

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 # 630426

NOTICE OF DECISION

PARTY

██████████  
██  
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██

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") granted ██████████, (the "Appellant") ██████████ 2014 application for Long Term Care Medicaid benefits effective ██████████ 2014.

On ██████████ 2014, the Appellant requested an administrative hearing to contest the Department's decision to deny certain months of benefits and requested that the Department grant benefits back to ██████████ 2013.

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

On ██████████ 2014, the Appellant's representative requested the administrative hearing be rescheduled.

On ██████████ 2014, 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:

[REDACTED] Appellant's Attorney  
 Noah Cass, Departments Representative  
 Scott Zuckerman, Hearing Officer

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

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department correctly granted the Appellant's Long Term Care Medicaid benefits effective [REDACTED] 2014.

### **FINDINGS OF FACT**

1. On [REDACTED] 2012, the Appellant was admitted to Mansfield Center for Nursing and Rehabilitation ("the facility"). (Hearing Record)
2. On [REDACTED] 2013, the Appellant applied for Long-Term Care Medicaid Assistance. (Hearing Summary, Ex. 10: W-1LTC Long-term Care/Waiver Applicaton [REDACTED]/13)
3. The Appellant is widowed. (Ex. 10: W-1LTC, [REDACTED]/13)
4. The Appellant is the owner and insured of Prudential Life Insurance Policy # [REDACTED]. Effective [REDACTED] 2013, the policy has a face value of \$1,000.00 and a cash value of \$4914.54. (Exhibit 10: W-1LTC, [REDACTED]/13)
5. The Appellant is the owner and insured of John Hancock Life Insurance Policy [REDACTED]. Effective [REDACTED] 2013, the policy has a face value of \$1,000.00 and a cash value of \$3529.79. (Exhibit 10: W-1LTC, [REDACTED]/13)
6. On [REDACTED] 2013, the Department mailed the Appellant's representative a W-1348LTC Addendum, requesting verifications needed to establish eligibility. Among the items requested was proof of face values and cash surrender values of the Prudential and John Hancock insurance policies. The W-1348 requested that the Appellant reduce her countable assets to \$1600.00 or less. (Exhibit 2: W-1348 LTC Addendum, Exhibit 4: Case narrative, [REDACTED] 13)
7. On [REDACTED] 2014, the Appellant's Prudential Insurance policy [REDACTED] was surrendered with a cash value of \$4490.08. (Exhibit 6: Prudential check statement, [REDACTED] 14)
8. On [REDACTED] 2014, the proceeds of \$4,490.08 from the cash surrender were deposited into the Appellants Trust account. (Exhibit 8: TAS check Register by Trust Account, [REDACTED]/14)

9. On [REDACTED] 2014, the \$4490.08 life insurance proceeds are liquidated by making payments to the facility for \$3950.00, Healthdrive Podiatry group for \$36.45 and \$250.00 to Ambulance Service of Manchester, LLC. (Ex. 8: TAS check Register by Trust Account, [REDACTED]/14)
10. On [REDACTED] 2014, the Department mailed the Appellant's representative a W-1348LTC Addendum, requesting verifications needed to establish eligibility. Among the items requested was proof of face value and cash surrender values of the Prudential and John Hancock insurance policies. The W-1348 requested that the Appellant reduce her countable assets to \$1600.00 or less. (Exhibit 3: W-1348 LTC Addendum, [REDACTED]/14, Exhibit 4: Case narrative, [REDACTED]/14)
11. On [REDACTED] 2014, the Appellant's representative provided verification of the Prudential Insurance surrender and verification that the proceeds were liquidated. (Ex. 4: Case narrative [REDACTED]/14)
12. The Appellant's assets for the months of [REDACTED] 2013 through [REDACTED] 2014 were as follows:

Month	Prudential # [REDACTED]	John Hancock # [REDACTED]	Bank of America Resident Trust acct
[REDACTED] 2013	\$4490.80	\$3529.79	
[REDACTED] 2013	\$4490.80	\$3529.79	
[REDACTED] 2014	\$0.00	\$3529.79 (exempt)	\$254.63

(Hearing Summary, Exhibit 6: Prudential Life Insurance Cash Surrender check, [REDACTED]/14, Ex. 8: TAS Check Register by Trust Account)

