

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

██████████ 2014
Signature Confirmation

Client ID # ██████████
Request #540744

NOTICE OF DECISION

PARTY

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██████████
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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 for Long Term Care Medicaid benefits for ██████████ 2012 and granting her Long Term Care benefits effective ██████████ 2012.

On ██████████ 2013, the Appellant requested an administrative hearing to contest the effective date 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 Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice rescheduling the administrative hearing for ██████████ 2013.

On ██████████ ██████████ 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice 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, OLCRAH held an administrative hearing. The following individuals were present at the hearing:

██████████, Appellant's Representative, Daughter, Conservator of Estate and Person
Jaime Chapelle, Department's Representative
Miklos Mencseli, Hearing Officer

The Appellant was not present.

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

STATEMENT OF THE ISSUE

The issue is the effective date of Long Term Care Medicaid benefits.

FINDINGS OF FACT

1. On ██████████ 2012, the Appellant applied for Medicaid for long term care assistance. The Appellant's daughter is listed as Conservator for the Appellant. (Summary, Exhibit A: Court of Probate certificate for appointment of Conservator)
2. The Appellant is a resident of West Hartford Health and Rehabilitation facility. (Summary)
3. On ██████████ 2012, the Department sent the Conservator and the facility a W-1348LTC verification form requesting information needed to process the Appellant's application. The Department also included the forms; "Hints To Speed Up The Application Process" and "Applying for Medicaid to Pay for Long-Term Care" with its packet. The information was due by ██████████, 2012. (Summary, Exhibit B: Department's W-1348 dated ██████████-12, Exhibit C: Hints form, Exhibit D: Applying for Medicaid form)
4. The Appellant owns 204 shares of Walt Disney stock. (Summary, Testimony, Appellant's Exhibit: Fax #1)
5. The Appellant's Conservator was unable to locate the original stock certificates, requested replacement certificates and requested they be issued as quickly as possible so the shares could be sold. (Appellant's Exhibit: Fax#1)
6. The Appellant was unable to assist the Conservator as she was diagnosed with the condition of Dementia as early as of ██████████ 2012. (Appellant's Exhibit: Fax #3: medical documentation regarding the Appellant's Dementia)
7. On ██████████ 2012, the Walt Disney shares were sold and the Appellant received a net amount of \$9,819.88. (Exhibit E: copy of bank receipt)

8. On [REDACTED] 2012, the \$9,819.88 was deposited into the Appellant's TD Bank checking account. (Exhibit I: TD Bank statement for the period of [REDACTED] 12 through [REDACTED]-12)
9. On [REDACTED] 2012, the Department received requested verifications (Summary)
10. On [REDACTED] 2013, the Appellant expired. (Summary, Testimony)
11. On [REDACTED] 2013, the Department reviewed verifications provided to date. (Summary)
12. On [REDACTED] 2013, the Department sent the Conservator a W-1348LTC verification form requesting additional information needed to process the Appellant's application. The information was due by [REDACTED] 2013. (Summary, Exhibit F: Department's W-1348 dated [REDACTED]-13)
13. On [REDACTED], 2013, the Department's worker emailed the Attorney General's office regarding the Appellant's TIAA and CREF annuities need to be reviewed and approved. (Summary)
14. On [REDACTED], 2013, the Department received requested verifications (Summary)
15. On [REDACTED] 2013, the Department reviewed all verifications provided to date and faxed over the TIAA and CREF annuity contract to the Attorney General's office. (Summary)
16. The Conservator in an email stated the Appellant could not take out lump sums from the annuities and only monthly payments. (Summary)
17. Per statements provided by the Appellant she withdrew \$23,532.10 from the CREF account on [REDACTED] 2012. (Summary)
18. The funds received from the CREF account were spent down in [REDACTED] 2012. (Exhibit H: asset worksheet)
19. The Appellant owned a Mutual of Omaha Life insurance policy with a cash value of \$4,540.00 as of [REDACTED] 2012 and \$4,808.00 as of [REDACTED] 2012. (Exhibit H: asset worksheet)
20. The Mutual of Omaha policy was cashed and spent down in [REDACTED] 2012. (Exhibit H: asset worksheet)

21. On [REDACTED], 2013, the Department sent the Conservator a W-1348LTC verification form requesting additional information needed to process the Appellant's application. The information was due by [REDACTED], 2013. (Summary, Exhibit G: Department's W-1348 dated [REDACTED]-13)
22. On [REDACTED] 2013, the Department received an email from West Hartford Health and Rehab requesting a pick up date of [REDACTED] 2012. (Summary)
23. On [REDACTED] 2013, the Department received requested verifications (Summary)
24. On [REDACTED] 2013, Department reviewed all verifications provided to date. It was determined that the TIAA and CREF were separate accounts. (Summary)
25. The Attorney General determined the TIAA account was a qualifying annuity and is inaccessible. (Summary)
26. The CREF account is accessible as the Appellant closed out the account and the Appellant received a Gross benefit of \$18,862.24 after taxes and penalties for closing the account. (Summary)
27. The funds were deposited into the Appellant's TD Bank account. (Exhibit H: asset worksheet)
28. On [REDACTED] 2013, the Department reviewed all the Appellant's assets and completed a monthly asset worksheet for the period of [REDACTED] 2012 through [REDACTED] 2012. (Exhibit H: asset worksheet)
29. The Department determined the Appellant was asset eligible as of [REDACTED] 2012, the month the Walt Disney shares were deposited and spent down from the Appellant's TD Bank account. (Exhibit I: TD Bank statement, Exhibit J: TD Bank statement for the period of [REDACTED]-12 through [REDACTED] 13)
30. On [REDACTED] 2013, the Department sent the Appellant a notice of action. The Department granted the Applicant's Long Term Care Medicaid benefits effective [REDACTED] 2012 and denied eligibility for [REDACTED] 2012 as the Appellant's assets exceeded the program asset limit prior to [REDACTED] 2012. (Exhibit P: NOA dated 6-10-13)
31. The Appellant's Conservator argued that the Appellant should be eligible for an earlier date as they have been trying to obtain replacement of the lost Disney stocks since [REDACTED] and the Appellant was unable to assist her due to her dementia. (Testimony)

