

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 # 641454

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") indicating that the Department is denying Long Term Care ("LTC") Medicaid benefits for the months of ██████████ 2014 through ██████████ 2014.

On ██████████ 2014, the Appellant's Representative requested an administrative hearing to contest the denial of Medicaid benefits as determined by the Department.

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

The Appellant's Conservator requested a rescheduled hearing date.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("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:

Attorney ██████████ Appellant's Conservator of Estate
Helen Steiner, Hebrew Home Financial Services Dept.

Jonas Steiner, Hebrew Home Admissions Director
 Martine LaSalle, Hebrew Home Accounts Receivable Supervisor
 Jamie LaChapelle, Department's Representative
 Shelley Starr, Hearing Officer

The Appellant, [REDACTED] was not present at the hearing.
 The Power of Attorney, [REDACTED] was not present at the hearing.

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

On [REDACTED] 2014, I received an e-mail from the Department. The hearing record was re-opened to [REDACTED] 2014 to allow the Appellant time to respond. On [REDACTED] 2014, the hearing record closed.

On [REDACTED] 2014, the Department requested a re-opening of the case to respond to the Appellant's submission. The Department's request was denied and the hearing record remained closed on [REDACTED] 2014.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly denied the Appellant's Long Term Care Medicaid Application due to excess assets.

FINDINGS OF FACT

1. On [REDACTED] 2013, the Appellant was admitted to the Hebrew Home of [REDACTED] Connecticut. (Conservator's Testimony)
2. The Appellant is [REDACTED] years old (DOB [REDACTED]), never married, and has a primary medical diagnosis of blindness and dementia. (Conservator's Testimony)
3. The Appellant's sister, [REDACTED], was appointed as Power of Attorney ("POA") on [REDACTED] 2008. (Appellant's Exhibit 2 (B) Power of Attorney dated [REDACTED] 2008)
4. On [REDACTED] 2014, the ("POA") applied for Long Term Care Medicaid on behalf of the Appellant. (Exhibit R: W-1 dated [REDACTED] 2014)
5. The Appellant is the owner of the following accounts and stock during the application process: Webster checking account # [REDACTED] Cigna Stocks (189 shares) and the Hebrew Home Resident Trust account. (Department's Exhibit 0: Monthly Asset Worksheet and Department's Testimony, Hearing Record)
6. Both parties stipulate that between the months of [REDACTED] 2014 through [REDACTED] 2014 the Appellant's combined Webster checking account # [REDACTED] and Resident Trust Account balances did not exceed the \$1,600.00 allowable asset limit. (Appellant's Exhibit 3: Letter dated [REDACTED] 2014 and Department's Exhibit 0: Monthly Asset Worksheet)

