

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

Client ID # ██████████
Request # 612711

NOTICE OF DECISION

PARTY

██████████
C/O Attorney ██████████
██
██

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying her benefits under the Medicaid for Long Term Care program for the period of ██████████ 2013, through ██████████ 2013, because the value of her assets was more than the amount allowed for this program.

On ██████████ 2014, the Appellant requested an administrative hearing to contest the Department's decision to deny such benefits.

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 requested to reschedule the administrative hearing.

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On [REDACTED] 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 [REDACTED], the Appellant's representative
Attorney [REDACTED], the Appellant's representative
Michael Briggs, Eligibility Services Specialist, Department's representative
Douglas Farrell, Eligibility Services Worker, Department's representative
Roberta Gould, Hearing Officer

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

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny the Appellant's benefits under the Medicaid for Long Term Care program for [REDACTED] 2013, through [REDACTED] 2013, was correct.

FINDINGS OF FACT

1. The Appellant is a recipient of the Medicaid program. (Hearing summary)
2. The Appellant entered Lord Chamberlain Health Care Center on [REDACTED] 2013. (Appellant's representative's testimony Hearing summary)
3. On [REDACTED] 2013, the Appellant applied for Medicaid benefits to cover the cost of her stay in a long-term care facility. (Hearing summary)
4. The Appellant is a trustee of the [REDACTED] Trust (hereafter the "trust"). Exhibit 20: Declaration of Trust and Hearing summary)
4. On [REDACTED] 2013, the Appellant's representative, Attorney [REDACTED], sent the Department a letter indicating that the Appellant did not have access to the trust principal and that it should be considered inaccessible until the Appellant gains access to it. (Exhibit 31: Appellant's summary for Administrative Hearing)
5. In [REDACTED] of 2013, the Department sent a referral to the legal division of the agency requesting a determination of the accessibility of the Appellant's trust account. (Department's testimony)
6. On [REDACTED] 2013, the Department sent the Appellant a W-1348 We Need Verification from You form requesting People's Bank account information, stock shares information, real estate information, [REDACTED] Trust information, tax returns from 2008 to present and medical insurance information. The Department indicated that the asset limit for the Medicaid program for which she

was applying was \$1600.00. The requested information was due back by [REDACTED] 2013. (Exhibit 1: W-1348LTC and Hearing summary)

7. The Department received some of the requested information. (Hearing record)
8. On [REDACTED] 2013, the Department sent the Appellant a W-1348 We Need Verification from You form requesting bank account information, stock shares information, real estate information, [REDACTED] Trust information, tax return information and medical insurance information. The requested information was due back by [REDACTED] 2013. (Exhibit 2: W-1348LTC and Hearing summary)
9. The Department received some of the requested information. (Hearing record)
10. On [REDACTED] 2013, the Department sent the Appellant a W-1348 We Need Verification from You form requesting bank account information, stock shares information, real estate information, [REDACTED] Trust information and tax return information. The requested information was due back by [REDACTED] 2013. (Exhibit 3: W-1348LTC and Hearing summary)
11. The Department received some of the requested information. (Hearing record)
12. On [REDACTED] 2013, the Department sent the Appellant a W-1348 We Need Verification from You form requesting bank account information, People's Bank securities information, real estate information, [REDACTED] Trust information and tax return information. The requested information was due back by [REDACTED] 2013. (Exhibit 4: W-1348LTC and Hearing summary)
13. On [REDACTED] 2013, a pre-need burial contract was purchased for the Appellant with funds from her People's Bank account. (Hearing summary)
14. The Department received some of the requested information. (Hearing record)
15. On [REDACTED] 2013, the Department sent the Appellant a W-1348 We Need Verification from You form requesting bank account information, People's Bank securities information, real estate information, [REDACTED] Trust information, and tax return information. The requested information was due back by [REDACTED] 2013. (Exhibit 5: W-1348LTC and Hearing summary)
16. The Department received some of the requested information. (Hearing record)
17. On [REDACTED] 2013, the Department sent the Appellant a W-1348 We Need from You form requesting bank account information, People's Bank securities information, real estate information, [REDACTED] Trust information and tax return information. The requested information was due back by [REDACTED] 2013. (Exhibit 6: W-1348LTC and Hearing summary)

