

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

██████████ 2014
Signature confirmation

Client: ██████████
Request: 599211

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") received an application for Medicaid coverage of long-term care services, as filed on behalf of ██████████ ██████████ (the "Appellant") by her then-attorney-in-fact, ██████████.

On ██████████ 2013, the Appellant died.

On ██████████ 2014, the Department issued the Appellant a notice denying her ██████████ 2013 Medicaid application.

On ██████████ 2014, ██████████ filed a request for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") to dispute the Department's ██████████, 2014 action.

On ██████████ 2014, the OLCRAH issued a notice scheduling the hearing for ██████████ 2014.

On ██████████ 2014, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held a hearing. The following individuals attended the hearing:

██, Appellant's representative
██ Appellant's representative's counsel (husband)
Liz Chaves, Department's representative
Eva Tar, Hearing Officer

The hearing record remained open for the submission of additional evidence. On [REDACTED] 2014, the hearing record closed.

STATEMENT OF ISSUE

The issue to be decided is whether the Department correctly determined that the Appellant was ineligible for Medicaid coverage of her long-term care services.

FINDINGS OF FACT

1. On [REDACTED] 2008, the Appellant assigned her power-of-attorney to [REDACTED]. (Department's Exhibit K: Fax, [REDACTED]/14)
2. In 2013, the Appellant grossed \$1,609.90 per month in Social Security benefits. (Department's Exhibit K)
3. In 2013, the Appellant's netted \$1,453.80 per month in Social Security benefits, after the Social Security Administration deducted \$104.90 for Medicare medical insurance per month and \$51.20 for her Medicare prescription drug plan per month. (Department's Exhibit K)
4. On [REDACTED] 2013, Hebrew Health Care, a skilled nursing facility, admitted the Appellant as a resident. (Department's Exhibit H: Institution-INST, printed [REDACTED]/14)
5. On [REDACTED] 2013, the Appellant received \$550.00, earmarked to her, in a bank transfer from Charles Schwab [REDACTED], care of Rockville Bank. (Appellant's Exhibit A: Correspondence with enclosures, dated [REDACTED]/14)
6. The Appellant is not one of the listed account holders of Charles Schwab [REDACTED] (Appellant's Exhibit A)
7. The Charles Schwab [REDACTED] account is owned by the Appellant's family members. (Appellant's representative's testimony)
8. The Appellant's family would periodically give the Appellant money to help her out. (Appellant's representative's testimony)
9. The Charles Schwab [REDACTED] account lists transfers to the Appellant, care of Rockville Bank, of \$550.00 on [REDACTED] 2007; [REDACTED] 2008; [REDACTED], 2009; [REDACTED], 2010; [REDACTED] 2011; [REDACTED], 2012; and [REDACTED] 2013. (Appellant's Exhibit A)
10. On [REDACTED] 2013, the Department received a Medicaid application for coverage of long-term care services that had been filed on the Appellant's behalf by the Appellant's representative. (Department's Exhibit K)
11. The Appellant's represented reported that the Appellant possessed the following assets on the Appellant's [REDACTED] 2013 Medicaid application: Rockville Bank [REDACTED] and New York Community Bank [REDACTED]. (Department's Exhibit K)

