

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 # 718887

**NOTICE OF DECISION**

**PARTY**

Attorney ██████████  
For ██████████  
██████████ ██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████ (the "Applicant") a Notice of Action ("NOA") granting Long Term Care Medicaid benefits effective ██████████ 2015.

On ██████████ 2015, Attorney ██████████, the Applicant's Conservator of Estate (the "Appellant") requested an administrative hearing to contest the effective date of the Long Term Care Medicaid benefits as determined by the Department.

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

On ██████████ 2015, OLCRAH issued a notice rescheduling the administrative hearing for ██████████ 2015.

On ██████████ 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:

Attorney ██████████ the Appellant, conservator for the Applicant, ██████████  
██████████  
Richard McGirr, Controller, New London Rehabilitation and Care  
Jacquelyn Mastracchio, DSS Eligibility Services  
Maureen Foley-Roy, Hearing Officer

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

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department's decision to grant Long Term Care benefits effective [REDACTED] 2015 was correct.

### **FINDINGS OF FACT**

1. On [REDACTED] 2011, the Applicant was admitted to the [REDACTED] Rehabilitation and Care Center. (Department's summary)
2. The Applicant was a recipient of Medicaid for Long Term Care and Medicaid paid for the Applicant's stay through [REDACTED] [REDACTED] 2014. (Facility representative's testimony)
3. The Applicant's only income is his Social Security benefit and a pension. (Department's summary)
4. The Applicant's wife was residing in the community ("Community Spouse"). (Hearing Record)
5. The Department authorized a Community Spousal Allowance ("CSA"), wherein while the Applicant was institutionalized and on Medicaid, his income was allowed for the Community Spouse's needs. (Exhibit 6: CSA Worksheet)
6. On [REDACTED] 2014, the Community Spouse (the Appellant's Conservator at the time) reapplied for Medicaid for Long Term Care for the Applicant. (Appellant's Exhibit A: Notice of Denial dated [REDACTED] 2014)
7. On [REDACTED] 2014, the Department denied the [REDACTED] 2014 application for failing to provide required verification. (Appellant's Exhibit A)
8. When the Department advised the Community Spouse that it had authorized a CSA for her needs, she told the Department that she was saving that money for her husband. (Department representative's testimony)
9. On [REDACTED] 2015, the Community Spouse closed the Citizen's account ending in [REDACTED] in the Applicant's name and opened a Citizens account ending in [REDACTED] for the Applicant and deposited \$16,326.77 into the account. The account name was "[REDACTED], [REDACTED] [REDACTED] "Conservator account". The balance on the account at the end of [REDACTED] 2015 was \$15,316.87. (Exhibit 10e: Citizens Bank statement ending [REDACTED] 2015)
10. Beginning in [REDACTED] of 2015, the Applicant's Social Security benefit of \$902 per month was deposited into the Conservator account ending in [REDACTED]. The balance

of the account on [REDACTED] 2015 was \$16,138.31. (Exhibit 10e: Citizen's Bank Statement ending [REDACTED] 2015)

11. On [REDACTED] 2015, the Department received a Renewal of Eligibility form for the Applicant signed by the Community Spouse and Conservator of Estate and Person. (Exhibit 1: Renewal of Eligibility document signed [REDACTED] 2015)
12. On [REDACTED] 2015, the Applicant's bank account had a balance of \$14,040.92. (Exhibit 10d: Citizen's Bank Statement ending [REDACTED] 2015)
13. On [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] of 2015, the Department sent Verification We Need forms to the Applicant's Community Spouse and Conservator requesting verification of assets and advising that there would be no eligibility for any month in which the Applicant's assets exceeded \$1600. (Exhibits 4a-4e: Verification We Need forms)
14. Beginning on [REDACTED] 2015, the Applicant's pension check was directly deposited into the Conservator account ending in [REDACTED]. The account balance on [REDACTED] 2015 was \$14,817.83. (Exhibit 10c: Citizen's bank statement ending [REDACTED] 2015)
15. On [REDACTED] 2015, the Applicant's bank account had a balance of \$15,790.65. (Exhibit 10b: Citizen's bank statement ending [REDACTED] 2015)
16. On [REDACTED] 2015, the Community Spouse was removed as the Applicant's Conservator of Estate and the Probate Court appointed the Applicant a new Conservator of Estate. (Exhibit 2: Probate Court documents)
17. On [REDACTED] 2015, the Department sent a Verification We Need form to the new Conservator of Estate requesting that the Applicant's name be removed from a bank account and that there was no eligibility for Medicaid for Long Term Care for any month in which the Applicant's assets exceeded \$1600. (Exhibit 4f: Verification We Need form sent [REDACTED] 2015)
18. On [REDACTED] 2015, the Applicant's bank account had a balance of \$17,183.06. (Exhibit 10a: Citizen's bank statement ending [REDACTED] 2015)
19. On [REDACTED] 2015, the Applicant's Conservator withdrew \$16,163 from the Citizen's bank account and paid the facility. (Exhibit 9: Bank check)
20. On [REDACTED] 2015, the Conservator withdrew \$1000 from the Applicant's Citizen's bank account and paid it to the resident trust account. (Exhibit 9)
21. On [REDACTED] 2015, the Applicant's Citizen's bank account had a balance of .06. (Exhibit 8: DDA Inquiry)

