

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

REQUEST #652641

CLIENT ID # ██████████

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2014, Department of Social Services (the "Department") sent ██████████ the "Appellant") a Notice of Denial stating that the Appellant was not eligible for medical assistance under the Medicaid program, from ██████████ 2014 through ██████████ 2014, because the value of her countable assets exceeded the allowable asset limit for the Medicaid program. The Department granted the Appellant medical under the Medicaid program, effective ██████████ 2014.

On ██████████ 2014, the Appellant's representative, **Attorney** ██████████ requested an administrative hearing on behalf of the Appellant to contest the effective date of Medicaid eligibility, as determined by the Department.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice of Administrative Hearing scheduling a hearing for ██████████ 2014 @ 10:00 AM.

On ██████████ 2014, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-184, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

██████████, Appellant's Representative  
██████████ Witness for the Appellant  
██████████ Witness for the Appellant  
Attorney ██████████ Counsel for the Appellant  
Noah Cass, Representative for the Department

Hernold C. Linton, Hearing Officer

**STATEMENT OF THE ISSUE**

The issue to be decided is whether the Appellant is ineligible for medical assistance under the Medicaid program for the period of [REDACTED] 2014 through [REDACTED] 2014, due to excess assets.

**FINDINGS OF FACT**

1. On [REDACTED] 2014, the Department received the Appellant's application for medical assistance for the Medicaid program. (Hearing Summary; Dept.'s Exhibit A: W-1 LTC)
2. The Appellant is seeking a Medicaid eligibility effective date of [REDACTED] 2014, to cover the cost of her stay in a long-term care facility ("LTCF"). (Hearing Summary; Dept.'s Exhibit G: Case Narrative Screens)
3. On [REDACTED] 2014, the Department received information that the Appellant owned a MetLife Annuity contract with the State of Connecticut named as remainder beneficiary. (Hearing Summary; Dept.'s Exhibit G)
4. Based on the terms of the annuity contract, for the period [REDACTED] 2014 through [REDACTED] 2014, the Appellant had the ability to sell or assign the income stream of her MetLife Annuity contract. (Hearing Summary; Dept.'s Exhibit G)
5. For the period [REDACTED] 2014 through [REDACTED] 2014, the value of the payment stream for the Appellant's MetLife Annuity contract was \$4,710.36. (Hearing Summary; Dept.'s Exhibit G)
6. On [REDACTED] 2014, Granoff Enterprises expressed an interest in purchasing the payment stream of the Appellant's annuity contract for \$4,950.00. (Dept.'s Exhibit K: MetLife Annuity Documents)
7. In [REDACTED] 2014, the Appellant submitted a request to MetLife to change the payee of her annuity contract to Granoff Enterprises. (Hearing Summary; Dept.'s Exhibit G)
8. On [REDACTED] [REDACTED] 2014, MetLife determined that the payment stream for the Appellant's annuity could be not sold or assigned, and refused to permit the assignment of the payment stream. (Dept.'s Exhibit K: MetLife Annuity Documents; Appellant's Exhibit #1: [REDACTED]/15 Letter from Atty [REDACTED])
9. On [REDACTED] 2014, the Department received verification that the Appellant sold her MetLife Annuity contract to Granoff Enterprises for \$4,710.36, and used proceeds to pay for her cost of care at Vernon Manor. (Hearing Summary; Dept.'s Exhibit G)
10. On [REDACTED] 2014, the Department denied the Appellant's request for medical assistance under the Medicaid program for the period of [REDACTED] 2014 through

██████████ 2014, claiming that the value of her countable assets exceeded the allowable asset limit for the program. (Hearing Summary; Dept.'s Exhibit G)

11. On ██████████ 2014, the Department granted the Appellant's application for medical assistance under the Medicaid program, effective ██████████ 2014, to cover the cost of her stay in a nursing facility. (Hearing Summary; Dept.'s Exhibit G)
12. The Department is diverting the Appellant's applied income to cover her cost of care at Vernon Manor for period prior to the effective date of her Medicaid eligibility. (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. Uniform Policy Manual ("UPM") Section 4030.47 provides that annuities are evaluated as both an asset representing an investment and as income that the beneficiary may receive on a regular basis (cross reference 5050, Treatment of Specific Types). The assistance unit's equity in an annuity is a counted asset to the extent that the assistance unit can sell or otherwise obtain the entire amount of equity in the investment. Any payments received from an annuity are considered income. Additionally, the right to receive income from an annuity is regarded as an available asset, whether or not the annuity is assignable
3. UPM § 4030.47(A)(1) provides that an applicant or recipient and his or her spouse must, as a condition of eligibility for long-term care medical services, disclose a description of any interest held in an annuity by the applicant and recipient or his or her spouse.
4. UPM § 4030.47(A)(2) provides that the Department shall notify an applicant or recipient of long-term care medical services that, pursuant to paragraph (2) of subsection (e) of section 1396p of the United States Code, the department becomes a remainder beneficiary under such an annuity by virtue of the provision of long-term care medical assistance services.
5. UPM § 4030.47(A)(3) provides that the Department shall notify the issuer of the annuity of the department's right as a preferred remainder beneficiary.
6. UPM § 4030.47(A)(4) provides that the Department may require the issuer to notify the department when there is a change in the amount of income or principal being withdrawn. The department shall use this information in determining the amount of the department's obligation for medical assistance or the ongoing eligibility of the applicant or recipient.
7. UPM § 4000.01 provides that an annuity is an asset that may produce income either annually or at regular intervals pursuant to the terms of the annuity contract.

