

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 # 704043

**NOTICE OF DECISION**

**PARTY**

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

**PROCEDURAL BACKGROUND**

On ██████████ 2015, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) denying her application for Medicaid for Long Term Care for the period from ██████████ 2014 to ██████████, 2015, inclusive, for the reason that the counted value of her assets exceeds the limit in those months.

On ██████████ 2015, the Conservator of the Appellant’s estate requested an administrative hearing to contest the Department’s denial of her eligibility for the program.

On ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2015.

On ██████████ 2015, at the Conservator’s request, OLCRAH rescheduled the hearing to ██████████ 2015.

On ██████████ 2015, at the Conservator’s request, OLCRAH rescheduled the hearing to ██████████ 2015.

On ██████████, at the Conservator’s request, OLCRAH rescheduled the hearing to ██████████, 2015.

On [REDACTED] 2015, due to a scheduling conflict, OLCRAH rescheduled the hearing to [REDACTED], 2015.

On [REDACTED], 2015, in accordance with sections 17b-60, 17-61 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:

[REDACTED], Appellant's Conservator of Estate (the "Conservator")  
Bruce Disco, Owner and Financial Manager for Villa Maria Nursing and Rehabilitation  
Lisa Coe, Director of Nursing Services for Villa Maria Nursing and Rehabilitation  
Nedra Pierce, Eligibility Services Specialist representing the Department  
Christine Morin, Eligibility Supervisor representing the Department  
James Hinckley, Hearing Officer

The hearing record was held open for seven days for the submission of additional evidence from the Department and seven additional days for the Appellant to respond. The Department provided the information after its deadline, so the time the record was held open was extended until [REDACTED], 2015 for the Appellant to respond. On [REDACTED], 2015, the hearing record closed.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department was correct to consider the value of a particular annuity, owned by the Appellant's Spouse, as an available asset in its determination of the Appellant's eligibility for Medicaid.

### **FINDINGS OF FACT**

1. The Conservator and the Department stipulate that the sole issue is whether Northwestern Mutual Annuity Contract # [REDACTED] (the "Annuity") should have been considered an available asset in the Department's determination of the Appellant's eligibility for Medicaid. (Testimony)
2. The Appellant has been a resident of Villa Maria Nursing and Rehabilitation (the "facility"), a long term care facility, since [REDACTED] 2013. (Record)
3. On [REDACTED], 2014, the Appellant's spouse, [REDACTED] (the "Spouse"), filed an application for long term care Medicaid assistance for the Appellant. (Ex. 1: W-1LTC Application Form)
4. The Appellant's application for Medicaid required that the Department complete an assessment of the assets owned by both spouses as of the date the Appellant became institutionalized (the "spousal assessment"), because the Department determined that the Appellant and her Spouse were considered an

institutionalized spouse and a community spouse, pursuant to the Medicare Catastrophic Coverage Act. (Testimony, Record)

5. The Spouse was represented by counsel, [REDACTED]. (Spouse's "Counsel"), throughout the Medicaid application process. (Testimony, Ex. 1, p. 20: signed Authorization to Disclose Information, Ex. 30: Department communications with [REDACTED].)
6. On [REDACTED], 2014, Spouse's Counsel submitted a letter to the Department concerning the Appellant's application for Medicaid in which he acknowledged that item #14 on a list of supporting documents enclosed with the application was a statement for the Annuity. (Ex. 30d: [REDACTED] 2014 letter from Attorney Norman)
7. On page 15 of the Appellant's application form the Spouse reported ownership of the Annuity, and reported its value as \$47,574.26. (Ex. 1, p. 15)
8. Between [REDACTED] 2014 and [REDACTED] 2015, the Department sent at least fifteen W-1348LTC *Information We Need* forms to the Appellant requesting financial information; the requests were sent in the course of the Department's completion of the spousal assessment and its examination of whether any assets had been transferred during the look-back period. (Record, Exhibits 34a through 34p)
9. One of the documents the Spouse's Counsel submitted to the Department during the application process, a "Variable Annuity Summary Statement" for the Annuity for the period [REDACTED] 2014 through [REDACTED] 2014 contained the following disclosures: "Cash surrender value at the beginning of the current period on [REDACTED]/2014 was \$43,682.92"; and "Total Contributions Since Inception: \$46,709.12, Total Withdrawals Since Inception: \$5,014.60"; and "Your contract can be converted into an income plan that cannot be outlived"; and the information, "If we can be of service, please contact your Financial Representative: [REDACTED] 115 Lafayette St., Norwich CT 06360-2708, Phone No. (860) 889-8075 or call the Annuity Customer Service Center at 1-888-456-2232, or visit us at [www.northwesternmutual.com](http://www.northwesternmutual.com)". (Ex. 15: Quarterly statements for Northwestern Mutual Annuity Contract # [REDACTED])
10. On [REDACTED], 2015, the Department sent the Spouse an *Assessment of Spousal Assets Notification of Results* letter informing him that the maximum amount of assets which he and his spouse (the Appellant) may retain without causing ineligibility is \$1,600.00 for the Appellant, the applicant, and \$29,625.14 for the Spouse. (Ex. 28d, Record)
11. Sometime in [REDACTED], 2015, the Spouse cashed the Annuity and used the proceeds to pay the nursing home. (Testimony)

