

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 #566604

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") denying her application for Long Term Care Medicaid benefits from ██████████ 2012 through ██████████ 2013 and granting her Long Term Care benefits effective ██████████ 2013.

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, 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
██, Appellant's Son, Power of Attorney ("POA")
██, Appellant's Daughter, Power of Attorney ("POA")
Laura Cantarino, Department's Representative
Miklos Mencseli, Hearing Officer

The Appellant was not present.

A separate decision will be issued regarding the Transfer of Asset penalty.

STATEMENT OF THE ISSUE

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

FINDINGS OF FACT

1. On [REDACTED] 2012, the Appellant's son, [REDACTED] sent an email to the Appellant's Attorney. The Appellant's son stated the Appellant has an insurance policy with the Hartford and the spouse had 217 shares of Sun Life Assurance Co Canada stock plus a Sun Life insurance policy. (Exhibit 2: email dated [REDACTED] 12)
2. On [REDACTED] 2012, the Appellant and her spouse, [REDACTED] application for long term care assistance was received by the Department. (Summary, Exhibit 1: Appellant's W-1F application)
3. The Application does not list any insurance policies. (Summary, Exhibit 1)
4. On [REDACTED], 2012, the Department sent the Appellant a W-1348 verification form requesting the assets for the Appellant and her spouse be reduced below \$1600.00, provide the policy number, face value and cash value for the Hartford life policy and the value of the 217 shares of Sun Life stock for the Appellant's spouse. The information was due by [REDACTED] 2012. (Summary, Exhibit 4: Department's W-1348 dated [REDACTED] 12)
5. On [REDACTED] 2012, the Department received an extension request from the Appellant's Attorney. The Attorney provided some of the requested verifications to the Department. (Summary, Exhibit 15: letter dated [REDACTED]-12)
6. On [REDACTED] 2012, the Appellant's spouse, [REDACTED] expired. (Exhibit 10: Sun Life Financial documentation, copy of death certificate included)
7. On [REDACTED] 2012, having not received any additional verifications, the Department sent an email to the Appellant's Attorney inquiring whether the Appellant still required long term care assistance. (Summary, Exhibit 16: email dated [REDACTED]-12)
8. On [REDACTED] 2012, the Department sent the Appellant a W-1348 verification form requesting additional information needed to process the Appellant's application. Items requested included the policy number, face and cash value of the Appellant's insurance policy and the documentation of the sale of the Sun Life stock. The information was due by [REDACTED] 2012. (Summary, Exhibit 4: Department's W-1348 dated [REDACTED]-12)

9. On [REDACTED] 2012, the Appellant's Attorney responded by providing some verifications requested. The Attorney stated that the Appellant has been trying to liquidate the 217 shares of Sun Life since [REDACTED]. The Appellant also requested an extension. (Summary, Exhibit 17: letter dated [REDACTED]-12)
10. Probate was not opened for the Appellant's spouse due to having only the life insurance policy and the Sun Life shares. (Exhibit 17, Exhibit 24: letter dated [REDACTED]-13, Testimony)
11. On [REDACTED], 1012, the Appellant received a letter from Protective Life Insurance (John Hancock) verifying she had a Whole Life policy with a face amount of \$2,947.01. (Exhibit 13: letter dated [REDACTED]-13)
12. On [REDACTED] 2013, the Department sent the Appellant a W-1348 verification form requesting additional information needed to process the Appellant's application. The Department was still requesting verification of the Appellant's life insurance policy, the Sun Life stocks and asset reduction. The information was due by [REDACTED] 2013. (Summary, Exhibit 4: Department's W-1348 dated [REDACTED]-13)
13. On [REDACTED], 2013, the Appellant's Attorney responded to the Department's W-1348. The Appellant provided some verifications and requested an extension for the additional verifications. (Exhibit 18: letter dated [REDACTED]-13)
14. On [REDACTED], 2013, the Department sent the Appellant a W-1348 verification form requesting additional information needed to process the Appellant's application. The Department was still requesting verification of the Appellant's life insurance policy, the Sun Life stocks and asset reduction. Also requested value of life insurance being deducted from the Appellant's spouse pension. The information was due by [REDACTED] 2013. (Summary, Exhibit 4: Department's W-1348 dated [REDACTED] 13)
15. On [REDACTED] 2013, the Appellant's Attorney provided the Department a letter stating the Appellant had no Hartford Life insurance policy. (Summary)
16. On [REDACTED], 2013, the Department sent the Appellant a W-1348 verification form requesting additional information needed to process the Appellant's application. The Department was still requesting verification of that the Sun Life stock sold. In addition information of a John Hancock policy [REDACTED] and asset reduction. The information was due by [REDACTED] 2013. (Summary, Exhibit 4: Department's W-1348 dated [REDACTED]-13)
17. The Appellant paid premiums of \$26.01 from Webster Checking account # [REDACTED] for the John Hancock policy on [REDACTED] 2012, [REDACTED], 2012,

██████████ 2012, ██████████, 2012 and ██████████ 2013. (Exhibit 12: Webster bank statements and copy of cancelled checks)

