

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 # 715491

NOTICE OF DECISION

PARTY

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

In Re: ██████████

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████ ██████████ (the "Appellant") a Notice of Action ("NOA") denying her application for Medicaid benefits for ██████████ 2014 through ██████████ 2015.

On ██████████ 2015, ██████████, the Appellant's Administrator of Estate requested an administrative hearing to contest the Department's decision to deny the Appellant's application for Medicaid for ██████████ 2014 through ██████████ 2015.

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:

████████████████████, Appellant's Administrator of Estate  
Matthew Lenczewski, Department's Representative  
Sybil Hardy, Hearing Officer

The record was held open for the submission of additional evidence. On [REDACTED] 2015, the record closed.

### **STATEMENT OF THE ISSUE**

The issue is whether the Department correctly denied the Appellant's Long Term Care Medicaid application for the period of [REDACTED] 2014 through [REDACTED] 2015 due to excess assets.

### **FINDINGS OF FACT**

1. On [REDACTED] 2014, the Appellant was admitted to the skill nursing facility, Riverside Health and Rehabilitation Center (the "Nursing Facility"), [REDACTED], Connecticut. (Exhibit B: Attorney's Brief with attachments)
2. The Appellant was a 71 year old (DOB [REDACTED]/43) widow living in a skilled nursing facility. (Exhibit B, Exhibit 5: Long-term Care/Waiver Application, [REDACTED]/15, Exhibit 9)
3. The Appellant had mild dementia with memory loss and difficulty with comprehension and poor safety awareness. She was unable to make medical decision on her own behalf or understand and manage her financial affairs. (Exhibit B)
4. The Appellant was diagnosed with the following medical conditions: anemia, breast cancer, cardiovascular disease, coronary artery disease, dementia, renal failure. (Exhibit B)
5. On [REDACTED] 2014, [REDACTED] (the "former Conservator") petitioned the court of probate to become the Appellant's Conservator of Person and Conservator of Estate. (Exhibit B)
6. On [REDACTED] 2014, the court established that the Appellant had a mental, emotional or physical condition that results in her being unable to receive and evaluate information or make or communicate decisions to such an extent that the Appellant is unable, even with appropriate assistance, to perform the functions inherent in managing her affairs. (Exhibit B)
7. Effective [REDACTED] 2014, the former Conservator was appointed as Conservator of the Estate and Person of the Appellant. (Exhibit C: Decree, [REDACTED]/15, Exhibit D: Transcription, [REDACTED]/15)
8. On [REDACTED] 2014, the Department received an application on behalf of the Appellant for Long Term Care assistance under the Medicaid program. (Exhibit 2:

Assistance Request, [REDACTED]/14, Exhibit 5: Long Term Care/Waiver Application, Exhibit 9: Notice of Action, [REDACTED]/15)

9. For the period of [REDACTED] 2014 through [REDACTED] 2014, the Appellant's monthly Social Security benefit payments of \$1,374.00 were directly deposited to the Appellant's checking account. (Exhibit 6: Webster Bank Checking Account Statements)
10. During [REDACTED] 2015. The Appellant's monthly Social Security benefit payment of \$1,400.00 was directly deposited to her checking account. (Exhibit 6)
11. On [REDACTED] 2014, the Nursing Facility sent a letter to [REDACTED] Probate court and the Honorable Judge [REDACTED] requesting that [REDACTED] be removed as conservator of estate because the Appellant Medicaid Assistance application was overdue and the former Conservator was unable to come to Connecticut to help complete the application process. (Exhibit B)
12. On [REDACTED] 2014, the Probate Court scheduled a hearing to discuss the petition to remove the former Conservator as the Appellant's Conservator of Estate for [REDACTED] 2015. (Exhibit B)
13. For the period of [REDACTED] 2014 through [REDACTED] 2015, the Appellant had the following assets and balances:

Asset	Highest Balance	Period	Owner
Checking:			
Webster Bank xxx[REDACTED]	\$7,562.41	[REDACTED]/14 – [REDACTED]/14	Appellant
Webster Bank xxx[REDACTED]	\$8,926.42	[REDACTED]/14 – [REDACTED]/14	Appellant
Webster Bank xxx[REDACTED]	\$10,328.42	[REDACTED]/14 – [REDACTED]/15	Appellant
Savings:			
Webster Bank xxx[REDACTED]	\$5.01	[REDACTED]/14 – [REDACTED]/15	Appellant

(Exhibit 6: Webster Bank Checking Account Statements, Exhibit 7: Webster Bank Savings Account Statement)

14. For the period of [REDACTED] 2014 through [REDACTED] 2015, the Appellant's assets were over \$1,600.00. (Exhibit 6, Exhibit 7)
15. On [REDACTED] 2015, the Appellant was discharged from the local hospital against medical advice and not returned to the nursing facility causing her to miss necessary medical care including dialysis. (Exhibit C: Decree, [REDACTED]/15, Exhibit D: Transcription of [REDACTED] 2015 hearing by Magna Legal Service)
16. On [REDACTED] 2015, the Appellant's former Conservator withdrew all the money from her bank accounts with Webster Bank and did not use it for the Appellant's

benefit. (Appellant's Administrator of the Estates' Testimony, Exhibit B, Exhibit 6, Exhibit 7)

