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

[redacted] **2015**
Signature Confirmation

CLIENT No #[redacted]
Request # 643533

NOTICE OF DECISION

PARTY

[redacted]
C/O [redacted]
[redacted]
[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2014, the Department of Social Services- (the "Department") sent [redacted] (the "Appellant") a Notice of Action ("NOA") granting her application for Long Term Care Medicaid benefits effective [redacted] 2014 and denying Medicaid benefits from [redacted] 2013 through [redacted] 2014.

On [redacted] 2014, the Appellant requested an administrative hearing to contest the effective date of the Medicaid benefits as determined by the Department.

On [redacted] 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2014.

On [redacted] 2014, the Office of Legal Counsel, Regulations and Administrative Hearings ("OLCRAH") re-issued a notice and scheduled the administrative hearing for [redacted] 2014.

On [redacted] 2015, the appellant requested to re-schedule the hearing with OLCRAH and this request was granted.

On [redacted] 2015, 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:

[redacted] Appellant's representative
Connie Estanislau, Department Representative,
[redacted]
Almelinda McLeod, Hearing Officer

The hearing record was held open for the submission of additional evidence. On [redacted] 2015 the hearing record was closed.

On [redacted] 2015, the hearing record was re-opened by the hearing officer in order to obtain further clarification from the Department. The Department responded for the record. On [redacted] 2015, after both parties reviewed the new evidence, the hearing record was closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined [redacted] 2014 as the effective date for Medicaid.

FINDINGS OF FACT

1. The Appellant is a resident of [redacted] Manor as of [redacted] 2013. (Hearing Record)

2. The Appellant has a diagnosis of dementia, confusion and memory issues prior to and after her admission to [redacted] Manor since 2007-2008. (Exhibit A, Appellant's Medical History)

3. On [redacted] 2013, the Appellant signed a W1F application and her son, [redacted] her authorized representative submitted the application to the Department. (Exhibit #2, W-1F, application)

4. On [redacted] 2013, the Department requested verification of Power of Attorney and or conservatorship and of a [redacted] Life Insurance policy discovered in her Webster bank account [redacted]. (Exhibit #24, W-1348 LTC Addendum)

5. The Webster account [redacted] belonged to the Appellant and her two sons, [redacted] and [redacted] (Exhibit #9 and Exhibit E, Webster Bank account statements)

6. On [redacted] 2013, the Appellant signed an Authorization to release information form in order for the Department to communicate with [redacted] Manor. (Exhibit 25, Authorization to release form)

7. The Appellant was capable and hoping to be discharged home under Money Follows the Person Program. (Exhibit 25, E-mail from [redacted] Manor to the Department)

8. The authorized representative was not being cooperative in the application process and [redacted] had already started to work with the Appellant's other son, [redacted] (Exhibit 25, E-mail correspondence from [redacted] Manor to the Department)

9. As of [redacted] 2013, the Appellant's two sons had not cooperated in the application process with [redacted] Manor. (Exhibit H, Email dated [redacted]/13 from [redacted] Manor Business Office Manager to the Department and [redacted]/13 E-mail to tammy.barraza@ct.gov.)

10. On [redacted] 2013, [redacted] Life Insurance returned to the Department the W-279, Insurance Verification form because it contained insufficient information. In order to process the inquiry, they required a signature of authorization from the insured. (Exhibit # 23, W-279, Insurance Verification form and faxed response from [redacted] Life Insurance)

11. On [redacted] 2013. [redacted] reported 5 more life insurance policies owned by the Appellant with [redacted] Life Insurance to the Department. (Attorney and Conservator's testimony)

12. In [redacted] 2014, [redacted] Manor filed the conservatorship papers on behalf of [redacted] (Exhibit #H, E-mail dated [redacted]/14 from [redacted] Manor Business Office Manager)

