

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

██████████ 2014
Signature confirmation

Client: ██████████
Request: 622569

NOTICE OF DECISION

PARTY

██████████
████████████████████
████████████████

PROCEDURAL BACKGROUND

On May 6, 2014, the Department of Social Services (the "Department") issued a notice to ██████████ (the "Appellant") denying her Medicaid coverage of long-term care services in Wintonberry Care Center, a skilled nursing facility, for ██████████ 2013 and ██████████ 2014. The Department granted the Appellant Medicaid coverage of long-term care services effective ██████████ 2014.

On ██████████ 2014, Wintonberry Care Center discharged the Appellant. The Appellant currently is not institutionalized.

On ██████████ 2014, ██████████, the Appellant's attorney-in-fact, filed a request for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") to dispute the Department's denial of Medicaid coverage of the Appellant's long-term care services for ██████████ 2013 and ██████████ 2014.

On ██████████ 2014, the OLCRAH issued a notice scheduling the administrative hearing for ██████████, 2014. The Appellant requested a postponement of the administrative hearing; the OLCRAH granted the request.

On ██████████, 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:

██████████, Appellant
██████████, Appellant's witness (attorney-in-fact)

██████████, Appellant's witness
██████████, Wintonberry Care Center employee, Appellant's witness
Jason Bezzini, Department's representative
Liza Morais, Department's witness
Eva Tar, Hearing Officer

The hearing record remained open for the submission of additional evidence. On ██████████ 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 for ██████████ 2013 and ██████████ 2014.

FINDINGS OF FACT

1. The Appellant is at least 74 years old. (Department's Exhibit 5: Narrative-NARR, varying dates)
2. The Appellant does not have Social Security income. (Department's Exhibit 5)(Appellant's witness's testimony)
3. On ██████████ 2011, Webster Bank passbook account (██████████) (the "Webster Bank account") was opened. (Appellant's Exhibit D: copy, undated)(Department's Exhibit 2: Webster Bank Transaction History Continuation, certified ██████████/14)
4. ██████████ helped the Appellant open the Webster Bank account, as ██████████ ██████████ was concerned that the Appellant might be robbed while living in the community. (Appellant's witness's account)
5. In the period from ██████████ 2011 through ██████████ 2013, the Appellant's name was listed on the Webster Bank account. (Department's Exhibit 2)
6. In the period from ██████████ 2013 through ██████████, 2014, the following names were added to the Webster Bank account: ██████████ and ██████████. (Department's Exhibit 2)
7. ██████████ is not related to the Appellant. (Appellant's witness's testimony)
8. ██████████ is not related to the Appellant. (Appellant's witness's testimony)
9. The Appellant's friends would make deposits to the Webster Bank account to help the Appellant out with her bills in the community, as she had no family. (Appellant's witness's testimony)

10. On or around [REDACTED] 2013, the Appellant reported her income to the Department as being \$1,100.00 per month, from employment beginning in [REDACTED] 2000, in conjunction with a Medicaid application. (Department's Exhibit 5)(Department's Exhibit 9: Earned Income 1- ERN1, printed [REDACTED]/14)
11. In [REDACTED] 2013, the Appellant received Medicaid coverage (for services unrelated to long-term care) subject to a "spend-down." (Department's Exhibit 5)(Department's Exhibit 7: Assistance Status-STAT, printed [REDACTED]/14)
12. Approximately a week prior to [REDACTED] 2013, the Appellant was admitted to Hartford Hospital. (Appellant's witness's testimony)
13. On [REDACTED] 2013, Hartford Hospital discharged the Appellant to Wintonberry Care Center, a skilled nursing facility. (Appellant's witness's testimony)(Department's Exhibit 5)
14. In [REDACTED] 2013, the only deposit to the Webster Bank account was 3 cents of interest. (Department's Exhibit 2)
15. On [REDACTED] 2013, the Webster Bank account had a balance of \$2,017.22. (Department's Exhibit 2)
16. In [REDACTED] 2013, the only deposit to the Webster Bank account was 3 cents of interest. (Department's Exhibit 2)
17. On [REDACTED] 2013, the Webster Bank account had a balance of \$1,617.35. (Department's Exhibit 2)
18. On [REDACTED] 2014, the Webster Bank issued an official check # [REDACTED] to [REDACTED], identifying account [REDACTED] as "remitter," for \$3,245.12. (Appellant's Exhibit A: Webster Bank official check, [REDACTED]/14)
19. The hearing record does not identify the names of the owner or owners of account [REDACTED].
20. [REDACTED] endorsed Webster Bank official check # [REDACTED]. (Appellant's Exhibit A)
21. On [REDACTED] 2014, \$3,245.12 was deposited to the Webster Bank account. (Department's Exhibit 2)
22. On [REDACTED], 2014, 6 cents interest accrued on the Webster Bank account. (Department's Exhibit 2)
23. On [REDACTED] 2014, the Webster Bank account had a balance of \$4,859.53. (Department's Exhibit 2)

