

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: ██████████
Request: 666549

NOTICE OF DECISION

PARTY

████████████████████
c/o ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") issued ██████████ (the "Appellant") a notice denying the Appellant Medicaid coverage for long-term care services for ██████████ 2014, for the reason that the value of her assets exceeded the program's limits. The Department granted the Appellant's ██████████ 2014 Medicaid application for long-term care services effective ██████████ 2014.

On ██████████ 2014, ██████████, the Appellant's conservator of person and estate, assigned ██████████ the conservator's right to apply for Medicaid benefits for services provided to the Appellant by the facility.

On ██████████ 2015, Attorney ██████████ of the ██████████ Co. filed a request with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") for an administrative hearing to dispute the Department's ██████████ 2014 notice. ██████████ Co. represents ██████████

On ██████████ 2015, the OLCRAH issued notices to the Appellant, the Appellant's conservator, and the Appellant's conservator's counsel, Attorney ██████████, scheduling the administrative hearing for ██████████ 2015. The Appellant requested postponements of the administrative hearing; the OLCRAH granted the requests.

On ██████████ 2015, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. Although noticed as to the scheduling of the ██████████ 2015 administrative hearing, the Appellant's conservator did not appear for the proceeding and did not request a postponement of the administrative hearing for good cause.

Attorney [REDACTED] of the [REDACTED] was sworn in for the administrative hearing, as she provided testimony.

The following individuals attended the hearing:

[REDACTED] [REDACTED] counsel
Christine Morin, Department's representative
Nedra Pierce, Department's representative
Eva Tar, Hearing Officer

STATEMENT OF ISSUE

The issue to be decided by this administrative hearing is whether the Department correctly determined that the Appellant's counted assets exceeded the Medicaid program's asset limit in [REDACTED] 2014.

FINDINGS OF FACT

1. On [REDACTED] 2013, the [REDACTED] Probate Court appointed [REDACTED] (the "conservator") to be the Appellant's conservator of person and estate. (Appellant's Exhibit 3: Probate decrees, varying dates)
2. Attorney [REDACTED] represented the Appellant's interests in conjunction with a marital dissolution. ([REDACTED] counsel's testimony)(Appellant's Exhibit 3)
3. The Appellant is a resident of [REDACTED] a skilled nursing facility. (Appellant's conservator's representative's testimony)
4. On [REDACTED] 2014, the Appellant's conservator assigned [REDACTED] the conservator's right to apply for Medicaid benefits for services provided to the Appellant by the facility. (Hearing record)
5. On [REDACTED] 2014, the Department received the Appellant's Medicaid application for long-term care services. (Department's Exhibit 3: Assistance Status-STAT, as of [REDACTED]/15)(Department's Exhibit 1: W-1F, signed [REDACTED]/14)
6. At the time of the Appellant's [REDACTED] 2014 Medicaid application, the Appellant's assets consisted of Webster Bank account and a resident trust account at [REDACTED] [REDACTED] (Department's representative's testimony)
7. Webster Bank account ([REDACTED]) is listed under the Account Title of "Estate of [the Appellant]" and the conservator's name. (Department's Exhibit 5: Transaction form w/attachments, varying dates)(Appellant's Exhibit 4: Narrative-NARR w/attachments, varying dates)
8. [REDACTED] resident trust account ([REDACTED]) is listed in the Appellant's name. (Appellant's Exhibit 5: Statement, [REDACTED]/14)

9. "Care Cost Payments" and "Beauty Shop/Barber" are periodically debited from the [REDACTED] resident trust account ([REDACTED]). (Appellant's Exhibit 5)
10. On [REDACTED] 2014, a debit card associated with Webster Bank account ([REDACTED]) was used to make a \$25.95 purchase. (Department's Exhibit 5)(Appellant's Exhibit 4)
11. On [REDACTED] 2014, Webster Bank account ([REDACTED]) had a balance of \$1,090.05. (Department's Exhibit 5)(Appellant's Exhibit 4)
12. On [REDACTED] 2014, the Appellant's [REDACTED] resident trust account ([REDACTED]) had a balance of \$720.00. (Department's Exhibit 6: Assets-1-AST1, as of [REDACTED]/15)
13. On [REDACTED] 2014, the Appellant's conservator signed check number [REDACTED] from Webster Bank account ([REDACTED]) for \$898.39, payable to [REDACTED] (Department's Exhibit 5)(Appellant's Exhibit 4)
14. On [REDACTED] 2014, the Department granted the Appellant Medicaid coverage for long-term care services effective [REDACTED] 2014. (Department's Exhibit 2: Notice Content-NCON, [REDACTED]/14)
15. On [REDACTED] 2014, the Department issued a notice to the Appellant, denying the Appellant's Medicaid application for long-term care services for the month of [REDACTED] 2014, for the reason that the value of her assets exceeded the program's limits. (Hearing record)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes designates the Department as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Section 4000.01 of the Uniform Policy Manual ("UPM") in part provides the following definitions:

Asset Limit

The asset limit is the maximum amount of equity in counted assets which an assistance unit may have and still be eligible for a particular program administered by the Department.

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.

Counted Asset

A counted asset is an asset which is not excluded and either available or deemed available to the assistance unit.