12. The Appellant's Social Security benefits are the only listed income on her [REDACTED], 2013 Medicaid application. (Department's Exhibit K)
13. Through [REDACTED] 2013, the Appellant's net Social Security benefits were direct deposited to New York Community Bank [REDACTED]. (Department's Exhibit D: Bank statements, varying dates)(Appellant's representative's testimony)
14. The Appellant's representative arranged with the Social Security Administration to have the Appellant's net Social Security benefits to be directed to Hebrew Health Care. (Appellant's representative's testimony)
15. The Appellant's net Social Security benefits were no longer direct deposited to New York Community Bank [REDACTED] in the period from [REDACTED] 2014 through [REDACTED] 2013. (Department's Exhibit D)
16. The Appellant is the primary account holder listed on Rockville Bank [REDACTED] (Department's Exhibit C: Bank statements, varying dates)
17. The Appellant's representative is the second name listed on Rockville Bank [REDACTED] (Department's Exhibit C)
18. The Appellant is the primary account holder listed on New York Community Bank [REDACTED] [REDACTED]. (Department's Exhibit D)
19. [REDACTED] and [REDACTED] are the second and third names listed on New York Community Bank [REDACTED]. (Department's Exhibit D)
20. The Appellant is the owner of a patient trust account ([REDACTED] at Hebrew Health Care. (Department's Exhibit E: printout [REDACTED]/14)
21. On [REDACTED] 2013, the Department issued an *Application Requirements List* to the Appellant. (Department's Exhibit A: *Application Requirements List*, [REDACTED]/13)
22. Item 5) on the [REDACTED] 2013 *Application Requirements List* requests the Appellant to document that her assets were reduced to \$1,600.00 or below. (Department's Exhibit A)
23. The [REDACTED] 2013 *Application Requirements List* in part notes the following: "Title XIX can only be granted for the months that assets are \$1,600.00 or below." (Department's Exhibit A)
24. As of [REDACTED] 2013, Rockville Bank [REDACTED] had a balance of \$1,398.58. (Department's Exhibit C: Financial records, varying dates)
25. As of [REDACTED] 2013, New York Community Bank [REDACTED] had a balance of \$387.83. (Department's Exhibit D: Financial records, varying dates)
26. As of [REDACTED] [REDACTED] 2013, patient trust account ([REDACTED] had a balance of \$21.00. (Department's Exhibit E)

27. As of [REDACTED] 2013, Rockville Bank [REDACTED] had a balance of \$873.46. (Department's Exhibit C)
28. As of [REDACTED] 2013, New York Community Bank [REDACTED] had a balance of \$764.08. (Department's Exhibit D)
29. As of [REDACTED] [REDACTED] 2013, patient trust account [REDACTED] had a balance of \$69.00. (Department's Exhibit E)
30. As of [REDACTED], 2013, Rockville Bank ([REDACTED] had a balance of \$799.32. (Department's Exhibit C)
31. As of [REDACTED], 2013, New York Community Bank [REDACTED] had a balance of \$764.08. (Department's Exhibit D)
32. As of [REDACTED] [REDACTED] 2013, patient trust account [REDACTED] had a balance of \$74.00. (Department's Exhibit E)
33. As of [REDACTED] 2013, Rockville Bank ([REDACTED] had a balance of \$768.18. (Department's Exhibit C)
34. As of [REDACTED] 2013, New York Community Bank [REDACTED] had a balance of \$764.09. (Department's Exhibit C)
35. As of [REDACTED] [REDACTED] 2013, patient trust account [REDACTED]) had a balance of \$91.00. (Department's Exhibit E)
36. On [REDACTED] 2013, Hebrew Health Care discharged the Appellant to a chronic disease hospital. (Department's Exhibit I: Narrative-NARR, printed [REDACTED]/14)
37. On [REDACTED] 2013, the Appellant died. (Appellant's Exhibit A)(Department's Exhibit I)
38. As of [REDACTED] 2013, Rockville Bank ([REDACTED] had a balance of \$736.69. (Department's Exhibit C)
39. As of [REDACTED] 2013, New York Community Bank [REDACTED] had a balance of \$764.09. (Department's Exhibit D)
40. As of [REDACTED] 2013, patient trust account ([REDACTED] had a balance of \$138.00. (Department's Exhibit E)
41. On [REDACTED] 2014, the Department issued a notice to the Appellant stating that the agency had denied the Appellant's [REDACTED] 2013 Medicaid application for coverage of long-term care services for the reason that her assets were in excess of the program's limits. (Department's Exhibit J: Notice Content-NCON, 3/1/14)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes designates the Department as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. 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. The provisions of this subsection shall not apply to a special needs trust, as defined in 42 USC 1396p(d)(4)(A). For purposes of determining whether a beneficiary under a special needs trust, who has not received a disability determination from the Social Security Administration, is disabled, as defined in 42 USC 1382c(a)(3), the Commissioner of Social Services, or the commissioner's designee, shall independently make such determination. The commissioner shall not require such beneficiary to apply for Social Security disability benefits or obtain a disability determination from the Social Security Administration for purposes of determining whether the beneficiary is disabled. Conn. Gen. Stat. § 17b-261 (c).
3. Section 4000.01 of the Uniform Policy Manual ("UPM") provides in part the following definitions:
 - Asset Limit: The asset limit is the maximum amount of equity in counted assets which an assistance unit may have and still be eligible for a particular program administered by the Department.
 - Available Asset: An available asset is cash or any item of value which is actually available to the individual or which the individual has the legal right, authority or power to obtain, or to have applied for, his or her general or medical support.
 - Counted Asset: A counted asset is an asset which is not excluded and either available or deemed available to the assistance unit.
4. For every program administered by the Department, there is a definite asset limit. UPM § 4005.05 (A).
5. With respect to the Medicaid program associated with the elderly and disabled, the asset limit is \$1,600.00 for a needs group of one and \$2,400.00 for a needs group of two. UPM § 4005.10 (A)(2).
6. 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: a. available to the unit; or b. deemed available to the unit. UPM § 4005.05 (B)(1).
7. The Department compares the assistance unit's equity in counted assets with the program asset limit when determining whether the unit is eligible for benefits. UPM § 4005.05 (D)(1).

