

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**

On ██████████ 2015, the Department of Social Services (the "Department") granted ██████████ (the "Appellant") Medicaid application for long-term care services effective ██████████ 2015.

On ██████████, 2015, Attorney ██████████, the Appellant's conservator of estate, filed a request with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") for an administrative hearing to dispute the Department's denial, requesting the agency grant the Appellant Medicaid coverage effective ██████████, 2014.

On ██████████ 2015, the 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, the OLCRAH held an administrative hearing. The following individuals attended the hearing:

████████████████████, Appellant's conservator  
██████████ Skyview Center's counsel, Appellant's witness  
██████████, Skyview Center's administrator, Appellant's witness  
██████████, Skyview Center's business office manager, Appellant's witness  
Janet Giunti, Department's representative  
Dorothea Kelson, Department's representative

Eva Tar, Hearing Officer

The hearing record remained open for the submission of additional evidence and comment. On [REDACTED], 2015, the hearing record initially closed.

On [REDACTED] 2015, after review of the exhibits submitted by both the Department and the Appellant, the Hearing Officer reopened the hearing record for the Department's submission of a chart identifying all of the Appellant's assets, counted and excluded, for a series of dates and the documentation that the Department used to arrive at the figures in its chart.

The Hearing Officer forwarded the items she received from the Department to the Appellant's conservator for her written comment. The hearing officer received written comment from the Appellant's conservator.

On [REDACTED] 2015, the hearing record closed.

### **STATEMENT OF ISSUE**

The issue to be decided by this administrative hearing is whether the Department correctly determined the effective date of the Appellant's Medicaid coverage of her long-term care services to be [REDACTED] 2015.

### **FINDINGS OF FACT**

1. The Appellant was born in 1941. (Department's Exhibit 1: W-1LTC, stamped as received [REDACTED]/14)(Appellant's Exhibit 2: W-1LTC, stamped as received [REDACTED]/14)
2. The Appellant was the owner of the following assets: Webster Bank ([REDACTED]), Webster Bank ([REDACTED]), 2008 Suzuki Forenza, Mid America Administrative & Retirement Solutions ([REDACTED] 457(b) I2H and 457(b) RLIC plans (collectively, the "Mid America IRA"), Webster Bank ([REDACTED]), Webster Bank [REDACTED], and Meadows Credit Union (-161). (Appellant's Exhibit 19: *Inventory*, signed [REDACTED]/15)(Department's Exhibit 20: Requested documentation, [REDACTED]/15)
3. The Mid America IRA was part of a retirement package set up by the Appellant's former employer, the [REDACTED] [REDACTED] [REDACTED]. (Appellant's Exhibit 30: Correspondence, [REDACTED]/15)(Department's Exhibit 4: Mid America Administrative & Retirement Solutions, Inc. statements, varying dates)(Appellant's conservator's testimony)
4. Prior to the [REDACTED] 2014 appointment of her conservator, the Appellant is the sole individual listed on the Mid America IRA. (Department's Exhibit 4)
5. On [REDACTED] 2014, the Appellant withdrew \$2,500.00 from her Mid America IRA plan. (Department's Exhibit 4)

6. On ██████ 2014, the Appellant was admitted to Skyview Center, a skilled nursing facility, after a fall. (Appellant's witness's testimony)
7. Attorney ██████ ██████ ██████ (the "conservator") has been the Appellant's conservator of estate since ██████ ██████ 2014. (Appellant's Exhibit 1: *Decree/Appointment of Conservator*, ██████/14)
8. After the ██████ 2014 appointment of her conservator, the Appellant has intermittently left Skyview Center to open bank accounts and acquire small personal loans. (Appellant's conservator's testimony)(Appellant's Exhibit 16: Webster Bank statement (██████), ██████/15)(Appellant's Exhibit 40: *Affidavit and Request for Payment Reimbursement*, ██████/15)(Appellant's Exhibit 47: Connex Credit Union, ██████/15)
9. The Appellant's conservator has contacted the Appellant's recent loan creditors to return the assets that had been lent to the Appellant. (Appellant's conservator's testimony)(Appellant's Exhibit 40)(Appellant's Exhibit 47)
10. As of the date of this administrative hearing, the Appellant continues to be a resident of Skyview Center. (Appellant's witnesses' testimony)
11. The Appellant is in the process of appealing the Probate Court appointment of a conservator in the Superior Court of the Judicial District of New Haven. (Appellant's conservator's testimony)(Appellant's Exhibit 12: *Writ of Summons*, ██████/15)(Appellant's Exhibit 43: *Complaint*, ██████/15)
12. The Appellant is represented in the Superior Court appeal. (Appellant's conservator's testimony)
13. On ██████ ██████ 2014, the Department received the Appellant's Medicaid application. (Department's Exhibit 1)(Appellant's Exhibit 2)
14. The Appellant's conservator signed the ██████ ██████, 2014 Medicaid application on ██████ ██████ 2014. (Appellant's Exhibit 2)
15. On the ██████ ██████, 2014 Medicaid application, the Appellant's conservator did not identify the Appellant's assets by name, account number, or value; she wrote "unknown at present" with respect to annuities. (Appellant's Exhibit 2)
16. The Appellant declines to disclose the location of her 2008 Suzuki Forenza to her conservator. (Appellant's Exhibit 13: Correspondence, ██████/15)
17. On ██████ ██████ 2014, the Department issued to the Appellant's conservator a request for verification; the request noted that there was no eligibility for Medicaid

long-term care benefits in any month in which counted assets exceeded \$1,600.00. (Department's Exhibit 2: W-1348: *Verification We Need*, issued [REDACTED]/14)