3. For every program administered by the Department, there is a definite asset limit. UPM § 4005.05 (A).
4. With the exception of certain Medicaid coverage groups, as listed in UPM § 4005.10 (A)(2), the asset limit for the Medicaid coverage group associated with the categorically and medically needy is \$1,600.00 for a needs group of one, and \$2400.00 for a needs group of two.
5. The Appellant is a needs group of one.
6. The Appellant is subject to the Medicaid program's \$1,600.00 asset limit.
7. MA, 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. UPM § 4005.15 (A)(2).
8. 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. UPM § 4005.05 (B)(1).
9. 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. If the terms of a trust provide for the support of an applicant, the refusal of a trustee to make a distribution from the trust does not render the trust an unavailable asset. Notwithstanding the provisions of this subsection, the availability of funds in a trust or similar instrument funded in whole or in part by the applicant or the applicant's spouse shall be determined pursuant to the Omnibus Budget Reconciliation Act of 1993, 42 USC 1396p. The provisions of this subsection shall not apply to a special needs trust, as defined in 42 USC 1396p (d)(4)(A). For purposes of determining whether a beneficiary under a special needs trust, who has not received a disability determination from the Social Security Administration, is disabled, as defined in 42 USC 1382c(a)(3), the Commissioner of Social Services, or the commissioner's designee, shall independently make such determination. The commissioner shall not require such beneficiary to apply for Social Security disability benefits or obtain a disability determination from the Social Security Administration for purposes of determining whether the beneficiary is disabled. Conn. Gen. Stat. § 17b-261 (c).
10. Under all programs except [the Supplemental Nutrition Assistance Program], 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. UPM § 4005.05 (B)(2).
11. The Appellant had the legal right to obtain the funds in Webster Bank account (██████) or to have the monies in that account applied for her general or medical support.
12. The Appellant's conservator had the legal authority or power to obtain the monies in Webster Bank account (██████) on the Appellant's behalf or to have the monies in these financial instruments applied for the Appellant's general or medical support.

13. The Appellant had the legal right to obtain the funds in her [REDACTED] resident trust account (-[REDACTED]) or to have the monies in that account applied for her general or medical support.
14. The Appellant's conservator had the legal authority or power to obtain the monies in [REDACTED] resident trust account (-[REDACTED]) on the Appellant's behalf or to have the monies in that account applied for the Appellant's general or medical support.
15. 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. UPM § 4005.05 (D)(1).
16. Some assets are not counted because they are considered inaccessible to the assistance unit. This chapter describes the Department's policies and procedures concerning inaccessible assets and their effect upon the assistance unit's eligibility. UPM § 4015.
17. 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. UPM § 4015.05 (A)(1).
18. The burden is on the assistance unit to demonstrate that an asset is inaccessible. UPM § 4015.05 (B)(1).
19. 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. a. If the unit does not cooperate as described above, the asset is considered available to the unit, and the unit's equity in the asset is counted toward the asset limit. b. If the unit's equity in the asset is unknown, the non-cooperative adult member of the unit is ineligible for assistance. UPM § 4015.05 (B) (2).
20. UPM § 3525.15 (A) describes the requirements of an assistance unit to cooperate in pursuing inaccessible assets, as defined by the Department.
21. The Appellant did not meet her burden to demonstrate that the funds in the Webster Bank account (-[REDACTED]) were inaccessible to the Appellant's conservator.
22. For the purposes of the Medicaid program, Webster Bank account (-[REDACTED]) was one of the Appellant's counted assets.
23. The Appellant did not meet her burden to demonstrate that the funds in the [REDACTED] resident trust account (-[REDACTED]) were inaccessible to the Appellant's conservator.
24. For the purposes of the Medicaid program, [REDACTED] resident trust account (-[REDACTED]) one of the Appellant's counted assets.
25. For the purposes of the Medicaid program, the total cash values of Webster Bank account (-[REDACTED]) and [REDACTED] resident trust account (-[REDACTED]) are compared to the program's asset limit.

26. The Department correctly determined that the Appellant's counted assets exceeded the Medicaid program's \$1,600.00 asset limit in [REDACTED] 2014.

DISCUSSION

[REDACTED] counsel argues that the Appellant's status as a conserved individual rendered her assets "inaccessible" for the purposes of the Medicaid program. In the alternative, she argues that the Appellant's conservator's delay in reducing the Appellant's total assets to within the \$1,600.00 asset limit rendered those assets "inaccessible." These arguments are without merit.


Section 17b-261 (c) of the Connecticut General Statutes states: "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." The statute is unambiguous.

The Appellant had the legal right to have the funds in Webster Bank account (-[REDACTED]) and her [REDACTED] resident trust account (-[REDACTED]) used for her general or medical support. The Appellant's conservator had the authority and power to obtain the funds in those accounts and apply the funds for the Appellant's general or medical support. These assets are "available assets" and are counted toward the Medicaid program's \$1,600.00 asset limit.

The Appellant's counted assets exceeded the Medicaid program's asset limit in [REDACTED] 2014. The Appellant was not eligible for Medicaid coverage of her long-term care services in [REDACTED] 2014.

DECISION

The Appellant's appeal is DENIED.



Eva Tar
Hearing Officer

cc: [REDACTED] Co.
Bonnie Shizume, DSS-New Haven (20)
Rachel Anderson, DSS-New Haven (20)
Brian Sexton, DSS-New Haven (20)
Lisa Wells, DSS-New Haven (20)

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.