7. In [REDACTED] 2014, The Appellant was owner of a total of 189 shares of Cigna Stock with a value of \$16,698.15. (Department's Exhibit C: NASDAQ Cigna Stock Prices; Appellant's Exhibit 2: Brief Dated [REDACTED] 2014 with Exhibits "C" Cigna Stock Certificates, Exhibit "F" and Exhibit "L" Cigna surrender checks)
8. In [REDACTED] 2014, the ("POA") began the process of liquidating the Cigna Stock and had difficulty with the liquidation as Computershare requested additional verification regarding the POA's appointment and missing stock certificates. (Appellant's Exhibit 2: Brief Dated [REDACTED] [REDACTED] 2014 and brief exhibit A: Computershare Correspondence dated [REDACTED] 2014; brief exhibit D: Correspondence dated [REDACTED] 2014; Conservator's Testimony)
9. On [REDACTED] 2014, the Department sent the ("POA") a third #3 W-1348LTC Verification We Need from You, requesting Webster bank account statements, verification that the stocks have been cashed out and spent down and informing that the asset limit is \$1600.00. The information was due by [REDACTED] 2014 (Department's Exhibit H: W-1348 LTC dated [REDACTED] 2014)
10. On [REDACTED] 2014, the Department discussed with the Department's Resources Investigator the Appellant's difficulty with the surrendering of stocks and the Resources Investigator determined they could not assist the Appellant with the surrendering of stock due to the Appellant being alive and having a Power of Attorney. (Department's Exhibit M: Case Narrative)
11. On [REDACTED] 2014, Cigna issued a check to the Appellant for \$5,644.29 for the surrendering of 63 shares of Cigna Stock. (Appellant's Exhibit F: Cigna Statement and check dated [REDACTED] 2014)
12. On [REDACTED] 2014, the Department received verification of 63 shares of surrendered Cigna Stock. (Department's Testimony; Department's Exhibit M: Case Narrative)
13. On [REDACTED] 2014, the Department determined that the Appellant's remaining 126 shares of Cigna Stock had not been surrendered. (Department's Testimony, Exhibit M: Case Narrative)
14. On [REDACTED] 2014, the Department sent the Appellant a notice denying her LTC Medicaid due to excess assets for the months of [REDACTED] 2014 through [REDACTED] 2014. (Department's Exhibit N: [REDACTED] 2014 Denial Notice)
15. The Appellant is seeking Medicaid eligibility effective [REDACTED] 2014. (Conservator's Testimony and Appellant's Exhibit 2 Brief dated [REDACTED] 2014)
16. The value of the 189 total shares of Cigna Stock during the months of [REDACTED] 2014 through [REDACTED] 2014 was over \$15,000.00. (Department's Exhibit C: NASDAQ share values and Department's Ex: O: asset worksheet)

17. The value of the remaining 126 shares of Cigna Stock during the months of [REDACTED] 2014 through [REDACTED] 2014 was over \$11,000.00. (Department's Exhibit C: NASFAQ share values and Departments Ex: O: asset worksheet)
18. On [REDACTED] 2014, the Appellant filed an application for Conservator in the [REDACTED] Probate Court. (Appellant's Exhibit 2: Brief dated [REDACTED] 2014 and Brief Exhibit G: Probate Petition for Conservator)
19. On [REDACTED] 2014, the Probate Court appointed Attorney [REDACTED] as the Appellant's Conservator of the Estate. (Appellant's Exhibit 2: Brief dated [REDACTED] 2014 and Brief Exhibit H: Probate Certificate dated [REDACTED] 2014)
20. On [REDACTED] 2014, the Conservator sent Computershare the documents needed for the surrender of the remaining 126 shares of Cigna Stock. (Appellant's Exhibit 2: Brief dated [REDACTED] 2014; Appellant's Brief Exhibit K: Correspondence to Computershare dated [REDACTED] 2014 and Conservator's Testimony)
21. On [REDACTED] 2014, Computershare issued the Appellant a check for \$11,136.01 for the surrender of the Appellant's 126 shares of Cigna Stock. (Appellant's Exhibit 2: Brief dated [REDACTED] 2014; Appellant's Brief Exhibit L: Cigna statement and check dated [REDACTED] 2014)

CONCLUSIONS OF LAW

1. Section 17b-2 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") § 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.
3. Connecticut General Statutes 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
4. UPM § 4030.05(A) provides that Bank accounts include the following: savings account, checking account, credit union account, certificate of deposit, patient account at long-term care facility, children's school account, trustee account, custodial account.

5. 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 available to the unit, or deemed available to the unit.
6. UPM § 4030.75 (A) provides that the equity value of stock is the net amount the owner would receive upon selling the share.
7. UPM § 4015.05 pertains to inaccessibility of assets and states in part: subject to the conditions described in this section, equity in an asset which is inaccessible to the assistance unit is not counted as long as the asset remains inaccessible. The burden is on the assistance unit to demonstrate the asset is inaccessible.

The Conservator did not demonstrate that the Cigna Stock shares were inaccessible to the Appellant.