18. The Department received some of the requested information. (Hearing record)
19. On [REDACTED] 2013, the Department sent the Appellant a W-1348 We Need from You form requesting bank account information, People's Bank securities information, real estate information, [REDACTED] Trust information and tax return information. The requested information was due back by [REDACTED] 2013. (Exhibit 7: W-1348LTC and Hearing summary)
20. The Department received some of the requested information. (Hearing record)
21. On [REDACTED] 2013, the Department sent the Appellant a W-1348 We Need Verification form requesting bank account information, People's Bank securities information, real estate information, [REDACTED] Trust information and tax return information. The requested information was due back by [REDACTED] 2013. (Exhibit 8: W-1348LTC and Hearing summary)
22. The Department received some of the requested information. (Hearing record)
23. On [REDACTED] 2013, the Department denied the Appellant's application for Medicaid assistance because the Appellant failed to provide information requested to establish eligibility for Medicaid for long-term care. (Hearing summary and Department's testimony)
24. On [REDACTED] 2013, the Department reopened the Appellant's application for Medicaid assistance because verifications requested were provided. (Hearing summary)
25. On [REDACTED] 2013, the Department sent the Appellant a W-1348 We Need Verification form requesting trust account information. The requested information was due back by [REDACTED] 2013. (Exhibit 9: W-1348LTC and Hearing summary)
26. On [REDACTED] 2013, the Department received trust statements from the Appellant. (Hearing summary)
27. Both the Department and the Appellant's representative stipulated that she exceeded the asset limit for the period of [REDACTED] 2013, through [REDACTED] 2013. (Hearing record)
28. On [REDACTED] 2014, the Department determined that the Appellant's share of the trust had fair market value of \$76,000 and was available to the Appellant for the purposes of determining Medicaid eligibility. The Department requested that the Appellant's legal representative finalize the sale of trust and reduce the Appellant's assets to within the Medicaid asset limit. (Hearing summary)
29. On [REDACTED] 2014, the Department sent a W-1348 We Need Verification form

requesting verification of the sale of trust assets and how the proceeds were spent. The requested information was due back by [REDACTED] 2014. (Exhibit 10: W-1348LTC and Hearing summary)

30. On [REDACTED] 2014, the Department determined that the Appellant's share of the trust was sold on [REDACTED] 2013. She received \$68,767.50, which was paid to her son's special needs trust. (Hearing summary)
31. Section 8 of the The [REDACTED] Declaration of Trust states that had the Appellant had the ability to terminate her share of the [REDACTED] Trust and that "the Trustees may then pay such withdrawing Declarant her one-third of the net market value of the Trust assets in return for her release deed to the Trust and any further interest as Trustee, Beneficiary, and/or eventual distributee of the Trust assets." (Exhibit 20, page 5, #8: Declaration of Trust)
32. The Appellant's share of the [REDACTED] Trust was available and accessible to her for purposes of determining Medicaid eligibility. (Exhibit 29: Email from Attorney Daniel Butler dated [REDACTED]/2014 and Hearing summary)
33. As of [REDACTED] 2013, the Appellant had assets in the amount of \$77,132.12. [\$76,000.00 Trust fair market value + \$750.00 People's Bank checking account balance + \$10.01 People's Bank savings account balance + \$372.11 People's Bank securities]. (Exhibit 14: Asset spreadsheet)
34. On [REDACTED] 2014, the Department granted the Appellant Medicaid assistance effective [REDACTED] 2013, denying assistance for the period of [REDACTED] 2013, through [REDACTED] 2013, because her assets exceeded the allowable limit. (Exhibit 11: EMS notice, Exhibit 12: EMS notice and Hearing summary)
35. The Department approved a diversion of income to offset the Appellant's unpaid room and board expenses for the period of [REDACTED] 2013, through [REDACTED] 2013. (Hearing summary)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. UPM § 1505.35(B) provides that the Department notifies applicants of:
 1. any actions taken on applications; and
 2. when applications are not acted upon within the established time limits.
3. The Department correctly notified the Appellant of all actions taken on her pending application.

