

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

[REDACTED] 2014
Signature confirmation

Client: [REDACTED]
Request: 605418

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On [REDACTED] 2013, the Department of Social Services (the “Department”) received from [REDACTED] (the “Appellant”) an application for Medicaid coverage of long-term care services.

On [REDACTED] 2013, the Appellant died.

On [REDACTED] 2014, the Department issued the Appellant and [REDACTED], her son and authorized representative (the “representative”), a notice denying the Appellant’s [REDACTED] [REDACTED], 2013 Medicaid application.

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

On [REDACTED] 2014, the OLCRAH issued a notice scheduling the administrative hearing for [REDACTED] 2014. The Appellant’s 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 a hearing. The following individuals attended the hearing:

[REDACTED], Appellant’s representative (son)
[REDACTED], Director of Social Work, [REDACTED] Center, Appellant’s representative’s witness

Shannon Bennett, Eligibility Services Worker, Department's representative
Eva Tar, Hearing Officer

The hearing record remained open for the submission of additional evidence and comment. 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. The Appellant's representative is her son. (Appellant's representative's testimony)
2. On [REDACTED] 2013, [REDACTED] Health Center, a skilled nursing facility, admitted the Appellant as a patient. (Appellant's representative's witness)
3. The Appellant received Social Security benefits. (Department's Exhibit 6)(Appellant's Exhibit A: Correspondence w/attachments, [REDACTED]/14)
4. The Appellant received Veterans Administration benefits. (Department's Exhibit 5)(Department's Exhibit 6)
5. On [REDACTED] 2013, the Department received the Appellant's application for Medicaid coverage of long-term care services, signed by the Appellant on or around [REDACTED] 2013. (Department's Exhibit 2: Assistance Status-STAT, printed [REDACTED] 14)(Department's Exhibit 5: W-1F, signed [REDACTED]/13)
6. The Appellant listed the following asset on her [REDACTED], 2013 Medicaid application: Wells Fargo account ([REDACTED]) (the "old Wells Fargo account") held jointly by the Appellant and her representative. (Department's Exhibit 5)
7. Prior to [REDACTED] 2013, the Appellant's Social Security benefits and Veterans Administration benefits were direct deposited to the old Wells Fargo account. (Appellant's Exhibit A)
8. On [REDACTED] 2013, Wells Fargo account ([REDACTED]) (the "new Wells Fargo account") was opened with an \$8,882.84 transfer from the old Wells Fargo account. (Appellant's Exhibit A)
9. On [REDACTED] 2013, Wells Fargo credited the new Wells Fargo account with a \$74.70 credit identified as "Temp Credit for Check Fraud Claim." (Appellant's Exhibit A)
10. The Appellant's representative and the Appellant were joint owners of both the old Wells Fargo account, the new Wells Fargo account, and Wells Fargo savings account ([REDACTED]) (the "Wells Fargo savings account"). (Department's Exhibit 6: Bank statements, varying dates)(Appellant's Exhibit A)