32. On [REDACTED], 2012, the Conservator faxed Walt Disney a request for the forms to issue replacement of lost stock. (Appellant's Exhibit: Fax#1, faxed dated [REDACTED]-12 to Disney)
33. On [REDACTED] 2012, the Conservator received a response from the Walt Disney Company. The Conservator is required to pay a one time bonding premium of \$214.00 and complete a affidavit of loss and indemnity form. (Appellant's Exhibit: Fax#1, Disney form, Fax#2, email to Kearns & Kearns PC)
34. The Conservator incorrectly completed the forms and sent them to Disney. (Appellant's Exhibit Fax#2, email dated [REDACTED]-12)
35. On [REDACTED] 2012, the Conservator sent Disney a corrected form for the bonding. (Appellant's Exhibit Fax#1, corrected bonding form)
36. On [REDACTED] 2012, the Conservator received the paperwork for Disney she requested. The Conservator in contact with TD Ameritrade to sell the Disney shares. (Appellant's Exhibit Fax#2, email dated [REDACTED] 12 to Kearns & Kearns PC)
37. On [REDACTED] and [REDACTED] 2012, the Conservator is in correspondence with Kearns & Kearns PC regarding the Disney stock and issues with TD Ameritrade in receiving the stock and liquidating them. (Appellant's Fax#2, emails to Kearns & Kearns)
38. On [REDACTED] 2012, the Conservator was able to place a sell order for the Walt Disney shares. (Appellant's Fax#2, email to Kearns & Kearns PC)
39. On [REDACTED] 2012, the Conservator received a check for \$9,819.88 for the sold shares. (Appellant's Fax#2, email dated [REDACTED] 12 to Kearns & Kearns PC)
40. The Appellant's Conservator is seeking an [REDACTED] 2012 date of eligibility as they were unable to receive the funds for the Disney stock until [REDACTED] 2012 and spend down the funds. (Testimony)

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) § 4005.05 (B)(1) 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.

3. 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.
4. UPM § 4015.05 pertains to inaccessible assets and states in part: 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. The burden is on the assistance unit to demonstrate that an asset is inaccessible.
5. The Appellant's Conservator demonstrated that the Walt Disney stock shares were inaccessible to the Appellant through the documentation provided to the Department.
6. UPM § 4099.15 (A) (1) pertains to factors relating to inaccessibility and states: the assistance unit must verify that an otherwise counted asset is inaccessible to the unit if the unit claims it can not convert the asset to cash.
7. The Appellant's Conservator could not convert the assets to cash until Walt Disney and TD Ameritrade completed the procedure and were satisfied they had the proper documentation.
8. UPM § 4099.15 (B) (1) pertains to factors once the asset becomes available and states: once an inaccessible asset becomes available to the unit, the unit must verify the amount of equity the unit has in the asset.
9. Once the assets were converted to cash and spent down, the Appellant's Conservator provided verification to the Department.
10. The Department correctly determined the CREF account is accessible as the Appellant closed out the account and received the benefit from the account in [REDACTED] 2012.
11. The Department correctly determined the Mutual of Omaha life insurance policy is a countable asset.
12. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
13. 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.

14. UPM § 1560.10 (A) provides for begin dates of Medicaid Assistance. The beginning date of assistance for Medicaid may be one of the following: 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.

DISCUSSION

The Appellant's Conservator made an effort to liquidate the Walt Disney stock. The Conservator provided enough evidence to establish her effort. The Appellant had no access to the funds. The Appellant was also unable to assist the Conservator due to her dementia as documented by medical records and prescription record provided by the Conservator. The Appellant has other assets that are not inaccessible and the Department will need to determine when those assets were spent down and the Appellant is below the asset limit.

DECISION

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

ORDER

1. The Department shall determine eligibility for the Appellant's application based on the inaccessibility of the Walt Disney stock.
2. The Department shall grant Long Term Care Medicaid benefits based on new effective date the Appellant is below the asset limit.
3. The Department shall determine if the Appellant is eligible for any retro months of eligibility.
4. No later than [REDACTED] 2014, the Department will provide to the undersigned proof of compliance with this order.


Miklos Mencsell
Hearing Officer

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

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.

