbers" to the same application—the first when the application originally was filed and the second when the Department administratively reopened that application, honoring the original filing date of ██████████ 2018—is not relevant to the issue of whether the Department's ██████████ 2019 denial of the ██████████ 2018 application is supported by state statutes and regulations.

The Appellant also opines that the information requested by the Department on its ██████████ 2019 *W-1348LTC Verification We Need* was not required to determine the Decedent's Medicaid eligibility. This argument is flawed.

"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-261b (a) (emphasis added). The Department is authorized by Section § 17b-261 (a) of the Connecticut General Statutes to decline to grant Medicaid coverage for long-term care to applicants and those acting as their agents who have made

disqualifying transfers from the applicant's assets. The Department acted within its authority when it requested the Decedent's bank statements for specific dates, from [REDACTED] 2017 through [REDACTED] 2017 and from [REDACTED] 2017 through [REDACTED] 2017, that fell within the 60-month look-back period identified in Section 3029.05 A. of its Uniform Policy Manual.

The Appellant failed to submit the requested documentation to the Department by its [REDACTED] 2019 deadline. The Appellant did not establish that she had good cause to fail to submit the requested documentation to the Department by its [REDACTED] 2019 deadline. The Department's [REDACTED] 2019 denial of the [REDACTED] 2018 application is upheld.

DECISION

The Appellant's appeal is DENIED.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

Pc: [REDACTED], [REDACTED]
Ken Smiley, DSS-Willimantic
Shayla Streater, DSS-New Haven
Tonya Cook-Beckford, DSS-Willimantic
Rachel Anderson, DSS-New Haven
Cheryl Stuart, DSS-New Haven
Lisa Wells, DSS-New Haven

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.