

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 #541692

CLIENT ID # ██████████

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") sent ██████████ ("Appellant") a Notice of Denial stating that the Appellant's application for medical assistance had been denied for failure to cooperate with the eligibility process pertaining to his ownership of non-home property.

On ██████████ 2013, the Appellant's representative ██████████ requested an administrative hearing on behalf of the Appellant to contest the Department's denial of the Appellant's application for medical assistance.

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 Department's denial of the Appellant's application for medical assistance.

On ██████████ 2013, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing to address the Department's denial of the Appellant's application for medical assistance.

The following individuals were present at the hearing:

██████████, Appellant's Representative (POA)
██████████, Appellant's daughter/Witness
██████████, Counsel for the Appellant

██████████, Co-Counsel for the Appellant
██████████, Witness for the Appellant
Shelley Starr, Department's Representative
Veda F. Graves, Department's Representative
Mark Plourd, Observer
Hernold C. Linton, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly denied the Appellant's application for medical assistance under the Medicaid program for failure to comply with the eligibility requirements of the Medicaid program.

FINDINGS OF FACT

1. In ██████ 2012, the Appellant became a resident of Countryside Manor, which is a long-term care facility ("LTCF"). (Hearing Summary; Dept.'s Exhibit #3: Application Part 1)
2. On ██████████, 2012, the Department received the Appellant's application for the Medicaid LTC program (L01). (Hearing Summary; Dept.'s Exhibit #3)
3. The Appellant is the owner of non-home property located at ██████████ ██████████ previously used as his primary residence. (Hearing Summary; Dept.'s Exhibit #10: Owner of Record)
4. The Appellant is not expected to return to his home. (Hearing Summary)
5. The Appellant has a reverse mortgage valued at \$167,055.71 with Wells Fargo against the fair market value ("FMV") of his non-home property. (Hearing Summary; Dept.'s Exhibit #1)
6. The Appellant's non-home property located at ██████████ was assigned an appraised value of \$146,500.00 by the Assessor's Office for the City of ██████. (Hearing Summary; Dept.'s Exhibit #10)
7. On ██████████, 2013, at the request of Wells Fargo, Elm City Appraisals appraised the Appellant's non-home property located at ██████████ at \$120,000.00. (Hearing Summary; Appellant's Exhibit A: Complete Appraisal)
8. The appraisal noted that the Appellant's non-home property needed replacement of the carpet, removal of wood paneling, and upgrading of the electric fuse box as it is functionally obsolescence. (Appellant's Exhibit A)
9. The appraisal noted that the mechanicals in the Appellant's non-home property were functional including heat, hot water, electricity, and appliances. (Appellant's Exhibit A)

10. The median sale price of similar and competing style properties in the same neighborhood as the Appellant's non-home property is \$169,450.00 for the current 12-month period. (Appellant's Exhibit A)
11. On [REDACTED] 2013, the Department sent the Appellant's representative an Application Requirements List (Form "W-1348LTC") requesting additional information or verifications (bank statements and foreclosure documents from Wells Fargo) due by [REDACTED] 2013, needed to determine the Appellant's eligibility for medical assistance under the Medicaid program. (Hearing Summary; Dept.'s Exhibit #4: Application Requirements List)
12. The W-1348LTC informed the Appellant and his representative of the outstanding verifications needed to process his application for medical assistance under the Medicaid program, and the due date by which to provide the requested information, or else his application would be denied. (Hearing Summary; Dept.'s Exhibit #4)
13. Based on comparable recent sales in the area, the Department determined the FMV for the Appellant's non-home property as \$181,725.00. (Hearing Summary; Dept.'s Exhibit #1: Addendum)
14. On [REDACTED] 2013, the Appellant received a repayment demand letter from Wells Fargo stating that his reverse mortgage was in default due to the Appellant's non-occupancy of the property, and that he was to pay the loan balance in full, complete a short sale of the property, or to execute a deed in lieu of foreclosure. (Hearing Summary; Dept.'s Exhibit #9: [REDACTED] 13 Letter from Wells Fargo)
15. On [REDACTED] 2013, the Department determined the Appellant's equity value in his non-home property as \$14,469.29. (Hearing Summary; Dept.'s Exhibit #1)
16. As of [REDACTED] 2013, the [REDACTED] Town Clerk's office had no records of a pending foreclosure on the Appellant's non-home property. (Hearing Summary; Dept.'s Exhibit #1)
17. On [REDACTED] 2013, the Department sent the Appellant's representative a revised W-1348LTC requesting additional information or verifications (contract listing non-home property for sale) due by [REDACTED] 2013, needed to determine the Appellant's eligibility for medical assistance under the Medicaid program. (Hearing Summary; Dept.'s Exhibit #5: Application Requirements List)
18. On [REDACTED] 2013, the Appellant's representative notified the Department that he was working with Wells Fargo to obtain approval for the "Deed in Lieu of Foreclosure" option for the Appellant's non-home property. (Hearing Summary; Dept.'s Exhibit #10: [REDACTED]/13 Letter from [REDACTED])
19. The Appellant did not list his non-home property for sale as requested by the Department. (See Facts # 1 to 18; Hearing Summary)

20. The Appellant does not have a relative of acceptable relationship lawfully residing in his non-home property. (Hearing Summary)
21. On [REDACTED] 2013, the Department denied the Appellant's application for medical assistance under the Medicaid program for failure to provide a listing contract or to make a bona fide effort to sell his non-home property located at [REDACTED] [REDACTED] (See Facts # 1 to 20; Hearing Summary; Dept.'s Exhibit #7: [REDACTED]/13 Notice of Denial)