4. Uniform Policy Manual ("UPM") § 4005.05.B.1 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:
 - a. available to the unit; or
 - b. deemed available to the unit.
5. 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.
6. UPM § 4015.05(B) provides that regarding inaccessible assets:
 1. The burden is on the assistance unit to demonstrate that an asset is inaccessible.
 2. For all programs except Food Stamps, in order for an asset to be considered inaccessible, the assistance unit must cooperate with the Department, as directed, in attempting to gain access to the asset.
 - a. If the unit does not cooperate as described above, the asset is considered available to the unit, and the unit's equity in the asset is counted toward the asset limit.
 - b. If the unit's equity in the asset is unknown, the non-cooperative adult member of the unit is ineligible for assistance.
7. UPM § 4000.01 defines Beneficiary as a person who is entitled to receive funds, property, or other benefits from an insurance policy, will, trust, or other settlement.
8. The Department correctly determined that the Appellant is a beneficiary of the [REDACTED] Trust.
9. UPM § 4030.80(A)(1) provides that the Department evaluates an individual's interest in a trust as:
 - a. a potentially counted asset in determining whether the individual's assets are within program limits (Cross Reference: 4005); and
 - b. a potential source of income in determining whether the individual's income is within the program limits, and in computing the amount of benefits for which the individual may be eligible (Cross Reference: 5000); and
 - c. a possible transfer of assets by the individual or by his or her spouse in determining whether the individual will be subject to a penalty period (Cross References: 3025, 3028).
10. UPM § 5515.05(C)(2)(a) and (b) provides in part that the needs group for an MAABD unit includes the following: the applicant or recipient and the spouse of the applicant or recipient when they share the same home regardless of whether one or both are applying for or receiving assistance.

11. UPM § 4005.10(A)(2)(b) provides that in the MAABD program, the asset limit is \$1600 for a needs group of one person.
12. UPM § 4005.15(B)(2)(b) provides that for recipients, if the assistance unit does not reduce its excess assets to an allowable level by the end of the month the excess first occurs, the unit is ineligible as of the first day of the following month and remains ineligible until the first day of the month in which the unit properly reduces its assets to an allowable level.
13. Until [REDACTED] of 2013, the Appellant had countable assets of \$77,132.12
14. The Department was correct when it determined that the Appellant's assets of \$77,132.12 exceeded the limit of \$1600 from [REDACTED] 2013, through [REDACTED] 2013.
15. The Department was correct when it denied the Appellant's Medicaid for Long Term Care benefits for [REDACTED] 2013, through [REDACTED] 2013, because her assets exceeded the allowable limit.

DISCUSSION

After reviewing the evidence and testimony presented at this hearing, I find that the Department's action to deny the Appellant's request for Medicaid is upheld. Regulations provide that an applicant who is entitled to receive funds, property, or other benefits from an insurance policy, will, trust, or other settlement is a beneficiary of such asset. As such, the Department was correct when it determined that the Appellant's share of the [REDACTED] Trust was available and accessible to her for purposes of determining Medicaid eligibility.

The Appellant's attorney opined that the Appellant did not have access to the trust principal and that it should be considered inaccessible until the Appellant gained access to it. I find that the language of the trust did not support this. He cited Corcoran v. Department of Social Services, 271 Conn. 679, 697 (2004) and Scandariato v. Department of Social Services, J.D. of New Britain, Docket No. HHB-CV-136020194 ([REDACTED] 2014, Prescott J.). In both case the Court speaks to the availability of assets in regard to Medicaid eligibility. After reviewing the evidence and testimony presented at this hearing, I find that the asset in question was available to the Appellant.

Medicaid policy is clear that the asset limit is \$1600. The Declaration of Trust and Department's determination that the Trust was available to the Appellant provided clear and convincing evidence that the Applicant's assets exceeded the allowable limit. The Department was correct when it denied the application for Medicaid as the Applicant's assets exceeded the asset limit.

DECISION

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

Roberta Gould

Roberta Gould
Hearing Officer

PC: Poonam Sharma, Social Services Operations Manager, Bridgeport R.O.
Fred Presnick, Social Services Operations Manager, Bridgeport R.O.
Yecenia Acosta, Social Services Program Manager, Bridgeport R.O.

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.