

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 # 673146

NOTICE OF DECISION

PARTY

██████████
C/O ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2014, the Department of Social Services (the "Department") sent ██████████ ██████████ the authorized representative for ██████████ ██████████ (the "Appellant") a Notice of Action ("NOA") denying the Appellant's application for Long Term Care ("LTC") Medicaid benefits.

On ██████████ ██████████, 2015, the Appellant's representative requested an administrative hearing to contest the Department's decision to deny the Appellant's application for Medicaid.

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:

Attorney ██████████ for the Appellant
Attorney ██████████, for the Appellant
██████████, Riverside Health Care, for the Appellant
Diane Wood, Department's Representative
Thomas Monahan, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny the Appellant's application for LTC Medicaid due to failure to submit information needed to establish eligibility was correct.

FINDINGS OF FACT

1. On [REDACTED], 2014, the Department received an application for Medicaid LTC Assistance for the Appellant. (Exhibit 1: Application form, [REDACTED]/14)
2. The Department denied the Appellant's previous [REDACTED] 2014, application for Long Term Medicaid in [REDACTED] of 2014. (Hearing record)
3. The Appellant entered Riverside Health & Rehab Center on [REDACTED], 2013. (Ex. 1: Application form, [REDACTED]/14)
4. The Appellant died on [REDACTED], 2014. (Hearing record)
5. The Appellant's Power of Attorney prior to his death was [REDACTED]. (Ex. 1: Application form, [REDACTED]/14)
6. On [REDACTED], 2015, the probate court appointed [REDACTED] Executrix of the Appellant's estate. (Appellant's Ex. A: Hearing request documents)
7. On [REDACTED], 2015, the probate court removed [REDACTED] as Executrix and appointed Attorney [REDACTED] as Administrator of the Estate. (Appellant's Ex. A: Hearing request documents)
8. On [REDACTED] 2014, the Department sent the Appellant's authorized representative a verification form requesting Niagara Bank statements from [REDACTED] 2014 to the present, verification that the Appellant's home was listed for sale and the Appellant's marital status at the time of his death. (Ex. 2: We Need Verification From You form, [REDACTED]/14)
9. On [REDACTED] 2014, the Department received the requested bank statements and verification of the Appellant's marital status. (Hearing record)
10. In mid-November the Appellant's daughter, who was also his Power of Attorney ("POA") prior to his death, brought a Berkshire Hathaway realtor to the Appellant's home. The realtor told the Appellant's daughter that the home was not marketable due to its poor condition. The realtor told the Appellant's daughter to contact a probate lawyer because she no longer

had the authority to sign a listing contract as her POA expired at the time of the Appellant's death. (Ex. I: Appellant's daughter's affidavit, [REDACTED]/15,)

11. On [REDACTED] [REDACTED] 2014, the Department sent the Appellant's representative another verification form requesting verification that the Appellant's home was listed for sale. (Ex. 3: We Need Verification From You form, [REDACTED]/14)
12. On [REDACTED] 2014, the Department received an email from Attorney [REDACTED] regarding the pending application and the Department's request to send verification that the Appellant's home was listed for sale. Counsel informed the Department that due to the poor condition of the Appellant's home, a realtor who viewed the property stated that it could not be listed for sale. Counsel asked if a letter from the realtor was sufficient evidence as to why the home was not listed for sale. (Ex. E: emails between Department and Attorney [REDACTED])
13. On [REDACTED] 2015 the Appellant's counsel submitted a letter from a realtor from Berkshire Hathaway home services stating that due to the home's deplorable condition in today's market it is not marketable for sale. (Ex. K: Realtor's letter, [REDACTED]/14)
14. The Appellant's home had multiple ceiling water leaks and mold on the interior walls and ceilings. There were broken windows and missing fixtures in the bathroom and kitchen. (Ex. K: Realtor's letter, [REDACTED]/14)
15. On [REDACTED], 2015 the Department responded to counsel's email notifying her that the home can be listed for sale by a representative for the owner. (Ex. E: emails between Department and Attorney [REDACTED])
16. On [REDACTED], 2014, the Appellant's counsel requested an extension so that the facility could petition the probate court to open the Appellant's estate so that a legal representative could be appointed who then could attempt to list the property for sale. (Ex. E: emails between Department and Attorney [REDACTED])
17. The Department's representative's response to the extension request was that conversations were already held with the POA and a facility representative regarding the requirement of listing the home for sale.
18. On [REDACTED] [REDACTED], 2014, the Department denied the Appellant's application for LTC assistance for failure to return the information requested to determine eligibility. (Ex. E: emails between Department and Attorney [REDACTED])