18. On ██████████, 2013, the Appellant's Attorney responded to the W-1348. The Attorney again stated the Appellant has no Hartford Life insurance and advised the family to request the cash surrender value of the John Hancock policy. (Summary, Exhibit 19: letter dated ██████████-13)
19. On ██████████ 2013, the Appellant requested the John Hancock policy, which is with Protective Life pay her the surrender value as soon as possible. (Exhibit 20: letter dated ██████████-13)
20. On ██████████ 2013, the Department sent the Appellant a W-1348 verification form requesting additional information needed to process the Appellant's application. The Department was still requesting verification of that the Sun Life stock sold, the value of the John Hancock policy ██████████ and asset reduction. The information was due by ██████████ 2013. (Summary, Exhibit 4: Department's W-1348 dated ██████████-13)
21. On ██████████ 2013, the Appellant completed a notice of withholding on distribution or withdrawals form for the John Hancock policy. (Exhibit 14: form dated ██████████-13)
22. On ██████████ 2013, the Department sent the Appellant's a W-495A Preliminary Decision Notice Transfer of Assets form. The Department determined that the Appellant transferred \$6,100.00 for the period of ██████████ through ██████████ 2013. A total of 19 checks were written. (Summary, Exhibit 5: Department's notice dated ██████████-13, Exhibit 8: list of gifts, Exhibit 9: Webster Bank # ██████████ bank statements and copy of cancelled checks)
23. On ██████████ 2013, the Appellant's Attorney responded by email to the W-495A. She objected to the determination of the transfer penalty and would be presenting evidence that certain items were payment for value and other items have been or will be returned. (Exhibit 21: email dated ██████████-13)
24. On ██████████ 2013, the Department sent the Appellant a W-1348 verification form requesting additional information needed to process the Appellant's application. The Department was still requesting verification of that the Sun Life stock sold, the value of the John Hancock policy # ██████████ and asset reduction. The information was due by ██████████ 2013. (Summary, Exhibit 4: Department's W-1348 dated 4-19-13)
25. On ██████████ 2013, the Appellant received a letter form Protective Life (John Hancock). The letter states as of ██████████, 2013 her coverage has terminated. You should be receiving a check in the amount of \$2,183.39.

(Exhibit 14: dated [REDACTED]-13)

26. The Appellant received a check for \$2,183.39 from John Hancock. The check is dated [REDACTED], 2013. (Exhibit 14: check dated [REDACTED]-13)
27. On [REDACTED] 2013, the Appellant's Attorney sent an email to Glastonbury Health facility. The Appellant received the cash surrender value of the John Hancock policy in the amount of \$2,183.39 and will be remitting the funds along with the Appellant's applied income for [REDACTED] 2013. (Exhibit 22: email dated [REDACTED]-13)
28. On [REDACTED], 2013, the Appellant's Attorney emailed Glastonbury Health. The Attorney stated the funds from the John Hancock policy be applied to the Appellant's spouse balance at the facility. They did not know about the policy until [REDACTED] of 2013. (Exhibit 23: email dated [REDACTED]-13)
29. On [REDACTED] 2013, the Department sent the Appellant a W-1348 verification form requesting additional information needed to process the Appellant's application. The Department was still requesting verification of that the Sun Life stock sold, all correspondence between Sun Life and the Appellant's Attorney, documents that the gifts have been returned and /or payment in value and asset reduction. The information was due by [REDACTED] 2013. (Summary, Exhibit 4: Department's W-1348 dated [REDACTED]-13)
30. The Department determined the Protective Life Insurance (John Hancock) policy was not inaccessible as checks were paid to the policy on from Webster Checking account # [REDACTED] for the John Hancock policy on [REDACTED] 2012, [REDACTED] 2012, [REDACTED] 2012, [REDACTED] 2012 and [REDACTED] 2013. (Exhibit 12, Exhibit 4: W-1348 dated [REDACTED]-13, Testimony)
31. On [REDACTED] 2013, the Department received a letter from the Appellant's Attorney with verifications. Listed were Christmas gifts for 2012 that correspond to the Department's list of checks for the period. (Exhibit 25: letter dated [REDACTED]-13)
32. On [REDACTED] 2013, the Department received an email from the Appellant's Attorney stating the Sun Life shares were assigned to Glastonbury Health on [REDACTED] 2013. (Summary)
33. Copy of Sun Life certificate dated [REDACTED] 2013 with Glastonbury Health Care Center as share holder. (Exhibit 11: copy of certificate)
34. On [REDACTED] 2013, the Department granted the Appellant L01 medical effective [REDACTED] 2013 and room and board effective [REDACTED] 2013 due to the transfer of asset penalty of \$6100.00. (Summary)

