

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 # ██████████
Request # 612741

NOTICE OF DECISION

PARTY

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██████████
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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 ("L01") for the reason that she has died, and that the value of her assets exceeds the Department's limit.

On ██████████ 2014, the attorney for the Appellant requested an administrative hearing to contest the Department's denial of her eligibility for the program.

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

On ██████████ 2014, in accordance with sections 17b-60, 17-61 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:

██████████, Attorney Representing the Appellant
██████████ Appellant's son
██████████, Appellant's son
John DiLeonardo, Department's Representative
James Hinckley, Hearing Officer

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

STATEMENT OF THE ISSUE

1. The first issue to be decided is whether the Department was correct to consider the Appellant's life insurance policy to be an accessible asset while it was in the process of being surrendered.
2. The second issue to be decided is whether the Department was correct to base its final eligibility determination on an accounting of the Appellant's assets as of the date of her death.

FINDINGS OF FACT

1. In [REDACTED] 2013, the Appellant became institutionalized at Milford Health and Rehabilitation Center, a long term care facility. (Testimony)
2. A few weeks after her institutionalization, the Appellant became represented by an attorney in order to assist her in the spending down of assets, and in the process of applying for long term care Medicaid assistance (L01). (Testimony)
3. Around the beginning of [REDACTED] 2013, the Appellant's son, [REDACTED], at the advice of the attorney, placed a phone call to Mutual of Omaha Insurance to inquire about surrendering the Appellant's life insurance policy for its cash value. [REDACTED] was advised by the company that he must acquire power of attorney in order to cash the policy in on behalf of his mother. (Testimony)
4. Sometime in [REDACTED] 2013, [REDACTED] acquired power of attorney for the Appellant. (Testimony)
5. On [REDACTED] 2013, [REDACTED] signed a form requesting to surrender Mutual of Omaha policy number [REDACTED] (the "policy") on behalf of the Appellant, and have its value paid in cash. (Testimony, Appellant's Ex. A: Life Insurance Surrender Request)
6. On [REDACTED] 2013, Mutual of Omaha terminated the policy for its cash value and issued a check to the Appellant in the amount of \$2,230.98. (Appellant's Ex. C: [REDACTED] 2013 check from Mutual of Omaha / [REDACTED] 2013 First Niagara Deposit Receipt)
7. As of the date of its surrender, the policy had a face value of \$6,000.00. (Ex. 4: Whole Life Policy Details)
8. On [REDACTED] 2013, the Appellant died. (Ex. 2: Death Certificate)

9. On [REDACTED] 2013, [REDACTED] retrieved the [REDACTED], 2013 check from Mutual of Omaha from the Appellant's mailbox. (Testimony)
10. On [REDACTED] 2013, [REDACTED] deposited the check from Mutual of Omaha into the Appellant's account ending in [REDACTED] at First Niagara Bank. (Ex. C)
11. On [REDACTED] 2013, [REDACTED] filed an application for L01 Medicaid on behalf of the Appellant. (Record, Ex. 1: W-1F Application Form)
12. On [REDACTED] 2014 the Department sent a NOA advising the Appellant that her application for L01 Medicaid was denied for the months of [REDACTED], 2013 through [REDACTED] 2014, inclusive, for the reasons that the applicant has died and that the value of her assets exceeds the limit. (Ex. 7: [REDACTED] 2014 NOA)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual ("UPM") § 4030.30 discusses the treatment of life insurance policies as assets.

UPM § 4030.30(A) provides that for all programs: 1. The owner of a life insurance policy is the insured unless otherwise noted on the policy, or if the insurance company confirms that someone else, and not the insured, can cash in the policy; and 2. Policies such as term insurance policies having no cash surrender value are excluded assets.

UPM § 4030.30(C) provides that for the AABD and MAABD programs: 1. If the total face value of all life insurance policies owned by the individual does not exceed \$1500.00, 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 which has no cash surrender value; and 2. Except as provided above, the cash surrender value of life insurance policies owned by the individual is counted toward the asset limit.