11. After [REDACTED] 2013, the Appellant's net Social Security benefits and Veterans Administration benefits were direct deposited to the new Wells Fargo account. (Appellant's Exhibit A)
12. On [REDACTED] 2012, the [REDACTED] Authority of the City of [REDACTED] (the "Housing Authority") issued a check for \$1,409.00 to the Appellant's representative. (Appellant's Exhibit A)
13. On [REDACTED] 2013, the Appellant's representative cashed the [REDACTED] 2012 [REDACTED] Authority check, depositing \$1,200.00 in cash to the old Wells Fargo account. (Appellant's Exhibit A)
14. On [REDACTED] 2013, the [REDACTED] Authority issued a check for \$835.00 to the Appellant's representative. (Appellant's Exhibit A)
15. On [REDACTED] 2013, \$835.00 was deposited to the old Wells Fargo account. (Appellant's Exhibit A)
16. On [REDACTED] 2013, \$950.00 was deposited to the old Wells Fargo account. (Appellant's Exhibit A)
17. On [REDACTED] 2013, check number [REDACTED] for \$950.00 was issued off of the old Wells Fargo account. (Appellant's Exhibit A)
18. On [REDACTED] 2013, the [REDACTED] Authority issued a check for \$835.00 to the Appellant's representative. (Appellant's Exhibit A)
19. On [REDACTED] 2013, \$870.00 was deposited to the old Wells Fargo account; of the \$870.00 deposit, \$835.00 was from the [REDACTED], 2013 [REDACTED] Authority check. (Appellant's Exhibit A)
20. On [REDACTED] 2013, check number [REDACTED] for \$700.00 was issued off of the old Wells Fargo account. (Appellant's Exhibit A)
21. On [REDACTED] 2013, the [REDACTED] Authority issued a check for \$835.00 to the Appellant's representative. (Appellant's Exhibit A)
22. On [REDACTED] 2013, \$925.00 was deposited to the old Wells Fargo account; of the \$925.00 deposit, \$835.00 was from the [REDACTED], 2013 [REDACTED] Authority check. (Appellant's Exhibit A)
23. On [REDACTED] 2013, check number [REDACTED] for \$925.00 was issued off of the old Wells Fargo account. (Appellant's Exhibit A)
24. On [REDACTED] 2013, the [REDACTED] Authority issued a check for \$835.00 to the Appellant's representative. (Appellant's Exhibit A)

25. On [REDACTED] 2013, \$849.95 was deposited to the old Wells Fargo account; of the \$849.95 deposit, \$835.00 was from the [REDACTED], 2013 [REDACTED] Authority check and \$14.95 was a check payable to the Appellant. (Appellant's Exhibit A)
26. On [REDACTED] 2013, check number [REDACTED] for \$700.00 was issued off of the old Wells Fargo account. (Appellant's Exhibit A)
27. As of [REDACTED], 2013, the new Wells Fargo account had a balance of \$10,314.32. (Department's Exhibit 6)
28. As of [REDACTED] 2013, the Wells Fargo savings account had a balance of \$1,290.20. (Department's Exhibit 6)
29. As of [REDACTED] 2013, the new Wells Fargo account had a balance of \$11,270.41. (Department's Exhibit 6)
30. As of [REDACTED] 2013, the Wells Fargo savings account had a balance of \$1,290.20. (Department's Exhibit 6)
31. On [REDACTED] 2013, the Appellant died.
32. As of [REDACTED] 2013, the new Wells Fargo account had a balance of \$9,844.48. (Department's Exhibit 6)
33. As of [REDACTED] 2013, the Wells Fargo savings account had a balance of \$1,290.23. (Department's Exhibit 6)
34. 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 4: Notice Content-NCON, [REDACTED]/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. An individual other than the spouse of an assistance unit member is considered merely the record owner of an account or similar asset held jointly with the unit member. a. This is true regardless of the time period the individual has been joint holder of the asset. b. 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)(3).
9. 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).
10. 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).

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's representative did not provide clear and convincing evidence to establish that some or all of the \$8,882.84 transferred from the old Wells Fargo account to the new Wells Fargo account on [REDACTED] 2013 were his assets and not the Appellant's.
13. The Appellant's representative did not provide clear and convincing evidence that any of the funds in the new Wells Fargo account were his and not the Appellant's, or that the Appellant was the record and not legal owner of part of or all of the funds in the new Wells Fargo account.
14. 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).
15. The Appellant is the legal owner of the funds in the new Wells Fargo account and the Wells Fargo savings account.
16. The funds in the new Wells Fargo account and the Wells Fargo savings account are counted in full toward the Medicaid asset limit.
17. 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).
18. The Appellant had the legal right to obtain the monies in new Wells Fargo account and the Wells Fargo savings account so as to have the monies in those financial instruments applied for her general or medical support.
19. For the purposes of the Medicaid program, the new Wells Fargo account and the Wells Fargo savings account are the Appellant's counted assets.
20. 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).
21. 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).
22. For the purposes of the Medicaid program, the Appellant's Social Security benefits, Veterans Administration benefits, and interest income as direct deposited into the new Wells Fargo account in the months from [REDACTED] 2013 through [REDACTED] 2013 was "income," and not an asset in that month.

