

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
25 SIGOURNEY STREET  
HARTFORD, CT 06106-5033

██████████ 2013  
Signature Confirmation

Client ID # ██████████  
Request # 522120

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") sent a Notice of Action ("NOA") to ██████████ ("the Appellant") denying her application for Long Term Care benefits for the months of ██████████ 2012 through ██████████ 2013.

On ██████████ 2013, ██████████, the Appellant's Power of Attorney ("POA"), requested an administrative hearing to contest the denial of the Long Term Care Medicaid benefits as determined by the Department.

On ██████████, 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████, 2013.

On ██████████ 2013, the Appellant's POA requested to reschedule the administrative hearing.

On ██████████, 2013, OLCRAH issued a Notice rescheduling the administrative hearing for ██████████ 2013.

On ██████████, 2013, 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 Attorney  
 Jyoti Ajoti, Manchester Manor  
 Kelsey Cullen, Observer  
 Michael Carone, Department's Representative  
 Christopher Turner, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department correctly denied the Appellant's Long Term Care Medicaid application due to excess assets.

### **FINDINGS OF FACT**

1. On ██████████ 2008, an Irrevocable Supplemental Needs Trust was established on the Appellant's behalf. (Exhibit D: Copy of Appellant's trust; Appellant's Schedule F: Copy of court decree)
2. On ██████████, 2008, the Appellant's Attorney submitted the Appellant's trust paperwork to Assistant Attorney General Elizabeth O'Dea for her review. (Appellant's Schedule C)
3. ██████████ is the Appellant's Conservator. (Hearing record)
4. The Appellant's date of birth is ██████33. (Hearing record)
5. On ██████████ 2011, the Appellant's trust account balance deposited in First Niagara bank account number ██████████ was \$17,055.80. (Appellant's Schedule H)
6. On ██████████ 2012, the Department received a W-1 assistance request for Long Term Care Medicaid for the Appellant. (Exhibit H: Notice content dated ██████/13; Department's summary)
7. On ██████ ██████ 2012, the Department mailed the Appellant's POA a W-1348, Verification We Need form, requesting verifications needed to establish eligibility along with an application checklist. Among the items requested were copies of all life insurance policies with proof of face values and cash surrender values. The request noted the asset limit for Medicaid is \$1,600.00. The due date was listed as ██████████ 2012. (Exhibit B: Application checklist; Exhibit C: W-1348 dated ██████/12; Department's summary)
8. On ██████████ 2012, the Appellant's balance of her trust account was \$4,664.76. (Exhibit G: Trust balance statement)

9. On [REDACTED] 2012, the Appellant's balance of her trust account was \$4,274.92. (Exhibit G)
10. On [REDACTED] 2012, the Department reviewed submitted items from trust and began a review of requested items. (Exhibit I: Department's Case narrative)
11. On [REDACTED] 2012, the Department sent a W-1348 to the Appellant's POA requesting updated bank statements and verification that a Bank of America account was closed. (Exhibit I: Department's narrative)
12. On [REDACTED] 2012, the Department made a referral to DSS principal Attorney Dan Butler to examine the Appellant's special needs trust. (Department's summary)
13. On [REDACTED] 2012, the Department received updated bank statements on one First Niagara account and sent another W-1348 for the remaining First Niagara account. (Exhibit I)
14. On [REDACTED] 2012, Attorney Dan Butler determined the Appellant's trust is a self-settled trust that does not meet the requirements of a special needs trust because the Appellant was over the age of 64 when the trust was established and funded and e-mailed his response to the Department this day. (Exhibit E: E-Mail from Attorney Butler dated [REDACTED]/12)
15. On [REDACTED] 2012, the Appellants trust account balance was \$3,368.13. (Exhibit G)
16. On [REDACTED] 2012, the Department reviewed the requested bank statements that were post marked [REDACTED]/12. (Exhibit I)
17. On [REDACTED] 2013, the Appellants trust account balance was \$2,198.21. (Exhibit G)
18. On [REDACTED] 2013, the Department sent the Appellant's POA a W-1348LTC requesting the balance of the Appellant's special needs trust. (Exhibit F: W-1348LTC dated [REDACTED]/13; Hearing summary)
19. On [REDACTED] 2013, the Appellant's First Niagara bank account balance was \$974.96. (Exhibit G)
20. On [REDACTED] 2013, the Department denied the Appellant's Long Term Care Medicaid Application as the Appellant's assets exceeded the allowable limit. (Exhibit I; Hearing summary)

### **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. Connecticut General Statutes 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.
4. 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.
5. 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.
6. UPM § 4005.05 (D) provides that an assistance unit is not eligible for benefits under a particular program if the unit's equity in counted assets exceeds the asset limit for the particular program.
7. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
8. UPM § 4005.15 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.
9. UPM § 4015.05 (A) 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.
10. UPM § 4015.05 (B) provides that the burden is on the assistance to demonstrate that an asset is inaccessible. 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.
11. UPM § 4030.80 (D) (6) (a) provides that the Department does not consider the following types of trusts in determining the individual's eligibility for Medicaid:
  - a. a trust containing the assets of an individual under age 65 who is disabled, according to criteria under the S.S.I. program.

12. The Appellant's trust account is not considered a special needs trust as the Appellant was over the age of 64 when the trust was established and funded.
13. The Appellant's assets were available and accessible.
14. The Appellant had assets that exceeded the Medicaid asset limit of \$1,600 for the months of [REDACTED] 2012 through [REDACTED] 2013.
15. The Department correctly denied the Appellant's application for Long Term Care Medicaid Assistance for [REDACTED] 2012 through [REDACTED] 2013 due to excess assets.

### **DISCUSSION**


The Appellant's Attorney requested that the Department grant the Appellant good cause due to the Department's delay in processing the Appellant's long term care application as well as consideration that the Department treat the Appellant's trust a special needs trust exempt from asset limit.

The Appellant's representatives were unaware that departmental policy prevents the Appellant's trust fund to be excluded from the asset limit. There is no provision in departmental regulations which exclude the value of the Appellant's trust fund because at the time the trust was finalized her age was overlooked. The trust fund balance, coupled with her First Niagara bank account, was in excess of the \$1,600.00 Medicaid asset limit for one at the time of denial.

After reviewing the evidence and the testimony presented at the hearing, I find that the Department's denial of Long Term Care Medicaid assistance is upheld.

### **DECISION**

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

  
Christopher Turner  
Hearing Officer

### **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, 25 Sigourney Street, Hartford, CT 06106-5033.

### **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, 25 Sigourney Street, Hartford, CT06106. 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.