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

, 2015 Signature confirmation

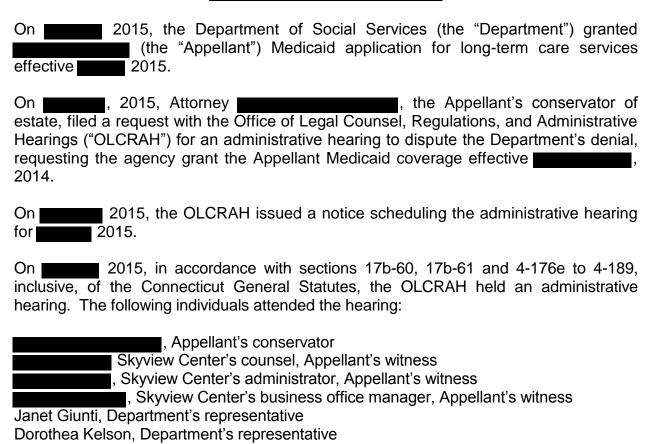
Client: Request: 699474

# **NOTICE OF DECISION**

# **PARTY**

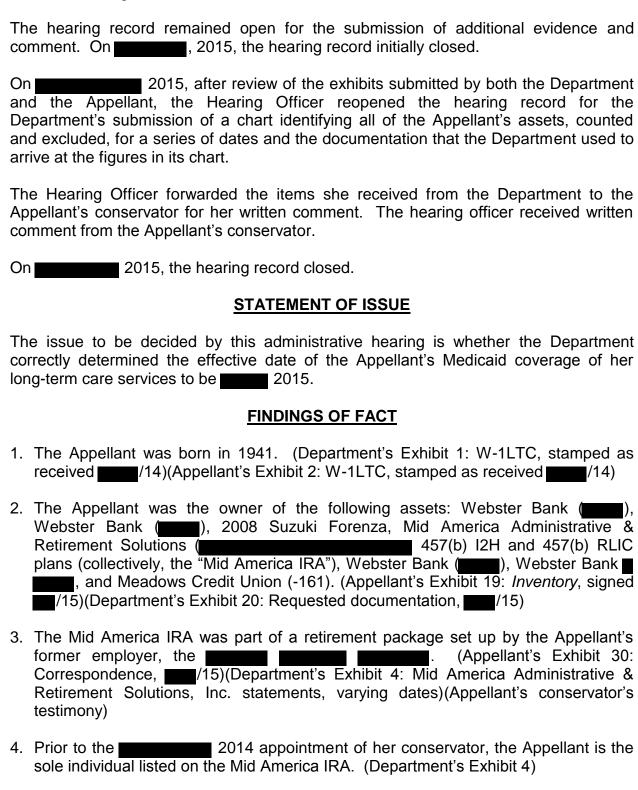


