

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

REQUEST #539049

CLIENT ID ██████████

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2013, Department of Social Services (the "Department") sent ██████████ ██████████ (the "Appellant") a Notice of Denial stating that the Appellant's application for medical assistance had been denied for the months of ██████████ 2012 through ██████████ 2013, as the value of his assets exceeded the allowable asset limit for the program.

On ██████████ 2013, the Appellant's representative requested an administrative hearing on behalf of the Appellant to contest the Appellant's effective date of eligibility for medical assistance as determined by the Department.

On ██████████ 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice of Administrative Hearing scheduling a hearing for ██████████ 2013 @ ██████████ to address the Appellant's effective date of eligibility for medical assistance as determined by the Department.

On ██████████ 2013, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-184, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing to address the Appellant's effective date of eligibility for medical assistance as determined by the Department.

The following individuals were present at the hearing:

████████████████████, Representative for the Appellant  
██, Counsel for the Appellant  
Janice Kopchik, For the Department

Michelle Massicotte, For the Department  
Hernold C. Linton, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Appellant's countable assets for the period of [REDACTED] 2012 through [REDACTED] 2013 exceeded the allowable asset limit for the Medicaid program.

### **FINDINGS OF FACT**

1. On [REDACTED] 2012, the Appellant's spouse was admitted to the Maefair Health Care Center for long-term care ("LTC"). (Hearing Summary)
2. On [REDACTED] 2012, the Appellant was admitted to the Jewish Home for the Elderly for long-term care ("LTC"). (Hearing Summary; Dept.'s Exhibit #2: Admission Notice)
3. On [REDACTED], 2012, the Department received applications from both the Appellant and his spouse for Medicaid benefits to pay for their stay in a long-term care facility ("LTCF"). (Hearing Summary; Dept.'s Exhibit #1: Application Part 1)
4. On [REDACTED] 2012, the Department sent the Appellant's representative Form W-1348LTC ("Verification We Need") requesting additional information needed to determine the Appellant's eligibility for medical assistance under Medicaid program. (Hearing Summary; Dept.'s Exhibit #3: Form W-1348LTC, dated [REDACTED]/12)
5. The Department provided the Appellant's representative with information about applying for Medicaid and on the treatment of countable assets. (Hearing Summary; Dept.'s Exhibit #3)
6. The Department did not deem assets from the Appellant's spouse to the Appellant as they were both institutionalized and living apart in separate nursing facilities. (Hearing Summary)
7. The Department granted the Appellant's spouse medical assistance under the Medicaid program, with an eligibility effective date of [REDACTED] 2012, to pay for her stay in a LTCF. (Hearing Summary)
8. On [REDACTED] 2013, the Department denied the Appellant's application for medical assistance under the Medicaid program for the period of [REDACTED] 2012 through [REDACTED], 2013, due to excess assets, claiming that the Appellant's countable assets for the period exceeded the allowable asset limit for the Medicaid program. (Hearing Summary; Dept.'s Exhibit #9: [REDACTED]/13 Notice of Denial)
9. The Department granted the Appellant's application for medical assistance under the Medicaid program, with an eligibility effective date of [REDACTED] 2013. (Hearing Summary; Dept.'s Exhibit #10: [REDACTED]/13 Notice of Approval)

10. The Appellant owned a life insurance policy with John Hancock Life Insurance Company with a face value of \$1,909.00, and a cash surrender value ("CSV") of \$2,602.90, which he cashed in on [REDACTED] 2013, and the proceeds deposited in the Appellant's checking account at People's United Bank. (Hearing Summary; Dept.'s Exhibit #11: Summary Policy)
11. The Appellant owned a life insurance policy through AARP/New York Life Insurance Company with a face value of \$7,000.00, and a CSV of \$3,748.22, which he cashed in on [REDACTED] 2013, and the proceeds deposited in the Appellant's checking account at People's United Bank. (Hearing Summary; Dept.'s Exhibit #12: [REDACTED]/13 Letter from New York Life Insurance Company)
12. The Appellant owned a life insurance policy through Bankers Life and Casualty Company with a face value of \$10,000.00, and a CSV of \$643.20. (Hearing Summary; Dept.'s Exhibit #13: [REDACTED]/13 Letter from Bankers Life and Casualty Company)
13. For the period of [REDACTED] 2012 through [REDACTED] 2013, the Appellant had total combined CSV from his life insurance policies of \$4,382.42 (\$3,748.22; plus \$634.20). (See Facts # 1 to 13)
14. The Appellant did not assign the death benefit of his life insurance policies to a funeral home to fund a funeral contract. (Testimony of Appellant's Representative)
15. For the period of [REDACTED] 2012 through [REDACTED] 2013, the countable balance in the Appellant's checking account at People's United Bank exceeded \$1,600.00. (Hearing Summary; Dept.'s Exhibit #14: Bank Statements)
16. The asset limit for the Medicaid program is \$1,600.00 per month for a needs group consisting of one member. (Hearing Summary)
17. On [REDACTED] 2013, the Appellant reduced the countable balance in his checking account at People's United Bank to below \$1,600.00. (Hearing Summary; Dept.'s Exhibit #14)
18. The Appellant died on [REDACTED] 2013. (Hearing Summary)