8. The Appellant's MetLife Annuity contract is compliant with the provisions set forth in the policy stated above.
9. UPM § 4005.05(A) provides that for every program administered by the Department, there is a definite asset limit.
10. 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.
11. UPM § 4005.05(B)(2) provides 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.
12. The Department correctly determined that the payment stream of the Appellant's MetLife Annuity contract was available to her as she was able to find a buyer for the contract.
13. For the period of [REDACTED] 2014 through [REDACTED] 2014, the Department correctly determined that the Appellant had the legal right and authority to obtain or to have the payment stream of her MetLife Annuity contract applied to her general or medical support.
14. For the period of [REDACTED] 2014 through [REDACTED] 2014, the Department correctly determined that the equity value of the payment stream for the Appellant's annuity contract was available and accessible to meet her needs and general support.
15. For the period of [REDACTED] 2014 through [REDACTED] 2014, the equity value of the payment stream for the Appellant's annuity contract was not available and inaccessible to meet her needs and general support, because of MetLife's refusal to permit the sale prevented her from gaining access to the equity value in the month of [REDACTED] 2014.
16. For the period of [REDACTED] 2014 through [REDACTED] 2014, the Department incorrectly determined that the equity value of the payment stream for the Appellant's annuity contract was available and accessible to meet her needs and general support.
17. UPM § 4005.05(D)(1) provides that the Department compares the assistance unit's equity in counted assets with the program's asset limit when determining whether the unit is eligible for benefits.

18. UPM § 4005.05(D)(2) 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, unless the assistance unit is categorically eligible for the program and the asset limit does not apply (cross reference: 2500 Categorically Eligibility Requirements).
19. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
20. UPM § 4005.15(A)(2) provides that 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.
21. The Department correctly determined the Appellant's countable assets for the period of [REDACTED] 2014 through [REDACTED] 2014, as \$4,710.36, the amount that she received from the sale of her annuity contract.
22. For the period of [REDACTED] 2014 through [REDACTED] 2014, the Appellant's countable assets exceeded the Medicaid asset limit of \$1,600.00 per month.
23. For the period of [REDACTED] 2014 through [REDACTED] 2014, the equity value of the payment stream for the Appellant's annuity contract is excluded as inaccessible and unavailable.
24. The Department incorrectly determined the Appellant's countable assets for the period of [REDACTED] 2014 through [REDACTED] 2014, as \$4,710.36.
25. For the period of [REDACTED] 2014 through [REDACTED] 2014, the Appellant's countable assets did not exceed the Medicaid asset limit of \$1,600.00 per month, as the annuity asset was not accessible.
26. The Appellant became asset eligible for Medicaid effective [REDACTED] 2014.

### DISCUSSION

The Appellant's representative argued that MetLife advised the Appellant that she could not sell or assign the payment stream of her annuity contract; therefore, the Department should treat the payment stream of her MetLife Annuity contract as an inaccessible and unavailable asset.

The terms of the Appellant's annuity contract are what determine whether the Appellant can sell or assign the payment stream, not MetLife. Departmental policy does not allow for the exclusion of the payment stream for an assignable annuity as a countable asset, until the Appellant sells the payment stream, as is the case in the Appellant's situation, or unless the Appellant can show the asset was inaccessible.

However, when MetLife refused to permit the sale of the payment stream, and the Appellant was cooperating with selling the assets, the annuity became unavailable and

inaccessible, until the point when MetLife followed through with the sale of the annuity. Therefore, the undersigned finds the payment stream of the Appellant's annuity contract as available and accessible for the period of [REDACTED] 2014 through [REDACTED] 2014, as defined by relevant Medicaid regulations, and inaccessible for the month of [REDACTED] 2014. For the period of [REDACTED] 2014 through [REDACTED] 2014, the Appellant's total countable assets exceeded the Medicaid asset limit of \$1,600.00 per month.

**DECISION**

The Appellant's appeal is **GRANTED** in part.

**ORDER**

1. The Department will grant the Appellant Medicaid coverage with an eligibility effective date of [REDACTED] 2014, based on the findings of this hearing decision.
2. No later than thirty days from the date of the hearing decision, the Department will provide the undersigned will a copy of the computer STATUS screen, as verification of the Department's compliance.

*Hernold C. Linton*

Hernold C. Linton  
Hearing Officer

Pc: **John Hesterberg**, Social Service Operations Manager,  
DSS, R.O. # 11, Manchester

Attorney [REDACTED]  
[REDACTED]

### **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.