8. UPM § 4099.15 (A) (1) pertains to factors relating to inaccessibility and states: the assistance unit must verify that an otherwise counted asset is inaccessible to the unit if the unit claims it cannot convert the asset to cash. (2) If the unit is unable to verify that the asset is inaccessible, the asset is considered a counted asset.

The POA and Conservator converted the asset to cash when Computershare completed the process and was satisfied it had the proper documentation.

9. 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.

The Department correctly determined that the Appellant's equity value of the Cigna Stock was available and accessible to the Applicant.

10. UPM § 4005.05 (A) provides for every program administered by the Department, there is a definite asset limit.
11. UPM § 4005.05 (D) provides that 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.
12. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one in the Medical Assistance for Aged, Blind or Disabled ("MAABD") program is \$1,600.00.
13. UPM § 4005.15 provides that in the Medicaid MAABD program 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.

The Department correctly counted the Appellant's assets in regards to the Medicaid program and correctly determined that the Appellant's assets were not reduced to within the Medicaid asset limit during the months of [REDACTED] 2014 through [REDACTED] 2014.

The Department correctly determined that the Appellant's assets exceeded the Medicaid asset limit from [REDACTED] 2014 through [REDACTED] 2014.

The Department correctly determined that the Appellant was ineligible for Medicaid for the period of [REDACTED] 2014 through [REDACTED] 2014.

The Department correctly denied the Appellant's [REDACTED] 2014, Long Term Care Medicaid application for the months of [REDACTED] 2014 through September 2014.

DISCUSSION

After reviewing the evidence and testimony presented, I find the Department's action to deny the Appellant's request for Medicaid Department is upheld.

It is clear that the Power of Attorney initiated the surrendering of the Cigna Stock and made effort to reduce the Appellant's assets within the Medicaid asset limit. However due to delays for documentation, the Appellant's assets were not reduced.

The Conservator of Estate was appointed on [REDACTED] 2014. The Conservator sent the necessary information to Computershare to surrender the remaining stock on [REDACTED] 2014. On [REDACTED] 2014, Computershare issued a check for the surrender of the remaining stock.

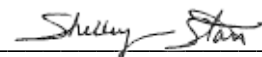
The record reflects that the Appellant's assets were not within the Medicaid asset limits for the denial months of [REDACTED] 2014 through [REDACTED] 2014. The Appellant's Conservator argued that based on CGS 17b-261(c), the equity value of the Cigna Stock should not have been counted towards eligibility as it should be considered an inaccessible asset. I disagree and find that the equity value of the stock was accessible. While the Power of Attorney had difficulty with the stock surrender, she was able to surrender 63 shares of the stock and the record reflects that it took less than one month for the Conservator to liquidate the assets. The Appellant never lost her legal right, authority or power to obtain the asset.

The Conservator also argued that the Department did not follow proper procedural requirements as set out in UPM § P4015.05. The hearing record reflects that on [REDACTED] [REDACTED] 2014, the Department discussed with the Resources Unit Investigator that the POA was having difficulty in regards to surrendering the stock. The Investigator determined they could not assist the Appellant with the surrendering. While the Department could not produce for the record any written request that it may have sent to the Investigator, the record reflects that the Department did explore the issue with the appropriate unit within the Department. The procedural cite further states that appropriate action is taken, if necessary, to help the unit gain access to the assets. It is reasonable to assume that the Investigator determined the stock to be accessible as the Department took no further action in regards to helping the POA surrender the stock and I further find the stocks were accessible.

The Appellant's total assets exceeded the allowable limit until the Conservator reduced the assets. I find no provisions in policy that permit the Department to grant benefits in a month when available assets exceed the allowable Medicaid limit. The Department correctly determined that the Appellant was not eligible for Medicaid for long term care during the denial months.

DECISION

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



Shelley Starr
Hearing Officer

cc: Musa Mohamud, Operations Manager, Hartford Regional Office

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 06105-3725. 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.

