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

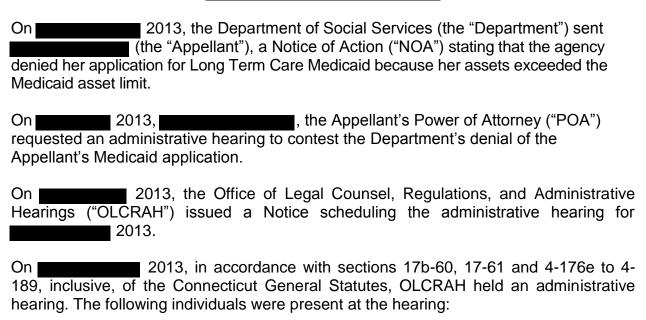
Client ID # Request # 557244

NOTICE OF DECISION

PARTY



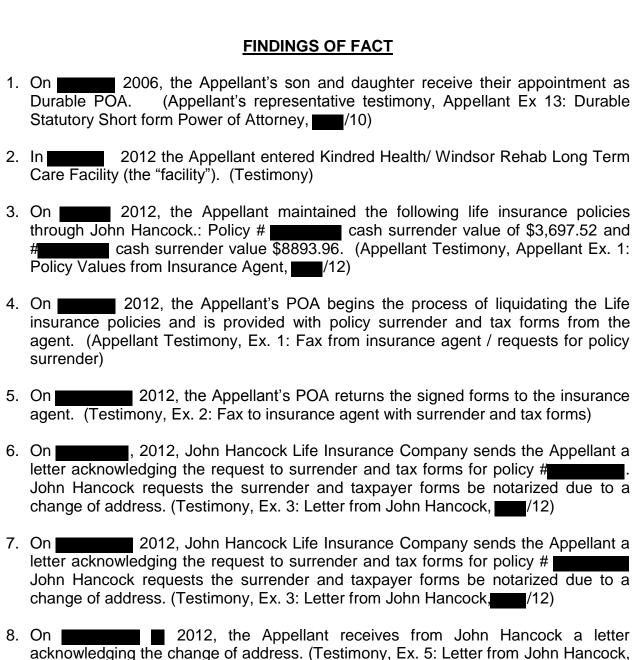
PROCEDURAL BACKGROUND



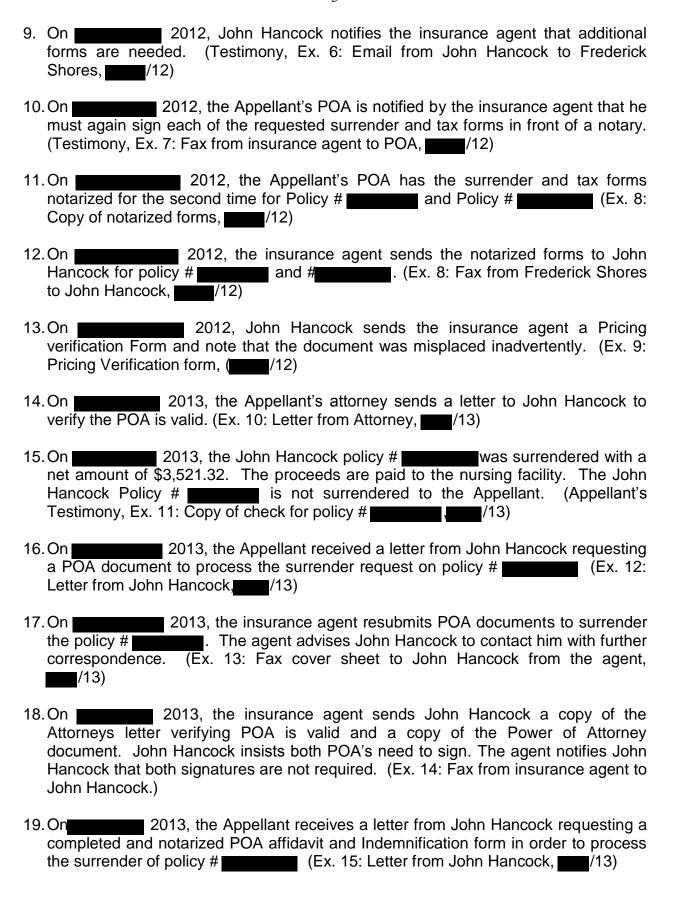
, Attorney for the Appellant Lea Chayes, Department's Representative Scott Zuckerman, Hearing Officer The hearing record remained open for the submission of additional evidence. On 2013 the hearing record closed.

