

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 #662055

NOTICE OF DECISION

PARTY

██████████
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PROCEDURAL BACKGROUND

In ██████████ 2014, the Department of Social Services (the "Department") sent ██████████ ██████████ (the "Appellant") a Notice of Action ("NOA") denying her application for Long Term Care Medicaid benefits for ██████████ 2014 through ██████████ 2014 and granting her Long Term Care benefits effective ██████████ 2014.

On ██████████ 2014, the Appellant requested an administrative hearing to contest the effective date of the Long Term Care Medicaid benefits as determined by the Department.

On ██████████ ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████ 2015.

On ██████████ 2015, in accordance with sections 17b-60, 17b-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 daughter, Power of Attorney ("POA")
Nancy Ptak, Financial Administrator, Arden House
LeShae Payton, Department's Representative
Miklos Mencseli, Hearing Officer

The Appellant was not present.

STATEMENT OF THE ISSUE

The issue is the effective date of Long Term Care Medicaid benefits.

FINDINGS OF FACT

1. The Appellant is a resident of Arden House Care and Rehabilitation Center. (Exhibit 1: W-1LTC application)
2. The Appellant owns a John Hancock Whole Life Insurance policy (# [REDACTED]) with a Face Amount value of \$10,000.00. (Exhibit 3: John Hancock letter dated [REDACTED]-14)
3. On [REDACTED] 2014, the Appellant sent John Hancock a letter requesting they provide the current face and cash value of her policy. The Appellant also requested John Hancock provided the cash surrender forms. (Appellant's Exhibit A: letter dated [REDACTED]-14)
4. On [REDACTED] 2014, the Appellant received a response from John Hancock. The policy # [REDACTED] has a Face Amount of \$10,000.00 with a cash surrender value of \$7,642.92. (Exhibit 3, Appellant's Exhibit A)
5. On [REDACTED] 2014, the Appellant received a letter from John Hancock stating the surrender value as of [REDACTED]-14 is \$7,642.98. (Exhibit 4, Appellant's Exhibit A: letter dated [REDACTED]-14)
6. On [REDACTED] 2014, the Appellant received a letter from John Hancock. They received the Appellant's request to surrender policy # [REDACTED]. John Hancock was unable to process the Appellant's request to surrender the policy as they required additional information. (Appellant's Exhibit A: letter dated [REDACTED]-14)
7. On [REDACTED] 2014, the Appellant received a letter from John Hancock. They were unable to process the Appellant's request to surrender the policy as the Appellant submitted incomplete pages of the surrender form. (Exhibit 5, Appellant's Exhibit A: letter dated [REDACTED]-14)
8. On [REDACTED] 2014, the Appellant faxed John Hancock her W-9 Request for Taxpayer Identification Number and Certification form. (Appellant's Exhibit A: W-9 form dated [REDACTED]-14)
9. On [REDACTED] 2014, the Appellant received a letter from John Hancock. They were unable to process the Appellant's request to surrender the policy as the surrender form have a notarized signature, if the address has been