13. On [redacted] 2014, the Department denied the Appellant's Medicaid application for failure to provide the required verifications to determine eligibility. (Hearing record, Exhibit D- [redacted] Fair Hearing decision [redacted] 2014)

14. On [redacted] 2014, [redacted] was appointed as the Appellant's conservator of person and Estate. (Exhibit #5 and Exhibit I, Appointment Decree of Conservator from State of Connecticut Probate Court)

15. On [redacted] 2014, the Appellant's conservator requested an administrative hearing in regards to the [redacted] 2014 Medicaid denial. (Hearing record- Exhibit D[redacted] Fair Hearing decision [redacted] 2014)

16. On [redacted] 2014, a W- 1 application was submitted on behalf of the Appellant for cost of care by[redacted] Manor. (Hearing Summary)

17. On [redacted] 2014, some verifications were received by the Department. The Department issued a W-1348, Verification We Need form requesting the face and cash values of the six Life Insurance policies from [redacted] and [redacted] Life Insurance with a due date of [redacted]/14. (Hearing summary)

18. On [redacted] 2014, the Authorized Representative signed an affidavit stating he did not participate in the Medicaid application process, was not her Power of Attorney, did not pay her bills and did not open her mail once she was admitted to [redacted] Manor. (Exhibit H, Affidavit from [redacted]

19. On [redacted] 2014, the Department denied the[redacted] 2014 application as there was not enough information provided for an eligibility determination. (Hearing summary)

20. On [redacted] 2014, Office of Legal Counsel, Regulations and Administrative Hearings held an administrative hearing for the [redacted] 2014 denial of the previous Medicaid application received on [redacted] 2013. (Exhibit D, [redacted] Fair hearing decision, [redacted] 2014)

21. On [redacted] 2014, a W-1LTC Medicaid application was received by the Department for cost of care in [redacted] Manor. (Exhibit 3, W1LTC Medicaid application)

22. On [redacted] 2014, the Department issued a W-1348, Verification form to the Appellant's Conservator, requesting verification of the six life insurance policies. (Exhibit # 6, Verification We Need form)

23. On [redacted] 2014, the hearing officer issued a decision ordering the Department to re-open the Medicaid application to the original application date o[redacted] 2013. (Exhibit D, Monahan Fair hearing decision [redacted] 2014)

24. The Department re-opened the [redacted] 2013 application and continued to process. (Hearing testimony)

25. On [redacted] 2014, the Department received verification of the cash values of the [redacted]l Life and [redacted] Life Insurance policies and

liquidation of those cash values to [redacted] Manor on [redacted] 2014. (Exhibit 15, E-mail from [redacted], Exhibit #16, copies of checks and deposit detail report-proof of payment)

26. The Appellant's asset balances at the end of each month are as follows:

Asset	Balance as of [redacted] 2013	Balance as of [redacted] 2013	Balance as of [redacted] 2013	Balance as of [redacted] 2013
[redacted] Bank Account #[redacted]	$1803.49	$1283.49	$260.15	$355.20
[redacted] Life Insurance #[redacted]	$45.68	$45.68	$45.68	$45.68
[redacted] Life Insurance #[redacted]	$1113.14	$1113.14	$1113.14	$1113.14
[redacted] Life Insurance #[redacted]	$39.87	$39.87	$39.87	$39.87
[redacted] Life Insurance #[redacted]	$713.25	$713.25	$713.25	$713.25
[redacted] Life Insurance #[redacted]	$176.40	$176.40	$176.40	$176.40
Totals:	$3891.83	$3371.83	$2348.49	$2443.54

Asset	Balance as of [redacted] 2013	Balance as of [redacted] 2013	Balance as of [redacted] 2013	Balance as of [redacted] 2013
[redacted] Account #[redacted]	$903.64	$105.05	$57.10	$0.00
Resident Account	$8.01	$68.01	$128.01	$188.03
[redacted]	$45.68	$45.68	$45.68	$45.68
[redacted] # [redacted]	$1113.14	$1113.14	$1113.14	$1113.14
[redacted] # [redacted]	$39.87	$39.87	$39.87	$39.87
[redacted] # [redacted]	$713.25	$713.25	$713.25	$713.25
[redacted] Life # [redacted]	$176.40	$176.40	$176.40	$176.40
Totals:	$2999.99	$2261.40	$2273.45	$2276.37

