

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL REGULATIONS AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

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

Client ID #: ██████████
Hearing ID #: 582294

NOTICE OF DECISION

PARTY

██████████
██████████
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██████████

PROCEDURAL BACKGROUND

On ██████████ 2014, 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 ██████████ 2014, the Appellant’s legal counsel requested an administrative hearing to contest the effective date of the Long Term Care Medicaid benefits as determined by the Department.

On ██████████ 2014, the Office of Legal Counsel Regulations and Administrative Hearings (“OLCRAH”) issued a notice scheduling an administrative hearing for ██████████, 2014.

On ██████████ 2014, in accordance with sections § 17b-60, 17b-61 and § 4-176e to § 4-184, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

████████████████████, Appellant's Attorney by telephone
██████████ Power of Attorney for the Applicant ("POA") by telephone
Diane Wood, Department's Representative
Christopher Turner, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department determined the correct effective date of eligibility when it granted the Appellant's application for Long Term Care effective ██████████ 2013.

FINDINGS OF FACT

1. On ██████████ 2012, the Appellant applied for Medicaid Long Term Care ("LTC") assistance. A Sovereign Bank account balance of \$8,141.87 is listed on the application. (Exhibit 1: W-1F Application; Exhibit 13: Department's narrative; Hearing summary)
2. On ██████████ ██████████ 2012, the Department sent the Appellant's POA an Application Verification List ("W-1348") requesting a Notification of Annuity Requirements (form "W-1J") to be signed. The Department also requested Sovereign Bank Account information, burial contract and POA information. (Exhibit 14: Copy of W-1348 dated ██████████/12; Exhibit 13 page 1 of 21; Hearing summary)
3. On ██████████ ██████████ 2012, the Department received the requested information. (Exhibit 15: Signed W-1J dated ██████████/12; Exhibit 13 page 1 of 21)
4. On ██████████ 2013, the Department submitted a referral to Principal Attorney Dan Butler requesting an evaluation of the Appellant's Lincoln Financial Annuity ("LFA"). (Exhibit 2: Form W-765; Exhibit 13 page 2 of 21; Hearing summary)
5. On ██████████ 2013, the Department received a response from Attorney Butler. Attorney Butler requires a copy of the LFA contract in order to complete his evaluation. (Exhibit 13 page 3 of 21; Hearing summary)
6. On ██████████ 2013, the Department e-mailed the Appellant's attorney an updated requirements list requesting in part a copy of the Appellant's annuity contract; verification of Sovereign bank deposits; New Alliance withdrawal from ██████████/07. (Appellant's Exhibit J: 1348 dated ██████████/13)
7. On ██████████ 2013, the Department's representative spoke with the Appellant's POA concerning the Appellant's LFA. (Exhibit 13 page 3 of 21)

8. On [REDACTED] [REDACTED] 2013, the Appellant's attorney informed the Department's representative that she is continuing to work on obtaining a copy of the LFA. The Department's representative extended the due date to [REDACTED]/13. (Exhibit 13 page 6 of 21)
9. On [REDACTED] 2013, the Department's representative e-mailed the Appellant's attorney an Annuities and Your Eligibility for Long-Term Care Medical Services (form "W-1540") for her signature with a due date of [REDACTED]/13. (Exhibit 13 page 6 of 21)
10. On [REDACTED] 2013, the Appellant's attorney received a letter from Lincoln Benefit Life. (Appellant's Exhibit J: Copy of [REDACTED]/13 letter from Lincoln Benefit Life)
11. On [REDACTED], 2013, the letter from Lincoln Benefit Life indicated the Immediate Annuity policy was annuitized on [REDACTED] 2012, which guaranteed the policy to make 120 monthly payments of \$767.53. "The option to surrender the policy, change the annuitant, change the payment amount and the frequency of the payments is no longer available." (Appellant's Exhibit J: Copy of [REDACTED]/13 letter from Lincoln Benefit Life)
12. On [REDACTED] 2013, the Appellant's attorney returned a W-1540 signed by the Appellant's POA. (Appellant's Exhibit K: E-Mail and W-1540)
13. On [REDACTED] 2013, the Appellant's attorney sent the Department's representative an e-mail affirming that the Appellant's annuity cannot be sold or cashed out. Therefore, the annuity should not be a countable asset since the Appellant is not able to obtain the entire equity amount in the annuity. In addition, the Appellant's counsel requested the Department approve the Appellant's Medicaid benefits effective [REDACTED] 12 and send the Appellant a W-1542 "Notification of Requirement to Designate Beneficiary" form. (Appellant's Exhibit J: Copy of E-mail dated [REDACTED]/13) see notes
14. On [REDACTED] 2013, the Department's representative received a response from Attorney Butler. The LFA "rolled over" on [REDACTED]/12 to a gross annuitized monthly benefit. The LFA is now considered to have an income stream. Attorney Butler advised the Appellant to sell the LFA and seek three bids. (Exhibit 13 page 7 of 21)
15. On [REDACTED] 2013, the Department's representative sent the Appellant's POA a W-1348LTC requesting a copy of the Appellant's LFA contract, clarification of an \$18,835.40 Webster Bank transaction, Clarification of four separate Sovereign Bank deposits, verification of \$25,0000 withdrawal from New Alliance Bank on [REDACTED]/07, (Exhibit 3: W-1348 dated [REDACTED]/13; Exhibit 13 page 7 of 21)
16. On [REDACTED] 2013, the Department received the complete LFA contract and sent the LFA contract to Atty. Dan Butler for review. (Exhibit 13 page 8 of 21)

