

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

██████████ 2015
Signature Confirmation

Request # 602439
Client ID # ██████████

NOTICE OF DECISION

PARTY

██████████
c/o ██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying her application for Long Term Care Medicaid because she did not return all of the required verification.

On ██████████ 2014, the Appellant requested an administrative hearing to contest the Department's decision to deny her 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 hearing for ██████████ 2014 at the request of the Appellant's conservator, who had a conflict.

On ██████████ 2014, OLCRAH issued a notice rescheduling the hearing for ██████████ 2014 at the request of the Appellant's conservator, who had a conflict.

On ██████████ 2014, OLCRAH issued a notice rescheduling the hearing for ██████████ 2014 at the request of the Appellant's conservator, who had recent surgery.

On [REDACTED] 2014, OLCRAH issued a notice rescheduling the hearing for [REDACTED] 2014 at the request of the Appellant's conservator, who had the flu.

On [REDACTED] 2014, OLCRAH issued a notice rescheduling the hearing for [REDACTED] 2014 at the request of the Appellant's new conservator, who needed time to become familiar with his new ward's affairs.

On [REDACTED] 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:

[REDACTED] Appellant's conservator
 Kristen Harris, attorney representing Westside Care Center
 Kimberly Smith, representing Westside Care Center
 Victor Robles, Department's Representative
 James Hinckley, Hearing Officer

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

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny the Appellant's application for Medicaid on [REDACTED] 2014 because she failed to provide all of the required verification was correct.

FINDINGS OF FACT

1. On [REDACTED] 2013, the Court of Probate issued a decree finding the Appellant incapable of managing her affairs, and appointing Attorney [REDACTED] [REDACTED] as Conservator of the Estate and Person. (Ex. B: Probate Court Appointment of Conservatorship)
2. On [REDACTED] 2013, the Appellant was admitted to Westside Care Center, a long term care nursing facility. (Ex. 5: Case Narrative)
3. On [REDACTED] 2013, the Appellant applied to the Department for long term care Medicaid. (Record)
4. On [REDACTED] 2013, the Department sent a W-1348 "Verification We Need" form, requesting information including "Please provide bank statements for [REDACTED] 2008, 2009, and 2010 for ANY accounts you

- had during this time”, and “Also, please provide bank statements for [REDACTED] 2011-Present for ANY accounts you had during this time including Conservator account”, and requesting that the items be submitted to the Department by [REDACTED] 2013. (Summary, Ex. 5, Ex. 1: W-1348LTC Addendum)
5. On [REDACTED] 2013, Attorney [REDACTED] sent an email to the Department noting that the [REDACTED] 2013 deadline to provide verifications fell on a Sunday; she included one bank statement from [REDACTED] 2013 as an enclosure and reported that she was awaiting other bank statements. She also reported that she would be requesting a hearing to determine ownership of monies in an account that the Appellant jointly held with her stepdaughter. (Ex. 6: email from Attorney [REDACTED])
 6. On [REDACTED] 2013, the Department sent a W-1348 “Verification We Need” form, requesting the same information that was requested on the [REDACTED] 2013 W-1348 form, and, in addition, twice including the statement “Please note that this includes account you reported that client has with step daughter”. (Summary, Ex. 5, Ex. 2: W-1348LTC Addendum)
 7. On [REDACTED] 2014, the Department denied the Appellant’s application for Medicaid because she did not provide all of the requested verification. (Summary, Ex. 5)
 8. On [REDACTED] 2014, Westside Care Center sent a letter to the Probate Court requesting a conference to consider the removal of Attorney [REDACTED] as conservator due to lack of cooperation concerning the conserved person’s financial affairs. (Ex. A: Memorandum from Attorney [REDACTED] providing chronology of events, Ex. D: Letter from Westside Care Center)
 9. On [REDACTED] [REDACTED] 2014, the Department reopened the Appellant’s application for Medicaid as of the original [REDACTED] 2013 application date, because when the application was denied on [REDACTED] 2014, proper notice was not sent to the Appellant’s conservator. (Summary, Ex. 5)
 10. On [REDACTED] [REDACTED] 2014, the Department re-sent the same W-1348 “Verification We Need” form that was originally sent on [REDACTED] 2013, with a new due date of [REDACTED] 2014. (Summary, Ex. 5, Ex. 3: W-1348LTC Addendum)
 11. On [REDACTED] 2014 the Probate Court sent a letter to Westside Care Center reporting that Attorney [REDACTED] was faxed a copy of the letter asking for her removal as conservator, and that she was asked to contact Westside Care Center immediately concerning the matter. (Ex. A, Ex. D: [REDACTED] 2014 letter from Probate Court)

