

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATION AND ADMINISTRATIVE HEARINGS
25 SIGOURNEY STREET
HARTFORD, CONNECTICUT 06106

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

CL ID # ██████████
Request ID #534090

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") sent ██████████ ██████████ (the "Appellant") a Notice of Action ("NOA") denying her application of ██████████ ██████████ 2012 for the L01 Medicaid, Long Term Care program.

On ██████████ 2013, the Appellant requested an administrative hearing to contest the Department's denial of her application for the L01 Medicaid program.

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

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

On ██████████, 2013, 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 were present at the hearing:

██, Appellant's Authorized Representative ("AREP")
██, Trustee for the Trust
Tyshara Coggins, Department's Representative

Attorney Daniel Butler, Department's Representative
Assistant Attorney General Patrick Kwanashie, Counsel for the Department
Bob Kiley, Paralegal for the Department
Miklos Mencseli, Hearing Officer

The Appellant, [REDACTED], was not present at the hearing.

The hearing officer held the record open for the submission of additional evidence. On [REDACTED] 2013, the hearing officer closed the record.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly denied the Appellant's L01 medical assistance application due to excess assets.

FINDING OF FACTS

1. On [REDACTED] 1989, the Appellant's father, [REDACTED], established his Last Will and Testament. (Exhibit D: copy of Last Will and Testament)
2. On the passing of [REDACTED] in 1991, his Last Will and Testament created the Trust for his daughters, [REDACTED] and [REDACTED]. (Exhibit D)
3. On [REDACTED], 1991, [REDACTED] was appointed Trustee of the trust. (Exhibit D)
4. Under Article III A. for the trust, the Trustee until the Appellant's death shall pay to or spend as much of the net income derived from this trust as the Trustee may deem advisable to provide properly for the maintenance and support and may incorporate any income not so distributed into the principal of the fund at the option of the Trustee. (Exhibit D)
5. Under Article III B. for the trust, the Trustee in his sole and absolute discretion at any time and from time to time to disburse from the principal for any of the trust estates created under this Article, even to the point of completely exhausting the same, such amount as he may deem advisable to provide adequately and properly for the support and maintenance of the current income beneficiaries thereof, any expenses incurred by reason of illness and disability. In determining the amount of principal to be so disbursed, the Trustee shall take into consideration any other income or property which such income beneficiary may have from any other source, and the Trustee's discretion shall be conclusive as to the advisability of any such disbursement and the same shall not be questioned by anyone. For all sums so distributed, the Trustee shall have full acquittance. All such disbursements from the principal shall be charged against

the trust fund for which they are made and shall not be charged against any individual share of principal subsequently distributed to any beneficiary. (Exhibit D)

6. Under Article III C. for the trust, Upon the death of either daughter, the surviving income beneficiary shall remain the income beneficiary until her death. (Exhibit D)
7. Under Article III C. for the trust, upon the death of both daughters, the existing principal of said Trust, together with any accumulated income shall be distributed to [REDACTED] heirs. (Exhibit D)
8. On [REDACTED] 2012, the Appellant applied for Medicaid for the Long Term Care program. (Summary, Exhibit H: W-1F application)
9. On [REDACTED] 2012, the Appellant entered Ellis Manor, a long term care facility. (Testimony)
10. [REDACTED] 2012 is the Appellant's date of institutionalization ("DOI"). (Testimony)
11. The Appellant remains in the long term care facility. (Testimony)
12. On [REDACTED], 2012, the Department reviewed verifications provided, including the establishment of the trust for the Appellant. (Summary)
13. On [REDACTED] 2013, the Department referred the trust to [REDACTED] [REDACTED] to determine if the trust is accessible. (Exhibit E: referral dated [REDACTED]-13)
14. The Department requested and received an accounting of the trust from the Court of Probate. As of [REDACTED] 2012, the trust value was \$169,754.91. (Exhibit E: Court of Probate Fiduciary's Periodic or Final Account)
15. On [REDACTED] 2013, Attorney Butler determined the trust is a general support trust f/b/o for the Appellant and the trust assets (Income and principal) are available to the Appellant and countable for Medicaid eligibility. (Exhibit E: email dated [REDACTED]-13)
16. On [REDACTED] 2013, the Department sent the Appellant a NOA denying her application of [REDACTED] 2012 for the L01 Medicaid, Long Term Care program as her assets exceed the limit for program eligibility. (Exhibit I: NOA dated [REDACTED] 13)
17. The Appellant's AREP and Trustee argue the trust is a testamentary /supplementary support trust. (Appellant's Exhibit 1: Fair Hearing Memorandum, Testimony)

18. The Appellant's AREP and Trustee argue the terms "maintenance and support" and expenditures for "illness and disability" are ascertainable standards. The ascertainable standard describes a desired condition to be maintained that relates back to the beneficiary of the trust, not to the duties of the Trustee. (Appellant's Exhibit 1)
19. The Appellant's AREP and Trustee argue the Trustee was granted "sole and absolute discretion" in the trust. The Trustee has power to exercise his discretion while providing for the support and maintenance of the beneficiary. (Appellant's Exhibit 1)
20. The Appellant's AREP and Trustee argue the trust states the Trustees decision shall be "conclusive", "shall not be questioned" and shall enjoy "full acquittance." (Appellant's Exhibit 1)
21. The Trustee determined that the Appellant's institutionalization at Ellis Manor facility does not compel him to use the trust to pay for her needs. (Appellant's Exhibit 1, Testimony)
22. On [REDACTED], 2013, Court of Probate, District of [REDACTED] ordered and decreed that the [REDACTED] Trust testamentary trust is a supplemental needs trust and the beneficiary (the Appellant) cannot compel the trustee to make distributions from the trust for her benefit. (Appellant's Exhibit 1)

