

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 # 622455

NOTICE OF AMENDED DECISION

PARTY

Attorney ██████████
For ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") sent ██████████ (the "Applicant") a Notice of Action ("NOA") granting Long Term Care Medicaid benefits effective ██████████ 2014.

On ██████████ 2014, Attorney ██████████, the Applicant's Conservator (the "Appellant") requested an administrative hearing to contest the effective date of the Long Term Care 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, OLCRAH issued a notice rescheduling the administrative hearing for ██████████, 2014 because OLCRAH has not notified the Appellant of the hearing.

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 ██████████, the Appellant, conservator for the Applicant, ██████████
Anne Jasorkowski, Esq. Attorney for ██████████, facility where Applicant resides
Karen Paul, ██████████ Business Office,
Denise Stone, Director of Social Services, ██████████
Maureen Harry, Eligibility Specialist, Department's representative

Maureen Foley-Roy, Hearing Officer

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

On [REDACTED] 2014, the hearing officer issued a decision.

On [REDACTED] 2014, the hearing officer amended the decision to allow for the inclusion of the presence of the Department's representative at the hearing.

STATEMENT OF THE ISSUE

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

FINDINGS OF FACT

1. On [REDACTED] [REDACTED] of 2014, a physician completed the physician's evaluation/conservatorship form for the State of Connecticut Court of Probate noting that the Applicant has diagnoses of severe to moderate Alzheimer's disease and dementia and was unable to independently care for herself or manage daily tasks. (Appellant's exhibit F: Probate Court Documents)
2. On [REDACTED] 2014, at the probate court hearing, the physician who had completed the medical form for the hearing testified that the Applicant had been unable to handle her affairs since at least 2012. (Appellant's Exhibit F)
3. On [REDACTED] 2014, the Department denied an application for Medicaid for Long term care that had been submitted for the Applicant in [REDACTED] of 2013 because the Applicant's assets exceeded the allowable limit. (Exhibit 1: Notice of Denial dated [REDACTED], 2014)
4. On [REDACTED] 2014 the Department received a new application for Medicaid for Long Term care for the Applicant. (Exhibit 2: Case Narrative p.15)
5. On [REDACTED] 2014, the Department granted Medicaid for Long Term care for the Applicant effective [REDACTED] of 2014 and approved retroactive medical assistance for the months of [REDACTED] and [REDACTED] of 2014. (Exhibit 6: Notice of Approval)
6. The Department did not grant retroactive Medicaid Coverage for [REDACTED] of 2013 because the Applicant's assets exceeded the allowable limit. (Department representative's testimony.)
7. On [REDACTED] 2014, the Probate Court appointed a new conservator for the Applicant. (Exhibit F)

8. On [REDACTED] [REDACTED] 2014, the new conservator requested an administrative hearing on the Department's action taken on [REDACTED] 2014 to grant Medicaid for Long Term Care. (Hearing record)
9. On [REDACTED] 2014, the Department removed a transfer of asset penalty that it had imposed on the [REDACTED], 2014 grant of Medicaid for Long Term Care because the Department's division of Protective Services for the Elderly determined that the Applicant had been exploited by her previous conservator. (Exhibit 2, p.18)

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 1570.05 H provides for the time limits for requesting a fair hearing and states the request for a fair hearing must be made within a specified period of time from the date that the Department mails a notice of action and for all programs except for Food Stamps, that period is 60 days.
3. UPM § 3525.05 C 2 provides that a penalty for noncooperation with the application and review processes is not imposed due to the failure of a representative to act in the best interests of an incompetent or disabled assistance unit, which is considered good cause for noncompliance.
4. UPM § 1560.10 A, B and C provides that the beginning date of assistance for Medicaid may be either: 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 the first day of the month of application when all non-procedural eligibility requirements are met during that month; or the actual date in a spenddown period when all non-procedural eligibility requirements are met.
5. UPM § 4005 B 2 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.
6. Due to the limitations imposed by her Alzheimer's disease and dementia, the Applicant did not have the power to obtain her assets and have them applied for her general support.
7. The Department was incorrect when it did not grant retroactive Medicaid for Long Term Care for [REDACTED] of 2013 because the Applicant did not have the power to obtain her

assets to have them applied for her general support and her representative was not acting in her best interest.

DISCUSSION

The issue of this hearing was the effective date of the Medicaid grant for the application which was received on [REDACTED] 2014 and granted on [REDACTED] 2014. The Appellant argued that due to the unique circumstances of this case and malfeasance of the previous conservator, the Department should reconsider the [REDACTED] 2014 denial of the application of [REDACTED] of 2013. Per conclusion of law #2 above, a hearing must be requested within 60 days of the date that the Department mails the notice of the action which is being appealed. This hearing was requested on [REDACTED] [REDACTED] 2014. The undersigned has no jurisdiction to address the previous application.

In regards to the [REDACTED] 2014 application, the Department correctly granted Medicaid for Long Term Care effective [REDACTED] of 2014 and for the retroactive months of [REDACTED] and [REDACTED] of 2014. The Department did not grant for the month of [REDACTED] 2013, stating that the Applicant's assets exceeded the limit at that time. However, the evidence shows that the Applicant was incapacitated to the point that she could not have her assets applied for her support and care and that her representative at that time was not acting in her best interest. The Department was incorrect when it considered the Applicant's assets available to her in [REDACTED] of 2013.

DECISION

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

ORDER

The Department is to grant Medicaid for Long Term Care for the month of [REDACTED] of 2013. Compliance with this order is due by [REDACTED] 2014 and shall consist of documentation that the Applicant was granted Medicaid for Long Term Care for [REDACTED] of 2013.

Maureen Foley-Roy

Maureen Foley-Roy,
Hearing Officer

Pc: Cathy Robinson-Patton, Operations Manager
DSS R.O. # 50, Middletown

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.

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 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.