8. If the assistance unit is the record owner of an asset, the unit is considered the legal owner unless it establishes otherwise, with clear and convincing evidence. UPM § 4010.05 (A)(1).
9. If it is established to the Department's satisfaction that the legal owner and the record owner of an asset are two different persons, the Department considers the asset the property of the legal owner. UPM § 4010.05 (A)(2).
10. An individual other than a spouse of an assistance unit member is considered merely the record owner of an account or similar asset held jointly with the unit member. This is true regardless of the time period the individual has been joint holder of the asset. The assistance unit may rebut the Department's finding by providing clear and convincing evidence that the individual is legal owner of the asset. UPM §4010.10 (A)(2)(a) and (b).
11. If the assistance unit proves that it is merely the record owner of part or all of the asset, the Department counts only the portion of the asset legally owned by the assistance unit. UPM §4010.10 (A)(4).
12. The Appellant did not establish with clear and convincing evidence that she was the record owner—and not the legal owner—of Rockville Bank [REDACTED], New York Community Bank [REDACTED] and patient trust account ([REDACTED]).
13. The Appellant is the legal owner of Rockville Bank [REDACTED], New York Community Bank [REDACTED], and patient trust account ([REDACTED]).
14. Under all programs except [the Supplemental Nutrition Assistance Program], 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. UPM § 4005.05 (B)(2).
15. The Appellant had the legal right to obtain the monies in Rockville Bank ([REDACTED], New York Community Bank [REDACTED] and patient trust account [REDACTED]), so as to have the monies in those financial instruments applied for her general or medical support.
16. For the purposes of the Medicaid program, Rockville Bank [REDACTED]), New York Community Bank ([REDACTED] and patient trust account [REDACTED] are the Appellant's counted assets.
17. Subject to the limitations described below, personal property such as a bank account held jointly by the assistance unit and by another person is counted in full toward the asset limit. UPM § 4010.10 (A)(1).
18. That part of a checking account to be considered as a counted asset during a given month is calculated by subtracting the actual amount of income the assistance unit deposits into the account that month from the highest balance in the account for that month. UPM § 4030.05 (B).
19. Money which is received as income during a month and deposited into an account during the month is not considered an asset for that month, unless the source of the money is: 1.

an income tax refund; or 2. cash received upon the transfer or sale of property; or 3. a security deposit returned by the landlord. UPM § 4030.05 (C).