24. On [REDACTED] 2014, \$3,466.53 was withdrawn from the Webster Bank account. (Appellant's Exhibit D: Copy, last entry [REDACTED]/14)
25. On [REDACTED], 2014, the Appellant purchased an irrevocable funeral trust contract with Carmon Community Funeral Homes, Inc., with Webster Bank official check # [REDACTED] for \$3,456.53. (Appellant's Exhibit E: *Funeral Trust Contract*, [REDACTED]/14)
26. On [REDACTED] 2014, the Department issued to the Appellant a notice, denying her Medicaid coverage of her long-term care services for the months of [REDACTED] 2013 and [REDACTED] 2014. (Department's Exhibit 11: Notice Content-NCON, [REDACTED] 14)
27. On [REDACTED] 2014, the Department granted the Appellant Medicaid coverage of her long-term care services effective [REDACTED] 2014. (Department's Exhibit 12: Notice Content-NCON, [REDACTED]/14)
28. On [REDACTED] 2014, Wintonberry Care Center discharged the Appellant. (Appellant's witness's testimony)
29. The Appellant currently resides in an apartment in the community. (Appellant's testimony)(Appellant's witnesses' testimonies)

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. 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).
9. 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).
10. An individual other than a spouse of an assistance unit member is considered merely the record owner of an account or similar asset held jointly with the unit member. This is true regardless of the time period the individual has been joint holder of the asset. 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)(2)(a) and (b).
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 did not establish with clear and convincing evidence that she was the record owner—and not the legal owner—of the Webster Bank account.
13. The Appellant is the legal owner of the Webster Bank account.
14. 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).
15. The Appellant had the legal right to obtain the monies in the Webster Bank account so as to have the monies in those financial instruments applied for her general or medical support.
16. For the purposes of the Medicaid program, the Webster Bank account is the Appellant's counted asset.
17. 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).
18. With respect to the Aid to Families with Dependent Children and related Medicaid programs, cash contributions made to the assistance unit from non-legally liable relatives, friends, or organizations are treated as unearned income. Cash contributed to the assistance unit by non-legally liable relatives or friends, is counted in full if the amount: a. is regularly and predictably contributed; and b. exceeds \$30.00 in a calendar quarter. UPM § 5050.17 (A)(1).
19. The provisions of [UPM § 5050.17 (A)] apply to the State Supplement and related Medicaid programs, except that cash contributions made by non-legally liable relatives are counted if the amount: 1. is regularly and predictably contributed; and 2. exceeds \$20.00 per calendar month. UPM § 5050.17 (B).
20. With respect to the Appellant's potential eligibility for Medicaid long-term care coverage, the value of the Webster Bank account is counted in full toward the program's asset limit.
21. 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).
22. The Appellant's counted assets for the purposes of the Medicaid program exceeded \$1,600.00 by ██████████ 2013.

23. The Appellant's counted assets for the purposes of the Medicaid program exceeded \$1,600.00 by [REDACTED], 2014.

24. The Department correctly determined that the Appellant was ineligible for Medicaid coverage of her long-term care services for [REDACTED] 2013 and [REDACTED] 2014.

DISCUSSION

The Appellant's witnesses argue that the Appellant's Webster Bank account should not be counted in full to the Medicaid asset limit, as it contained periodic deposits that were gifts from her friends to her, to help the Appellant remain in the community. This argument is unpersuasive.

A financial gift becomes the legal property of the gift's recipient; the people who made the gift retain no legal rights to it. Upon receipt, the recipient of the gift is the gift's legal owner.

The Appellant used \$3,456.53 of the funds in the Webster Bank account to purchase an irrevocable burial trust on [REDACTED] 2014. The Appellant had the legal right, authority or power to obtain the funds in the Webster Bank account and to apply the funds for her general or medical support. The Webster Bank account is a counted asset for the purposes of the Medicaid program.

The Appellant's counted assets exceeded the \$1,600.00 Medicaid program limit in the months from [REDACTED] 2013 and [REDACTED] 2014. 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:

[REDACTED]
Albert Williams, Field Operations Managers, DSS-Hartford (10)
Musa Mohamud, Field Operations Managers, DSS-Hartford (10)

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.