23. 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).
24. For the purposes of the Medicaid program, the counted value of the Appellant's assets equaled \$10,726.44 in [REDACTED] 2013.
25. For the purposes of the Medicaid program, the counted value of the Appellant's assets equaled \$11,361.51 in [REDACTED] 2013.
26. For the purposes of the Medicaid program, the counted value of the Appellant's assets equaled \$10,577.63 as of [REDACTED] 2013.
27. For the purposes of the Medicaid program, the Appellant's counted assets exceeded \$1,600.00 in [REDACTED] 2013, [REDACTED] 2013, and as of [REDACTED], 2013.
28. The Appellant was ineligible for Medicaid coverage of her long-term care services in [REDACTED] 2013, [REDACTED] 2013, and [REDACTED] 2013.
29. The Department correctly determined that the Appellant was ineligible for Medicaid coverage of her long-term care services.

DISCUSSION

The Department denied the Appellant's [REDACTED], 2013 Medicaid application for the period from [REDACTED] 2013 through [REDACTED] 2013, the date of the Appellant's death, stating that the Appellant's counted assets exceeded the \$1,600.00 Medicaid 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 Wells Fargo account [REDACTED] (the "new Wells Fargo account") and that those funds should not be counted toward the \$1,600.00 Medicaid asset limit.

The new Wells Fargo account was created by a balance transfer of \$8,882.84 from Wells Fargo account ([REDACTED]) (the "old Wells Fargo account") on [REDACTED] 2013. Both the old and the new Wells Fargo accounts, and a Wells Fargo savings account, listed the Appellant and the Appellant's representative as joint owners. The Appellant's witness at the [REDACTED] 2014 hearing stated that the Appellant was concerned with strange activity in her checking account and had to be transported from the Facility to close the old Wells Fargo account.¹

The Appellant's Social Security and Veterans Administration benefits were direct deposited into the old Wells Fargo account and into its successor account, the new Wells Fargo account. The Appellant's representative deposited \$1,200.00 in cash and \$3,340.00 in

¹ The Appellant was credited \$74.70 on August 26, 2013 to the new Wells Fargo account for "Temp Credit for Check Fraud Claim." (Appellant's Exhibit A)

checks issued to the Appellant's representative into the old Wells Fargo account in the period from [REDACTED] 2013 through [REDACTED], 2013.

At the [REDACTED] 2014 administrative hearing, the Appellant's representative testified that he had the [REDACTED] Authority direct deposit the payments to the old Wells Fargo account and that he did not withdraw funds from the old Wells Fargo account. The hearing officer did not find the Appellant's representative's testimony credible.

In reviewing the Appellant's representative's exhibits, the deposits that the Appellant's representative identifies as being his (as originating from [REDACTED] Authority checks) were not made electronically; they were branch deposits. One \$1,409.00 [REDACTED] Authority check was cashed, then \$1,200.00 of the cash deposited to the old Wells Fargo account. At least two of the deposits included other funds, some of which belonged to the Appellant, as part of a miscellaneous deposit. On the same day or within two days of the majority of the identified deposits to the old Wells Fargo account, checks from the old Wells Fargo account cleared that equaled or came fairly close to equaling the identified deposits in amounts.

The burden is on the Appellant's representative to establish by "clear and convincing" evidence that some or all of the \$8,882.84 in funds transferred to the new Wells Fargo account did not belong to the Appellant at the time she completed the transfer in [REDACTED] 2013. The hearing officer finds that the Appellant's representative did not meet his burden.

The Appellant's counted assets exceeded \$1,600.00 in the months of [REDACTED] 2013, [REDACTED] 2013, and [REDACTED] 2013. The Appellant was not eligible for Medicaid coverage of her long-term care services in those months.

DECISION

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



Eva Tar
Hearing Officer

cc: Peter Bucknall, DSS-New Haven (20)
Lisa Wells, DSS-New Haven (20)
Bonnie Shizume, DSS-New Haven (20)

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.