17. On [REDACTED] 2013, the Department's representative sent a W-1348 to the Appellant's POA requesting deposit and withdrawal information on Webster Bank account # [REDACTED] with a [REDACTED]/13 due date. (Exhibit 13 page 9 of 21)
18. On [REDACTED] 2013, the Department received the Webster Bank account information. (Exhibit 13 page 9 of 21)
19. On [REDACTED] 2013, the Department's representative sent the Appellant's POA and Attorney a W-1348 requesting that the Appellant's LFA be sold and three offers be provided to the Department. A due date of [REDACTED]/13 was given. (Exhibit 4: W-1348 dated [REDACTED]/13; Exhibit 13 page 9 of 21)
20. On [REDACTED] 2013, the Department received some of the requested information. Due date extended to [REDACTED]/13. (Exhibit 13 page 10 of 21)
21. On [REDACTED] 2013, the Appellant's counsel sent the Department's representative an e-mail outlining, in part, their position that the Appellant's LFA is not a countable asset (resource) and requesting the Appellant's Medicaid application be granted effective [REDACTED] 2012. (Appellant's Exhibit M: E-mail to Department caseworker)
22. On [REDACTED] 2013, the Appellant's counsel received from J.G. Wentworth a letter outlining options for the purchase of the Appellant's LFA. The letter noted, "These options are not a commitment to purchase your annuity and are subject to underwriting requirements." (Appellant's Exhibit O: Letter from J.G. Wentworth dated [REDACTED]/13)
23. On [REDACTED] 2013, Attorney Butler advised the Department's representative to instruct the Appellant's Attorney to accept J.G. Wentworth's offer to buy the Appellant's LFA. Present value of LFA is \$52,750. (Exhibit's 6 & 7: E-mail string between parties)
24. On [REDACTED], 2013, the Department's representative reviewed the submitted information and issued the Appellant's attorney a W-1348 requesting verification of LFA purchase by J.G. Wentworth and information on a Sovereign Bank account gross distribution as well as a Universal Plans gross distribution. Due date of [REDACTED] 13 given. (Exhibit 8: 1348; Exhibit 13 page 11 of 21)
25. On [REDACTED] 2013, Department's representative left a voice mail with the Appellant's attorney. (Exhibit 13 page 11 of 21)

26. On [REDACTED] 2013, a Department representative faxed a copy of the W-1348 dated [REDACTED]/13 to the Appellant's attorney. The 1348 requested verification of the gross distributions monthly for a Sovereign Bank account as well as for the Universal Plans. Also, the 1348 included a request for the Appellant to sell the Lincoln Financial Annuity to J.G. Wentworth for the offered price of \$52,750 and to provide verification. (Exhibit 13 page 12 of 21; Appellant's Exhibit R: 1348 dated [REDACTED]/14)
27. On [REDACTED] 2013, the Department's representative spoke with the Appellant's attorney concerning the LFA. (Exhibit 13 page 12 of 21; Appellant's Exhibit S: E-mail from Appellant's Attorney)
28. On [REDACTED] 2013, the Appellant's representative entered into a contract to sell the Appellant's LFA to J.G. Wentworth. (Appellant's Exhibit T: E-mail to Mark Princehorn dated [REDACTED] 13)
29. On [REDACTED] 2013, the Department's representative spoke with the Appellant's attorney concerning the Sovereign Bank and Universal Plans' gross distributions. (Exhibit 13 page 13 of 21)
30. On [REDACTED], 2013, the Appellant's attorney sent an E-mail to the Department's representative requesting the Department's assistance in obtaining the required Sovereign Bank account information. (Appellant's Exhibit S: E-mail dated [REDACTED] 13)
31. On [REDACTED] [REDACTED] 2013, the Department's representative spoke with the Appellant's attorney concerning the processing of the J.G. Wentworth transaction. The Appellant's attorney requested and was given an extension of time until [REDACTED] 13. (Exhibit 13 page 13 of 21; Hearing summary)
32. On [REDACTED] [REDACTED] 2013, the Department's representative spoke with the Appellant's attorney concerning the processing of the J.G. Wentworth transaction. The Appellant's attorney requested and was given an extension of time until [REDACTED]/13. (Exhibit 13 page 14 of 21)
33. On [REDACTED] 2013, the Appellant's attorney e-mailed an extension request. An extension was granted until [REDACTED]/13. (Exhibit 13 page 14 of 21)
34. On [REDACTED] 2013, the Appellant's attorney requested an extension of time. An extension was granted until [REDACTED]/13. Awaiting J.G. Wentworth transaction to close. (Exhibit 13 page 14 of 21)
35. On [REDACTED] 2013, the Appellant's attorney requested an extension of time. An extension was granted until [REDACTED]/13. Awaiting finalization of J.G. Wentworth transaction. (Exhibit 13 page 15 of 21)

