

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 # 557244

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") stating that the agency denied her application for Long Term Care Medicaid because her assets exceeded the Medicaid asset limit.

On ██████████ 2013, ██████████, the Appellant's Power of Attorney ("POA") requested an administrative hearing to contest the Department's denial of the Appellant's Medicaid application.

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:

██████████, Attorney for the Appellant
Lea Chayes, Department's Representative
Scott Zuckerman, Hearing Officer

The hearing record remained open for the submission of additional evidence. 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 Medicaid application due to excess assets.

FINDINGS OF FACT

1. On [REDACTED] 2006, the Appellant's son and daughter receive their appointment as Durable POA. (Appellant's representative testimony, Appellant Ex 13: Durable Statutory Short form Power of Attorney, [REDACTED]/10)
2. In [REDACTED] 2012 the Appellant entered Kindred Health/ Windsor Rehab Long Term Care Facility (the "facility"). (Testimony)
3. On [REDACTED] 2012, the Appellant maintained the following life insurance policies through John Hancock.: Policy # [REDACTED] cash surrender value of \$3,697.52 and # [REDACTED] cash surrender value \$8893.96. (Appellant Testimony, Appellant Ex. 1: Policy Values from Insurance Agent, [REDACTED]/12)
4. On [REDACTED] 2012, the Appellant's POA begins the process of liquidating the Life insurance policies and is provided with policy surrender and tax forms from the agent. (Appellant Testimony, Ex. 1: Fax from insurance agent / requests for policy surrender)
5. On [REDACTED] 2012, the Appellant's POA returns the signed forms to the insurance agent. (Testimony, Ex. 2: Fax to insurance agent with surrender and tax forms)
6. On [REDACTED], 2012, John Hancock Life Insurance Company sends the Appellant a letter acknowledging the request to surrender and tax forms for policy # [REDACTED]. John Hancock requests the surrender and taxpayer forms be notarized due to a change of address. (Testimony, Ex. 3: Letter from John Hancock, [REDACTED]/12)
7. On [REDACTED] 2012, John Hancock Life Insurance Company sends the Appellant a letter acknowledging the request to surrender and tax forms for policy # [REDACTED]. John Hancock requests the surrender and taxpayer forms be notarized due to a change of address. (Testimony, Ex. 3: Letter from John Hancock, [REDACTED]/12)
8. On [REDACTED] [REDACTED] 2012, the Appellant receives from John Hancock a letter acknowledging the change of address. (Testimony, Ex. 5: Letter from John Hancock, [REDACTED] 2012)

9. On [REDACTED] 2012, John Hancock notifies the insurance agent that additional forms are needed. (Testimony, Ex. 6: Email from John Hancock to Frederick Shores, [REDACTED]/12)
10. On [REDACTED] 2012, the Appellant's POA is notified by the insurance agent that he must again sign each of the requested surrender and tax forms in front of a notary. (Testimony, Ex. 7: Fax from insurance agent to POA, [REDACTED]/12)
11. On [REDACTED] 2012, the Appellant's POA has the surrender and tax forms notarized for the second time for Policy # [REDACTED] and Policy # [REDACTED] (Ex. 8: Copy of notarized forms, [REDACTED]/12)
12. On [REDACTED] 2012, the insurance agent sends the notarized forms to John Hancock for policy # [REDACTED] and # [REDACTED]. (Ex. 8: Fax from Frederick Shores to John Hancock, [REDACTED]/12)
13. On [REDACTED] 2012, John Hancock sends the insurance agent a Pricing verification Form and note that the document was misplaced inadvertently. (Ex. 9: Pricing Verification form, [REDACTED]/12)
14. On [REDACTED] 2013, the Appellant's attorney sends a letter to John Hancock to verify the POA is valid. (Ex. 10: Letter from Attorney, [REDACTED]/13)
15. On [REDACTED] 2013, the John Hancock policy # [REDACTED] was surrendered with a net amount of \$3,521.32. The proceeds are paid to the nursing facility. The John Hancock Policy # [REDACTED] is not surrendered to the Appellant. (Appellant's Testimony, Ex. 11: Copy of check for policy # [REDACTED], [REDACTED]/13)
16. On [REDACTED] 2013, the Appellant received a letter from John Hancock requesting a POA document to process the surrender request on policy # [REDACTED] (Ex. 12: Letter from John Hancock, [REDACTED]/13)
17. On [REDACTED] 2013, the insurance agent resubmits POA documents to surrender the policy # [REDACTED]. The agent advises John Hancock to contact him with further correspondence. (Ex. 13: Fax cover sheet to John Hancock from the agent, [REDACTED]/13)
18. On [REDACTED] 2013, the insurance agent sends John Hancock a copy of the Attorneys letter verifying POA is valid and a copy of the Power of Attorney document. John Hancock insists both POA's need to sign. The agent notifies John Hancock that both signatures are not required. (Ex. 14: Fax from insurance agent to John Hancock.)
19. On [REDACTED] 2013, the Appellant receives a letter from John Hancock requesting a completed and notarized POA affidavit and Indemnification form in order to process the surrender of policy # [REDACTED] (Ex. 15: Letter from John Hancock, [REDACTED]/13)