22. On [REDACTED] 2015, the Department granted Medicaid for Long Term Care for the Applicant effective [REDACTED] 2015. (Exhibits 11 and 12: Notice of Approval for Long term Care Medicaid)

### **CONCLUSIONS OF LAW**

1. Section 17b-2 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. Uniform Policy Manual (“UPM”) Section 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.
3. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
4. UPM § 4005.05 (D) (1) provides that 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.
5. UPM § 4005 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 § 4015.05 B 1 provides that the burden is on the assistance unit to demonstrate that an asset is inaccessible.
7. UPM § 4099.15 A provides for the factors relating to inaccessibility and states that 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 and if the unit is unable to verify that the asset is inaccessible, the asset is considered a counted asset.
8. The Appellant did not meet his burden of proof that the funds in the account were inaccessible because the Community Spouse had access to the funds and the funds were in the Applicant's name.
9. The Department was correct when it did not consider the funds in an account in the Applicant's name as inaccessible assets because his Conservator had access to them and could have used them for his benefit.
10. The Department was correct when it determined that the funds in the Applicant's Conservator account were available to apply for the Applicant's general or medical support.

11. UPM § 4030.05 A provides that bank accounts include the following: Savings account, checking account, credit union account, certificate of deposit, patient account at long term care facility, children's school account, trustee account, custodial account and that this list is not all inclusive.
12. UPM § 4030.05 C provides that money which is received as income during a month and deposited into an account during the month is not considered an asset **for that month**, unless the source of the money is an income tax refund, cash received upon the transfer or sale of property or a security deposit returned by a landlord. (Emphasis added)
13. The Department was correct when it considered the Applicant's income deposited into his conservator account as an asset in the month **after** it was received.
14. UPM § 5035.30 A provides for the use of a Community Spouse Allowance ("CSA") and states that the CSA is used as an income deduction in the calculation of the post-eligibility applied income of an institutionalized spouse (IS) only when the IS makes the allowance available to the community spouse (CS) or for the sole benefit of the CS.
15. UPM § 4005.15 provides that in the Medicaid program, 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.
16. The Department was correct when it determined that the Applicant's assets were reduced to a level below the asset limit of \$1600 on [REDACTED] 2015.
17. The Department was correct when it granted Medicaid for Long Term Care effective [REDACTED] 2015; the month the Applicant's assets were reduced and denied Medicaid for [REDACTED] and [REDACTED] of 2015 because the Applicant's assets exceeded the allowable limit.

### **DISCUSSION**

The Appellant contended that since the Department had previously determined that the Community Spouse was entitled to the Applicant's income to support herself in the community; and that the Community Spouse funded the bank account in question solely from the Applicant's income, then the funds were not available to the Applicant.

As long as those funds were in the Applicant's bank account, they were considered assets which were available to be used for his benefit. The Department had in previous eligibility determinations considered that the Applicant's income be available to his spouse for her support in the community. However, the Community Spouse was not accessing the income, allowing it to become an asset available for the Applicant's support. There is nothing in the regulation to support disregarding the funds in the bank account due to the origination of those funds. Per UPM 4030.05, income received in a month and deposited into an account is considered income for that month and not counted as an asset. However, that would be for that one month only.

The Appellant references policy regarding the Community Spouse Disregard ("CSD") pertaining to protected assets. Per UPM § 4022.05, general provisions, the CSD is used to allow the institutionalized spouse to transfer a specific amount of his or her counted assets to the community spouse when such assets are needed to raise the community spouse's assets to the Community Spouse Protected Amount. The policy regarding CSD goes on to state that no CSD is used when an assessment of spousal assets has not been completed. UPM § 1507.05 provides that the Department provides an assessment of assets when one spouse begins a continuous period of institutionalization. The results of the assessment are retained by the Department and used to determine the eligibility at the time of application for assistance as an institutionalized spouse. The policy regarding the Community Spouse Disregard is not applicable in this case because the Department completes a spousal assessment when the Applicant's first applies for assistance and is determined eligible for Long Term Care assistance. The Applicant was receiving Long Term Care assistance until [REDACTED] 2014. The application dated [REDACTED] 2015 was a re-application of assistance.

There is no basis in the regulations to disregard the funds in the Applicant's bank account. As the funds exceeded the limit, he was ineligible for Medicaid prior to [REDACTED] of 2015.

### **DECISION**

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

*Maureen Foley-Roy*  
Maureen Foley-Roy  
Hearing Officer

Pc: Cheryl Parsons, Operations Manager  
DSS R.O. # 40, Norwich  
Jacquelyn Masticchio, Eligibility Worker

### **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.