STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT06105-3725

[redacted] **2015**
CERTIFIED MAIL

Client ID # [redacted]
Hearing Request #655476

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On [redacted] 2014, the Department of Social Services (the "Department") issued [redacted] (the "Appellant") a notice of action ("NOA") granting Medicaid benefits effective [redacted] 2014, and denying Medicaid for the months of [redacted] of 2013 through [redacted] of 2014.

On [redacted] 2014, the Appellant, through her representative, [redacted] (the "Attorney"), requested an administrative hearing to contest the Department's decision to deny such benefits.

On [redacted] 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2015.

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] Conservator and Appellant's Representative
Kristin Harris, Westside Healthcare Center
Kimberly Smith, Westside Healthcare Center
Victor Robles, Eligibility Services Worker, Department's Representative
Roberta Gould, Hearing Officer

The hearing record remained open for the submission of additional evidence. The hearing record closed on [redacted] 2015.

STATEMENT OF ISSUE

The issue to be decided is whether the Department's decision to grant Medicaid benefits effective [redacted] 2014, was correct.

FINDINGS OF FACT

1. The Appellant is a resident of Westside Healthcare Center, which is a long-term care facility (LTCF). (Exhibit G: EMS Case Narrative)

2. The Appellant was admitted to the LTCF in [redacted] of 2013. (Hearing record)

3. In [redacted] of 2013, the Court of Probate appointed [redacted] as the Conservator of Estate and Person for the Appellant. (Hearing record)

4. On [redacted] 2013, the Appellant's Authorized Representative applied for Medicaid benefits to cover the cost of her stay and care in the LTCF. (Hearing record)

5. On [redacted] 2014, the Department denied the Appellant's application for Medicaid because she did not provide all of the requested verification. (Hearing record)

6. On [redacted] 2014, the Court of Probate appointed [redacted] as the Conservator of Estate and Person for the Appellant.

7. The Appellant is the owner and insured of John Hancock Life Insurance Policies #[redacted] and #[redacted]. (Hearing record)

8. As of [redacted] 2014, John Hancock life insurance policy #[redacted] had a face value of $3,428.20 and a cash surrender value of $3,322.25. As of [redacted] 2014, John Hancock life insurance policy #[redacted] had a face value of $1,919.46 and a cash surrender value of $1,858.50. (Exhibit C: Summary for insurance policy, Exhibit D: Check for cash surrender of policy, Exhibit E: Summary for insurance policy and Exhibit F: Check for cash surrender of policy)

9. On [redacted] 2014, the Appellant re-applied for Medicaid assistance for long-term care. (Hearing summary)

10. The Appellant's Conservator and Authorized Representative is seeking Medicaid eligibility for the period of [redacted] of 2013, through [redacted] 2014. (Hearing Record)

11. On [redacted] 2014, the Department sent a W-1348 Verification We Need form to the Appellant requesting what was done with the proceeds from both John Hancock life insurance policies. The requested information was due by [redacted] 2014. (Exhibit A: W-1348LTC)

12. On [redacted] 2014, the Department received mail from the Appellant, but did not receive the verification for the proceeds of the life insurance policies. (Exhibit G: Case Narrative and Hearing summary)

13. On [redacted] 2014, the Department sent a W-1348 Verification We Need form again requesting what was done with the proceeds from both John Hancock life insurance policies. The requested information was due by [redacted] 2014. (Exhibit B: W-1348LTC)

14. On [redacted] 2014, the Department received the requested verifications regarding the proceeds from the life insurance policies. (Hearing summary)

15. In [redacted] of 2014, the Appellant's Conservator and Authorized Representative used the proceeds from the cash surrender of the two John Hancock life insurance policies to pay the LTCF for the Appellant's cost of care. (Authorized Representative's testimony)

16. In [redacted] of 2014, the Appellant reduced her assets to below $1,600.00. (Exhibit G and Hearing summary)

17. On [redacted] 2014, the Department granted Medicaid assistance for the Appellant effective [redacted] 2014. The Department denied the Appellant's application for assistance preceding [redacted] 2014, because she was considered to be over the assets limit for the period prior to that date. (Hearing summary)

18. On [redacted] [redacted] 2015, the Department issued a fair hearing decision that adjudicated the issue of whether the Department correctly denied the Appellant's application for Medicaid assistance on [redacted] 2014, because she did not return all of the required verification. (Hearing record)

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 (MAABD) 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. 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.