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Section 1924 of the Social Security Act [U.S.C. 1396r-5] (h) Definitions:
  - (1) The term "institutionalized spouse" means an individual who-

- (A) is in a medical institution or nursing facility or who (at the option of the State) is described in section 1902(a)(10)(A)(ii)(VI), and
    - (B) is married to a spouse who is not in a medical institution or nursing facility; but does not include any such individual who is not likely to meet the requirements of subparagraph (A) for at least 30 consecutive days.
  - (2) The term “community spouse” means the spouse of an institutionalized spouse.
3. The Department correctly determined that the Appellant did not have a community spouse as his spouse has been residing in a nursing facility for more than thirty (30) consecutive days.
  4. Uniform Policy Manual (“UPM”) Section 1561.10 provides that the beginning date of assistance for Medicaid may be one of the following:
    - A. the first day of the first, second or third month immediately preceding the month in which the Department receives a signed application when all non-procedural eligibility requirements are met and covered medical services are received at any time during that particular month; or
    - B. the first day of the month of application when all non-procedural eligibility requirements are met during that month; or
  5. UPM § 4005.05 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: 1. available to the unit; or 2. deemed available to the unit. It further 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.
  6. UPM § 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.
  7. UPM § 4030.05(A) provides that bank accounts include the following. This list is not all inclusive:
    - (1) Savings account; (2) Checking account; (3) Credit union account;
  8. UPM § 4030.05(A) provides that that part of a checking account to be considered as a counted asset during a given month is calculated by subtracting the actual amount of income the assistance unit deposits into the account that month from the highest balance in the account for that month.

9. The Department correctly determined that for the period of [REDACTED] 2012 through [REDACTED] 2013, the countable balance in the Appellant's checking account at People's United Bank exceeded \$1,600.00.the Appellant
10. UPM § 4030.30(A)(1) provides that the owner of a life insurance policy is the insured unless otherwise noted on the policy, or if the insurance company confirms that someone else, and not the insured, can cash in the policy.
11. UPM § 4030.30(A)(2) provides that policies such as term insurance policies having no cash surrender value are excluded assets.
12. UPM § 4030.30(C)(1) provides that if the total face value of all life insurance policies owned by the individual does not exceed \$1,500, the cash surrender value of such policies is excluded. In computing the face value of life insurance, the Department does not count insurance such as term insurance which has no cash surrender value.
13. UPM § 4030.30(C)(2) provides that except as provided above, the cash surrender value of life insurance policies owned by the individual is counted towards the asset limit.
14. State law allows individuals to fund a funeral contract by assigning the death benefit of their life insurance to a funeral home to fund a funeral contract. The Department will exclude the CSV of a life insurance policy when the death benefit has been assigned to a funeral home to fund a funeral contract. [REDACTED] 2013 email from Marc Shok, Adult Services Program Manager]
15. The Department correctly determined the combined CSV (\$4,382.42) of the Appellant's life insurance policies as a countable asset for Medicaid eligibility purposes.
16. The Appellant's countable assets consist of the combined CSV of his life insurance policies, plus the monthly balance in his checking account at People's United Bank.
17. For the period of [REDACTED] 2012 through [REDACTED] 2013, the Appellant had total countable assets of \$4,382.42, the combined CSV of his life insurance policies; plus the monthly balance in his checking account at People's United Bank.
18. UPM § 4005.10(A)(2)(a) provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
19. The Appellant's countable assets for the period of [REDACTED] 2012 through [REDACTED], 2013 exceeded the Medicaid asset limit of \$1,600.00 per month.
20. 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.

21. The Department correctly denied the Appellant's request for Medicaid coverage for the period of [REDACTED] 2012 through [REDACTED] 2013, due to excess assets.

### DISCUSSION

The Appellant's representative argued that he had no knowledge of the Appellant's ownership of life insurance policies and their cash surrender values. The Appellant's representative also argued that he would have acted expeditiously in reducing the Appellant's countable assets, had he known of their existence. He stated that the Appellant owes the facility payments totaling \$84,477.00 for his room and board. The reasons stated for the failure of the Appellant's representative to reduce his countable assets in a timely manner could not be interpreted under the provisions found in the UPM as circumstances beyond one's control, and thus excluding his countable assets for Medicaid eligibility purposes.

The combined CSV of his life insurance policies and the funds in his checking account were readily available for the Appellant's general support. Therefore, the undersigned finds that the combined CSV of his life insurance policies and the funds in his checking account were available and accessible, as defined by relevant Medicaid regulations. The Appellant's representative did not meet the burden of proof in establishing that the combined CSV of his life insurance policies and the funds in his checking account were inaccessible; therefore, for the period of [REDACTED] 2012 through [REDACTED] 2013, the Appellant is ineligible for medical assistance under the Medicaid program, due to excess assets.

### DECISION

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

*Hernold C. Linton*

Hernold C. Linton  
Hearing Officer

Pc: **Phil Ober**, Social Service Operations Manager,  
DSS, R.O. # 30, Bridgeport

[REDACTED]

### **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.