

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 # 643032

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") granting Long Term Care Medicaid benefits for her sister, ██████████ effective ██████████ 2014.

On ██████████ 2014, the Appellant requested an administrative hearing to contest the Department's determination of the effective date of ██████████ eligibility for the program.

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:

██████████, Appellant and Power of Attorney for ██████████
██████████, Appellant's husband, observing
Carol Gebhardt, representing Touchpoints Long term Care Facility
Michael Stebe, Department's Representative
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly established that [REDACTED] first became eligible for Medicaid beginning [REDACTED] 2014, and that her assets exceeded the Medicaid limit in [REDACTED] 2014 and [REDACTED] 2014.

FINDINGS OF FACT

1. On [REDACTED] 2014, [REDACTED] was admitted to a skilled nursing facility. (Hearing Summary)
2. As of [REDACTED] 2014, [REDACTED] owned three AARP life insurance contracts through New York Life Insurance Company. (Ex. 9: New York Life/AARP policy information letters dated [REDACTED] 2014)
3. As of [REDACTED] 2014, the first policy (number ending in [REDACTED]) had a face value ("FV") of \$6,000.00; the second policy (number ending in [REDACTED]) had a FV of \$2,500.00; the third policy (number ending in [REDACTED]) had a FV of \$2,500.00. The total FV of the three policies as of [REDACTED] 2014 was \$11,000.00 (\$6,000.00 plus \$2,500.00 plus \$2,500.00). (Ex. 9)
4. As of [REDACTED] 2014, the first policy (number ending in [REDACTED]) had a cash surrender value ("CSV") of \$2,003.08, the second policy (number ending in [REDACTED]) had a CSV of \$586.05, and the third policy (number ending in [REDACTED]) had a CSV of \$834.61. The total CSV of the three policies as of [REDACTED] 2014 was \$3,423.74 (\$2,003.08 plus \$586.05 plus \$834.61). (Ex. 9)
5. In [REDACTED] 2014, the Appellant, acting as Power of Attorney for [REDACTED] surrendered all three of [REDACTED] life insurance policies to New York Life/AARP for redemption of their cash value. (Appellant testimony)
6. On [REDACTED] 2014, New York Life/AARP redeemed the three policies for their cash value, and issued three checks payable to [REDACTED] one for the redemption of each policy. The first check (check number ending in [REDACTED]) was in the amount of \$586.32; the second check (check number ending in [REDACTED]) was in the amount of \$840.95; and the third check (check number ending in [REDACTED]) was in the amount of \$2,018.28. The total paid for the redemption of the three policies was \$3,445.55 (\$586.32 plus \$840.95 plus \$2,018.28). (Ex. 3: Redemption checks from New York Life/AARP dated [REDACTED] 2014)
7. The Appellant did not cash any of the three checks from New York Life/AARP. (Appellant testimony)

8. On [REDACTED] 2014, the Appellant, acting as power of attorney for [REDACTED] applied to the Department for long term care Medicaid. (Record)
9. On [REDACTED] 2014, the Appellant, acting as power of attorney for [REDACTED] purchased an irrevocable pre-need funeral contract from [REDACTED] Funeral Homes. The Appellant paid a total of \$3,445.55 to the funeral home (\$2,910.55 for irrevocable trust, plus \$535.00 for burial space items). Payment was accomplished by signing over the three insurance policy redemption checks, which had a total value of \$3,445.55) (Ex. 4: Funeral Trust Contract, Summary, Fact #6)
10. The Appellant is seeking eligibility for long term care Medicaid for [REDACTED] beginning [REDACTED] 2014. (Appellant testimony)
11. In [REDACTED] and [REDACTED] of 2014, [REDACTED] assets consisted only of a savings and a checking account with Bank of America, plus the three AARP/New York Life insurance policies (while the policies were in force) or, after [REDACTED] 2014, their proceeds in the form of uncashed redemption checks. (Record)
12. The value of [REDACTED] two Bank of America accounts in [REDACTED] 2014 (balance of checking account ending in [REDACTED] plus balance of savings account ending in [REDACTED]) equaled \$1,064.50. (Summary, Ex. 2: Bank of America account statements; values stipulated by both parties)
13. The value of [REDACTED] two Bank of America accounts in [REDACTED] 2014 (balance of checking account ending in [REDACTED] plus balance of savings account ending in [REDACTED]) equaled \$886.50. (Summary, Ex. 2; values stipulated by both parties)
14. The Department determined that [REDACTED] was not eligible for Medicaid in [REDACTED] 2014 or [REDACTED] 2014 because her assets exceeded the Medicaid asset limit in both months. (Summary, Ex. 1: Asset calculation sheets)
15. On [REDACTED] 2014, the Department mailed a NOA to [REDACTED] that she was eligible for long term care Medical Assistance beginning [REDACTED] 2014. (Ex. 8: [REDACTED] 2014 notice of action)