12. On [REDACTED], 2015, [REDACTED]. (the Conservator) was appointed Conservator of the Estate for the Appellant. (Ex. F: Court of Probate Certificate of Conservatorship dated [REDACTED], 2015)
13. On [REDACTED] 2015, the Department sent the Appellant a NOA advising her that her application for long term care Medicaid was approved effective [REDACTED] 2015, but that her application was denied for the months of [REDACTED] through [REDACTED] inclusive for the reason that her assets exceeded the limit for the program in those months. NOA's were sent on [REDACTED] 2015 to the Appellant, to the Conservator, to the Spouse, to the Spouse's Counsel, and to the administrator of the long term care facility. (Exhibits 31a through 31e: NOAs dated [REDACTED] 2015 )
14. The Conservator is seeking Medicaid eligibility for the Appellant effective [REDACTED] 2014. (Hearing Request, Testimony)
15. The Appellant, even prior to being conserved, was not capable of understanding that the Annuity had a cash surrender value. (Stipulated to by the Department)
16. The Appellant's Spouse was aware that he owned the Annuity. (Fact #7)
17. The Spouse's Counsel was aware that the Spouse owned the Annuity. (Fact #6)
18. The Spouse and his Counsel both possessed statements that reported the Annuity's cash surrender value. (Fact #9)
19. The diagnosis of dementia is a role that is reserved for doctors. (Director of Nursing Services' testimony)
20. The facility's Director of Nursing Services' impressions regarding the mental state of the Appellant's Spouse did not demonstrate that the Spouse was incapable of understanding that the Annuity had a cash surrender value. (Director of Nursing Services' testimony)
21. The Spouse was aware that the Annuity had a cash surrender value. (Facts #16, #18, #20 & #11)
22. No evidence was presented that the Spouse lacked the legal authority to cash the Annuity. (Record)

## CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Connecticut General Statutes § 17b-261 (c) defines an “available asset” for purposes of determining eligibility for the Medicaid program as “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.”

Uniform Policy Manual (“UPM”) § 4000.01 defines an “available asset” as “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.

3. UPM § 4005.05(A) provides that for every program administered by the Department, there is a definite asset limit.

UPM § 4005.05(B)(1) provides that 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)(2) provides that 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.

UPM § 4005.05(C) provides that the Department does not count the assistance unit’s equity in an asset toward the asset limit if the asset is either:

1. excluded by state or federal law; or
2. not available to the unit.

**The Department was correct to determine that the Annuity was an available asset between [REDACTED], 2014, when the Appellant’s application was filed, and [REDACTED], 2015, when the Annuity was cashed, because the Appellant’s Spouse had the legal authority to obtain the asset during this time.**

4. UPM § 4015.05(A)(1) provides that 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(B)(1) provides that the burden is on the assistance unit to demonstrate that an asset is inaccessible.

UPM § 4015.05(B)(2) provides in relevant part that 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.

