# 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

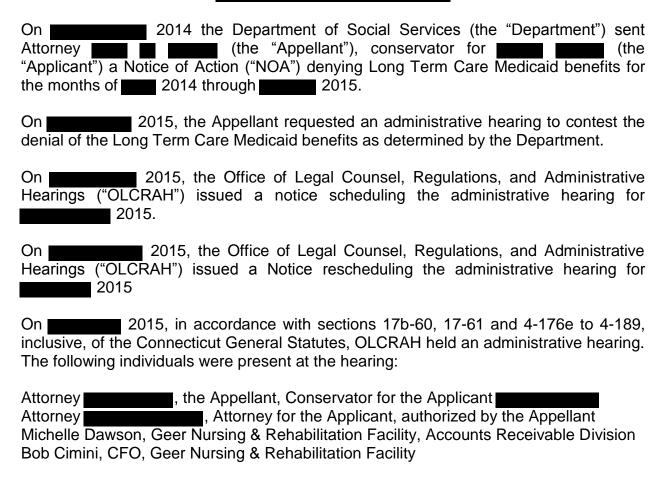
Client ID # Request # 665886

#### **NOTICE OF DECISION**

# **PARTY**

| Attorney        |   |
|-----------------|---|
| Conservator for |   |
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#### PROCEDURAL BACKGROUND



Pamela Corbin-Riddick, ESW, Department's representative Amy Kreidel, Department's fair hearing liaison Maureen Foley-Roy, Hearing Officer

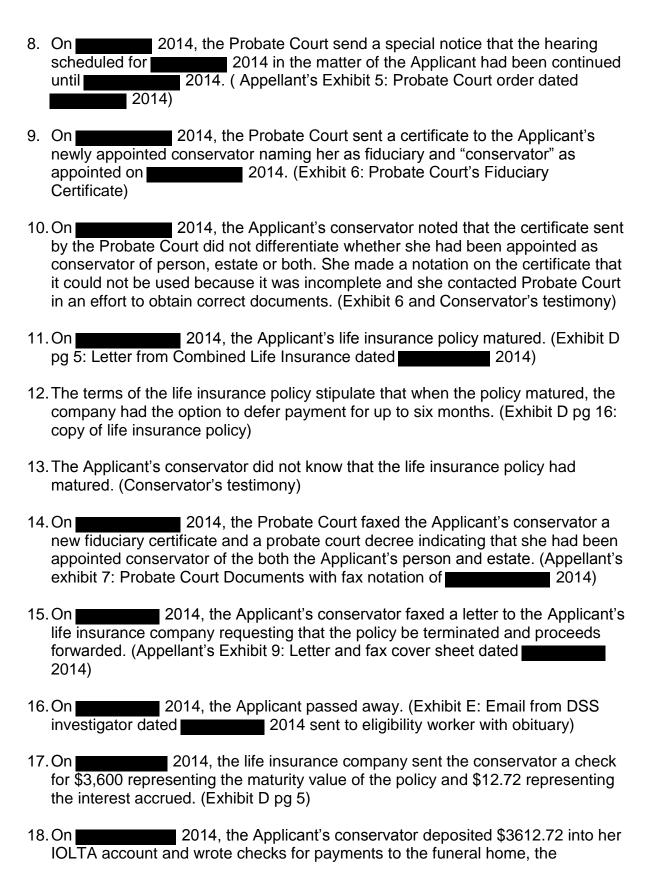
The hearing record remained open for the submission of additional evidence. On 2015, the record closed.

# STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny Long Term Care benefits was correct.

# **FINDINGS OF FACT**

- 1. On 2014, the Applicant was admitted to the facility for long term care. (Exhibit H: LTC application)
- 2. On 2014, a physician completed a Social Security Administration form regarding an individual's ability to manage benefits and indicated that due to her moderate dementia, the Applicant could neither manage her funds nor direct someone else to manage them for her. (Exhibit 2: Social Security Administration Physician Statement)
- 3. On 2014, the facility staff completed an application for long term care for the Applicant with the assistance of the Applicant's former granddaughter in law, who was neither the power of attorney, nor conservator for the Applicant. (Exhibit H, Geer Accounts Receivable staff testimony)
- 4. The Applicant's assets consisted of \$456.53 in a bank account at Salisbury Bank and a life insurance policy with a cash value of \$3600. (Exhibit H)
- 5. On or about 2014, the facility filed a petition for a conservator to be appointed for the Applicant as she had no family or friends to represent or assist her. (Geer CFO's testimony, Exhibit B1:Probate Application for Appointment of Conservator)
- 6. On 2014, the Probate Court sent a special notice that a petition in the matter of the Applicant would be held 2014 at the facility. (Appellant's Exhibit 3: Probate Court Order dated 2014)
- 7. On 2014, the Probate Court send a special notice that the hearing scheduled for 2014 in the matter of the Applicant had been continued until 2014. (Appellant's Exhibit 4: Probate Court order dated 2014)



conservator (herself) another attorney for probate charges and the facility. (Exhibit D: Insurance Policy Documents & Disbursement Checks.)

19. On 2014, the Department denied the Applicant's application for Medicaid for Long Term Care because the Applicant's assets exceeded the allowable limit. (Exhibit I: Notice of Denial)

## **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") Section 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 § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
- 4. UPM § 4005.05 provides for the definition of available assets and states that 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.
- 5. The Department was incorrect when it determined that the Applicant's life insurance policy was an available asset because the Applicant had been found to be unable to manage her own financial affairs and there was no one appointed to act on her behalf that could legally access her assets until 2014.
- 6. UPM § 4015.05 A 1 provides that subject to the conditions described in this section, equity in an asset which is inaccessible to the assistance unit is not counted as long as the asset remains inaccessible.
- 7. UPM § 4015.05 B 2 provides that 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.
- 8. 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.
- 9. The Department incorrectly determined that the cash surrender value of the Applicant's life insurance policy was a counted asset because it was inaccessible and the conservator, once appointed, was cooperating in attempting to access that asset.
- 10. The Department incorrectly determined that the Applicant's assets exceeded the allowable limit.

11. The Department was incorrect when it denied the Applicant's application for Medicaid for Long Term care for exceeding the allowable limit.

# **DISCUSSION**

All of the regulations and policy address availability and accessibility of an applicant's assets. Available assets are defined as those that can be used for an individual's general or medical support. In this case, the Applicant's assets could not be used for her support because there was no one who could legally access them. A physician had determined that the Applicant was unable to manage her own affairs. Until there were complications which prevented the appointment of another individual to represent the Applicant, at which time her life insurance policy had already matured. When the Conservator was appointed, she was diligent in attempting to have the Applicant's assets accessed and used for her support. I find that the Department was incorrect in denying the Applicant's application for Medicaid for Long Term Care because her assets exceeded the allowable limit when those assets were not available or accessible to the Applicant.

## **DECISION**

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

#### **COMPLIANCE**

Compliance with this order shall be submitted to the undersigned by 2015 and shall consist of documentation that the Department has reopened and processed the 2014 application without consideration of the Applicant's assets, which were unavailable to be used for her general and medical support.

Maureen Foley-Roy,
Maureen Foley-Roy,
Hearing Officer

Pc: Annette Lombardi, Operations Manager, DSS R.O. #62, Torrington Amy Kreidel, Fair Hearing Liaison, Waterbury Pamela Corbin-Riddick, DSS, Waterbury

#### 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 <u>specific</u> grounds for the request: for example, indicate <u>what</u> error of fact or law, <u>what</u> new evidence, or <u>what</u> 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.