

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

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

NOTICE OF DECISION

Client ID # ██████████
Request # 599457

PARTY

██████████
C/o ██████████
██████████
██████████

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 ("LTC") Medicaid benefits from ██████████ 2013 through ██████████, 2013 and granting her LTC benefits effective ██████████ 2014.

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

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") scheduled an administrative 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, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

██████████ Power of Attorney for the Appellant
██████████, Power of Attorney for the Appellant
Attorney ██████████, Appellant's Legal Representative
Jaimie LaChapelle, Department's Representative
Christopher Turner, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department correctly determined [REDACTED] 2014 as the begin date for Long Term Care.

FINDINGS OF FACT

1. The Appellant is a resident of Glastonbury Health Care Center (“GHCC”). (Exhibit S: Department’s narrative)
2. On [REDACTED] 2013, the Appellant had the following asset balances: Mutual of Omaha Life Insurance policy # [REDACTED] \$2,201.35; Mutual of Omaha Life Insurance policy # [REDACTED] \$443.05; East Hartford Federal Credit Union (“EHFCU”) [REDACTED] \$574.03; EHFCU [REDACTED] \$741.53 for a total of \$3,959.96. (Exhibit N: Monthly asset worksheet)
3. On [REDACTED] 2013, the Department received an application for LTC submitted by Brown, Pindiris & Scott on behalf of the Appellant. (Exhibit S; Exhibit W: Application; Hearing summary)
4. The Appellant receives a \$1,507.00 monthly Social Security benefit that is deposited into EHFCU #70-01. (Exhibit P: EHFCU bank statement; Hearing record)
5. The Appellant receives a \$656.22 monthly pension check from the State of Connecticut that is deposited into EHFCU # 70-03. (Exhibit P; Hearing record)
6. On [REDACTED], 2013, the Appellant’s Mutual of Omaha Life Insurance policy # [REDACTED] was redeemed with the proceeds paid to GHCC. (Exhibit E: Copy of check dated 3/22/13; Hearing summary)
7. On [REDACTED] 2013, the Department mailed the Appellant’s representative an Application Requirements List (“W-1348”) requesting clarification of burial contract, Life insurance status, Wells Fargo bank transactions from [REDACTED]/08 to present, Copies of EHFCU accounts from [REDACTED] 08-[REDACTED]/10 and [REDACTED]/13 to present and documentation of all transactions in excess of \$5,000 or more, document assets reduced to \$1,600. The 1348 contained a note indication eligibility exists for months in which assets are \$1,600 or below. A due date of [REDACTED]/13 was given. (Exhibit A:1348 dated [REDACTED] 13)
8. On [REDACTED] [REDACTED] 2013, the Department received the requested verifications. (Exhibit S; Hearing Summary)

9. On [REDACTED] [REDACTED] 2013, the Department reviewed the Appellant's application. (Exhibit S; Hearing summary)
10. On [REDACTED] 2013, the Department mailed the Appellant's attorney a W-1348LTC requesting verification of gross income, representative W-1348LTC requesting bank statements from EHFCU. A notation was made concerning the asset limit for LTC is \$1,600.00 along with a statement concerning how the values of life insurance policies are handled. A due date of [REDACTED]/13 was given. (Exhibit B: 1348 dated [REDACTED]/13; Hearing summary)
11. On [REDACTED] 2013, the Department received funeral contract, Medicare card, and verification of income, bank accounts, and life insurance policies from the Appellant. (Exhibit S)
12. On [REDACTED] 2014, the Department reviewed the Appellant's application and EHFCU statements from [REDACTED] 2013. (Exhibit S; Hearing summary)
13. On [REDACTED] [REDACTED] 2014, the Department mailed the Appellant's representative W-1348LTC requesting bank statements from EHFCU. A notation was made concerning the asset limit for LTC is \$1,600.00 along with a statement concerning how the values of life insurance policies are handled. (Exhibit G: 1348 dated [REDACTED] 14; Hearing summary)
14. On [REDACTED] 2014, the Department's representative spoke with the Appellant's attorney concerning the treatment of life insurance policies under \$10,000, specifically CGS 17b-261h. (Exhibit S)
15. On [REDACTED] [REDACTED], 2014, the Department's representative e-mailed information concerning 17b-261 to a Department Public Assistance Consultant ("PAC"). (Exhibit S; Exhibit J: E-mail to PAC)
16. On [REDACTED] 2014, the Department's representative reviewed the provided verifications. (Exhibit S)
17. On [REDACTED] [REDACTED] 2014, the Department sent a W-1348LTC to the Appellant's representative requesting EHFCU bank statements from [REDACTED] 2014. A notation was made concerning the asset limit for LTC is \$1,600.00 along with a statement concerning how the values of life insurance policies are counted. A due date of [REDACTED]/14 was given. (Exhibit K: 1348 dated [REDACTED]/14; Exhibit S)
18. On [REDACTED] 2014, the Department's representative reviewed the provided verifications. (Exhibit S)

