

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

[REDACTED] 2014
Certified mail

Client: [REDACTED]
Request: 604932

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2014, the Department of Social Services (the "Department") issued [REDACTED] (the "Appellant") a notice stating that the Department had denied his [REDACTED] 2013 Medicaid application.

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

On [REDACTED] 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") scheduled the administrative hearing for [REDACTED] 2014. [REDACTED], the Appellant's authorized representative, requested a postponement of the administrative hearing; the OLCRAH granted the request.

On [REDACTED] 2014, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The Appellant's authorized representative represented the Appellant's interests at the hearing, as the Appellant and his spouse were unable to attend the administrative hearing due to mental or physical frailty.

The following individuals attended the administrative hearing:

[REDACTED], Appellant's representative
[REDACTED], Appellant's counsel
Edward Swibold, 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 determined is whether the Department correctly denied the Appellant's [REDACTED] 2013 Medicaid application.

FINDINGS OF FACT

1. The Appellant's date of birth is [REDACTED] 1923. (Department's Exhibit 1: W-1F, signed [REDACTED] 13)
2. The Appellant is married to [REDACTED] (dob [REDACTED] 1929) (the "wife"). (Department's Exhibit 1)
3. On [REDACTED] 2010, the Appellant appointed his wife to hold his power of attorney. (Department's Exhibit 6: *Statutory Short Form Power of Attorney*, notarized [REDACTED]/10)
4. The Appellant's wife has limited mobility and is physically frail. (Appellant's representative's testimony)
5. The Appellant's wife has a private aide to help her in her home, seven days per week. (Department's Exhibit 10: W-1348s, varying dates)(Appellant's Exhibit 6: Correspondence, [REDACTED]/14)(Appellant's Exhibit 7: Emails, varying dates)
6. On [REDACTED] 2013, the Appellant was admitted to John Dempsey Hospital's emergency room. (Department's Exhibit 5: Narrative, varying dates)(Department's Exhibit 2: W-1-SA, signature page not included)
7. On [REDACTED] 2013, the Appellant filed an application for medical assistance with the Department. (Department's Exhibit 12: Notice Content-NCON, [REDACTED]/14)
8. On [REDACTED] 2013, the Appellant's wife signed an authorization with the Department to disclose information regarding "qualifying for Medicaid benefits, a spousal assessment, etc." to [REDACTED] (the "representative"). (Appellant's Exhibit 2: *Authorization for Disclosure of Information*, [REDACTED]/13)
9. On [REDACTED] 2013, the Appellant was admitted to Touchpoints of Farmington, a skilled nursing facility. (Department's Exhibit 5)(Appellant's Exhibit 13: Fax, [REDACTED]/14)
10. The Appellant has a diagnosis of dementia. (Appellant's Exhibit 13)
11. From [REDACTED] 2002 through [REDACTED] 2013, the Appellant and his wife owned a residence located at [REDACTED] (the "former address"). (Department's Exhibit 8: *Statutory Form Warranty Deed*, [REDACTED]/02)(Appellant's Exhibit 6)(Department's Exhibit 9: Form M-2T, [REDACTED]/14)

12. On [REDACTED] 2013, the Appellant's wife sold the couple's home located at [REDACTED] (Appellant's Exhibit 6)(Department's Exhibit 9)
13. The Appellant's wife hired people to pack up the couple's belongings in moving boxes. (Appellant's representative's testimony)
14. The moving boxes are unmarked as to their contents. (Appellant's representative's testimony)
15. On [REDACTED] 2013, the Appellant's wife purchased a home located at [REDACTED] (the "current address"). (Appellant's Exhibit 6)
16. The Appellant's wife resides at the current address. (Appellant's representative's testimony)
17. Many of the packed moving boxes are at the current address. (Appellant's representative's testimony)
18. Since [REDACTED] 2013, the Department has been working with the Appellant's representative regarding the verification that the agency required with respect to the Appellant's [REDACTED] 2013 Medicaid application. (Department's Exhibit 10)
19. The Appellant's representative has been meeting the Department's deadlines regarding verification from [REDACTED] 2013 through [REDACTED] 2014. (Department's Exhibit 5)(Appellant's representative's testimony)
20. On [REDACTED] 2013, the Department issued an amended *Assessment of Spousal Assets/Notification of Results*, listing the couple's counted assets to equal \$158,013.82. (Department's Exhibit 3: *Assessment of Spousal Assets/Notification of Results*, [REDACTED]/13)
21. On [REDACTED], 2014, the Department issued a written request for verification to the Appellant at Touchpoints in Farmington, stating that it required verification of a \$68,741.49 transaction from a Schwab account ending in [REDACTED] on [REDACTED] 2013 and copy of the sale documents for the prior address; the deadline for the return of information was [REDACTED], 2014. (Department's Exhibit 10)
22. On [REDACTED] 2014, the Appellant's representative reported to a Department employee by telephone that the \$68,741.49 transaction was worked into the purchase of the current address. (Department's Exhibit 5)
23. In the [REDACTED] 2014 telephone conversation, the Appellant's representative told the Department employee that she would work with the attorney involved in the purchase, as the new home had a reverse mortgage. (Department's Exhibit 5)

