

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

██████████ 2015
Signature confirmation

Client: ██████████
Request: 640206

NOTICE OF DECISION

PARTY

Attorney ██████████
Re: ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") issued ██████████ (the "Appellant") a notice granting his Medicaid application for long-term care services effective ██████████ 2014.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received a request for an administrative hearing to dispute the effective date of the Appellant's Medicaid coverage. Attorney ██████████ filed the request, as the Appellant's counsel.

On ██████████ 2014, the Appellant died.

On ██████████ 2014, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2014. Attorney ██████████ 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's representative (daughter)
██████████ Appellant's representative's counsel
Mario Ponzio, Department's representative
Eva Tar, Hearing Officer

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

STATEMENT OF ISSUE

The issue to be decided by this administrative hearing is whether the Department correctly determined that the effective date of the Appellant's Medicaid coverage for long-term care services.

FINDINGS OF FACT

1. On [REDACTED] 2010, the Appellant assigned durable power of attorney to his authorized representative. (Appellant's Exhibit A: Correspondence, [REDACTED]/14)
2. On [REDACTED] 2014, the Department received the Appellant's Medicaid application for long-term care services at [REDACTED] House Care and Rehabilitation Center. (Department's Exhibit 2: *Long-term care/Waiver Application*, marked [REDACTED]/14)(Department's Exhibit 1: Narrative-NARR, varying dates)
3. [REDACTED] House Care and Rehabilitation Center is a skilled nursing facility. (Department's representative's testimony)
4. Prior to residing at [REDACTED] House Care and Rehabilitation Center, the Appellant resided at the Gables at [REDACTED] an assisted living facility, in [REDACTED] Connecticut. (Department's Exhibit 2)(Appellant's representative's testimony)
5. The Appellant is the owner of [REDACTED] and a co-owner of [REDACTED] (Appellant's representative's testimony)(Appellant's Exhibit A)(Department's Exhibit 1)
6. The Appellant's [REDACTED] 2014 Medicaid application disclosed his ownership of rental property located at [REDACTED], in [REDACTED] (the "rental property"). (Department's Exhibit 2)
7. On [REDACTED] the Appellant's authorized representative, as holder of the Appellant's durable power of attorney, listed the rental property for sale with Century 21-[REDACTED] [REDACTED]. (Department's Exhibit 7: *Exclusive Right to Sell Listing Agreement*, [REDACTED]/14)
8. On the initial version of the [REDACTED] 2014 *Exclusive Right to Sell Listing Agreement* with Century 21-[REDACTED] the Appellant's authorized representative had signed the contract, leaving the line containing the street location of the property to be sold in [REDACTED], blank. (Appellant's Exhibit A)

9. Century 21-██████████ accepted the initial ██████████ 2014 Exclusive Right to Sell Listing Agreement that contained the blank line. (Appellant's Exhibit A)
10. The final version of the ██████████ 2014 *Exclusive Right to Sell Listing Agreement*, the line containing the street location of the property to be sold in ██████████ contains the address of the rental property, but not the adjoining property. (Department's Exhibit 7)
11. The rental property's borders are in the shape of a truncated pie-wedge. (Department's Exhibit 8: *Exclusive Right to Sell Listing Agreement*, ██████████ 14)(Appellant's Exhibit A)
12. The rental property has direct access to ██████████. (Appellant's Exhibit A)
13. The rental property contains a house and shares a well with an adjoining property owner. (Appellant's representative's testimony)(Appellant's Exhibit A)
- 14.0 [Zero] ██████████ (the "adjoining property") is 4.58 acres of undeveloped land that adjoins the rental property, and runs the length of the longest side of the rental property, as well as another property's owner's border. (Department's Exhibit 8)(Appellant's Exhibit A)
15. The adjoining property is land-locked; there is no direct access to the road. (Appellant's Exhibit A)(Appellant's representative's testimony)
16. On ██████████ ██████████ 2014, the Department issued to the Appellant's authorized representative a request for verification that the adjoining property was listed for sale, giving a deadline of ██████████ 2014. (Department's Exhibit 5: *Verification We Need*, ██████████/14)
17. Until brought to her attention by the Department, the Appellant's authorized representative did not realize that the adjoining property had not been included in the ██████████ ██████████ 2014 Century 21-██████████ listing for sale. (Appellant's representative's testimony)
18. The Appellant's authorized representative's testimony is credible.
19. On ██████████ 2014, the Appellant listed the adjoining property for sale with Century 21-██████████. (Department's Exhibit 8)
20. On ██████████ 2014, the Department issued a notice to ██████████ House Care and Rehabilitation Center, approving the Appellant's Medicaid application for long-term care services, effective ██████████ 2014. (Department's Exhibit 9: *Notice of Approval for Long-Term Care Medicaid*, ██████████/2014)
21. On ██████████ 2014, the Appellant died. (Appellant's Exhibit A)

