

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 # 615441

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") denying the Appellant's application for Long Term Care ("LTC") Medicaid benefits.

On ██████████ 2014, the Appellant requested an administrative hearing to contest the Department's decision to deny the Appellant's application for Medicaid.

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

On ██████████ 2014 OLCRAH issued a notice rescheduling the 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:

██████████, Appellant  
██████████, Appellant's daughter  
Attorney Earl Temchin, for Fairview of Fairfield  
Terrence Brennan, Fairview of Fairfield Administrator  
Barbara Connelly, Fairview of Fairfield Business Manager  
Evan Ballas, Fairview of Fairfield Social Worker

Marilyn Phillips (by phone), Department's Representative  
Swatantar Sehgal, Hearing Officer Observer  
Marci Ostroski, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department's decision to deny the Appellant's application for LTC Medicaid due to failure to submit information needed to establish eligibility was correct.

### **FINDINGS OF FACT**

1. On [REDACTED] 2006 the Appellant was legally separated from her spouse. (Ex. E: Separation Agreement dated [REDACTED]/06)
2. On [REDACTED] 2007 a Motion for Contempt was granted against the spouse of the Appellant for failure to comply with several articles outlined in the Separation Agreement. (Ex. D: Motion for Contempt dated [REDACTED]/07)
3. On [REDACTED] 2009 a Motion for Contempt was granted against the spouse of the Appellant for failure to comply with Article III of the Separation Agreement; failure to pay alimony of \$4000 a month. (Ex. C: Memorandum of Decision de Plaintiff's Motion for Contempt dated [REDACTED]/09)
4. The Appellant was admitted to Fairview of Fairfield Skilled Nursing Facility on [REDACTED] 2011. (Fairview of Fairfield Business Manager's testimony)
5. On [REDACTED] 2012, [REDACTED] 2012, [REDACTED] 2013 and [REDACTED] 2013 bank checks were issued to the Appellant in the amount of \$500 each from her spouse as alimony payments. The Appellant has not received any payments from the spouse since that time. (Ex. 2: Copies of bank checks dated [REDACTED]/12, [REDACTED]/12 [REDACTED]/13 and [REDACTED]/13, Fairview of Fairfield Business Manager's testimony)
6. On [REDACTED] [REDACTED] 2014, the Department received an application for Medicaid LTC Assistance for the Appellant. (Hearing Summary)
7. On the Application form the Appellant listed a spouse and stated that they were estranged and he lived in Florida. (Ex. A: W1E Application form)
8. On [REDACTED] 2014 the Department made a referral to its Resources Department to locate the estranged spouse. (Hearing Summary)

9. On [REDACTED] 2014, the Department sent the Appellant a W-1348LTC "We Need Verification from You" form requesting completion of the W1LTC Application form, Chase Bank statements, explanation of deposits and withdrawals over \$5000, Pre-need funeral arrangement from Abraham Green and Son funeral home, and the completion of the W1SA Application for Determination of Spousal Assets. (Ex. H; 1348LTC dated [REDACTED]/14)
10. The Department received from the Appellant a letter which was dated [REDACTED] 2014 and notarized on [REDACTED] 2014 which states that the Appellant is unable to find her estranged spouse. The letter further states that the Appellant does not have his Social Security number or telephone number to reach him but she did provide his last known address of [REDACTED] (Ex G: Letter from [REDACTED] (the Appellant) dated [REDACTED] 2014)
11. The facility had attempted to contact by mail the estranged spouse at the [REDACTED] drive address but the mail was returned as unclaimed by the post office on [REDACTED] 2012. (Ex. 1: Copy of envelope addressed to [REDACTED])
12. On [REDACTED] 2014, the Department sent the Appellant a W-1348LTC form request number 6 requesting pre-need funeral arrangement from [REDACTED] Funeral home and the completion of the W1SA application for determination of Spousal Assets. The 1348 stated that the Resource Department located a potential address for the Appellant's estranged spouse at [REDACTED] and provided a possible telephone number. (Ex. L: W-1348LTC request #6 dated [REDACTED]/14)
13. On [REDACTED] 2014, Fairview of Fairfield sent a letter to the Appellant's estranged spouse on behalf of the Appellant to the [REDACTED] address. The letter was returned to sender, unable to forward by the post office with a note written "no longer at this address" (Ex. N: Copy of envelope addressed to [REDACTED] postmarked [REDACTED]/14)
14. On [REDACTED] 2014 the Department sent the Appellant a W-1348LTC form request number 7 requesting the completion of the W1SA and listing the [REDACTED] address as a possible location for the estranged spouse. No other items were requested on the 1348 form. (Ex. M: W-1348 LTC request #7 dated [REDACTED]/14)
15. On [REDACTED] 2014 the Fairview of Fairfield representative reported to the Department that she attempted to contact the estranged spouse via the telephone number provided by the Resources Department and she was told it was the wrong number and not to call back. (Hearing Summary)

16. On [REDACTED] 2014 the Fairview of Fairfield Business Manager sent a letter to the estranged spouse at a third address [REDACTED] provided by the Department as a possible residence. This letter threatened eviction of the Appellant from the facility to the spouse's address if he did not comply with the request for completion of paperwork. There has been no response to the letter to date. (Ex. F: Letter to [REDACTED] [REDACTED] dated [REDACTED]/14, Fairview of Fairfield Business Manager's testimony)
17. Throughout the application process the Appellant provided all verifications requested of her with the exception of the W1SA. (Hearing record)
18. On [REDACTED] 2014, the Department denied the Appellant's application for LTC assistance for failure to return the information requested to determine eligibility. (Ex. O: NOA dated [REDACTED]/14)