The Department correctly determined that the Appellant's Mutual of Omaha policy number [REDACTED] had a face value exceeding \$1500.00, and that the policy's cash surrender value was therefore counted toward the asset limit.

3. UPM § 4015.05 discusses the treatment of inaccessible assets for all programs.

UPM § 4015.05A provides that, Subject to the conditions described in this section, equity in an asset which is inaccessible to the assistance unit is not counted as long as the asset remains inaccessible.

Connecticut General Statutes § 17b-261 (c) provides that 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.

UPM § 4000.01 provides the following definition of 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.

The Department correctly determined that the life insurance policy was not an inaccessible asset. The Appellant or her representative at all times had the legal power to obtain the asset, making it an available asset for purposes of determining eligibility for the Medicaid program.

4. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1600.00.

The Department correctly determined that the \$2,230.98 cash surrender value of the policy exceeded the Medicaid asset limit of \$1600.00.

5. UPM § 1560.10 discusses Medicaid beginning dates of assistance and provides that the beginning date of assistance for Medicaid may be one of the following:
 - A. The first day of the first, second or third month immediately preceding the month in which the Department receives a signed application when all non-procedural eligibility requirements are met and covered medical services are received at any time during that particular month; or
 - B. The first day of the month of application when all non-procedural eligibility requirements are met during that month; or
 - C. The actual date in a spenddown period when all non-procedural eligibility requirements are met. For the determination of income eligibility in spend-down, refer to Income Eligibility Section 5520; or
 - D. The first of the calendar month following the month in which an individual is determined eligible when granted assistance as a Qualified Medicare Beneficiary (Cross Reference: 2540.94). The month of eligibility determination is considered to be the month that the Department receives all information and verification necessary to reach a decision regarding eligibility.

The Department correctly determined that the Appellant did not meet the eligibility requirement of having assets under the limit in the [REDACTED], 2013 application month, or in the first, second or third month immediately preceding the application month. In the month of [REDACTED] 2013, the Appellant was the owner of a life insurance policy which was a counted and available asset, and whose value exceeded the asset limit. In the months of [REDACTED] 2013 and [REDACTED] 2013, she was the owner of the \$2,230.98 cash proceeds from the surrender of the policy, which were legally available to her.

The Department correctly determined that any reduction in the value of accounts belonging to the Appellant's estate following her [REDACTED] 2013 date of death have no relevance to the determination of her Medicaid eligibility for [REDACTED] 2013.

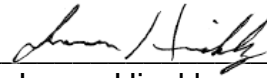
DISCUSSION

The primary issue of the hearing was whether the Department incorrectly considered the Appellant's life insurance policy an accessible asset. Toward that question, the Appellant's attorney argued that the Department confused its policy on exempt assets with its policy on inaccessible assets. He argued that the value of the Appellant's policy was not exempt from consideration, but that it should be considered inaccessible beginning [REDACTED] 2013, the date her son, [REDACTED], began the process of cashing it in, making the Appellant eligible for Medicaid beginning [REDACTED] 2013. For the reasons set forth in the Conclusions of Law above, I have concluded that the Department applied its policy concerning assets correctly in the Appellant's case.

At the hearing officer's suggestion, the Appellant requested that the decision also address whether the Department was correct to end its consideration of the Appellant's Medicaid eligibility as of the date of her death, or whether it should have considered the value of her accounts as of the end of the month in which she died. The Appellant's assets exceeded the Medicaid limit as of her date of death, and so the Department found her ineligible for Medicaid for that month. After consideration, I have concluded that the Department was also correct to deny the Appellant's Medicaid application for [REDACTED], 2013 and not consider any reductions in the balances or values of any accounts after the date of her death. The Department can only make a determination of Medicaid eligibility based on what assets are owned by the applicant. The Appellant's ownership of assets ended with her death; following her death, the assets belong to the Appellant's estate.

DECISION

The Appellant's appeal is DENIED.



James Hinckley
Hearing Officer

CC: Peter Bucknall, SSOM New Haven

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.