24. In the [REDACTED] 2014 telephone conversation, the Appellant explained to the Department's employee that the Appellant's wife was unable to locate the requested paperwork. (Appellant's representative's testimony)(Appellant's Exhibit 7)
25. From the [REDACTED] 2014 conversation, the Appellant's representative believed that the Department had granted an extension to the [REDACTED] 2014 deadline. (Appellant's representative's testimony)(Appellant's Exhibit 7)
26. [REDACTED] of [REDACTED], Connecticut (the "attorney") was the attorney involved with the Appellant's real estate transactions in [REDACTED] 2013. (Appellant's representative's testimony)
27. On [REDACTED] 2014, the Department issued a notice to the Appellant, the Appellant's wife, and the Appellant's representative, stating that the agency had denied the Appellant's [REDACTED], 2013 Medicaid application for the reason that he had not returned all the verification that the agency had asked for. (Department's Exhibit 12)(Department's Exhibit 13: Notice Content-NCON, [REDACTED]/14)(Department's Exhibit 14: Notice Content-NCON, [REDACTED]/14)(Appellant's Exhibit 5: *General Information About Your Eligibility*, [REDACTED]/14)
28. On [REDACTED] 2014 and [REDACTED] 2014, the Appellant's representative spoke with Department employees, to address the Department's [REDACTED] 2014 denial notice. (Appellant's Exhibit 7)
29. On [REDACTED] 2014, the Appellant's representative informed the Department by email that the attorney had not been in the state of Connecticut for personal reasons, but had committed to providing the Appellant with a breakdown of the transactions by [REDACTED] 2014. (Appellant's Exhibit 7)
30. On [REDACTED] 2014, a Department supervisor notified the Appellant's representative by email that the agency was not in a position to re-open or grant an extension based on expectation. (Appellant's Exhibit 7)
31. The Department's supervisor's [REDACTED] 2014 email to the Appellant's representative stated that once the verifications were provided, the agency would require a new application to begin the process. (Appellant's Exhibit 7)
32. On [REDACTED] 2014, the Department received correspondence from the attorney addressing the sale of the prior address and the purchase of the current address, with an attached breakdown and settlement statements. (Department's Exhibit 10)
33. On [REDACTED] 2014, the Department received a second Medicaid application on behalf of the Appellant. (Department's representative's testimony)
34. The Appellant's representative's testimony is credible.

CONCLUSIONS OF LAW

1. The Department is the designated state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act. Conn. Gen. Stat. § 17b-2.