20. On [REDACTED], 2013, the Appellant applied for Long Term Care Medicaid to cover the cost of care in the facility effective [REDACTED] 2013. The Appellant's attorney states two insurance policies were surrendered and one check was not received. (Hearing Summary, Departments Ex 11: W-1F, Application for Assistance, [REDACTED]/13, Appellant's Ex. 19: Certified Mail receipt, [REDACTED]/13, Ex. 19: Letter to the Department from Appellant's Attorney, [REDACTED]/13)
21. The Appellant is widowed. (Testimony, Departments Ex. 11: W-1F)
22. On [REDACTED] 2013, the Appellant's Attorney sends John Hancock the signed and notarized POA Affidavit and Indemnification form for Policy # [REDACTED]. (Ex. 15: POA Affidavit and Indemnification form, [REDACTED]/13)
23. On [REDACTED] 2013, the Department received items requested to process the application from the Appellant's attorney. Included with the submission were verification that policy # [REDACTED] was surrendered in [REDACTED] 2013 and an update regarding the difficulty in surrendering policy # [REDACTED]. (Ex. 19: Letter to the Department, [REDACTED]/13, Certified Mail receipt, [REDACTED]/13)
24. On [REDACTED] 2013, the Department received items requested to process the application. Included with the submission is an update from the attorney regarding the status of John Hancock policy # [REDACTED]. (Ex. 19: Letter to the Department, [REDACTED]/13, Certified mail receipt, [REDACTED]/13)
25. On [REDACTED] 2013, the Appellant's Attorney sends a signed and notarized form from the POA, giving John Hancock permission to provide the Appellant's Attorney with all written information regarding policy # [REDACTED]. (Ex. 16: Letter from the POA to John Hancock, [REDACTED]/13)
26. On [REDACTED] 2013, the Appellant's Attorney re sends the authorization form. (Ex. 17: Fax from Attorney to John Hancock, [REDACTED]/13)
27. On [REDACTED], 2013, the Appellants Attorney sends to the Department items requested to process the application. The Attorney apprises the Department on the continued delay in processing policy # [REDACTED] (Ex. 19: Letter to the Department, [REDACTED]/13)
28. On [REDACTED] 2013, the Appellant passed away. (Testimony)
29. On [REDACTED] [REDACTED] 2013, the Appellant's John Hancock Policy # [REDACTED] is surrendered. The surrender value is \$9,148.88. (Departments Ex. 9: Letter and check from John Hancock)
30. On [REDACTED] 2013, the Department denied the Appellant's Title XIX Long-Term Care Medical Assistance application because her assets for the months of February 2013 through October 2013 exceeded the asset limit. (Department's Ex. 12: Notice Content, [REDACTED]/13)

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. UPM § 4015.05 (A) provides that 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.

10. UPM §4015.05 B (1) provides that the burden is on the assistance to demonstrate that an asset is inaccessible.
11. UPM § 4015.05 B (2) A provides that for all programs except Food Stamps, in order for an asset to be considered inaccessible, the assistance unit must cooperate with the Department as directed, in attempting to gain access to the asset.
12. The Appellant's representatives provided evidence documenting multiple interactions with John Hancock from [REDACTED] 2012 through [REDACTED] 2013 in attempting to gain access to policy # [REDACTED].
13. The Appellant met her burden of proof that the John Hancock policy # [REDACTED] was inaccessible from [REDACTED] 2012 through [REDACTED] 2013.
14. The Department incorrectly counted the Appellant's life insurance cash surrender value and determined that the Appellant was ineligible for Long Term Care Medicaid.
15. The Department incorrectly denied the Appellant's application for Long Term Care Medicaid assistance for the months of [REDACTED] 2013 through [REDACTED] 2013 due to excess assets.

DISCUSSION

After reviewing the evidence and the testimony presented at the hearing, I find that the Department's denial of the Appellant's Long Term Care Medicaid application is not upheld.

The Appellant's attorney argued that the life insurance asset was not accessible and should not have been included in the asset calculation. The Appellant's POA had been paying private pay to the nursing facility while spending down the Appellant's assets. The Appellant's representatives began the process of liquidating the two insurance policies simultaneously through John Hancock in [REDACTED] of 2012. All forms were completed in [REDACTED] 2012 and [REDACTED] 2013 for both insurance policies. The testimony and evidence provided indicates that for some reason John Hancock only processed and surrendered policy # [REDACTED]. The Appellant's representative again began the process of liquidating policy # [REDACTED]. The delays continued through [REDACTED] of 2013, when the second policy was surrendered following the Appellant's death. Throughout this process the Appellant's representatives submitted all the necessary paperwork asked for by John Hancock, which included forms previously submitted.

I find the Appellant's representative demonstrated she made all reasonable efforts to gain access to the asset by providing months of correspondence with the insurance agent and John Hancock. The representatives provided duplicate items requested the first time around. The Attorney and Department testified that all other assets were reduced in [REDACTED] 2013 and the proceeds of policy # [REDACTED] were paid to the nursing facility at that time. I find the Appellant's testimony credible that had John

Hancock surrendered policy # [REDACTED] simultaneously, the proceeds would have been paid to the nursing facility in [REDACTED] 2013. At the time of the hearing the Appellant's Attorney was in the process of paying the proceeds of policy # [REDACTED] to the nursing facility. The Department submitted this case for an Administrative review on [REDACTED]/13. The hearing record was left open for the Department to provide a response to this review. There was no response. The undersigned hearing officer finds that the Appellant's assets were reduced to under the \$1600.00 limit in the month of [REDACTED] 2013.

DECISION

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



Scott Zuckerman
Hearing Officer

ORDER

1. The Department is ordered to remove the cash surrender value of the John Hancock Life Insurance policy # [REDACTED] from consideration effective [REDACTED] 2013 through [REDACTED] 2013.
2. The Department is ordered to Grant the Appellant's Long Term Care Medical Assistance effective [REDACTED] 2013, provided all other eligibility factors are met.
3. Compliance with this order is due to the undersigned by [REDACTED] 2014.

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.