

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 # 654324

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) denying Long Term Care Medicaid benefits for the months of ██████████, 2014 through ██████████, 2014, inclusive, due to her assets exceeding the limit in those months.

On ██████████ 2014, the Appellant requested an administrative hearing to contest the Department’s action to deny such benefits.

On ██████████, 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████, 2015.

On ██████████ 2015, the hearing was rescheduled at the Appellant’s request for ██████████ 2015.

On ██████████ 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:

██████████, Appellant’s granddaughter and Power of Attorney
Matthew Lenczewski, Department’s Representative
James Hinckley, Hearing Officer

The hearing record was held open until [REDACTED] 2015 for the Appellant to provide additional information. On [REDACTED], 2015, the hearing record closed.

On [REDACTED] 2015, the hearing record was reopened to allow the Appellant time to resend the information that she was unable to fax successfully. On [REDACTED] 2015, the hearing record closed.

STATEMENT OF THE ISSUE

The first issue to be decided is whether the Department correctly established that the Appellant's assets exceeded the limit for the months of [REDACTED] 2014 through [REDACTED], 2014, inclusive.

The second issue to be decided is whether the Appellant has a valid claim for equitable estoppel against the Department for its decision to deny Medicaid due to excess assets.

FINDINGS OF FACT

1. On [REDACTED], 2014, the Appellant was admitted to Touchpoints at Farmington, a long term care facility. (Summary)
2. On [REDACTED] 2014, the Appellant applied to the Department for Long Term Care Medicaid. (Summary)
3. The Application form for Long Term Care Medicaid, form W-1 LTC, contains the statement in bold letters, "The asset limit for Long-Term Care and Home Care Medicaid is \$1600.00. You will not qualify for assistance in any month in which your assets exceed \$1600.00". (Ex. 5: W-1 LTC, p. 2)
4. On [REDACTED], 2014, the Appellant's granddaughter, [REDACTED], who is her Power of Attorney (the "POA"), made a phone call to the Department to discuss the application process. During the conversation she asked the worker assigned to the case whether it would be permissible for the Appellant to repay her son for rent that he had paid on her behalf, and she was told that the Department would not consider payment of what she owed her son to be an improper transfer of assets, as long as the debt could be verified as being valid. (Ex. 11: Case Narrative)
5. On [REDACTED], 2014 the POA sent several items of verification to the Department, including proof that [REDACTED] (the Appellant's "Son") had been reimbursed the amounts of \$3,571.67, plus \$700.00, plus \$150.40. A letter accompanying the verifications stated in part, "As we discussed, I need to pay her final phone and cable bill, any remaining doctor's bills from her recent hospital stays, and then reimburse [the Son] for additional rental payments he made for [the

Appellant] in 2012 (documentation to be provided – but the amount is over \$10,000 so it will exceed her available funds).” (Ex. A: May 20, 2014 Letter)

6. On [REDACTED], 2014, the POA sent several items of verification to the Department with an accompanying letter. The letter stated in part that the Appellant still has \$2,028.25 in assets, and still has obligations for cable and phone bills, and for potential medical expenses from recent hospital stays, and for remaining unpaid rental reimbursement to the Appellant’s son, and also stated “I need to know whether I can hold back the additional cremation fee and interment fees or whether that is to be taken out of her final \$1600.” (Ex. B: May 26, 2014 Letter)
7. The letter of [REDACTED], 2014 also stated that after paying other expenses, “Whatever is left over needs to be paid to [REDACTED] as his rental payments remain not completely reimbursed. He remains due \$1783.43 from [REDACTED] of 2012 and \$3470.02 from [REDACTED] of 2012 (I do expect to receive a return of a security deposit from the Gables of approximately \$2000 in [REDACTED] which I would turn over to [REDACTED]).” (Ex. B)
8. The Department did not respond to the POA’s letters of [REDACTED], 2014 and of [REDACTED] 2014. (Appellant testimony, Record)
9. On [REDACTED], 2014, the Department reassigned the case to a new eligibility worker. (Ex. 11)
10. On [REDACTED] 2014, the new worker conducted an extensive review of the case and sent a form W-1348LTC “Verification We Need” form to the Appellant requesting several remaining items that were still needed to process the case. (Ex. 11, Ex. 9: W-1348 LTC dated [REDACTED], 2014)
11. On [REDACTED] 2014, the POA sent several items of verification to the Department with an accompanying letter. The letter stated in part, [REDACTED] has \$3,506.06 in her two accounts. Absent additional allowances for cremation and burial, by my calculation, the funds to which she remains entitled total \$1,847.90 (\$1600 spend down + \$60/month since [REDACTED] - \$112.10 payment for her clothing) and therefore I should make a final payment to [REDACTED] for \$1658.16. Please confirm.” (Ex. C: [REDACTED], 2014 Letter)
12. On [REDACTED] 2014, the worker called the POA and notified her that his examination of the Appellant’s financial documents showed that the Appellant’s assets have exceeded the limit for the months of [REDACTED], 2014 through [REDACTED], 2014, inclusive. (Ex. 11)
13. On [REDACTED], 2014, the worker called the POA and notified her that the Appellant may still be eligible for Medicaid for [REDACTED], 2014 if her assets are reduced to below the limit by [REDACTED], 2014, but if they are not reduced by the