## PROCEDURAL BACKGROUND

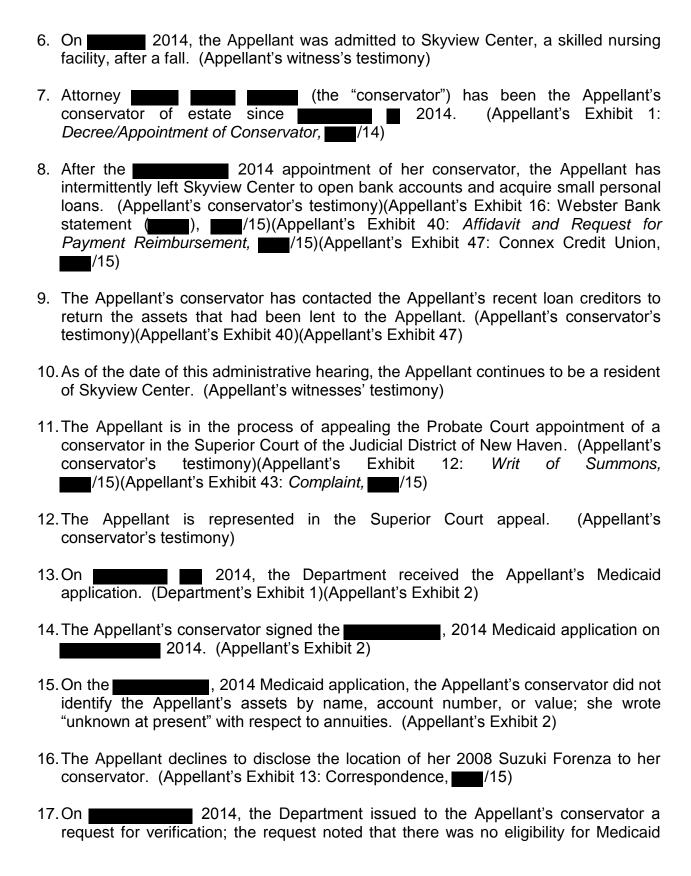


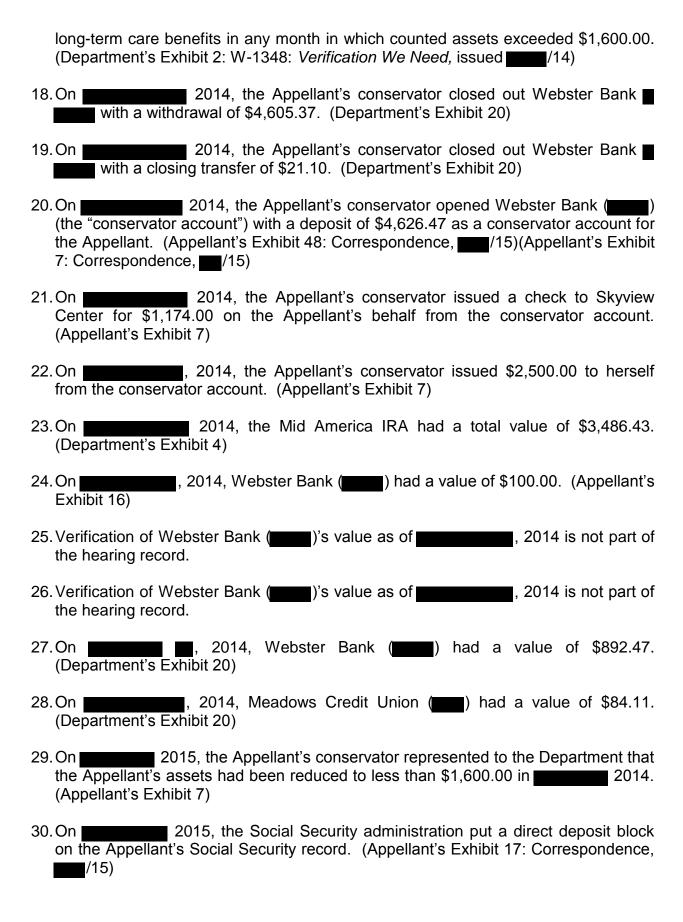
Eva Tar, Hearing Officer

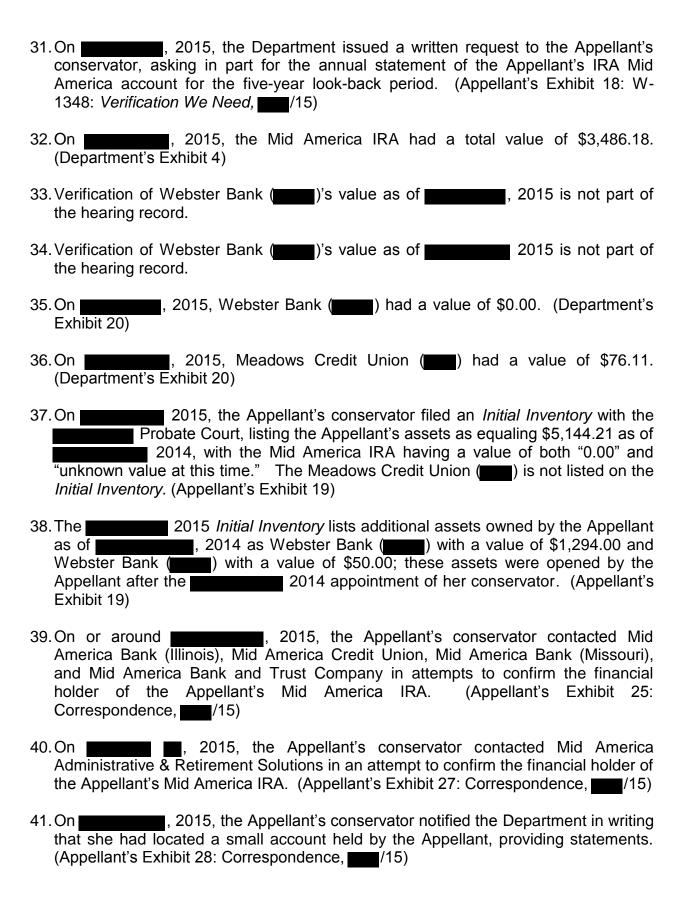
(Department's Exhibit 4)