**The Department was correct to determine that the Annuity was not an inaccessible asset, because the Appellant did not meet her burden of demonstrating that the Annuity was inaccessible.**

### DISCUSSION

The Conservator argues that the Department should have considered the Annuity an inaccessible asset for the denied months because both the Appellant and her Spouse were elderly and suffering from dementia, rendering them incapable of being aware that the Annuity had cash value during that time. She argues that “during the time period from [REDACTED] 2014 to [REDACTED] 2015, [the Appellant and her Spouse] were not aware the annuity had cash value; as soon as they were made aware, they liquidated the annuity and paid the proceeds to the nursing home.”

In support of her position the Conservator cites UPM § 4015.05, which discusses the treatment of Inaccessible assets, and also *Evans v. Dept. of Social Services*, 81 Conn. App. 37, 838 A.2d 250 (2004); in *Evans*, the court held that an asset was inaccessible during the time the plaintiff, who was the only person with knowledge of the asset or access to it, was in a coma.

It must first be noted that the Conservator’s Hearing Request incorrectly attributes the definition of an “inaccessible asset” as “an asset which someone owns but, for some good reason beyond his or her control, cannot readily convert to cash”, to § 4015.05 of the UPM. The quoted definition was never part of § 4015.05; it was part of UPM § 4000.01 at the time of *Evans*, however it is not included in the current version of § 4000.01. The facts in *Evans* were substantially different from the facts of this case. Not only did *Evans* rely on a definition of “inaccessible asset” that no longer exists in the Department’s Policy, but in *Evans* the asset was deemed inaccessible to the plaintiff because he was comatose. In this case, the Conservator tries to make a much more difficult argument: that the Spouse’s alleged lack of awareness of the Annuity’s cash value was, by itself, enough for the Department to conclude that the asset should have been treated as “inaccessible” during the time that he was unaware.

First, the Conservator did not prove that the Spouse was incapable of knowing or understanding that the Annuity had cash value. The only evidence presented to support the claim was the testimony of the facility’s Director of Nursing Services regarding her general impressions that the Spouse had a poor memory, asked repetitive questions, required a lot of explanation and queueing, was vague in his responses to questions

and had a rather flat affect. While I gave the testimony some weight, it was not persuasive enough to conclude that the Spouse had a “dementia” that prevented him from understanding that his Annuity had cash value. The Nursing Director testified that she could offer her impressions of the Appellant’s Spouse based on her experience in the field of dementia care, but that she was unable to make a “diagnosis” as that role is reserved for doctors. Other evidence showed that the Spouse was perfectly capable of understanding that the Annuity had cash value; namely, that he reported the Annuity and its value on the application form, and that he later cashed in the Annuity. Also, between the time he reported the Annuity and the time he cashed it, the Spouse regularly received statements reporting the Annuity’s cash value, which his Counsel also had access to.

Next, even if the Spouse and his Counsel both lacked knowledge of the asset, it does not necessarily follow that that the lack of knowledge would make the asset “inaccessible”. The applicable law is the definition of an “available asset” in Connecticut General Statutes § 17b-261(c), and in the Department’s UPM 40001.01 and UPM 4005.05. Under the definition, as long as the Spouse had the legal authority to obtain the asset, it was “available” for purposes of determining eligibility for the Medicaid program. UPM § 4015.05 provides that *in order to be considered inaccessible the assistance unit must cooperate with the Department in attempting to gain access to the asset* (emphasis added). UPM § 4015.05 must contemplate a different meaning of “inaccessible asset” than what the Conservator contends, because someone without knowledge of an asset could not cooperate in attempting to access it, and yet such cooperation is *required* in order for the asset to be considered inaccessible.

Finally, the Conservator contends that the Department’s Medicaid Regulations are not permitted to be more stringent than Social Security regulations, and contends that had the standards contained in Social Security Program Operations Manual System (“POMS”) SI 01110.117 been applied to the Appellant’s case, the Annuity would have been treated as inaccessible. Consulting POMS SI 01110.117 reveals that it discusses how an asset is to be treated when an individual is unaware of his or her ownership of the asset. Even if the Conservator’s first contention is correct, the Social Security regulation she cites does not apply to this case because the Conservator has never claimed that the Spouse was unaware of his ownership of the Annuity, but only that he was unaware that it had a cash value.

### **DECISION**

The Appellant’s appeal is **DENIED**.



---

James Hinckley  
Hearing Officer

Cc: Tonya Cook-Beckford, SSOM, Willimantic

[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 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.