

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105

██████████ 2015
SIGNATURE CONFIRMATION

Client ID #: ██████████
Hearing ID #: 666282

NOTICE OF DECISION

PARTY

██████████
████████████████████
████████████████████

Applicant: ██████████

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") sent ██████████ ("Appellant") a notice indicating that her mother ██████████ ("applicant") application for Long Term Care ("LTC") Medicaid benefits are granted effective ██████████ 2014.

On ██████████ 2015, the Appellant requested an administrative hearing to contest the Department's decision to grant eligibility effective ██████████, 2014 and deny the preceding months.

On ██████████, 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice originally scheduling the administrative hearing for ██████████, 2015. OLCRAH rescheduled the hearing twice at the Appellant's request.

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 hearing record closed on ██████████ 2015 for receipt of additional information.

The following individuals were present at the hearing:

Attorney ██████████ for the Applicant
██████████ Appellant, for the Applicant
██████████, the Appellant, Applicant's daughter

██████████, Applicant's nephew (observer)
Diane Wood, Department's Representative
Karen Brown, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department was correct in its determination of the applicant's Long Term Care Medicaid benefits effective date of ██████████ 2014.

FINDINGS OF FACT

1. Since ██████████ 2014, the applicant resides at ██████████ Nursing Facility.
(Exhibit 1: W-1LTC application packet)
2. As of ██████████ 2014, the applicant and her spouse had assets that included the following:
 - Four Webster Bank accounts (ending in ██████████, and ██████████)
 - A Resident trust
 - Two Citizens Bank accounts (ending in ██████████ and ██████████)
 - One Citizens individual retirement account (IRA) (ending in ██████████)
 - Vantis Life Insurance policy (\$3,678.83 cash surrender value)
 - Prudential Life Insurance policy (\$22,978.67 cash surrender value)(Exhibit 7: Department's spousal assets worksheet)
3. As of ██████████ 2014, the couple had total bank, trust, insurance, and IRA assets totaling \$41,370.39. (Exhibit 7: Department's spousal assets worksheet; Exhibit 9: copies of Webster and Citizens Bank statements and letter from Vant Life)
4. On ██████████, 2014, the Department received the applicant's request for Long Term Care Medicaid benefits. (Exhibit 1)
5. On ██████████ 2014, the Department reviewed the application. (Hearing Summary)
6. On ██████████ 2014, the Department sent the applicant's daughter a W-1348LTC, "We Need Verification from You" requesting the following: date of admission to St. Francis Hospital, proof of transactions of \$5,000.00 or more on all assets, proof of life insurance, and appraisal of ██████████ MG TD Convertible. The requested information was due by ██████████, 2014. (Exhibit 2: W-1348LTC)
7. The Department received some of the requested information on the following dates: ██████████/14, ██████████/14, ██████████/14, and ██████████/14. (Hearing Summary; Appellant's Exhibit 3: requested information sent on ██████████/14; Appellant's Exhibit 5: requested information sent on ██████████/14; Appellant's Exhibit 7: requested information sent from ██████████/14; Appellant's Exhibit 8: requested information sent from ██████████/14)
8. As of ██████████ 2014, the applicant and her spouse's combined assets totaled

\$33,390.31. (Exhibit 7)