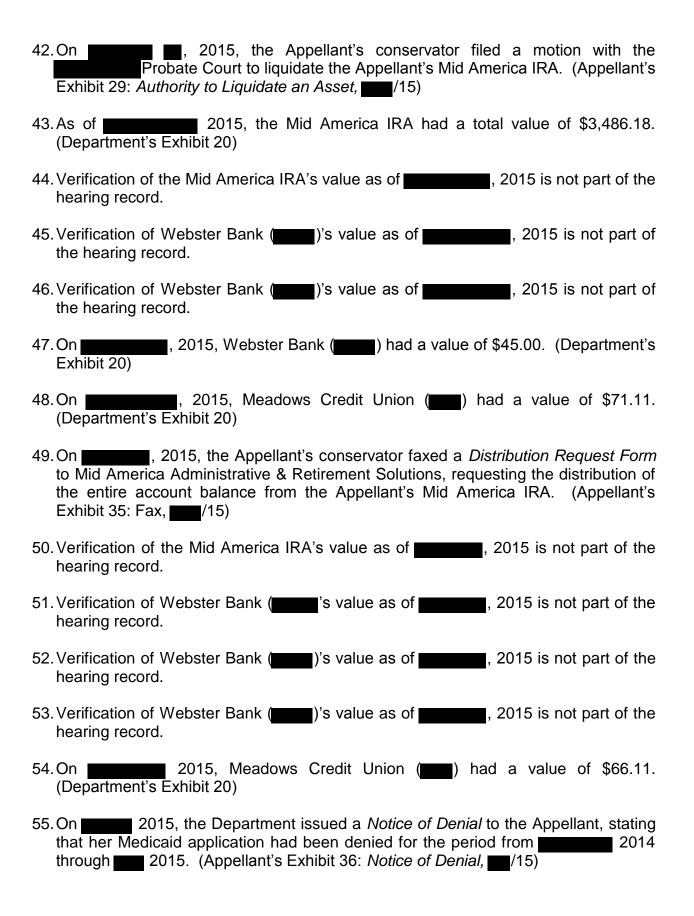


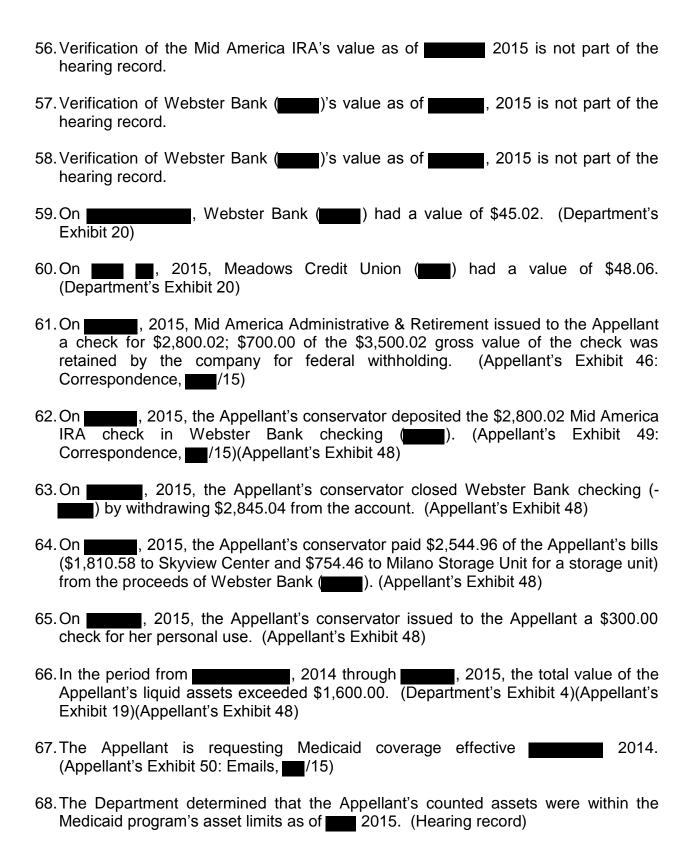
5. On 2014, the Appellant withdrew \$2,500.00 from her Mid America IRA plan.