13. In [REDACTED] 2014, the Appellant reduced her assets to below \$1600.00. (Hearing Summary, Exhibits 6 & 8)
14. On [REDACTED] 2014, the Department granted the Appellant's [REDACTED] 2013 application for Long Term Care Medicaid effective [REDACTED] 2014. (Hearing Record)
15. On [REDACTED], 2014, the Department's representative received an email from the Department's Public Assistance Consultant that indicated that CGS 17b-261h has not been approved. The E-mail stated, "17b-261h is subject to Federal approval, currently that is still pending. Workers should work applications based on their case specifics and deny applications that are over assets when appropriate. Should Federal approval be received, further guidance will be provided from the Eligibility Policy and Program Support Division". (Exhibit 9: E-Mail dated [REDACTED]/14)

## 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.
3. 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.
4. 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
5. The Department correctly determined that Prudential Insurance policy # [REDACTED] and John Hancock Insurance policy # [REDACTED] had combined face values exceeding \$1500.00, and that the policy's cash surrender value was therefore counted toward the asset limit.
6. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1600.00.
7. The Department correctly determined that the \$4,490.08 cash surrender value of the Prudential policy [REDACTED] exceeded the Medicaid asset limit of \$1600.00.
8. 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.
9. The Department correctly determined that the Appellant met the eligibility requirement of having assets under the limit as of [REDACTED] 2014, the date when the Prudential policy proceeds of \$4,490.08 was issued to the Mansfield Center for Nursing, Healthdrive podiatry and Ambulance service of Manchester, LLC.
  10. Section 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
  11. UPM § 4005.05 (A) 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.
  12. UPM § 4005.05 (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.
  13. UPM § 4005.05 (D) provides that an assistance unit is not eligible for benefits under a particular program if the units equity in counted assets exceeds the asset limit for the particular program.
  14. The Department correctly determined that the Prudential policy # [REDACTED] was an available asset and that the applicant had the legal right, authority or power to obtain the asset.
  15. Section 17b-2(8) Programs administered by the Department of Social Services provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

16. Section 17b-261(h) provides to the extent permissible under federal law, an institutionalized individual, as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3), shall not be determined ineligible for Medicaid solely on the basis of the cash value of a life insurance policy worth less than ten thousand dollars provided (1) the individual is pursuing the surrender of the policy, and (2) upon surrendering such policy all proceeds of the policy are used to pay for the institutionalized individual's long-term care.
17. The Department correctly determined the Prudential policy # [REDACTED] as countable because the Center of Medicaid Services ("CMS") has not informed the Department that the provisions of 17b-261(h) are permissible under the federal law, the provisions in the subsection cannot be implemented.
18. The Department correctly determined that the Appellant did not meet the eligibility requirement of having assets under the limit in [REDACTED] 2013 through [REDACTED] 2013.
19. The Department correctly determined that the Appellant's Medicaid eligibility begin date is [REDACTED], 2014, the first day of the month in which assets were reduced.

### **DISCUSSION**

After reviewing the evidence and testimony presented, I find the Department's determination of the Medicaid effective date to be correct.

The record reflects that the Appellant's assets were within the Medicaid limits effective [REDACTED] 2014, the month in which the life insurance policy proceeds were liquidated and used to pay the cost of care to the facility and other medical bills. Prior to [REDACTED] 2014, the cash surrender value of the life insurance policy was available and exceeded the Medicaid limit.


The Appellant's counsel argues that based on CGS 17b-261(h) the value of the life insurance policy should not be considered because the appellant was pursuing the surrender and the proceeds were to be used to pay for long term care.

I disagree and find that this statute has limitations based on Federal approval. At this point, the Department does not know whether this rule is permissible under federal law. It appears that the Department has sought Federal approval to implement the statute, but has not yet obtained it.

Accordingly, the Department cannot implement this provision yet and must continue to apply the regulations that are currently in place.

**DECISION**

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



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Scott Zuckerman  
Hearing Officer

CC: Tonya Cook-Beckford, SSOM, DO # 42, Willimantic  
Noah Cass, Fair Hearings Liaison

### **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. 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.