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. Section 4000.01 of the Uniform Policy Manual (“UPM”) provides:
 - 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.
 - Excluded Asset

An excluded asset is an asset which is not counted by the Department in determining the assistance unit's eligibility for assistance.
 - Non-Home Property

Non-home property is real property which a person owns but is not using as principal residence.
 - Real Property

Real property is an asset in the form of real estate - that is, land and buildings, or campers, trailers or mobile homes which have been permanently affixed to the land.
3. For every program administered by the Department, there is a definite asset limit. UPM § 4005.05 (A).
4. MA, AABD Residents of Long-Term Care Facilities: At the time of application, the assistance unit is ineligible until the first day of the month in which it reduces its equity in counted assets to within the asset limit. UPM § 4005.15 (A)(2).
5. 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).
6. 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. UPM § 4005.05 (B)(2).
7. For the purposes of the Medicaid program, the rental property is an available asset.

8. For the purposes of the Medicaid program, the adjoining property is an available asset.
9. Assets not Counted Toward the Asset Limit. The Department does not count the assistance unit's equity in an asset toward the asset limit if the asset is either: 1. excluded by state or federal law; or 2. not available to the unit. UPM § 4005.05 (C).
10. 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).
11. UPM § 4030.65 (D)(1) addresses the treatment of property previously used as the primary residence, for the purposes of the Medicaid program.
12. All other non-home property is excluded for as long as the individual is making a bona fide effort to sell it. UPM § 4030.65 (D)(2)(a).
13. For the purposes of the Medicaid program, the rental property is "non-home property."
14. For the purposes of the Medicaid program, the adjoining property is "non-home property."
15. The exclusion period begins with the first month in which all of the following conditions are met: (1) the assistance unit is otherwise eligible for assistance; (2) the assistance unit owns the property; (3) the property is available to the assistance unit; (4) the assistance unit is making a bona fide effort to sell the property. UPM § 4030.65 (D)(2)(b).
16. The Appellant began making a bona fide effort to sell his non-home property on [REDACTED] 2014.
17. The Department incorrectly determined that the effective date of the Appellant's Medicaid coverage for long-term care services.

DISCUSSION

The Appellant began making a bona fide effort to sell his [REDACTED] rental property by listing it with Century 21-[REDACTED] on [REDACTED] 2014. The Appellant's failure to include the undeveloped, landlocked acres adjoining the rental property in the original [REDACTED] 2014 listing was due to scrivener's error. The Appellant immediately remedied the oversight, once it was brought to his authorized representative's attention in mid-[REDACTED] 2014.

For the purposes of the Medicaid program as it relates to long-term care services, the hearing officer finds that the rental property and the adjoining property are "excluded assets," effective [REDACTED] 2014.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department will reopen the Appellant's [REDACTED] 2014 Medicaid application for long-term care services.
2. The Department will consider both the rental property and the adjoining property to be "excluded assets" for the purposes of the Medicaid program, effective [REDACTED] 2014.
3. Provided all factors of eligibility are met, the Department will grant the Appellant's [REDACTED] 2014 Medicaid application for long-term care services, effective [REDACTED] 2014.
4. Within 21 calendar days of the date of this decision, or [REDACTED] 2015, documentation of compliance with this order is due to the undersigned.



Eva Tar
Hearing Officer

cc:

[REDACTED]
John Hesterberg, Middletown DSS

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.