69. On 2015, the Department granted the Appellant's Medicaid application for long-term care services effective 2015. (Appellant's Exhibit 51: General Information About Your Eligibility, 6/4/15)(Department's representative's testimony)

#### CONCLUSIONS OF LAW

- 1. 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. Conn. Gen. Stat. § 17b-2.
- 2. Section 4000.01 of the UPM provides in part 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.

<u>Available Asset</u>: 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.

<u>Counted Asset</u>: A counted asset is an asset which is not excluded and either available or deemed available to the assistance unit.

- 3. 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. UPM § 4005.05 (B)(1).
- 4. 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. An assistance unit is not eligible for benefits under a particular program if the unit's equity in counted assets exceeds the asset limit for the particular program, unless the assistance unit is categorically eligible for the program and the asset limit requirement does not apply. UPM § 4005.05 (D).
- 5. 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).
- 6. AABD and MAABD Categorically and Medically Needy. (Except Qualified Medicare Beneficiaries, Specified Low Income Medicare Beneficiaries, Additional Low Income Medicare Beneficiaries, Qualified Disabled and Working Individuals, Working Individuals with Disabilities and Women Diagnosed with Breast or Cervical Cancer) The asset limit is \$1,600 for a needs group of one. UPM § 4005.10 (A)(2)(a).
- 7. The Department timely informed the Appellant's conservator of the Medicaid program's asset limit.

- 8. 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).
- 9. 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).
- 10. The Appellant had a legal right to obtain the funds in the Mid America IRA to have the monies in that account applied for the Appellant's general or medical support.
- 11. Prior to the 2014 appointment of her conservator of estate, the Appellant was able to withdraw funds from the Mid America IRA.
- 12. The Appellant's conservator of estate had the authority or power to obtain the Appellant's assets or to have the assets applied for the Appellant's general or medical support.
- 13. 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.
- 14. 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).
- 15. The burden is on the assistance unit to demonstrate that an asset is inaccessible. UPM § 4015.05 (B)(1).

- 16. The assistance unit must verify that an otherwise counted asset is inaccessible to the unit if the unit claims it cannot convert the asset to cash. UPM § 4099.15 (A)(1).
- 17. If the unit is unable to verify that the asset is inaccessible, the asset is considered a counted asset. UPM § 4099.15 (A)(2).
- 18. The Appellant did not meet her burden to demonstrate that the funds in the Mid America IRA were inaccessible assets.
- 19. The Appellant's funds in the Mid America IRA were counted assets for the purposes of the Medicaid program, with respect to the Appellant's Medicaid application.
- 20. The Department correctly determined that the Appellant was ineligible for Medicaid coverage of her long-term care services until the month in which her counted assets equaled \$1,600.00 or less.
- 21. The Department correctly determined the effective date of the Appellant's Medicaid coverage of her long-term care services to be 2015, the month in which her counted assets equaled \$1,600.00 or less.

#### DISCUSSION

The Appellant had a legal right to the funds in the Mid America IRA and to have those funds used for her general or medical support. The Mid America IRA was an accessible asset. The Mid America IRA is a counted asset for the purposes of the Medicaid program. The Appellant's counted assets exceeded \$1,600.00, the Medicaid program's asset limit, in the period from 2014 through 2015.

### DECISION

The Appellant's appeal is DENIED.

Eva Tar Hearing Officer

cc: Attorney

Janet Giunti, DSS-New Haven (20) Dorothea Kelson, DSS-New Haven (20) Bonnie Shizume, 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 <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 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.