CONCLUSIONS OF LAW

1. The Department is the state agency that administers the Medicaid program pursuant to Title XIX of the Social Security Act. The Department may make such regulations as are necessary to administer the medical assistance program. Conn. Gen. Stat. § 17b-2; Conn. Gen. Stat. § 17b-262
2. The Department is the sole agency to determine eligibility for assistance and services under the programs it operates and administers. Conn. Gen. Stat. § 17b-261b(a)
3. The Department shall grant aid only if the applicant is eligible for that aid. Conn. Gen. Stat. § 17b-80(a)
4. Uniform Policy Manual ("UPM") § 3530.05(B) provides that the MA assistance unit is not required to sign a security mortgage against non-home property which has been temporarily excluded from consideration pending sale (Cross-reference 7510 re: Liens).
5. UPM § 3530.05(C) provides that if the assistance unit fails to cooperate by signing the security mortgage as required, the equity value of the assistance unit's interest in the property involved is added to the unit's countable assets.
6. UPM § 4030.65(D)(1)(a) provides that property previously used as a primary residence becomes non-home property when the individual enters a long-term care facility and:
 - (1) no relative of acceptable relationship is lawfully residing in the home; and
 - (2) the individual cannot reasonably be expected to return to the home. (Cross Reference: 7510)

7. UPM § 4030.65(D)(1)(b) provides that non-home property that was the recipient's primary residence prior to entering the nursing home is excluded for as long as the individual is making a bona fide effort to sell it.
8. UPM § 4030.65(D)(1)(c) provides that the exclusion period begins with the first month of eligibility during which the person owns the property, and is cumulative for all months in which the person receives assistance.
9. UPM § 4030.65(D)(1)(d) provides that for an individual who applies on or after January 1, 2006, with an equity interest in his or her home of greater than \$750,000, the individual is ineligible for the payment of nursing facility and other long-term care services unless any of the following persons is lawfully residing in the home.
10. UPM § 4030.65(D)(1)(h) provides that the Department places a lien against the property. (Cross Reference: 7510)
11. UPM § 4030.65(D)(2)(a) provides that all other non-home property is excluded for as long as the individual is making a bona fide effort to sell it.
12. UPM § 4030.65(D)(2)(b) provides that the exclusion period begins with the first month in which all of the following conditions are met:
 - (1) the assistance unit is otherwise eligible for assistance;
 - (2) the assistance unit owns the property;
 - (3) the property is available to the assistance unit;
 - (4) the assistance unit is making a bona fide effort to sell the property.
13. UPM § 4030.65(D)(3) provides that the Department places a lien against all non-home property. (Cross Reference: 7510)
14. The Appellant did not make a bona fide effort to sell his non-home property as requested by the Department which is a condition of eligibility for the program.
15. The Department correctly determined that the Appellant's non-home property was not listed for sale.
16. By not listing his non-home property for sale, the Appellant is not in compliance with the procedural eligibility requirement of making a good-faith effort to sell his non-home property.
17. Because the Appellant was not making a bona fide effort to sell his non-home property, its equity value becomes a countable asset.

18. UPM § P-3028.20(1) provides that to determine fair market value of an asset, use sources such as, but not limited to:

- NADA "blue" book of trade-in values for automobiles;
- real estate conveyance records;
- marketing appraisals;
- bank records;
- passbooks;
- records of stock transactions;
- property appraisals performed by the Department;
- tax assessment records.

19. The market appraisal completed of the Appellant's non-home property by Elm City Appraisals is questionable as their appraised value of \$120,000.00 is unjustifiably well below the appraised value of \$146,500.00 assigned by the Assessor's office for the said property.

20. The FMV of the Appellant's non-home property located at [REDACTED] is undetermined.

21. The equity value of the Appellant's non-home property is undetermined.

22. The Department correctly determined that the Appellant's failure to provide a contract listing for sale his non-home property located at [REDACTED] violates the procedural eligibility requirements of the Medicaid program.

23. The Department correctly determined that the Appellant is not making a bona fide effort to sell his non-home property located at [REDACTED]

24. The Department correctly denied the Appellant's application for medical assistance under the Medicaid program for failure to comply with the procedural eligibility requirements of the Medicaid program.

DISCUSSION

The Appellant's representative testified that the Appellant is working with Wells Fargo to do a deed-in-lieu of foreclosure for his non-home property and that there is no equity value on the property due to a reverse mortgage taken out by the Appellant. The Appellant's representative claimed that the Appellant should not have to list his non-home property for sale as it has no countable equity value. However, the policy provides for the exclusion of non-home property only as long as the individual is making a good-faith effort to sell the property, or a relative of acceptable relationship is lawfully residing in the home.

As the Appellant did not list his non-home property for sale, as required, he is not in compliance the procedural eligibility requirements of the Medicaid program. Regardless of the property's FMV, the Appellant is required to make a bona fide effort to sell his non-home property as a condition of eligibility for the program. The regulation does not provide for the substitution of the requirement to make a bona fide effort to sell his non-home property with the "Deed-in-Lieu of Foreclosure" option. The Appellant's non-home property can only be excluded for as long as he his making a bona fide effort to sell it, regardless of its FMV. Therefore, the Appellant's failure to list for sale his non-home property located at [REDACTED] defies the procedural eligibility requirements of the Medicaid program, resulting in the denial of his application for medical assistance under the Medicaid program.

DECISION

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



Hernold C. Linton
Hearing Officer

Pc: **George Chamberlin**, Social Service Operations Manager,
DSS, R.O. #52, New Britain

[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.