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.

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.

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.

The Department correctly determined that [REDACTED] was the owner of the three life insurance policies with New York Life/AARP, and that because the three policies had a total face value of \$11,000.00, which exceeds \$1500.00, their cash surrender values were counted toward the Medicaid asset limit.

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.

UPM § 4000.01 provides the following definition of 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.

The Department correctly determined that the combined cash surrender value of the Applicant's three life insurance policies was considered an available asset for purposes of determining the Applicant's eligibility for Medicaid in [REDACTED] 2014. [REDACTED] was the owner of the three policies in [REDACTED] 2014, and she, or her representative, had the legal authority to obtain their value.

The Department correctly determined that the value of the three uncashed checks representing the cash proceeds of redeeming the three policies was considered an available asset for purposes of determining the Applicant's eligibility for Medicaid in [REDACTED] 2014. [REDACTED] was the payee on the three checks, and she, or her representative, had the legal authority to cash or apply the checks in [REDACTED] 2014.

4. 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.

The Appellant applied for Medical Assistance for ██████████ in ██████████ 2014, and the Department may consider Medicaid eligibility retroactive to the first, second, or third month immediately preceding the month of ██████████ application; the Appellant is seeking Medicaid eligibility for ██████████ beginning ██████████ 2014.

5. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1600.00.

The Department correctly determined that ██████████ is ineligible for Medicaid in ██████████ 2014 because her total assets of \$4,488.24 (\$3,423.74 CSV of three life insurance policies with New York Life/AARP, plus \$1,064.50 total Bank of Americas balances) exceeded the Medicaid asset limit of \$1600.00 in that month.

The Department correctly determined that ██████████ is ineligible for Medicaid in ██████████ 2014 because her total assets of \$4,332.05 (\$3,445.55 cash proceeds from the surrender of her three life insurance policies with New York Life/AARP, plus \$886.50 total Bank of America balances) exceeded the Medicaid asset limit of \$1600.00 in that month.

The Department correctly determined that the Applicant is eligible for Medicaid beginning ██████████ 2014, the first month in which her assets were below the Medicaid asset limit of \$1,600.00.

DISCUSSION

The Appellant testified that she never had any intent to use the proceeds from [REDACTED] [REDACTED] life insurance policies for any other purpose than to apply them to [REDACTED] [REDACTED] eventual funeral needs. She argued that because she retained the uncashed redemption checks from [REDACTED] 2014 when they were issued, until [REDACTED] 2014, when the checks were signed over to a funeral director as payment for a funeral contract for [REDACTED] the Department should not count their value in determining [REDACTED] total assets. Unfortunately, the Department does not consider intent in determining whether an asset is countable. Even though the funds were eventually converted to an irrevocable funeral trust (which the Department does not count as an asset) on [REDACTED] 2014, prior to that date the funds were legally available to [REDACTED] [REDACTED] to be used for other purposes, and the Department was required to count them as available assets for purposes of determining eligibility for the Medicaid program.

DECISION

The Appellant's appeal is DENIED.

James Hinckley
Hearing Officer

cc: John Hesterberg, SSOM Manchester

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.