end of the month, the Appellant will not be eligible for the month of [REDACTED], 2014. (Ex. 11)

14. On [REDACTED] 2014, the POA sent the Department several final items of verification with an accompanying letter. The letter, in part, expressed concern regarding the POA's recent conversation with the new worker that the Appellant may not be approved for Medicaid as of [REDACTED], 2014. In the letter, the POA references her communications with the previous worker, and specifically her letter to the Department of [REDACTED], 2014. The [REDACTED], 2014 letter states in part, "At that time I had a lot of questions about whether I should "reserve" money above the \$1600 spend down amount to pay for burial expenses, doctor's bills, etc. (My question about the burial expenses was never answered.) I was in steady contact with [the previous worker] at the time and at no time was I advised that unless the bank balances technically dipped below \$1600 that [the Appellant] would not receive benefits." (Ex. D: [REDACTED] 2014 Letter)

15. The [REDACTED] 2014 letter also states that, "given that [the Appellant's] liabilities exceeded her assets in [REDACTED] of 2014, if I were told that her bank accounts had to technically show less than \$1600 in [REDACTED], I could have and would have taken immediate action. Neither [the Appellant] nor Touchpoints should suffer based on the excess amount of \$400 still in the account at the end of [REDACTED] since those funds were owed to [the Appellant's son], and particularly since I received no further inquiries from DSS until [REDACTED] – over a 4 month delay. Neither [the Appellant] nor Touchpoints should be penalized for DSS' delay." (Ex. D)

16. The [REDACTED] 2014 letter also states that, "I also was not under the impression that there was any urgency to make the bank accounts "technically" total less than \$1600 because [the worker] told me that I could make some payments to [the Son] but that I should tell him "not to do anything with the money." I followed his advice. The only reason that I had not paid [the Son] the final few dollars was that I was waiting to hear back from [the worker]." (Ex. D)

17. On [REDACTED] 2014, the Department found that the Appellant's assets exceeded the Medicaid asset limit of \$1,600.00 for the months of [REDACTED] 2014 through [REDACTED], 2014, inclusive; the Department's month by month determination of the Appellant's assets is summarized in the chart below:

| | Farmington Bank Acct. # [REDACTED] | Bank of America Acct. # [REDACTED] | Total Assets |
|------------------|---------------------------------------|---------------------------------------|-----------------|
| [REDACTED], 2014 | \$2,219.92 | \$1,648.78 | \$3,868.70 |
| [REDACTED], 2014 | \$1,371.06 | \$676.78 | \$2,047.84 |
| [REDACTED], 2014 | \$888.47 | \$1,409.63 | \$2,298.10 |
| [REDACTED], 2014 | \$888.47 | \$2,437.63 | \$3,326.10 |
| [REDACTED], 2014 | \$888.47 | \$2,058.79 | \$2,947.26 |

(Ex. 3: Bank Balance Calculations for Bank of America checking,
Ex. 4: Farmington Bank statements, Ex. 12: Assets and Remarks screens)