CONCLUSION 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. Sec. 17b-261b(a) of the Connecticut General Statutes states that 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.
3. The Court of Probate order and decree is not used to determine eligibility for assistance for Department of Social Services programs.
4. Sec. 17b-261(a) of the Connecticut General Statutes states a disposition of property ordered by a court shall be evaluated in accordance with the standards applied to any other such disposition for the purpose of determining eligibility. The commissioner shall establish the standards for eligibility for medical assistance at one hundred forty-three per cent of the benefit amount paid to a family unit of equal size with no income under the temporary family assistance program in the appropriate region of residence.

5. Uniform Policy Manual (“UPM”) section 4000.01 defines a Testamentary trust as a trust established pursuant to the terms of a will.
6. The Last Will and Testament of [REDACTED] established a Testamentary trust.
7. UPM Section 4000.01 defines a Trust as an oral or written agreement in which someone (the trustee) holds the legal title to an asset for the benefit of another person (the beneficiary).
8. UPM Section 4000.01 defines a Beneficiary as a person who is entitled to receive funds, property, or other benefits from an insurance policy, will, trust, or other settlement.
9. The Appellant is a beneficiary of the Trust.
10. UPM Section 4030.80.A.1 provides that the Department evaluates an individual’s interest in a trust as (a) potentially counted asset in determining whether the individual’s assets are within the program limits (Cross Reference: 4005)
11. UPM Section 4030.80.B provides that for the purpose of determining an individual's eligibility under the Medicaid program, paragraph B pertains to testamentary or inter vivos trusts not established by the individual.
 1. The Department determines whether the corpus, or principal of such a trust is an available asset by referring to the terms of the trust and the applicable case law construing similar instruments.
 2. The principal of such a trust is an available asset to the extent that the terms of the trust entitle the individual to receive trust principal or to have trust principal applied for his or her general or medical support.
 3. Under circumstances described in subparagraph 2 above, the trust principal is considered an available asset if the trustee’s failure to distribute the principal for the benefit of the individual in accordance with the terms of the trust would constitute an abuse of discretion by the trustee.
 4. The Department considers the following factors in determining whether the trustee would be abusing his or her discretion by refusing to distribute trust principal to the individual:
 - a. the clarity of the settlor’s intention to provide for the general or medical support of the individual; and
 - b. the degree of discretion afforded to the trustee; and
 - c. the value of the trust created, with a high dollar value tending

to indicate an intent to provide for general or medical support;
and

- d. the history of trust expenditures prior to the filing of an application for assistance for or on behalf of the individual.

Title 42 U.S.C § 1396p(d)(B) In the case of an irrevocable trust—

(i) if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income—

(l) to or for the benefit of the individual, shall be considered income of the Individual

12. The language of the Trust allows for payments to be made on behalf of the client for support, maintenance and any expenses incurred by reason of illness and disability.
13. As of ██████████ 2012, the value of the Trust is \$169,754.94.
14. UPM Section 4005.05 states that every program administered by the Department has a definite asset limit.
15. UPM Section 4005.10.A.2.a defines the asset limit as \$1,600 for a needs group of one.
16. The client's assets exceed the Medicaid asset limit of \$1,600.00 effective date of application of ██████████ 2012.
17. The Department was correct to deny the Appellant's application for Medicaid Benefits as it determined the Trust is a General Support Trust which funds are available to the Appellant .

DISCUSSION

After reviewing the evidence and testimony presented, the Department's action to deny the Appellant's Medicaid application dated ██████████ 2012 is upheld. The Appellant's Representatives argued that the trust is a testamentary/supplementary support trust. The Department argued the trust is a general support trust. Both sides referenced Corcoran v. Department of Social Services, 271 Conn. 679 (2004) and Zeoli v. Commissioner of Social Services, 179 Conn, 83, 89 (1979) to advance their arguments. The language of the trust to the hearing officer is plain and clear. The trust is for the maintenance and support of the Appellant. I agree with the Department that the trust is a general support trust. The Appellant's representative's arguments were not persuasive and their interpretation of the trust language was not

convincing. Further, according to Department's policy UPM Section 4030.B.3, the trustee's refusal to make distributions from the Trust does not render it an unavailable asset.

Therefore, based on current case law, regulations, and the language of the trust, I find that the trust value of \$169,754.94 available to the client and therefore should be considered in the determination of the client's eligibility for the Medicaid program.

DECISION

The appeal is **DENIED**.



Miklos Mencseli
Hearing Officer

C: Lisa Wells, Operations Manager, DSS R.O. # 10 Hartford

[REDACTED]
Daniel Butler, OLRAH
Patrick Kwanashie, AAG

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, 25 Sigourney Street, Hartford, CT 06106.

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 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.