

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 # 533079

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") sent ██████████ ██████████, the Appellant's (the "Appellant") Authorized Representative ("AREP"), a Notice of Action ("NOA") denying Long Term Care benefits for the months of ██████████ 2012 through ██████████ 2013.

On ██████████ 2013, the Appellant's AREP 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, 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 AREP
██████████, Appellant's Counsel
██████████, Appellant's Daughter
██████████, Appellant's Daughter
██████████, Appellant's Son
Paula Wilczynski, Department's Representative
Christopher Turner, Hearing Officer

The Hearing record was left open for the submission of additional information. On [REDACTED] 2013, the hearing record closed.

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 [REDACTED] 2012, the Appellant entered a nursing home. (Department's summary)
2. On [REDACTED] [REDACTED] 2012, the Appellant's [REDACTED] Healthcare Credit Union ("MHCU") bank account balance was \$5,237.26. (Exhibit 8: Bank balance as of [REDACTED]/12)
3. On [REDACTED] 2012, the Department received an application (W-1F) for Medical assistance. (Exhibit 7: W-1F; Department's summary)
4. The Appellant is widowed. (Exhibit 7)
5. The Appellant's daughter, [REDACTED] [REDACTED] is the Appellant's Authorized Representative ("AREP"). (Exhibit 7; Hearing summary)
6. The Appellant's representatives are requesting a [REDACTED] 2012, start date for nursing home coverage. (Testimony)
7. On [REDACTED] 2012, the Department screened a Home Care for Elders ("W-01") application for the Appellant and mailed a W-1348LTC, We Need Verification from you form, requesting verifications needed to establish eligibility. Among the items requested were copies of the Appellant's spouses' death certificate, copies of all MHCU statements from [REDACTED] 2007 to present. The request noted the asset limit for Medicaid is \$1,600.00. (Exhibit 9: W-1348LTC dated [REDACTED]/12)
8. On [REDACTED] [REDACTED] 2012, the Appellant's MHCU bank account balance was \$5,238.58. (Exhibit 8: Bank balance as of [REDACTED]/12)
9. On [REDACTED] 2013, the Department mailed the Appellant's AREP a W-1348LTC, We Need Verification from you form, requesting verifications needed to establish eligibility. The requested item was copies of all MHCU statements from [REDACTED] 2008 to present. The request noted the asset limit for Medicaid is \$1,600.00. (Exhibit 9: W-1348LTC dated [REDACTED]/13)
10. On [REDACTED] 2013, the Department mailed a bank tracer to MHCU requesting bank statements from [REDACTED] 2008 to present date. (Exhibit 2: Case narrative)

11. On [REDACTED] 2013, the Appellant passed away. (Exhibit 2: Case narrative, [REDACTED]/13; Exhibit 10: Letter from Appellant's AREP dated [REDACTED]/13)
12. On [REDACTED] 2013, a withdrawal of \$3,639.24 was made from the MHCU bank account payable to [REDACTED] Funeral Home leaving a balance of \$1,600. (Exhibit 8: Bank statement dated [REDACTED]/13)
13. On [REDACTED] 2013, the Department received a letter from the Appellant's AREP stating they did not meet the [REDACTED] 2013, deadline as requested. The letter also stated that funds were used to pay for the Appellant's funeral expenses. (Exhibit 10)
14. On [REDACTED] 2013, the Department denied the Appellant's W-01 application as the Appellant is deceased. (Exhibit 2)
15. On [REDACTED] 2013, the Department spoke with the Appellant's Attorney who informed the Department that the Appellant was a resident of a nursing home since [REDACTED] 2012. (Exhibit 2)
16. On [REDACTED] 2013, the Department screened an application for Long Term Care ("L01") for the Appellant effective [REDACTED]/12. (Exhibit 2)
17. On [REDACTED] 2013, the Department mailed the Appellant's AREP a W-1348LTC requesting copies of all MHCU statements from [REDACTED] 2008 to present. The request noted the asset limit for Medicaid is \$1,600.00. (Exhibit 9: W-1348LTC dated [REDACTED] 13)
18. On [REDACTED] 2013, the Department mailed a bank tracer to MHCU requesting bank statements from [REDACTED] 2008 to present date. (Exhibit 2)
19. On [REDACTED] 2013, the Department received from MHCU the requested bank account statements. (Exhibit 2)
20. On [REDACTED] 2013, the Department granted the Appellant's application for L01 coverage effective [REDACTED] 2013 and denied the months of [REDACTED] 2012 through [REDACTED] 2013 due to assets in excess of \$1,600.00. (Exhibit 4: Notice content dated [REDACTED] 13; Exhibit 2)

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. The Appellant's AREP did not reduce the Appellant's assets to within the Medicaid asset limits from [REDACTED] 2012 through [REDACTED] 2013.
10. The Appellant had assets that exceeded the Medicaid asset limit of \$1,600.00 for the months of [REDACTED] 2012 through [REDACTED] 2013.

11. 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 AREP testified that she was unaware of the Department's \$1,600 asset limit for Medicaid. The Department clearly noted on all requests for information sent to the Appellant's AREP that the asset limit for Medicaid was \$1,600. While it is clear that the Department did not screen the Appellant for L01 coverage in [REDACTED] 2012 but for W01 coverage, both programs have a \$1,600 asset limit. After the discovery of this oversight, the Department reopened the Appellant's request for assistance and continued to process the Appellant's application. The Appellant's counsel expressed the difficulty in reaching a department representative and the trouble of working with more than one individual. The Department met its responsibility to the Appellant by communicating openly the asset limit for the program for which the Appellant applied. The asset limit was clearly noted on all correspondence sent to the Appellant and was never questioned.

There is no provision in Departmental regulations which would exclude the value of the bank account because of a lack of understanding of departmental guidelines. The Department was correct in its decision to deny the Appellant's L01 application due to excess assets.

DECISION

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


Christopher Turner
Hearing Officer

Pc: Peter Bucknall, Operations Manager, New Haven Regional Office #20

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, CT 06106. 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.