18. The Department calculated the assets for each month by counting either the balance that remained in each account as of the end of the month, or by subtracting the income that was deposited into the account during the month from the highest balance that existed during that month, whichever figure was lower; the Department made no adjustments to the counted amounts based on how the funds were later used. (Department testimony, Ex. 3)
19. On [REDACTED], 2014, the Department sent the Appellant a NOA advising her that her application for Long Term Care Medicaid has been denied for the months of [REDACTED] 2014 through [REDACTED], 2014, inclusive, because her assets exceeded the limit in those months. (Ex. 15: NOA dated [REDACTED] 2014)
20. The POA claims that the Department “should be estopped from denying benefits as of [REDACTED], 2014 based on the affirmative statements and representations made by its representative employee”. (Hearing Request)
21. The Department provided no information to the POA that was inaccurate or erroneous. (Record)
22. The information that the Department provided to the POA on [REDACTED], 2014 regarding making payments to the Son for reimbursement concerned its transfer of asset policy, not its asset limit policy. (Fact #4)
23. The Department made no statements or representations to the POA that were calculated or intended to induce her to believe that certain facts exist, and to act on that belief. (Record)
24. The Department informed the POA of the \$1,600.00 asset limit for the program. (Fact #3)
25. The POA’s failure to reduce the Appellant’s assets to below the limit until [REDACTED] 2014 was not the result of any affirmative statements or representations made by the Department. (Record)

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”) § 4030.05 discusses the treatment of bank accounts as assets and provides in part that:

A. Types of Bank Accounts

Bank accounts include the following. This list is not all inclusive.

1. Savings account;
2. Checking account;
3. Credit union account;
4. Certificate of deposit;
5. Patient account at long-term care facility;
6. Children's school account;
7. Trustee account;
8. Custodial account.

B. Checking Account

That part of a checking account to be considered as a counted asset during a given month is calculated by subtracting the actual amount of income the assistance unit deposits into the account that month from the highest balance in the account for that month.

C. Income Versus Assets

Money which is received as income during a month and deposited into an account during the month is not considered an asset for that month, unless the source of the money is:

1. An income tax refund; or
2. Cash received upon the transfer or sale of property; or
3. A security deposit returned by the landlord.

The Department used the correct methodology to determine the amount of the Appellant's assets which must be counted toward the asset limit in each month. The Department either used the actual ending balances remaining in the Appellant's accounts at the end of the month, or subtracted the income that was deposited into the account during the month from the highest balance in the account for that month.

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 was correct to count the entire amount of the Appellant's assets in each month, without consideration of any debts or obligations

that were owed. The Appellant had the legal authority to obtain whatever existed in each of her accounts in each month.

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.

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 is ineligible for Medicaid for the months of [REDACTED], 2014 through [REDACTED], 2014, inclusive, because her assets exceeded the \$1,600.00 asset limit in each month.

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

5. In Kimberly-Clark Corporation v. Dubno, 204 Conn., 148(1987), the Connecticut Supreme Court stated that, “[u]nder our well-established law, any claim of estoppel is predicated on proof of two essential elements: the party against whom estoppel is claimed must do or say something calculated or intended to induce another party to believe that certain facts exist and to act on that belief; and the other party must change its position in reliance on those facts, thereby incurring some injury.

The court also noted that estoppel against a public agency is limited, and stated further that when estoppel may be invoked against the state: “It is the burden of the person claiming the estoppel to show that he exercised due diligence to ascertain the truth and that he not only lacked knowledge of the true state of things but had no convenient means of acquiring that knowledge.” Id.

The Appellant has not established a valid claim for equitable estoppel. The Department made no statements and provided no information that caused, or intended to cause, the POA to retain the excess assets that made the Appellant ineligible. Further, it is not possible for the POA to raise a claim for estoppel based on the Department's *failure* to advise her regarding all of the questions that she had; the Department's failure to respond to the POA's letters of [REDACTED], 2014 and [REDACTED] 2014 is not valid grounds for estoppel. Finally, the POA had many other convenient means of acquiring knowledge regarding Long Term Medicaid asset rules, including consulting the program information that the Department widely disseminates through both electronic and printed publications, or by engaging professional advice.