36. On [REDACTED] 2013, the Appellant's attorney requested an extension of time. An extension was granted until [REDACTED]/13. Awaiting finalization of J.G. Wentworth transaction. (Exhibit 13 page 15 of 21)
37. On [REDACTED], 2013, an extension of time was given until [REDACTED]/13 for submission of the J.G. Wentworth transaction. A voice mail was left with the Appellant's attorney. (Exhibit 13 page 16 of 21)
38. On [REDACTED] 2013, an extension of time was given. New due date is [REDACTED]/13. (Exhibit 13 page 16 of 21)
39. On [REDACTED] [REDACTED] 2013, the Appellant's attorney phoned the Department's representative explaining the J.G. Wentworth transaction was still being processed. An extension was given until [REDACTED]/13. (Exhibit 13 page 17 of 21)
40. On [REDACTED] 2013, the Appellant's attorney phoned the Department's representative explaining the J.G. Wentworth transaction was still being processed. An extension of time was given until [REDACTED]/13. (Exhibit 13 page 17 of 21)
41. On [REDACTED] 2013, the Department received an e-mail from the Appellant's attorney confirming the completion of J.G. Wentworth purchase of the Appellant's LFA. (Exhibit 9: E-mail dated [REDACTED]/13; Exhibit 10: E-mail dated [REDACTED]/13)
42. On [REDACTED] 2013, the Department received in part the requested Sovereign and Webster Bank account information. A 1348 was sent to the Appellant's attorney for the time period of [REDACTED]/13 through [REDACTED]/13. The Department's representative also sent faxes to Sovereign and Webster Bank requesting the same. (Exhibit 13 page 17 of 21)
43. On [REDACTED], 2014, the Department granted the Appellant's application for LTC. effective [REDACTED] 2013. (Exhibit 13 page 18 of 21, Hearing record)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
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 assistance 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 § 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.
5. UPM § 4005.10 (A) (2) (a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.
6. UPM § 4015.05 pertains to inaccessible assets and states in part: Subject to the conditions described in this session, equity in an asset that 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.
7. The Appellant’s legal counsel demonstrated that the LFA was inaccessible to the Appellant through the documentation from Lincoln Benefit Life provided to the Department on ██████████ 2013.
8. The annuity meets the definition of being inaccessible.

DISCUSSION


Regulation provides that under all programs except Food Stamps, the Department consider 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. In this case, the record reflects the Appellant's attorney believed, rightly, that the annuity was inaccessible based on the information she provided to the Department. However, the Appellant's attorney was instructed by the Department to sell the annuity thereby extending the processing of the Appellant's application. The Appellant's attorney did everything the Department asked of her without delay. Based on the above findings, I find the Appellant's eligibility begin date needs to be evaluated based solely on the value of her bank accounts not the annuity.

DECISION

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

ORDER

1. The Department is instructed to evaluate the Appellant's eligibility effective date of application based on only the value of her bank accounts, not the value of the annuity.
2. No later than [REDACTED] 2014, the Department will submit verification of compliance with this order.



Christopher Turner
Hearing Officer

Cc: Albert Williams, Operations Manager Hartford
Musa Mohamud, Operations Manager Hartford
Elizabeth Thomas, Manager 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, 55 Farmington Avenue, Hartford, CT 06105.

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, 55 Farmington Avenue, Hartford, CT 06105. 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.