20. With respect to the Aid to Families with Dependent Children and related Medicaid programs, cash contributions made to the assistance unit from non-legally liable relatives, friends, or organizations are treated as unearned income. Cash contributed to the assistance unit by non-legally liable relatives or friends, is counted in full if the amount: a. is regularly and predictably contributed; and b. exceeds \$30.00 in a calendar quarter. UPM § 5050.17 (A)(1).
21. The provisions of [UPM § 5050.17 (A)] apply to the State Supplement and related Medicaid programs, except that cash contributions made by non-legally liable relatives are counted if the amount: 1. is regularly and predictably contributed; and 2. exceeds \$20.00 per calendar month. UPM § 5050.17 (B).
22. The \$550.00 received by the Appellant from the Appellant's family member's Charles Schwab (██████) account on March 27, 2013 was a gift.
23. The transfer of \$550.00 from the Appellant's family members' Charles Schwab (██████) account to the Appellant's Rockville Bank (██████) account on ██████ 2013 was part of a pattern of giving over the years by the Appellant's family members to the Appellant.
24. The transfer of \$550.00 from the Appellant's family members' Charles Schwab (██████) account exceeded \$20.00 in the calendar month in which it was received.
25. In the month of ██████ 2013, the \$550.00 gift received by the Appellant from the Appellant's family members was considered unearned income for the purposes of the Medicaid program; and an asset to the level it was retained following ██████ 2013.
26. With respect to the Appellant's Medicaid application, the value of Rockville Bank (██████), New York Community Bank (██████) and patient trust account (██████) are counted in full toward the program's asset limit.
27. For the purposes of the Medicaid program, the Appellant's Social Security benefits as direct deposited into New York Community Bank (██████) in ██████ 2013 was "income," and not an asset in that month.
28. For the purposes of the Medicaid program, the Appellant's Social Security benefits as direct deposited into New York Community Bank (██████) in ██████ 2013 was "income," and not an asset in that month.
29. For the purposes of the Medicaid program, the counted value of the Appellant's Rockville Bank (██████) in ██████ 2013 equaled \$0.00.
30. For the purposes of the Medicaid program, the counted value of the Appellant's Rockville Bank (██████) in ██████ 2013 equaled \$0.00.
31. 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, unless the

assistance unit is categorically eligible for the program and the asset limit requirement does not apply (cross reference: 2500 Categorical Eligibility Requirements). UPM § 4005.05 (D)(2).

32. For the purposes of the Medicaid program, the counted value of the Appellant's assets equaled \$1,419.58 in [REDACTED] 2013.
33. For the purposes of the Medicaid program, the counted value of the Appellant's assets equaled \$942.46 in [REDACTED] 2013.
34. For the purposes of the Medicaid program, the counted value of the Appellant's assets equaled \$1,637.40 in [REDACTED] 2013.
35. For the purposes of the Medicaid program, the counted value of the Appellant's assets equaled \$1,623.27 in [REDACTED] 2013.
36. For the purposes of the Medicaid program, the counted value of the Appellant's assets equaled \$1,638.78 as of [REDACTED], 2013, the date of the Appellant's death.
37. The Appellant's counted assets for the purposes of the Medicaid program did not exceed \$1,600.00 in [REDACTED] 2013 and [REDACTED] 2013.
38. The Appellant's counted assets for the purposes of the Medicaid program exceeded \$1,600.00 in [REDACTED] 2013, [REDACTED] 2013, and [REDACTED] 2013.
39. The Appellant was financially eligible for Medicaid coverage of her long-term care services in [REDACTED] 2013 and [REDACTED] 2013.
40. The Appellant was financially ineligible for Medicaid coverage of her long-term care services in [REDACTED] 2013, [REDACTED] 2013, and [REDACTED] 2013.
41. The Department incorrectly determined that the Appellant financially was ineligible for Medicaid coverage of her long-term care services for [REDACTED] 2013 and [REDACTED] 2013.
42. The Department correctly determined that the Appellant financially was ineligible for Medicaid coverage of her long-term care services for [REDACTED] 2013, [REDACTED] 2013, and [REDACTED] 2013.

DISCUSSION

The Department denied the Appellant's [REDACTED] 2013 Medicaid application for the period from [REDACTED] 2013 through [REDACTED] 2013, the month of the Appellant's death, stating that the Appellant's counted assets exceeded the \$1,600.00 Medicaid limit in each of those months.

After a careful review of the hearing record, the hearing officer finds that the Department erred in determining that the Appellant was ineligible for Medicaid coverage in [REDACTED] 2013 and [REDACTED] 2013. The hearing officer, however, affirms the Department's denial of the Appellant's Medicaid application for the months of [REDACTED] 2013, [REDACTED] 2013, and [REDACTED] 2013.