CONCLUSIONS OF LAW

1. Section 17b-2 and § 17b-260 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. Section 1-56b of the Connecticut General Statutes provides that if the principal dies, the power of attorney shall cease at the time of the principal's death.
3. Regulation 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. Uniform Policy Manual ("UPM") § 1010.05(A)(1)
4. Regulation provides that the Department must inform the assistance unit regarding the eligibility requirements of the programs administered by the Department, and regarding the unit's rights and responsibilities. UPM § 1015.10(A)
5. The Department correctly sent the Appellant multiple Application Verification Requirements lists requesting information needed to establish eligibility.
6. Regulation provides that the following promptness standards are established as maximum time periods for processing applications: forty-five calendar days for AABD or MA applicants applying on the basis of age or blindness. UPM § 1505.35(C)
7. Regulation provides that the Department determines eligibility within the standard of promptness for the AFDC, AABD, and MA programs except when verification needed to establish eligibility is delayed and one of the following is true: the client has good cause for not submitting verification by the deadline, or the client has been granted a 10 day extension to submit verification which has not elapsed. UPM § 1505.35(D)(2)
8. Regulation provides that the eligibility determination is delayed beyond the AFDC, AABD or MA processing standard if because of unusual circumstances beyond the applicant's control, the application process is incomplete and one of the following conditions exists:
 1. Eligibility cannot be determined; or

2. Determining eligibility without the necessary information would cause the application to be denied.

UPM § 1505.40(B)(4)(a)

9. Regulation provides that if the application is delayed, the Department continues to process the application until
 1. The application is complete; or
 2. Good cause no longer exists.

UPM § 1505.40(B)(4)(b)

10. The Appellant's representatives requested an extension on [REDACTED] 2014, because the Appellant did not have a legal representative to sign a real estate contract.
11. The Appellant's representatives demonstrated good cause in not listing the home property for sale.
12. The Department incorrectly denied the Appellant's application for failure to submit information needed to establish eligibility.

DISCUSSION

After reviewing the evidence and testimony presented, the Department's action to deny the Appellant's request for Medicaid is not upheld.

Regulations provide that an application must remain pending as long as the client has good cause for not submitting verification by the deadline. The Appellant died on [REDACTED], 2014. The POA for [REDACTED], the Appellant's daughter, ended on the Appellant's date of death. The case was denied on [REDACTED], 2014. [REDACTED] was appointed Executrix of the Appellant's Estate [REDACTED] 2015. No one had legal authority to sign a real estate contract until [REDACTED] 2015, which was after the application was denied. The Appellant's representatives had good cause on [REDACTED], 2014, when they requested and extension so that a legal representative could be appointed by the court. The Department argued that the Appellant's were aware of the requirement of listing the home for sale for over a year. The previous application and denial has no bearing on the [REDACTED] 2014 application. The POA for the appellant's daughter was in effect at the time of the last application. The Appellant's representatives demonstrated good cause and requested a reasonable extension in order to prepare and list the home for sale.

DECISION

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

ORDER

1. The Department will reopen the LTC Medicaid application to the original application date of [REDACTED], 2014.
2. The Department will request any outstanding verifications and determine eligibility.
3. No later than twenty days of the date of this decision, the Department will submit to the undersigned verification of compliance with this order.

Thomas Monahan
Hearing Officer

Pc: John Hesterberg, Operations Manager, Manchester Regional Office
Diane Wood, Hearing Liaison, Hartford Regional Office
Attorney [REDACTED]

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, 25 Sigourney Street, Hartford, CT 06106-5033.

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 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.