### **CONCLUSIONS OF LAW**

1. Section 17b-2 and § 17b-260 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") § 1010.05 (A)(1) provides that the assistance unit must supply the Department in an accurate and timely manner as defined by the Department, all pertinent information, and verification that the Department requires to determine eligibility and calculate the amount of benefits.
3. UPM § 1015.10(A) provides that the Department must inform the assistance unit regarding the eligibility requirements of the programs administered by the Department, and regarding the unit's rights and responsibilities.
4. The Department correctly sent the Appellant multiple Application Verification Requirements lists requesting information needed to establish eligibility.
5. UPM § 1505.35 (C) provides that the following promptness standards are established as maximum time periods for processing applications: forty-five calendar days for AABD or MA applicants applying on the basis of age or blindness.
6. UPM § 1505.35 (D) (2) provides that the Department determines eligibility within the standard of promptness for the AFDC, AABD, and MA programs except when verification needed to establish eligibility is

delayed and one of the following is true: the client has good cause for not submitting verification by the deadline, or the client has been granted a 10 day extension to submit verification which has not elapsed.

7. UPM § 1540.10 (A) provides that the verification of information pertinent to an eligibility determination or a calculation of benefits is provided by the assistance unit or obtained through the direct efforts of the Department. The assistance unit bears the primary responsibility for providing evidence to corroborate its declarations.
8. UPM § 1505.40 (B) (4) (a) provides that 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.
9. UPM § 1505.40 (B) (4) (b) provides that if the application is delayed, the Department continues to process the application until
  1. The application is complete; or
  2. Good cause no longer exists.
10. UPM § 1505.40 (B) (5) (b) provides that additional 10-day extensions for submitting verification shall be granted as long as after each subsequent request for verification the assistance unit submits at least one item of verification within each extension period.
11. UPM § 1507.05 (A)(1)(b) The Department provides an assessment of assets: b. at the time of application for Medicaid whether or not a request is made
12. UPM § 1507.05(A)(6) provides that Initial eligibility is determined using an assessment of spousal assets except when: undue hardship exists (Cross Reference 4025.68);
13. UPM § 4025.67 (B)(2) provides for B. Circumstances in Which Assets Are Not Deemed: The Department does not deem assets from the community spouse to the institutionalized spouse:
  2. when undue hardship exists (Cross Reference 4025.68);
14. Connecticut General Statutes Sec. § 17b-285. (Formerly Sec. § 17-134gg). Assignment of spousal support of an institutionalized person or person in need of institutional care. Notwithstanding any provision of the general statutes, an institutionalized person or person in need of institutional care who applies for

Medicaid may assign to the Commissioner of Social Services the right of support derived from the assets of the community spouse of such person but only if (1) the assets of the institutionalized person or person in need of institutional care do not exceed the Medicaid program asset limit; and (2) the institutionalized person or person in need of institutional care cannot locate the community spouse; or the community spouse is unable to provide information regarding his or her own assets. If such assignment is made or if the institutionalized person or person in need of institutional care lacks the ability to execute such an assignment due to physical or mental impairment, the commissioner may seek recovery of any medical assistance paid on behalf of the institutionalized person or person in need of institutional care up to the amount of the community spouse's assets that are in excess of the community spouse protected amount as of the initial month of Medicaid eligibility.

15. UPM § 4025.68 (A) provides that Undue hardship exists when:
1. the facility has threatened, in writing, to evict the institutionalized spouse (IS) due to non-payment of the cost of care; and
  2. all of the assets of the community spouse (CS) are unavailable due to circumstances beyond the control of the institutionalized spouse; and
  3. the institutionalized spouse does not have counted assets exceeding the asset limit; and
  4. the institutionalized spouse executes an assignment of support rights. (Cross Reference 7520.07)
16. UPM § 4025.68 (B) (1) provides that The assets of the community spouse are considered unavailable due to circumstances beyond the control of the institutionalized spouse when:
1. the location of community spouse is unknown;
17. The Department incorrectly did not pursue undue hardship for the Appellant
18. The Department incorrectly denied the Appellant's application for failure to submit information needed to establish eligibility.

### **DISCUSSION**

After reviewing the evidence and testimony presented, the Department's action to deny the Appellant's request for LTC assistance is not upheld. The Appellant testified that she does not know the whereabouts of her estranged spouse and has no means of locating him. The Appellant's testimony is credible. The Appellant and the staff of the Skilled Nursing Facility in which she resides both have done their due diligence in attempting to locate her estranged spouse and they have provided multiple exhibits which outline their efforts. The Department testified that they had exhausted all means of locating the estranged spouse so it is not

unreasonable to conclude that the Appellant also would have exhausted all means of locating her estranged spouse.

The Department testified that the Appellant provided all other forms of verification requested other than the Spousal Assessment. The Department erred when it denied the Medicaid Application as the Appellant clearly had good cause as outlined in policy for not providing the Spousal Assessment.


All of the assets of the community spouse are unavailable to the Appellant due to circumstances beyond her control because she does not know his location. The letter that the facility sent to the Appellant's spouse's multiple addresses is clearly a threat that they will be forced to evict her for non-payment. Because of these facts and the fact that the Appellant showed good cause to not provide the Spousal Assessment the Department should have pursued undue hardship and requested the Appellant provide an assignment of support rights.

### **DECISION**

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

### **ORDER**

1. The Department will reopen the Appellant's LTC application as of [REDACTED] 2014.
2. The Department will request from the Appellant's representatives completion of an assignment of support rights.
3. The Department will grant this LTC Medicaid application upon receipt of the assignment of support rights pending all other factors of eligibility exist
4. The Department will submit to the undersigned verification of compliance with this order within 21 calendar days or [REDACTED] 2014

  
Marci Ostroski  
Hearing Officer

Cc: Poonam Sharma, Operations Manager, Bridgeport 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, 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.

### **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. 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.