18. On [REDACTED] 2014, the Appellant's conservator closed out Webster Bank [REDACTED] with a withdrawal of \$4,605.37. (Department's Exhibit 20)
19. On [REDACTED] 2014, the Appellant's conservator closed out Webster Bank [REDACTED] with a closing transfer of \$21.10. (Department's Exhibit 20)
20. On [REDACTED] 2014, the Appellant's conservator opened Webster Bank ([REDACTED]) (the "conservator account") with a deposit of \$4,626.47 as a conservator account for the Appellant. (Appellant's Exhibit 48: Correspondence, [REDACTED]/15)(Appellant's Exhibit 7: Correspondence, [REDACTED]/15)
21. On [REDACTED] 2014, the Appellant's conservator issued a check to Skyview Center for \$1,174.00 on the Appellant's behalf from the conservator account. (Appellant's Exhibit 7)
22. On [REDACTED], 2014, the Appellant's conservator issued \$2,500.00 to herself from the conservator account. (Appellant's Exhibit 7)
23. On [REDACTED] 2014, the Mid America IRA had a total value of \$3,486.43. (Department's Exhibit 4)
24. On [REDACTED], 2014, Webster Bank ([REDACTED]) had a value of \$100.00. (Appellant's Exhibit 16)
25. Verification of Webster Bank ([REDACTED])'s value as of [REDACTED], 2014 is not part of the hearing record.
26. Verification of Webster Bank ([REDACTED])'s value as of [REDACTED], 2014 is not part of the hearing record.
27. On [REDACTED] [REDACTED], 2014, Webster Bank ([REDACTED]) had a value of \$892.47. (Department's Exhibit 20)
28. On [REDACTED], 2014, Meadows Credit Union ([REDACTED]) had a value of \$84.11. (Department's Exhibit 20)
29. On [REDACTED] 2015, the Appellant's conservator represented to the Department that the Appellant's assets had been reduced to less than \$1,600.00 in [REDACTED] 2014. (Appellant's Exhibit 7)
30. On [REDACTED] 2015, the Social Security administration put a direct deposit block on the Appellant's Social Security record. (Appellant's Exhibit 17: Correspondence, [REDACTED]/15)

31. On [REDACTED], 2015, the Department issued a written request to the Appellant's conservator, asking in part for the annual statement of the Appellant's IRA Mid America account for the five-year look-back period. (Appellant's Exhibit 18: W-1348: *Verification We Need*, [REDACTED]/15)
32. On [REDACTED], 2015, the Mid America IRA had a total value of \$3,486.18. (Department's Exhibit 4)
33. Verification of Webster Bank ([REDACTED])'s value as of [REDACTED], 2015 is not part of the hearing record.
34. Verification of Webster Bank ([REDACTED])'s value as of [REDACTED] 2015 is not part of the hearing record.
35. On [REDACTED], 2015, Webster Bank ([REDACTED]) had a value of \$0.00. (Department's Exhibit 20)
36. On [REDACTED], 2015, Meadows Credit Union ([REDACTED]) had a value of \$76.11. (Department's Exhibit 20)
37. On [REDACTED] 2015, the Appellant's conservator filed an *Initial Inventory* with the [REDACTED] Probate Court, listing the Appellant's assets as equaling \$5,144.21 as of [REDACTED] 2014, with the Mid America IRA having a value of both "0.00" and "unknown value at this time." The Meadows Credit Union ([REDACTED]) is not listed on the *Initial Inventory*. (Appellant's Exhibit 19)
38. The [REDACTED] 2015 *Initial Inventory* lists additional assets owned by the Appellant as of [REDACTED], 2014 as Webster Bank ([REDACTED]) with a value of \$1,294.00 and Webster Bank ([REDACTED]) with a value of \$50.00; these assets were opened by the Appellant after the [REDACTED] 2014 appointment of her conservator. (Appellant's Exhibit 19)
39. On or around [REDACTED], 2015, the Appellant's conservator contacted Mid America Bank (Illinois), Mid America Credit Union, Mid America Bank (Missouri), and Mid America Bank and Trust Company in attempts to confirm the financial holder of the Appellant's Mid America IRA. (Appellant's Exhibit 25: Correspondence, [REDACTED]/15)
40. On [REDACTED] [REDACTED], 2015, the Appellant's conservator contacted Mid America Administrative & Retirement Solutions in an attempt to confirm the financial holder of the Appellant's Mid America IRA. (Appellant's Exhibit 27: Correspondence, [REDACTED]/15)
41. On [REDACTED], 2015, the Appellant's conservator notified the Department in writing that she had located a small account held by the Appellant, providing statements. (Appellant's Exhibit 28: Correspondence, [REDACTED]/15)