19. On [REDACTED], 2014, the Department's representative mailed a W-1348LTC to the Appellant's POA requesting bank statements from EHFCU from [REDACTED] 14 to present. A notation was made concerning the asset limit for LTC is \$1,600.00 along with a statement concerning how the values of life insurance policies are counted. A due date of [REDACTED]/14 was given. (Exhibit L: W-1348 dated [REDACTED]/14; Hearing summary)

20. The Appellant's asset balances at the end of each month is detailed below:

Asset	Balance [REDACTED]/2013	Balance [REDACTED]/2013	Balance [REDACTED]/2013	Balance [REDACTED]/2013
Life Insurance [REDACTED]#	\$ 2,644.40	\$ 443.05	\$ 443.05	\$ 443.05
EHFCU #[REDACTED]	\$ 574.03	\$ 683.33	\$ 683.33	\$1,050.33
EHFCU #[REDACTED]	\$ 741.53	\$ 656.22	\$ 727.53	\$ 703.22
Total	\$ 3,959.96	\$1,782.60	\$1,853.91	\$2,196.60

#-Combined balance of both policies

Asset	Balance [REDACTED]/2013	Balance [REDACTED]/2013	Balance [REDACTED]/2013	Balance [REDACTED]2013
Life Insurance [REDACTED]	\$ 443.05	\$ 443.05	\$ 443.05	\$ 443.05
EHFCU #[REDACTED]	\$1,257.33	\$1,667.75	\$1,824.75	\$2,238.64
EHFCU #[REDACTED]	\$ 656.22	\$ 870.13	\$ 675.91	\$1,130.82
Total	\$2,356.60	\$2,980.93	\$2,943.71	\$3,812.51

Asset	Balance [REDACTED]/2013	Balance [REDACTED]/2013	Balance [REDACTED]2013	Balance [REDACTED]/2014
Life Insurance [REDACTED]	\$ 443.05	\$ 443.05	\$ 443.05	\$ 443.05
EHFCU #[REDACTED]	\$2,859.82	\$2,859.82	\$2,930.82	\$ 14.22
EHFCU #[REDACTED]	\$ 675.91	\$ 675.91	\$ 675.91	\$ 675.91
Total	\$3,978.78	\$3,978.78	\$3,978.78	\$1,133.18

(Exhibit N)

21. On [REDACTED] 2014, the Department's representative received an email from the PAC that indicated that CGS 17b-261h has not been approved. The E-mail stated, "17b-261h is subject to Federal approval, currently that is still pending. Workers should work applications based on their case specifics and deny applications that are over assets when appropriate. Should Federal approval be received, further guidance will be provided from the Eligibility Policy and Program Support Division". (Exhibit M: E-Mail dated [REDACTED]/14; Exhibit S; Hearing summary)
22. On [REDACTED], 2014, the Department's representative spoke with the Attorney [REDACTED] concerning the pending status of CGS 17b-261h and the states inability to apply the policy to the Appellant's case. (Exhibit M; Exhibit S)
23. On [REDACTED] 2014, the Department's representative received bank statements from the EHFCU. (Exhibit P: Bank statements; Hearing summary)
24. On [REDACTED] 2014, the Department's representative granted the Appellant's LTC application effective [REDACTED] 2014. (Exhibit U: Notice dated [REDACTED] 14; Hearing summary)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Section 17b-3b of the Connecticut General Statutes provides that the Commissioner of Social Services is authorized to do all things necessary to apply for, qualify for and accept any federal funds made available or allotted under any federal act for social service development, or any other projects, programs or activities which may be established by federal law, for any of the purposes or activities related thereto, and said commissioner shall administer any such funds allotted to the department in accordance with federal law.
3. Connecticut General Statutes § 17b-2 and 17b-262 provides that the Department is the designated state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act and may make such regulations as are necessary to administer the medical assistance program.