35. On [REDACTED], 2013, the Department sent the Appellant a W-495B Transfer of Assets Notice of Response to Rebuttal/Hardship Claim form. The Department determined that the Appellant's transfer of funds did not meet the criteria for an allowable transfer of funds. The Department initiated a penalty period that will last .55 months due to the transfer of funds. (Exhibit 6: W-495B dated [REDACTED]-13)
36. On [REDACTED] 2013, the Department sent the Appellant a W-495C Transfer of Assets Final Decision Notice form. The form states the Appellant is eligible for certain Medicaid benefits effective [REDACTED] 2013, a penalty period will begin [REDACTED] 2013 and continue until [REDACTED], 2013. During the penalty period, Medicaid will not pay for any long term care services. (Exhibit H: W- 495C dated [REDACTED]-13)
37. The Department has since revised the penalty amount and period. This issue will be addressed in a separate decision.
38. The Appellant's Attorney argued that the Appellant should be eligible for an earlier date as they have been trying to liquidate the Sun Life Stock since [REDACTED] 2013 and the funds from the stock were inaccessible to the Appellant. (Testimony)
39. On [REDACTED] 2012, the Appellant's Attorney sent a letter to Sun Life Financial (c/o Canadian Stock Transfer Co) requesting the 217 shares be liquidated to his surviving spouse, the Appellant. Included was a copy of the Appellant's spouse's death certificate and copy of the original stock certificate. (Exhibit 10: letter dated [REDACTED]-12)
40. On [REDACTED], 2012, the Appellant's Attorney received a response from the Canadian Stock Transfer Co. They provided a declaration of transmission form to be completed and returned. This form was needed as Probate Court proceedings were not opened for the Appellant's spouse. Exhibit 10: letter dated [REDACTED]-12)
41. On [REDACTED], 2012, the Appellant's Attorney sent Sun Life Financial a letter with the signed declaration form dated [REDACTED]-12 requesting the liquidation of the stock to the Appellant. (Exhibit 10: letter dated [REDACTED]-12)
42. On [REDACTED], 2012, the Appellant's Attorney sent Sun Life Financial a letter with a copy of the Appellant's Spouse's death certificate requesting the liquidation of the stock to the Appellant. (Exhibit 10: letter dated [REDACTED]-12)
43. On [REDACTED] 2012, the Appellant's Attorney sent Sun Life Financial a letter requesting an update of the status of the liquidation of the stock. (Exhibit 10: letter dated [REDACTED]-12)

44. On [REDACTED] 2013, the Appellant's Attorney sent Sun Life Financial a letter enclosing a completed declaration of transmission form requesting the liquidation of the stock to proceed. (Exhibit 10: letter dated [REDACTED]-13)
45. On [REDACTED] 2013, the Appellant's Attorney sent Sun Life Financial a letter enclosing a completed waiver of probate and agreement of indemnity form requesting the liquidation of the stock to proceed. (Exhibit 10: letter dated [REDACTED]-13)
46. On [REDACTED] 2013, the Appellant's Attorney sent Sun Life Financial a letter enclosing a copy of the original stock certificate. She also stated that they have been requesting liquidation of the stock since [REDACTED] 2012. (Exhibit 10: letter dated [REDACTED]-13)
47. On [REDACTED] 2013, the Appellant's Attorney sent Sun Life Financial a letter requesting an update of the status of the liquidation of the stock. (Exhibit 10: letter dated [REDACTED]-13)
48. The stock was converted to Glastonbury Health Care Center on [REDACTED] 2013. (Finding of Fact # 29, Exhibit 11: copy of certificate)
49. The Appellant's Representatives are seeking a [REDACTED] 2013 date of eligibility as they were unable to verify the John Hancock policy until [REDACTED] 2012 and start the process to cash out the policy. (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 Representatives demonstrated that the Sun Life 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 Representatives could not convert the assets to the facility until Sun Life Financial completed the procedure and was satisfied it 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 the facility, the Appellant's Representatives provided verification to the Department.
10. UPM § 4030.30 (C) (1)(2) pertains to Life Insurance policies as counted assets for AABD and MAABD. 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. Except as provided above, the cash surrender value of life insurance policies owned by the individual is counted towards the asset limit.
11. The Department correctly determined the Appellant's John Hancock Policy is a countable asset as the face value of the policy is \$2, 947.01.
12. The Appellant received \$2,183.39 as the cash surrender value.
13. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
14. 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.
15. The Appellant did not reduce her assets within the asset limit until [REDACTED] 2013 when she distributed the funds to Glastonbury Health Care Center.
16. The Department incorrectly determined the Appellant's effective date based on the inaccessibility of assets.

DISCUSSION

The Appellant's Representatives made an effort to liquidate the Sun Life stock. They provided enough evidence to establish their effort. The Appellant had no access to the funds. It probably would have been better had they gone through probate court. The same cannot be said for the John Hancock policy. Payments were made on the policy on [REDACTED] 2012, [REDACTED] 2012, [REDACTED] 2012, [REDACTED], 2012 and [REDACTED] 2013. It is not until [REDACTED], 2013 that the Appellant requests distribution of the funds. The Appellant then does not reduce her assets below the \$1600.00 asset limit until paying the facility in [REDACTED] 2013.

DECISION

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

ORDER

1. The Department shall determine eligibility for the Appellant's application based on the inaccessibility of the Sun Life stock.
2. The Department shall grant Long Term Care Medicaid benefits based on new effective date the Appellant is below the asset limit.
3. No later than [REDACTED] 2013, the Department will provide to the undersigned proof of compliance with this order.


Miklos Mencseli
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.