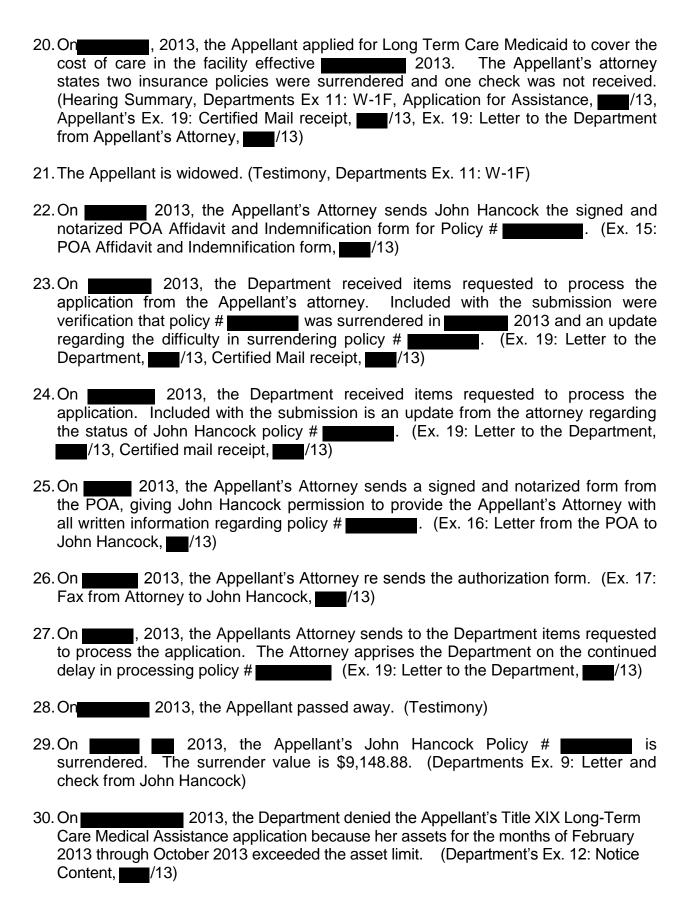
STATEMENT OF THE ISSUE

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



2012)





CONCLUSIONS OF LAW

- 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 Statues 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.
- 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 assista	ance to demonstra	te 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 repres	entatives provided	d evidence documei	nting multiple interactions
	with John Hancock fron	n 2012 throug	gh 2013 in a	attempting to gain access
	to policy #			

- 13. The Appellant met her burden of proof that the John Hancock policy # was inaccessible from 2012 through 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 2013 through 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 of 2012. All forms were completed in 2012 and 2013 for both insurance policies. The testimony and evidence provided indicates that for some reason John Hancock only processed and surrendered policy # The Appellant's representative again began the process of liquidating policy # The Appellant's continued through 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 2013 and the proceeds of policy # were paid to the nursing facility at that time. I find the Appellant's testimony credible that had John

Hancock surrendered policy # simultaneously, the proceeds would have been paid to the nursing facility in 2013. At the time of the hearing the Appellant's Attorney was in the process of paying the proceeds of policy # to the nursing facility. The Department submitted this case for an Administrative review on 1/13. 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 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 # from consideration effective 2013 through 2013.
- 2. The Department is ordered to Grant the Appellant's Long Term Care Medical Assistance effective 2013, provided all other eligibility factors are met.
- 3. Compliance with this order is due to the undersigned by 2014.

Pc: Albert Williams, Operations Manager, Hartford Regional Office

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 <u>specific</u> grounds for the request: for example, indicate <u>what</u> error of fact or law, <u>what</u> new evidence, or <u>what</u> 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.