4. 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.
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 (A) (2) (a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.
8. 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.
9. UPM § 4030.05 (B) provides that part of a checking account to be considered as an 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.
10. UPM § 4030.05 (C) provides for 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.
11. UPM § 4030.30 (C) (1) (2) provides that if the total 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 that has not 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.

12. The Center of Medicaid Services ("CMS") has not informed the Department that the provisions in § 17b-261 subsection (h) are permissible under the federal law. With regards to the provisions in 17b-261(h) to the extent permissible under federal law, an institutionalized individual, as defined in Section 1917 of the Social Security Act, 42 USC 1396(h)(3) shall not be determined ineligible for Medicaid solely on the basis of the cash value of a life insurance policy worth less than ten thousand dollars provided (1) the individual is pursuing the surrender of the policy, and (2) upon surrendering such policy all proceeds of the policy are used to pay for the institutionalized individual's long-term care cannot be implemented.
13. The Department correctly disregarded the Appellant's Social Security check when calculating the Appellant's bank balance for EHFCU account # [REDACTED].
14. The Department failed to disregard the Appellant's State of Connecticut pension check when calculating the Appellant's bank balance for EHFCU account # [REDACTED].
15. The Department failed to disregard the Appellant's life insurance policy when calculating the Appellant's total assets.
16. The subtraction of the Appellant's State of Connecticut pension check from the balance of the EHFCU account # [REDACTED] and the disregarding of the Appellant's life insurance policy results in the Appellant's eligibility for [REDACTED], [REDACTED], [REDACTED] and [REDACTED] 2013.
17. The Appellant had assets that exceeded the Medicaid asset limit of \$1,600.00 for the period of [REDACTED] 2013 and [REDACTED] 2013 through [REDACTED] 2013.
18. The Department incorrectly denied the Appellant's application for LTC assistance from [REDACTED] 2013 through [REDACTED] 2013 due to excess assets.
19. The correct dates of ineligibility are [REDACTED] 2013, and [REDACTED] 2013 through [REDACTED] 2013.

DISCUSSION

The Appellant's counsel expressed concern over the time it took the Department to process the Appellant's application as well as an unfortunate accident that occurred to one of the Appellant's representatives. The Department met its responsibility to the Appellant by communicating openly the asset limit for the program for which the Appellant applied. The asset limit was clearly noted on all correspondence sent to the Appellant and was never questioned.

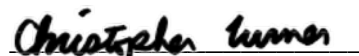
The Department was correct to deny the Appellant's LTC application due to over assets for ██████████ 2013. The Appellant's attorney argued 17b-261 (h) ought to apply as the Appellant had two life insurance policies below \$10,000 that should not count towards the asset limit. The Department has presented the issue to CMS, that, as of the date of the hearing, the state has not received federal approval for 17b-261 (h), and the Department does not know when federal approval may be granted. At this point, the Department does not know whether this rule is permissible under federal law. Accordingly, the Department cannot yet implement this provision and must continue to apply the regulations that are currently in place.

DECISION

The Appellant's appeal is Granted in part and Denied in part. The Appellant is eligible for Medicaid for the period of ██████████ 2013, ██████████ 2013, ██████████ 2013, and ██████████ 2013. The Appellant's assets exceed the Medicaid asset limit for ██████████ 2013 and the period of ██████████ 2013 through ██████████ 2013.

Order

The Department is instructed to grant LTC coverage for the Appellant as indicated above within two weeks from the date of this decision. Submission of the NOA is appropriate proof of compliance.


Christopher Turner
Hearing Officer

Cc: Musa Mohamud, Operations Manager Hartford
Elizabeth Thomas, Operations Manager Hartford
Atty. ██████████
Marc Shok, Adult Services Program Manager, DSS 55 Farmington Avenue

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, law, and 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 06105-3725.

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, if 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 06105-3725. 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.