42. On [REDACTED], 2015, the Appellant's conservator filed a motion with the [REDACTED] Probate Court to liquidate the Appellant's Mid America IRA. (Appellant's Exhibit 29: *Authority to Liquidate an Asset*, [REDACTED]/15)
43. As of [REDACTED] 2015, the Mid America IRA had a total value of \$3,486.18. (Department's Exhibit 20)
44. Verification of the Mid America IRA's value as of [REDACTED], 2015 is not part of the hearing record.
45. Verification of Webster Bank ([REDACTED])'s value as of [REDACTED], 2015 is not part of the hearing record.
46. Verification of Webster Bank ([REDACTED])'s value as of [REDACTED], 2015 is not part of the hearing record.
47. On [REDACTED], 2015, Webster Bank ([REDACTED]) had a value of \$45.00. (Department's Exhibit 20)
48. On [REDACTED], 2015, Meadows Credit Union ([REDACTED]) had a value of \$71.11. (Department's Exhibit 20)
49. On [REDACTED], 2015, the Appellant's conservator faxed a *Distribution Request Form* to Mid America Administrative & Retirement Solutions, requesting the distribution of the entire account balance from the Appellant's Mid America IRA. (Appellant's Exhibit 35: Fax, [REDACTED]/15)
50. Verification of the Mid America IRA's value as of [REDACTED], 2015 is not part of the hearing record.
51. Verification of Webster Bank ([REDACTED])'s value as of [REDACTED], 2015 is not part of the hearing record.
52. Verification of Webster Bank ([REDACTED])'s value as of [REDACTED], 2015 is not part of the hearing record.
53. Verification of Webster Bank ([REDACTED])'s value as of [REDACTED], 2015 is not part of the hearing record.
54. On [REDACTED] 2015, Meadows Credit Union ([REDACTED]) had a value of \$66.11. (Department's Exhibit 20)
55. On [REDACTED] 2015, the Department issued a *Notice of Denial* to the Appellant, stating that her Medicaid application had been denied for the period from [REDACTED] 2014 through [REDACTED] 2015. (Appellant's Exhibit 36: *Notice of Denial*, [REDACTED]/15)

56. Verification of the Mid America IRA's value as of [REDACTED] 2015 is not part of the hearing record.
57. Verification of Webster Bank ([REDACTED])'s value as of [REDACTED], 2015 is not part of the hearing record.
58. Verification of Webster Bank ([REDACTED])'s value as of [REDACTED], 2015 is not part of the hearing record.
59. On [REDACTED], Webster Bank ([REDACTED]) had a value of \$45.02. (Department's Exhibit 20)
60. On [REDACTED], 2015, Meadows Credit Union ([REDACTED]) had a value of \$48.06. (Department's Exhibit 20)
61. On [REDACTED], 2015, Mid America Administrative & Retirement issued to the Appellant a check for \$2,800.02; \$700.00 of the \$3,500.02 gross value of the check was retained by the company for federal withholding. (Appellant's Exhibit 46: Correspondence, [REDACTED]/15)
62. On [REDACTED], 2015, the Appellant's conservator deposited the \$2,800.02 Mid America IRA check in Webster Bank checking ([REDACTED]). (Appellant's Exhibit 49: Correspondence, [REDACTED]/15)(Appellant's Exhibit 48)
63. On [REDACTED], 2015, the Appellant's conservator closed Webster Bank checking ([REDACTED]) by withdrawing \$2,845.04 from the account. (Appellant's Exhibit 48)
64. On [REDACTED], 2015, the Appellant's conservator paid \$2,544.96 of the Appellant's bills (\$1,810.58 to Skyview Center and \$754.46 to Milano Storage Unit for a storage unit) from the proceeds of Webster Bank ([REDACTED]). (Appellant's Exhibit 48)
65. On [REDACTED], 2015, the Appellant's conservator issued to the Appellant a \$300.00 check for her personal use. (Appellant's Exhibit 48)
66. In the period from [REDACTED], 2014 through [REDACTED], 2015, the total value of the Appellant's liquid assets exceeded \$1,600.00. (Department's Exhibit 4)(Appellant's Exhibit 19)(Appellant's Exhibit 48)
67. The Appellant is requesting Medicaid coverage effective [REDACTED] 2014. (Appellant's Exhibit 50: Emails, [REDACTED]/15)
68. The Department determined that the Appellant's counted assets were within the Medicaid program's asset limits as of [REDACTED] 2015. (Hearing record)

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.
  - 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. 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 2014 through [REDACTED] 2015.

### **DECISION**

The Appellant's appeal is DENIED.

  
\_\_\_\_\_  
Eva Tar  
Hearing Officer

cc: Attorney [REDACTED]  
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 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.