DISCUSSION

By [REDACTED], 2014, the Appellant's assets were substantially depleted, so that they only slightly exceeded the Medicaid asset limit of \$1,600.00. The Appellant's granddaughter, who is her POA, was unsure at that time about how best to reduce the assets that remained above the Medicaid limit. According to the POA, she posed several questions to the Department in her letters of [REDACTED] 2014 and [REDACTED] 2014, but the Department never provided her with direction on how she should proceed until [REDACTED], 2014 when a newly reassigned worker advised her that she must reduce the Appellant's assets to below \$1,600.00 immediately, which she did, after which the Appellant became Medicaid eligible.

The POA first argues that the Appellant's assets did not actually exceed the limit in any of the denied months, because in each of the months the Appellant was obligated to pay legitimate expenses or debts that exceeded her overage of the limit. She argues that the expenses were all later verified by the Department to be valid and that the Department should therefore not count the funds that the POA kept in reserve to pay them toward the limit. Conn. Gen. Stat. § 17b-261(c) provides that "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..." Regardless of the ultimate disposition of the Appellant's funds, while they were legally available to her to be used for other purposes, the full balances that were available must be counted by the Department toward the asset limit.

Second, the POA argues that "The Government should be estopped from denying benefits as of [REDACTED], 2014 based on the affirmative statements and representations made by its representative employee". She also notes in her appeal that the Department did not meet its timely processing standard for the Appellant's case, and that because she did not receive proper direction during several months while the case pended, the Department should not deny the Appellant benefits for those months.

Estoppel claims must be based on harm that is caused by acting on the advice of the party against whom estoppel is claimed. While the POA's appeal mentions "affirmative

statements and representations”, there is no evidence that the Department ever made any statement or representation that was erroneous, or that caused, or intended to cause the POA to take any action which harmed the Appellant. As of [REDACTED], 2014, the POA stated in her letter that she had already reimbursed some funds to the Appellant’s Son, so she was already aware that reimbursing him for legitimate debts owed was one acceptable way of reducing the Appellant’s assets. So when the POA says in her [REDACTED] 2014 letter that she didn’t reimburse the Son more of the Appellant’s assets in [REDACTED], 2014 because she was waiting to hear back from the worker, it is not a compelling argument. Rather, it seems, the POA was having difficulty in deciding how best to spend down the remainder of the Appellant’s assets, and was seeking the Department’s advice on how exactly she should use the remaining money. Such advice is not the Department’s place to provide, and the Appellant cannot make a claim for estoppel based on the Department’s failure to provide her with advice. Moreover, according to the POA’s [REDACTED], 2014 letter, the Appellant’s obligations exceeded her funds at that time, and in the letter the POA expressed her intent to expend all of the funds for various purposes; the Department had no cause to respond to the letter, in which the POA communicated an accurate understanding of the need to spend down the Appellant’s remaining excess assets. When the newly reassigned worker called the POA on [REDACTED] 2014, and informed her that the Appellant’s assets must be reduced to below the limit before she will become eligible, he was simply providing information consistent with that previously provided by the Department. When the POA now tries to make a distinction between the information provided by the reassigned worker, and that provided through her previous contacts with the Department, she is incorrect. The POA somehow arrived at the mistaken assumption that any portion of the Appellant’s money that she “held back” or kept in reserve would not be counted toward the limit, but there is no evidence that the Department was the source of this erroneous information.

As far as the Department not meeting its timeliness standard, while the delay is regrettable, it was not the cause of the Appellant’s ineligibility.

Finally, the POA notes that the Appellant’s assets were briefly below the \$1,600.00 limit at the beginning of [REDACTED] 2014, but exceeded the limit again after she received a security deposit refund later in the month. She now tries to argue that the Appellant should be eligible as of when her assets first dropped below the limit. UPM § 4030.05(C) specifies that security deposit refunds are counted as assets, so the Department was correct to count the additional money toward the limit in the month it was received. The POA mentioned in her [REDACTED] 26, 2014 letter that she was anticipating the refund, and that she was planning on applying the entire amount toward reimbursing the Son. Had she immediately applied the money toward that, or any other legitimate purpose, the Appellant would have become eligible at the time. But because the POA did not use the funds immediately, the Department was correct to count the money for as long as it remained in the Appellant’s account.

DECISION

The Appellant's appeal is DENIED.

James Hinckley
Hearing Officer

cc: Musa Mohamud, SSOM, Hartford
Elizabeth Thomas, SSOM, Hartford

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.