Asset	Balance as of [redacted] 2013	Balance as of [redacted] 2013	Balance as of [redacted] 2014	Balance as of [redacted] 2014
[redacted] Bank Account #[redacted]	Closed [redacted]/13 (Exh.9) $0.00	$0.00	$0.00	$0.00
Resident account	$248.05	$308.08	$368.08	$396.27
[redacted] #[redacted]	$45.68	$45.68	$45.68	$45.68
[redacted] #[redacted]	$1113.14	$1113.14	$1113.14	$1113.14
[redacted] #[redacted]	$39.87	$39.87	$39.87	$39.87
[redacted] #[redacted]	$713.25	$713.25	$713.25	$713.25
[redacted] #[redacted]	$176.40	$176.40	$176.40	$176.40
Totals:	$2336.39	$2396.42	$2456.42	$2484.61

Asset	Balance as of [redacted] 2014	Balance as of [redacted] 2014	Balance as of [redacted] 2014	Balance as of [redacted] 2014
[redacted] Bank Account	$0.00	$0.00	$0.00	$0.00
Resident account	$56.32	$86.36	$116.37	$146.38
[redacted] #[redacted]	$45.68	surrendered [redacted]/14	surrendered [redacted]/14	surrendered [redacted]/14
[redacted] #[redacted]	$1113.14	surrendered [redacted]/14	surrendered [redacted]/14	surrendered [redacted]/14
[redacted] #[redacted]	$39.87	surrendered [redacted]/14	surrendered 0[redacted]/14	surrendered [redacted]/14
[redacted] #[redacted]	$713.25	$713.25	$713.25	$713.25
[redacted] #[redacted]	$110.25	$110.25	$110.25	$110.25
Totals:	$2078.51	$909.86	$939.87	$969.88

(Exhibit # 22, Monthly Asset Worksheet and Exhibit # G, Liquidation of [redacted] Cash values from Life Insurance policies and Exhibit 15, E-mail correspondence)

27. On [redacted] 2014, the Department granted Medicaid effective [redacted] 2014; the first month in which the Appellant was under the Medicaid asset limit. The Appellant was denied from [redacted] 2013 to [redacted] 2014 as the assets of the life Insurance policies were not reduced to $1600.00 until [redacted] 2014. (Hearing Summary, Exhibit #19, State Notice of Eligibility)

28. As of [redacted] 2015, the Center for Medicare and Medicaid Services (CMS) had not provided federal approval regarding Section 17b-261 (h) and the effective date of federal approval for the Department to adapt Public Act 13-234. The Department did not adapt to CGS 17b-261 (h) as it had not been federally approved. (Exhibit L: CGS Public Act 13-234 and Exhibit #26, Department letter dated [redacted] 2015)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the social Security Act.

2. Connecticut General Statutes § 17b-260 and 17b-262 provides that the Department is the designated state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act and may make such regulations as are necessary to administer the medical assistance program.

3. Connecticut General Statutes § 17b-261 (2012) provides in part, any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, person authorized to make such disposition pursuant to a power of attorney or other person so authorized by law shall be attributed to such applicant, recipient or spouse.

   Section 17b-261 (c) provides in part, 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 § 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 assistance unit.

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.

UPM § 4015.05 (A)(1) provides that subject to the conditions described in this section, equity is an asset which is inaccessible to the assistance unit is not counted as long as the asset remains inaccessible.

UPM § 4015.05 (B)(1)(2) The burden is on the assistance unit to demonstrate that an asset is inaccessible. 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.