9. On [REDACTED] 2014, the Department sent the applicant's daughter a second W-1348LTC requesting proof of transactions of \$5,000.00 or more on all assets, verification that the life insurance policy was cashed out and the status of the funds, and verification of ownership of the [REDACTED] MG and [REDACTED] Mercury. The requested information was due by [REDACTED], 2014. (Exhibit 3: W-1348LTC)
10. On [REDACTED] 2014, the Department sent a third W-1348LTC requesting proof of transactions of \$5,000.00 or more on all assets and verification that the applicant has spent down all assets in order to be eligible for benefits. It further stated that the applicant will become eligible on the month that the assets are spent down. The requested information was due by [REDACTED], 2014. (Exhibit 4: W-1348LTC)
11. The Department received some of the requested information on the following dates: [REDACTED]/14, [REDACTED]/14, [REDACTED]/14, and [REDACTED]/14. (Department's Testimony; Appellant's Exhibit 9: request information sent; Appellant's Exhibit 14: requested information sent to DSS on [REDACTED]/14; Appellant's Exhibit 15: requested information sent to DSS on [REDACTED]/14; Appellant's Exhibit 17: requested information for DSS on [REDACTED]/14)
12. On [REDACTED], 2014, the Department sent out a fourth W-1348LTC requesting bank account statements and copies of bills, receipts, and canceled checks to show bank transactions of amounts \$5,000.00 or greater as well as the origin of funds deposited into the accounts. The requested information was due by [REDACTED], 2014. (Exhibit 5: W-1348LTC)
13. The Department did not receive the requested information by the due date. (Hearing Summary)
14. On [REDACTED] 2014, the Department received a fax on behalf of the applicant with the requested information. (Exhibit 6: Department's narrative notes; Exhibit 10: statements from Webster and Citizens Banks)
15. On [REDACTED] 2014, the Department denied the applicant's application for Long Term Care Medicaid due to failing to provide the required information it needed in order to determine eligibility. (Exhibit 6)
16. On [REDACTED] [REDACTED] 2014, the Department reviewed the application and the requested information and completed a W-1SAN, assessment of spousal assets and determined that the total value of the applicant and spouse's assets is \$65,940.87, with the applicant's share as \$1,600.00 and the spouse's share of assets as \$32,970.44; with a total amount of \$34,570.44 that the couple can retain. (Exhibit 11: W-1SAN)
17. On [REDACTED], 2014, the Department granted the applicant's Long Term Care Medicaid benefits with an effective date of [REDACTED] 2014. (Exhibit 12: Notice of

Approval for Medicaid)

18. The balance of the spousal assets for the months that the application was pending were as follows:

MONTH	TOTAL BALANCE OF ACCOUNTS
██████████ 2014 DOI	\$65,940.87
██████████ 2014	\$41,370.39
██████████ 2014	\$18,638.21
██████████ 2014	\$42,418.91
██████████ 2014	\$41,670.77
██████████ 2014	\$33,390.31
██████████ 2014	\$33,820.95

(Exhibit 7)

19. The Appellant contacted the Department on several occasions to inquire about the status of the application. (Appellant's Exhibit A: Attorney ██████████ arguments; Exhibit 6)
20. The applicant's assets reduced below \$34,570.44 in ██████████ 2014 and then, effective ██████████ 2014. (Fact #11)
21. The Department notified the applicant on the ██████████ 2014 and ██████████ 2014 W-1348LTC requests that the applicant's assets must reduce to the \$1,600 asset limit. (Facts # 9 and 11)

CONCLUSIONS OF LAW

1. Section 17b-2, section (9) of the Connecticut General Statutes designates the Department of Social Services as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
3. Section 17b-80(a) of the Connecticut General Statutes states that the Department shall grant aid only if the applicant is eligible for that aid.
4. Uniform Policy Manual ("UPM") Section 1505.35.B provides that the Department notifies applicants of:
 1. any actions taken on applications; and
 2. when applications are not acted upon within the established time limits.

