

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 # 613536

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") sent ██████████ ██████████ (the "Appellant"), a Notice of Action ("NOA") granting Medicaid benefits effective ██████████ 2014 and denying Medicaid benefits for the months of ██████████ 2013 through ██████████ 2014.

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

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:

██████████, Appellant's Conservator
██████████, for the Appellant

Darlene Rogers, Department's Representative
Thomas Monahan, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to grant Medicaid benefits effective [REDACTED] 2014 was correct.

FINDINGS OF FACT

1. On [REDACTED] 2013, the Department received an application for Long Term Care ("LTC") Medicaid for the Appellant. (Hearing summary, Exhibit 1: LTC Application form)
2. The Appellant was admitted to Skyview Health Care in Wallingford on [REDACTED] 2013. The Appellant died on [REDACTED] 2014. (Hearing record, Ex. 1: LTC application)
3. On [REDACTED] 2012, the Connecticut State Court of Probate appointed [REDACTED] [REDACTED] Conservator of the Appellant's estate up to \$1,600.00. (Appellant's conservator's brief)
4. The Appellant did not cooperate in disclosing her assets to the conservator or other family members at the time of LTC application. (Hearing record)
5. On [REDACTED] 2013, the Department sent the conservator a LTC addendum requesting Bank Statements for the Appellant from [REDACTED] 2011 forward from Webster Bank and TD Bank North. The addendum stated that there is no eligibility for Medicaid in any month that assets exceed \$1,600.00. (Ex. 2: LTC addendum)
6. On [REDACTED] 2014, the Department received verification that the Appellant's balance in the TD Bank North account was in excess of \$13,000.00. The balance in the account was in excess of \$13,000.00 from [REDACTED] 2013 through [REDACTED] 2014. (Ex. 8: Bank account history)
7. On [REDACTED] 2014, the Department emailed the Appellant's conservator notifying him that the Appellant's account at TD Bank North had a balance of \$13,000.00 and must be reduced to qualify for LTC Medicaid. (Ex. 6: Emails between Department and Conservator)
8. On [REDACTED] 2014, the conservator requested authority from the court to handle up to \$13,000.00 of the Appellant's assets. (Appellant's conservator's brief)
9. On [REDACTED] 2014, the Appellant's conservator closed out the TD Bank North account receiving a check for \$13,132.91. (Ex. 7: copy of closeout check)

10. On [REDACTED] 2014, the Appellant's conservator wrote a check to Skyview Health Care for \$6,000.00. (Ex. 8; Copy of check, [REDACTED]/14)
11. On [REDACTED] 2014, the Appellant's conservator wrote a check from the Appellant's money to the Treasurer of the State of Connecticut for \$650.00. (Ex. 8; Copy of check, [REDACTED]/14)
12. On [REDACTED] 2014, the Appellant's conservator wrote a check from the Appellant's money to Masonic Care for \$98.00. (Ex. 8; Copy of check, [REDACTED]/14)
13. On [REDACTED] 2014, the Appellant's conservator wrote a check from the Appellant's money to McClam Funeral Home for \$5,400.00. (Ex. 8; Copy of check, [REDACTED]/14)
14. On [REDACTED] 2014, the Appellant's conservator wrote a check from the Appellant's money to Skyview Health Care for \$991.91. (Ex. 8; Copy of check, [REDACTED]/14)
15. The Appellant reduced her assets under \$1,600.00 on [REDACTED] 2014. (facts 7-14)
16. On [REDACTED] 2014, the Department granted ongoing Medicaid effective [REDACTED] 2014. (Ex. 10: Applied income grant letter, Ex. 11: Case Narrative)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes, authorizes the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual ("UPM") Section 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.
3. 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. 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.

4. Regulation 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 unit. UPM § 4005.05 (A)
5. Regulation 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. UPM § 4005.05 (B)(2)
7. Regulation 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. UPM § 4005.05 (D)
8. Regulation provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month. UPM § 4005.10
9. Regulation provides that in the Medicaid program at the time of application, the assistance unit is ineligible until the first day of the month in which it reduces its equity in counted assets to within the asset limit. UPM § 4005.15
10. Regulation 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. UPM § 4015.05 (A)
11. Regulation provides that the burden is on the assistance to demonstrate that an asset is inaccessible. For all programs except Food Stamps, in order for an asset to be considered inaccessible, the assistance unit must cooperate with the Department as directed, in attempting to gain access to the asset. UPM 4015.05 B
12. The Department correctly counted the Appellant's assets as accessible until they were spent in [REDACTED] of 2014, as the Appellant's Conservator had the legal right to obtain them from the date of application forward.
13. Although, the Conservator spent down the Appellant's assets throughout the Medicaid Application process; the Appellant's assets exceeded the Medicaid asset limit of \$1,600.00 from the date of application through [REDACTED] 2014.
14. The Department correctly determined that the Appellant was ineligible for Medicaid for the period of [REDACTED] 2013 through [REDACTED] 2014.

DISCUSSION

After reviewing the evidence and the testimony presented at the hearing, I uphold the Department's determination of an [REDACTED] 2014 effective date.

The Appellant's Conservator argued that the assets were not accessible and should not have been included in the asset calculation. They were unaware of the TD Bank North account prior to [REDACTED] 2013, and discovered the amount of the account when

notified by the Department in [REDACTED] of 2014. The conservator could not access the amount of money in the account until approval was received from the probate court as his originally was authorized to handle \$1,600.00 of the Appellant's funds. The Appellant's conservator further argued that the Department did not begin to work on the application until three months after the application date of [REDACTED] 2013 causing a delay in the grant.

Although the Appellant's conservator was unaware of the account he was able to access it after following the probate procedures and increasing his amount allowed by the court. Throughout the application process the conservator had the legal right and authority to obtain the asset. The conservator was aware of the asset in [REDACTED] 2013, but assets were not reduced until five months later. It is true that the Department did not request any asset verifications until [REDACTED] of 2013, but it is the responsibility of the Appellant to report and reduce the assets to within limits.

DECISION

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

Thomas Monahan
Hearing Officer

Pc: Peter Bucknall, Operations Manager, New Haven Regional Office
Lisa Wells, Operations Manager, New Haven Regional Office
Bonnie Shizume, Program Manager, New Haven Regional Office

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 Administrative Hearings and Appeals, 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, 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 06105-3725. 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 the Commissioner's 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.