UPM § 4030.30 (C)(1)(2) provides that if the total 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. Except as provided above, the cash surrender value of life insurance policies owned by the individual is counted towards the asset limit.

The Department correctly determined that the [redacted] Life and [redacted]Life Insurance cash values were an available asset; the applicant had the legal right, authority or power to obtain the asset or to have it applied for the Appellant's medical support.

The Appellant's conservator has failed to show how the value of the cash surrender values were inaccessible when after the appropriate steps were taken to obtain conservatorship, the assets became accessible.

6. 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 requirement are met during that month; or

C. The actual date in a spendown period when all non-procedural eligibility requirements are met. For the determination of income eligibility in spendown, 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.

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.

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 the Appellant met the eligibility requirement of having assets under the asset limit as of [redacted] 2014; the first day of the month in which the combined assets were reduced under the Medicaid asset limit.

The Department correctly determined that the Appellant's total assets exceeded the Medicaid asset limit of $1600.00 for the period of [redacted] 2013 through to [redacted] 2014.

7. Section 17b-261 (h) states: To the extent permissible under federal law, an institutionalized individual, as defined in Section 1917 of the Social Security Act, 42 USC 1396 p (h) (3), shall not be determined ineligible for Medicaid solely on the basis of the cash value of a life insurance policy worth less than ten thousand dollars provided (1) the individual is pursuing the surrender of the policy, and (2) upon surrendering such policy all proceeds of the policy are used to pay for the institutionalized individual's long term care.

The Department correctly determined that the [redacted] Life Insurance cash values are countable because CMS has not informed the Department that the provisions in this Public Act is permissible under the federal law. The provisions in the subsection cannot be implemented.

DISCUSSION

After reviewing the evidence and testimony presented at this hearing, I find the Department was correct in granting the Medicaid LTC effective [redacted] 2014 and denying the Medicaid for months from [redacted] 2013 through to [redacted] 2014.

The record reflects that the Appellant's assets were within the Medicaid asset limits effective [redacted] 2014, the month in which the life insurance policies were liquidated to the Nursing Home for cost of care. Prior to that, the Appellant's assets exceeded the $1600.00 Medicaid asset limit for a household of one.

The Appellant's counsel argues that based on CGS-17b-261 (h) the value of the life insurance policies should not be considered because the cash surrender values were less than ten thousand dollars, the appellant was pursuing the surrender values and the proceeds were to be used to pay for long term care. However, CGS-17b-261 (h) has not been federally approved by CMS, thus not permissible. The Department cannot implement this provision and must continue to apply the regulations that are currently in place.

The Appellant's counsel argued that the [redacted] Life Insurance cash surrender values should be considered inaccessible between [redacted] 2013 to [redacted] 2014 **or** at the very least between [redacted] 2014, (month of Conservatorship) to [redacted] 2014 (date the life insurance policies were cashed in) because due to circumstances beyond their control they were unable to provide verifications by the due date. The record reflects that [redacted] had difficulty in gaining cooperation from the Appellant's sons in the application process initiated on [redacted] 2013. The affidavit presented by [redacted] was not presented until after the [redacted] 2014 denial of the [redacted] 2013 Medicaid application. The process to start the conservatorship for [redacted] did not begin until [redacted] 2014. It wasn't until [redacted] 2014, that [redacted] became conservator and was then able to gain the requested verifications. There is no provision that allows a countable asset to be considered inaccessible because of the level of difficulty involved in obtaining them.

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The Department has an obligation to evaluate all assets to determine proper ownership and value as soon as the Department becomes aware of the assets. The life Insurance cash surrender value is not an excluded assets by current Federal, State and Departmental policy, therefore cannot be considered as inaccessible as the asset was obtained as soon as all the POA/ conservatorship requirements were met.

DECISION

The Appellant's appeal is DENIED.

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Almelinda McLeod
Hearing Officer

CC: Musa Mohamud, SSOM, Hartford Regional Office
Elizabeth Thomas, SSOM, 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 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.