5. UPM Section 1505.35.C.1.c.2 provides that the Department's standard of promptness for processing Medicaid applications based on age is a maximum time of 45 calendar days.
6. UPM Section 1505.40.B.5 provides that for the Medicaid program, regardless of the standard of promptness, no eligibility determination is made when there is insufficient verification to determine eligibility when the following has occurred:
 - (1) the Department has requested verification; and
 - (2) at least one item of verification has been submitted by the assistance unit within a time period designated by the Department, but more is needed.
7. The Department correctly delayed the determination of eligibility for LTC Medicaid because it had some of the requested items but required more in order to determine eligibility.
8. The Department notified the Appellant and applicant via the W-1348, verifications we need forms of what documents were requested in order to determine eligibility as it did not have all of the information it needed.
9. The Department notified the Appellant and applicant through a process delay notice when it recognized that it did not complete application processing within the prescribed time limits.
10. UPM Section 1507.05.A.1.a states in part that the Department provides an assessment of assets at the request of an institutionalized spouse or a community spouse (1) when one of the spouses begins his or her initial continuous period of institutionalization; and (2) whether or not there is an application for Medicaid; or (b) at the time of application for Medicaid whether or not a request is made.
11. The Department could not determine the spousal assessment of assets until it had all of the verifications it needed.
12. UPM Section 1507.05.C provides the following:
 1. The Department provides a notification of the results of the assessment to each spouse.
 2. The notification contains the following information:
 - a. the result of the assessment; and
 - b. the documents used for the assessment; and
 - c. the amount of the spousal share; and
 - d. the maximum amount of assets which may be retained by the spouses at the time of the results of the assessment which

would not adversely affect eligibility; and

- e. the Department's determination of the assistance unit's current eligibility status in regard to assets; and
- f. the right of each spouse to request a Fair Hearing (Cross Reference 1570).

13. The Department provided notification of the results of the assessment to the Appellant.

14. UPM Section 4005.05.B provides that:

- 1. 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.
- 2. 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.

15. UPM Section 1010.05.A.1 provides that the assistance unit must supply the Department, in an accurate and timely manner as defined by the Department, all pertinent information and verification which the Department requires to determine eligibility and calculate the amount of benefits (cross reference: 1555).

16. UPM Section 4005.10.A.2.a provides that the Medicaid asset limit for one person is \$1,600.

17. The applicant's assets fell below the \$1,600.00 Medicaid asset limit in [REDACTED] 2014.

18. The Department incorrectly determined that the applicant was not eligible for LTC Medicaid for [REDACTED] 2014.

19. The Department correctly determined that the applicant was not eligible for LTC Medicaid for the months of [REDACTED] 2014, [REDACTED] 2014 and [REDACTED] 2014.

20. UPM Section 4005.15.A.2 provides that for Medicaid and AABD residents of Long Term Care Facilities, 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 applicant's assets were within the Medicaid asset limit in [REDACTED] 2014 and then effective [REDACTED] 2014.

22. The Department must grant Medicaid eligibility for the applicant for the month of [REDACTED] 2014, as the assets reduced to below the asset limit.
23. The Department correctly granted the applicant's Medicaid effective [REDACTED] 2014, the month that the applicant's assets reduced to below the asset limit.

DISCUSSION

The Appellant testified that she maintained ongoing communication with the Department regarding the application process and was not told until [REDACTED] 2014 to have the applicant spend-down her assets. She further testified that the Department notified them of application day on [REDACTED] 2014, 48 days following the application date. Policy provides that regardless of the standard of promptness, for the Medicaid program, the Department may not determine eligibility if it has some information but needs more, which is how the Department followed its course. The Department provided communication to the Appellant on [REDACTED], 2014 by sending out a "verifications we need" or W-1348 form requesting further documentation, and subsequently sent out more "verifications we need" letters, so there was communication between the Appellant and the Department. The applicant's assets fell below the asset limit in [REDACTED] 2014, so the applicant is entitled to medical benefits for that period. The Department must grant eligibility for [REDACTED] 2014. Following the month of [REDACTED], the assets exceeded the limits until [REDACTED] 2014.

DECISION

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

ORDER

1. The Department must grant LTC Medicaid for [REDACTED] 2014 for the applicant if all other requirements of eligibility are met.
2. Compliance, in the form or a document, is due to the undersigned no later than [REDACTED] 2015.



Karen Brown
Hearing Officer

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, 25 Sigourney Street, Hartford, CT 06106.

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, 25 Sigourney Street, Hartford, CT 06106. 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.