4. UPM § 4005.05 (B)(2) provides that under all programs except Food Stamps, the Department considers an asset available when it actually becomes 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.

5. UPM § 4005.05 (D)(1) provides that the Department compares the assistance unit's equity in counted assets with the program asset limit when determining whether the unit is eligible for benefits.

6. The Department correctly determined that the John Hancock life insurance policies were available assets and that the Appellant had the legal right, authority or power to obtain the asset.

7. UPM § 4030.30 discusses the treatment of life insurance policies as assets.

8. 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.

    2. Policies such as term insurance policies having no cash surrender value are excluded assets.

9. 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.

    2. Except as provided above, the cash surrender value of life insurance policies owned by the individual is counted towards the asset limit.

10. The Department correctly determined that John Hancock Insurance policy #[redacted] and #[redacted] had combined face values exceeding $1500.00, and that the policies' cash surrender value was, therefore, counted toward the asset limit.

11. UPM § 4005.10 (A)(2) provides that for MAABD the asset limit is $1600 for a needs group of one.

12. The Department correctly determined that the $3,322.25 cash surrender value of the John Hancock policy # [redacted] exceeded the Medicaid asset limit of $1600.00.

13. UPM § 4005.15 (A)(2) provides that for residents of LTCF's, 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.

14. The Department correctly determined that the Appellant met the eligibility requirement of having assets under the limit as of [redacted] 2014, the date when John Hancock policy proceeds were issued to the LTCF for the Appellant's cost of care.

15. Section 17b-261(h) provides that to the extent permissible under federal law, an institutionalized individual, as defined in Section 1917 of the Social Security Act, 42 USC 1396p(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.

16. The Department correctly determined that the John Hancock policy [redacted] was countable because the Center for Medicaid Services ("CMS") has not informed the department that the provisions of 17b-261(h) are permissible under the federal law and, therefore, the provisions in the subsection cannot be implemented.

17. The Department correctly determined that the Appellant did not meet the eligibility requirement of having assets under the limit in [redacted] of 2013 through [redacted] of 2014.

18. On [redacted] 2014, the Department correctly determined that the Appellant's Medicaid eligibility begin date is [redacted] 2014, the first day of the month in which assets were reduced to within the asset limit.

DISCUSSION

After reviewing the evidence and the testimony presented at the hearing, I find that the Department's determination of an [redacted] 2014, effective date is upheld.

The record reflects that the Appellant's assets were within the Medicaid limit effective [redacted] of 2014, the month in which the life insurance policy proceeds were liquidated and used to pay the cost of care to the LTCF. Prior to [redacted] of 2014, the cash surrender value of the life insurance policy was available and exceeded the Medicaid limit.

The Appellant's Conservator and representative argues that based on CGS 17b-261(h) the value of the life insurance policy should not be considered because the Appellant

was pursuing the surrender and the proceeds were to be used to pay for her long-term care. However, the statute has limitations based on federal approval. At this point, the Department does not know whether this rule is permissible under federal law. It appears that the Department has sought federal approval to implement the statute, but has not yet obtained it. Accordingly, the Department cannot implement this provision yet and must continue to apply the regulations that are currently in place.

DECISION

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

Roberta Gould

Roberta Gould
Hearing Officer

Pc: John Hesterberg, Social Services Operations Manager
DSS, Manchester R.O.

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, 11th Floor, Hartford, CT 06015.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court within **45** days of the mailing of this decision. Even if a reconsideration has been requested, there are still only **45** days to file an appeal. 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/her 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.