12. On [REDACTED] 2014, Attorney [REDACTED] sent a letter to the Probate Court requesting a hearing which stated "I need to spend down [REDACTED] and need a hearing to determine which monies are hers and her and her step daughter share a bank account". (Ex. A, Ex E: [REDACTED] 2014 letter from Attorney [REDACTED])
13. On [REDACTED] 2014 the Probate Court issued a notice that a hearing was scheduled for [REDACTED] 2014 "Upon the petition to discuss/take action on Title 19 issues". (Ex. A, Ex: F: Probate Court Notice of Hearing)
14. On [REDACTED] 2014, the Department denied the Appellant's application for Medicaid because she did not provide all of the required verification. (Summary, Ex. 5)

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.

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.

UPM § 1505.35 (C) provides that the following promptness standards be established as maximum times for processing applications: forty-five calendar days for AABD or MA applicants applying based on age or blindness.

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: a. the client has good cause for not submitting verification by the deadline, or b. the client has been granted a 10 day extension to submit verification which has not elapsed.

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.

UPM § 1505.40 (B) (4) (b) provides that if the eligibility determination is delayed, the Department continues to process the application until:

- (1) The application is complete; or
- (2) Good cause no longer exists.

UPM § 1505.40 (B) (5) provides that in the case of insufficient verification:

- a. Regardless of the standard of promptness, no eligibility determination is made when there is insufficient verification to determine eligibility when the following has occurred:
 - (1) The Department has requested verification; and
 - (2) At least one item of verification has been submitted by the assistance unit within a time period designated by the Department, but more is needed.
- b. Additional 10 day extensions for submitting verification shall be granted, as long as after each subsequent request for verification at least one item of verification is submitted by the assistance unit within each extension period.

3. The Appellant's conservator did not respond to the Department's [REDACTED] 2014 request for information which had a due date of [REDACTED] 2014.
4. The Appellant's conservator failed in her duty to act in the interest of the Appellant, who is incapable of acting in her own interest.
5. The Appellant had good cause for being unable to provide all of the required verification.
6. The Department was incorrect to deny the Appellant's application for long term care Medicaid for the reason that she did not return all of the required verification.

DISCUSSION

Attorney [REDACTED] clearly failed in her duties as conservator to properly manage the Appellant's affairs. She was charged with acting on the Appellant's behalf with respect to her application for Medicaid, but was almost entirely unresponsive to the Department's requests, resulting in the application being denied.

The task of cooperating in the processing of the Appellant's Medicaid application and preventing it from being prematurely denied was not an onerous one. The Department requested several years of statements from for at least two bank accounts. Attorney [REDACTED] informed the Department on [REDACTED] 2013 that she was in the process of acquiring the statements, but by [REDACTED] 2014, the Department had received only a single statement. While it is hard to imagine what could have resulted in such a long administrative delay, if there was some complication that delayed receiving the records from the bank, Attorney [REDACTED] could have written a letter to the Department explaining that circumstances beyond her control were preventing the verification from being submitted timely, and the Department would have granted good cause. Also, the Department's policy is clear that an unlimited number of ten day extensions may be granted, so long as after each request for information, at least one of the requested items is submitted. If Attorney [REDACTED] had any of the statements at all, or any of the other information the Department needed, all she had to do was submit what she had, and the Department would have sent a new request for the items that were still outstanding and continued to process the application. While Attorney [REDACTED] requested a hearing with the Probate court on [REDACTED] 2014 to discuss monies in the joint account, that should not have delayed her from providing the statements to the Department, who made clear that they were still needed, even if ownership was in question.

Although this hearing was rescheduled on five occasions, resulting in a long delay, it is limited to deciding the issue on which the hearing was requested, which was whether the Department's [REDACTED] 2014 decision to deny the Appellant's application was correct. It is not a determination of eligibility for the Appellant, but simply finds that the application was incorrectly denied on that date, and that it should be reopened so that her eligibility may be considered back to the original date.

DECISION

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

ORDER

1. The Department shall reopen the Appellant's L01 Medicaid application as of [REDACTED] 2013.
2. The Department shall provide proof of compliance with this order to the undersigned no later than [REDACTED] 2015.

James Hinckley
Hearing Officer

cc: John Hesterberg, SSOM, Manchester
Kristen Harris, Westside Care Center

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.