2. For AFDC, AABD and MA applications, except for the Medicaid coverage groups noted below in 1510.10 D.2, the date of application is considered to be the date that a signed application form is received by any office of the Department. Uniform Policy Manual ("UPM") § 1505.10 (D)(1).
3. The Appellant's initial date of application for medical coverage through the Medicaid program was [REDACTED] 2013.
4. As a condition of eligibility, members of the assistance unit are required to cooperate in the initial application process and in reviews, including those generated by reported changes, redeterminations and Quality Control. (Cross reference: Eligibility Process 1500). Applicants are responsible for cooperating with the Department in completing the application process by: a. fully completing and signing the application form; and b. responding to a scheduled appointment for an interview; and c. providing and verifying information as required. UPM § 3525.05 (A)(1).
5. The Department must inform the assistance unit regarding the eligibility requirements of the programs administered by the agency and regarding the unit's rights and responsibilities. UPM § 1015.10 (A).
6. The Department must tell the assistance unit what the unit has to do to establish eligibility when the agency does not have sufficient information to make an eligibility determination. UPM § 1015.05 (C).
7. The Department correctly informed the Appellant of what he had to do in order to establish eligibility when the agency issued the [REDACTED] 2014 written request for verification.
8. The assistance unit must supply the Department, in an accurate and timely manner as defined by the Department, all pertinent information and verification which the Department requires to determine eligibility and calculate the amount of benefits. The assistance unit must permit the Department to verify information independently whenever the unit is unable to provide the necessary information, whenever verification is required by law, or whenever the Department determines that verification is necessary. UPM § 1010.05 (A).
9. The following provisions apply if the applicant failed to complete the application without good cause: (1) if eligibility has been established to the extent that assistance can be granted to all or a part of the assistance unit, the case is processed between the day after the expiration of the applicant's deadline for completing the required action; and (2) the last day of the agency promptness standard for processing the application. UPM § 1505.40 (B)(1)(a).
10. The Department determines eligibility within the standard of promptness for Medicaid program except when verification needed to establish eligibility is delayed and one of the following is true: a. *the client has good cause for not submitting verification by the*

*deadline;*¹ or b. the client has been granted a 10-day extension to submit verification which has not elapsed; or c. the Department has assumed responsibility for obtaining verification and has had less than 10 days; or d. the Department has assumed responsibility for obtaining verification and is waiting for material from a third party. UPM § 1505.35 (D)(2).

11. Delays Due to Good Cause (AFDC, AABD, MA Only). The eligibility determination is delayed beyond the AFDC, AABD or MA processing standard if because of unusual circumstances beyond the applicant's control, the application process is incomplete and one of the following conditions exists: (1) eligibility cannot be determined; or (2) determining eligibility without the necessary information would cause the application to be denied. UPM § 1505.40 (B)(4)(a).
12. Delays Due to Good Cause (AFDC, AABD, MA Only). If the eligibility determination is delayed, the Department continues to process the application until: (1) the application is complete; or (2) good cause no longer exists. UPM § 1505.40 (B)(4)(b).
13. Good Cause for Noncompliance-AFDC, AABD, MA. Penalties for noncooperation with the application and review processes are not imposed under the following conditions, which are considered good cause for noncompliance: 1. circumstances beyond the assistance unit's control; 2. failure of a representative to act in the best interests of an incompetent or disabled assistance unit. UPM § 3525.05 (C).
14. The Appellant's mental condition of dementia and residing in an institution were circumstances beyond his control that prevented him from locating the requested documentation in the packed moving boxes located at his wife's current address.
15. The Appellant's wife's physical frailty and diminished mobility were circumstances beyond her control that prevented her from locating the requested documentation in one of the packed moving boxes located at her current address.
16. The Appellant's representative was unable to get the requested documentation from an unavailable third party, a local attorney, who was in a different state for personal reasons, due to circumstances beyond her control.
17. The Appellant, the Appellant's wife, and the Appellant's representative had good cause for not submitting the requested verification by the Department's [REDACTED] 2014 deadline.
18. The Department failed to account for the Appellant's, the Appellant's wife's, and the Appellant's representative's good cause for failing to provide documentation to the Department by its [REDACTED] 2014 deadline.
19. On [REDACTED] 2014, the Department processed the Appellant's [REDACTED] 2013 Medicaid application as an incomplete application.
20. The Department incorrectly denied the Appellant's [REDACTED] 2013 Medicaid application.

¹ *Emphasis added.*

DISCUSSION

Based on the credible testimony and evidence submitted for the [REDACTED] 2014 administrative hearing, the hearing officer finds that the Appellant, the Appellant's wife, and the Appellant's authorized representative had good cause when they failed to comply with the Department's [REDACTED], 2014 deadline for the submission of documents.

The Department must reopen the Appellant's [REDACTED] 2013 Medicaid application.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department is hereby ordered to reopen the Appellant's [REDACTED], 2013 Medicaid application.
2. Provided all eligibility factors are met, the Department will grant the Appellant's [REDACTED] 2013 Medicaid application.
3. Within 31 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]
[REDACTED]
[REDACTED]

Albert Williams, Operations Manager, DSS-Hartford (10)
Musa Mohamud, Operations Manager, 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.