17. On [REDACTED] 2015, the Appellant died of Cardiac Arrest at the local hospital. (Exhibit B: Attorney's Brief with attachments)
18. On [REDACTED] 2015, the Appellant had a scheduled administrative hearing because she received a Notice denying her application for Medicaid benefits for failure to complete the application process. (Exhibit A: Hearing Decision, [REDACTED]/15)
19. On [REDACTED] 2015, [REDACTED] was appointed as the Administrator of the Estate for [REDACTED]. (Exhibit C: Probate Decision, [REDACTED]/15)
20. On [REDACTED] 2015, the hearing officer issued a decision granting the Appellant good cause to reopen the Application back to [REDACTED] 2015 because the former Conservator was negligent in handling the Appellant's original application. (Exhibit A)
21. On [REDACTED] 2015, a hearing was held with the judge of probate for the [REDACTED] Probate District, to determine if the Appellant's prior Conservator, [REDACTED] [REDACTED] to determine whether she is personally responsible to reimburse the estate for all the unaccounted assets. (Exhibit D)
22. On [REDACTED] 2015, the Department sent the Appellant a Notice denying medical assistance from [REDACTED] 2014 through [REDACTED] 2015 because the Appellant assets exceeded the program asset limit. (Exhibit 9: Denial Notice, [REDACTED]/15)
23. On [REDACTED] 2015, the Court of Probate, [REDACTED] found the Appellant's former Conservator personally liable and responsible to reimburse the estate in the total amount of \$9,958.38. (Exhibit C: Court Decree, [REDACTED]/15)

### **CONCLUSIONS OF LAW**

1. Section 17b-260 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Uniform Policy Manual ("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: available to the unit; or deemed available to the assistance unit.
3. UPM § 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.

4. Connecticut General Statutes 17b-261(c) provides that 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, 42USC 1396p.
5. 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.
6. UPM § 4005.05 (D) provides that 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.
7. UPM § 4005.10 (A) (2) (a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.
8. The Department correctly determined that the checking and savings accounts with Webster Bank are owned by the Appellant.
9. UPM § 4005.15 provides that at the time of application, the assistance unit is ineligible for assistance until the first day it reduces its equity in counted assets to within the particular program asset limit.
10. The Department correctly determined that the accounts with Webster Bank were accessible assets for the Appellant.
11. UPM § 4030.05(B) provides that part of a checking account to be considered as a counted asset during a given month is calculated by subtracting the actual amount of income the assistance unit deposits into the account that month from the highest balance in the account for that month.
12. UPM § 4030.05(C) provides that money which is received during a month and deposited into an account during the month is not considered an asset for that month, unless the sources of the money is; an income tax refund; or cash received upon the transfer or sale of property; or a security deposit returned by the landlord.
13. The Department correctly determined that the Appellant's Social Security payments directly deposited into her checking account were not counted as assets during for the month it was deposited.

14. The Department correctly determined that the Appellant's assets exceeded the \$1,600.00 asset limit for period [REDACTED] 2015 through [REDACTED] 2015.
15. The Department correctly determined that the Appellant was ineligible for Medicaid for the period of [REDACTED] 2014 through [REDACTED] 2015.
16. The Department correctly denied the Appellant's Long Term Care Application from [REDACTED] 2014 through [REDACTED] 2015 because the Appellant's assets exceeded the Medicaid asset limit
17. The Department correctly denied the Appellant's Long-Term Care Application from [REDACTED] 2015 through [REDACTED] 2015 because the Appellant was deceased.

### DISCUSSION

The Department correctly denied the Appellant's Long Term Care Application for the period of [REDACTED] 2014 through [REDACTED] 2015 because the Appellant's assets were over the program asset limit of \$1,600.00 and denying [REDACTED] 2015 through [REDACTED] 2015 because the Appellant was deceased and therefore no longer eligible.

The Appellant's Administrator of the Estate gave testimony that the Appellant's former Conservator was negligent in the care of the Appellant's financial affairs and pending Medicaid application. Therefore, an order was issued to allow the Department to reopen the application back to its original date. The good cause, however, does not exempt the Appellant from the Asset limit for the program. Both the Appellant and the former Conservator were able to access the bank accounts. Therefore, they must be counted toward the Appellant's asset limit.

It is unfortunate that the Appellant's former Conservator did not act in the best interest of the Appellant by following through with the application process timely and taking the necessary steps to make sure with Appellant was within the asset limit for the Medicaid program. Hopefully, the Appellant's estate will be able to recoup what was lost by the former Conservator's negligence.

The Department correctly denied the Applicant's request for Medicaid because the Appellant's assets exceeded the asset limit for the Medicaid program for [REDACTED] 2014 through [REDACTED] 2015.

### DECISION

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

*Sybil Hardy*  
Sybil Hardy  
Hearing Officer

Pc: John Hesterberg, Operations Manager; DSS R.O. # 11; Manchester

### **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, 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 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.