The Appellant owned the following accounts: Rockville Bank [REDACTED], New York Community Bank [REDACTED]), and a Hebrew Health Care patient trust [REDACTED].

Money which is received as income during a month and deposited into an account during the month is not considered an asset for that month, unless the source of the money is an income tax refund, cash received upon the transfer or sale of property, or a security deposit returned by a landlord. UPM § 4030.05 (C).

The Department included the Appellant's net Social Security benefits as direct deposited into her New York Community Bank ([REDACTED] account in its calculations of the balance of that account for the months of [REDACTED] 2013 and [REDACTED] 2013. After [REDACTED] 2013, the Appellant's Social Security benefits were no longer deposited into her New York Community Bank [REDACTED] account, as the Appellant's representative had arranged for the benefits to go directly to the skilled nursing facility in which the Appellant resided.

After deducting the income that was direct deposited into the Appellant's New York Community Bank [REDACTED] account in [REDACTED] 2013 and [REDACTED] 2013, it is clear that the sum of the Appellant's counted assets equaled less than \$1,600.00 in those particular months. After [REDACTED] 2013, however, the Appellant's counted assets between the three accounts exceeded the \$1,600.00 limit.

At the [REDACTED] 2014 administrative hearing, the Appellant's representative argued that the Appellant was not the legal owner of some or all of the funds in the Rockville Bank ([REDACTED] account, and that those funds should not be counted toward the \$1,600.00 Medicaid asset limit.

The Appellant's representative testified that family members would give the Appellant money to help her out from Charles Schwab [REDACTED] an account that did not have the Appellant's name listed as an account holder. The Appellant's representative stated that the family members stopped giving the Appellant monetary help once she entered Hebrew Health Care.¹

The hearing record reflects that \$550.00 was transferred from the Charles Schwab account [REDACTED] to the Appellant, through her Rockville Bank [REDACTED] account on [REDACTED] 2013. A \$550.00 transfer to the Appellant from the Charles Schwab account ([REDACTED]) appears to have occurred on an annual basis every [REDACTED], beginning in 2007.

The Appellant's representative argues that the monies transferred to the Appellant by family members over the years were never legally the Appellant's, as she did not originate the funds. If she is not the legal owner of the funds, the Appellant's representative argues, then the funds cannot be considered as counting to the Medicaid asset limit. The Appellant's representative's argument is unpersuasive.

The Appellant's family regularly gifted the Appellant with these funds, for her use. A financial gift becomes the legal property of the gift's recipient; the people who made the gift retain no legal rights to it. Upon receipt, the recipient of the gift is the gift's legal owner.

¹ The Appellant was admitted to Hebrew Health Care on [REDACTED] 2013. (Department's Exhibit H)

The hearing officer concludes that the \$550.00 gift from the Appellant's family to the Appellant on [REDACTED] 2013 from Charles Schwab account [REDACTED] was part of the Appellant's "income" in [REDACTED] 2013 and an "asset" to the level it was retained by the Appellant after [REDACTED] 2013.


The Appellant's counted assets exceeded the Medicaid program limits for the months of [REDACTED] 2013, [REDACTED] 2013, and [REDACTED] 2013.

DECISION

The Appellant's appeal is **GRANTED** in part and **DENIED** in part.

ORDER

1. The Department is ordered to reopen the Appellant's [REDACTED] [REDACTED] 2013 Medicaid application.
2. Provided all non-financial factors of eligibility are met, the Department will grant the Appellant's Medicaid application for the months of [REDACTED] 2013 and [REDACTED] 2013, based on her assets being within the program limits in those months.
3. The Department's denial of the Appellant's [REDACTED] 2013 Medicaid application for the months of [REDACTED] 2013, [REDACTED] 2013, and [REDACTED] 2013 for the reason that her counted assets exceeded the Medicaid program limit of \$1,600.00 in those months is affirmed.
4. Within 21 calendar days of the date of this decision, or [REDACTED] 2014, documentation of compliance with this order is due to the undersigned.



Eva Tar
Hearing Officer

cc: [REDACTED]
Albert Williams, Field Operations Managers, DSS-Hartford (10)
Musa Mohamud, Field Operations Managers, DSS-Hartford (10)

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.