- changed. (Appellant's Exhibit A: letter dated [REDACTED]-14)
10. The Appellant provided John Hancock with a notarized signature. (Appellant's Exhibit A: signed affidavit)
 11. On [REDACTED] 2014, the Appellant again sent John Hancock a letter requesting they provide the current face and cash value of her policy. The Appellant also requested John Hancock provided the cash surrender check asap. (Appellant's Exhibit A: letter dated [REDACTED] 14)
 12. On [REDACTED] 2014, the Appellant signed a contract with [REDACTED] Funerals and Cooperative Funeral Fund Inc. for burial space. (Exhibit 7 & 8: [REDACTED]-15 contracts)
 13. On [REDACTED] 2014, John Hancock issued the Appellant a check in the amount of \$7,712.31 as the cash surrender for policy # [REDACTED]. (Exhibit 6: check dated [REDACTED]-14)
 14. On [REDACTED] 2014, the Appellant paid \$7,200.00 to [REDACTED] Funeral Home for her burial contract. (Exhibit 9: check dated [REDACTED]-14)
 15. On [REDACTED] 2014, the Department received the Appellant's application for Medicaid long term care assistance. The Appellant authorized the Department to disclose information with Arden House, attention Nancy Ptak. (Exhibit 1)
 16. On [REDACTED] 2014, [REDACTED] 2014 and [REDACTED] 2014, the Department sent the Appellant C/O Arden House a W-1348LTC Verification We Need form requesting information needed to process the Appellant's application. (Exhibits 2, requests 1, 2, 3: Department's W-1348LTC dated [REDACTED]-14, [REDACTED]-14 & [REDACTED]-14)
 17. On [REDACTED] 2014, the Department granted the Appellant Medicaid for long term care assistance effective for [REDACTED] 2014. The first month the Appellant was under the asset limit for the program. (Summary, Testimony)
 18. The Appellant's representatives presented the argument that Conn. Gen. Stat. § 17b-261(h) should apply to the Appellant's application as they were pursuing the surrender of her John Hancock policy and used the proceeds for her long term care needs. (Testimony)
 19. As of [REDACTED] 2014, the presented issue at the Centers for Medicare and Medicaid Services ("CMS") has not approved the state's proposal to not determine someone ineligible for Medicaid solely on the basis of the cash value of a life insurance policy worth less than \$10,000 provided the individual is pursuing surrender of the policy and that, upon surrendering

such policy, all proceeds of the policy are used to pay for the institutionalized individual's long term care.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes, authorizes the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual (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.
3. 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.
4. UPM § 4005.05 (D) provides that an assistance unit is not eligible for benefits under a particular program if the units equity in counted assets exceeds the asset limit for the particular program.
5. The Department correctly determined that the John Hancock policy [REDACTED] was an available asset and that the applicant had the legal right, authority or power to obtain the asset.
6. 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.

7. The Department correctly determined that the John Hancock insurance policy [REDACTED] had a face value exceeding \$1500.00, and that the policy's cash surrender value was therefore counted toward the asset limit.

8. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1600.00.
9. The Department correctly determined that the \$7,712.31 cash surrender value of the John Hancock policy [REDACTED] exceeded the Medicaid asset limit of \$1600.00.
10. Conn. Gen. Stat. §17b-2(8) Programs administered by the Department of Social Services provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
11. Section 17b-261(h) provides 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) 6 upon surrendering such policy all proceeds of the policy are used to pay for the institutionalized individual's long-term care.
12. The Department correctly determined the John Hancock policy [REDACTED] as countable because ("CMS") has not informed the Department that the provisions of 17b-261(h) are permissible under the federal law, the provisions in the subsection cannot be implemented.
13. The Department correctly determined that the Appellant did not meet the eligibility requirement of having assets under the limit in [REDACTED] 2014 through [REDACTED] 2014.
14. UPM § 4005.15 provides that in the Medicaid program 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.
15. UPM § 1560.10 (A) provides for begin dates of Medicaid Assistance. The beginning date of assistance for Medicaid may be one of the following: 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.
16. 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 below the asset limit for the program.

DISCUSSION

The Appellant's representatives argue 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 of the insurance policy and the proceeds were to be used to pay for long term care, in case the purchase of a funeral contract.

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.

The Department at this time cannot implement this provision yet and must continue to apply the regulations that are currently in place.

The Appellant's Representatives through no fault of their own, it took time to receive the cash surrender funds for the insurance policy from John Hancock. However, the funds were available to the Appellant and are a counted asset. The Department cannot grant eligibility until the first day of the month in which the applicant reduces its equity in counted assets to within the asset limit. The Department correctly determined the Appellant is eligible effective for [REDACTED] 2014.

DECISION

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


Miklos Mencseli
Hearing Officer

C: Lisa Wells, Operations Manager, DSS R.O. #20 New Haven

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.

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.