

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

[REDACTED], 2015
Signature Confirmation

Request # 726225

Client ID # [REDACTED]

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2015, the Department of Social Services (the "Department") sent [REDACTED] (the "Appellant") a Notice of Action ("NOA") denying her application for Medicaid for payment of Long Term Care because she did not provide the Department with all the information it requested.

On [REDACTED] 2015, the Appellant requested an administrative hearing to contest the Department's decision to deny her application for Medicaid.

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

On [REDACTED] 2015, due to a logistical problem on the original date, OLCRAH sent a notice rescheduling the hearing for [REDACTED] 2015.

On [REDACTED], 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:

[REDACTED] Appellant's Conservator of the Estate and Person
Richard McGirr, Comptroller, New London Rehab and Care of Waterford
Felicia Andrews, Department's Representative
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department was correct to deny Medicaid for the Appellant because she failed to provide required verifications.

FINDINGS OF FACT

1. The Appellant has been a resident of New London Rehabilitation and Care Center of Waterford (the "Facility"), a long term care facility, since [REDACTED] 2014. (Record)
2. On [REDACTED] 2014, [REDACTED] was appointed as the Appellant's Conservator of the Estate and Person (the "Conservator"). (Ex. 9: Market Analysis Packet, p.17)
3. On [REDACTED] 2015, the Appellant applied to the Department for Medicaid to pay the cost of long term care. (Record)
4. The Appellant is not expected to ever return to the community. (Conservator's testimony)
5. The Appellant owns real property located at [REDACTED] [REDACTED] (the "Property") which was the Appellant's home before she entered the nursing facility. (Record)
6. The Property is currently occupied by a squatter. (Conservator's testimony, Record)
7. The squatter is not on the deed, does not have a lease or pay rent, and is not authorized to live at the property. (Conservator's testimony)
8. The squatter has resided at the property for many years. (Conservator's testimony)
9. The squatter has the legal right to remain at the property until a court, following an eviction proceeding, issues a final order for him to vacate the premises. (Conservator's testimony)
10. The Department has asked the Conservator to list the property for sale with an agent through the Multiple Listing Service ("MLS"). (Conservator's testimony, Department's testimony, Exhibits 1, 2, 3, 6, 7, 8: W-1348 *Verification We Need* forms sent by the Department during the application process)

11. The Conservator has been unable to find an agent willing to list the Property for sale while it is occupied by a squatter, because a proper appraisal cannot be completed while a squatter occupies the Property, and because the Property cannot be shown to prospective buyers. (Conservator's testimony)
12. The Conservator inquired of the chief executive officer of the Eastern Connecticut Association of Realtors whether the Property could be listed for sale through the MLS and was told that it was unlikely that any agent would accept a listing under the circumstances (of a squatter residing on the premises). (Conservator's testimony)
13. Even if the Property could be listed for sale while the squatter was occupying it, it could not be sold for fair market value because buyers would not pay fair market value for a property that could not be inspected. (Testimony, Record)
14. It is not practicable to list the Property for sale while a squatter occupies it. (Facts #11 through #13)
15. Eviction is a multi-step process that can be lengthy and involves fees and expenses. (Conservator's testimony)
16. The Appellant's Estate has no funds. (Conservator's testimony)
17. Courts do not waive fees for cases being prosecuted by landlords. (Conservator's testimony)
18. On [REDACTED], 2015, the Conservator had the squatter served by a State Marshall with a Notice to Quit; the notice informed the squatter that he must quit (end) possession or occupancy of the Property on or before [REDACTED] 2015. (Ex. 11: Notice to Quit (End) Possession)
19. The expense of serving the squatter with the Notice to Quit was paid by the Conservator's firm's funds. (Conservator's testimony)
20. On [REDACTED], 2015, the Department sent the Appellant a W-1348 *Verification We Need* form that requested: "Please provide complete listing agreement, or documentation from realtor verifying they will not list property until it is vacant". (Ex. 1: [REDACTED] 2015 W-1348 *Verification We Need* form)
21. On [REDACTED], 2015, the Department determined that the Conservator had not provided the information that was requested on the [REDACTED], 2015 W-1348 *Verification We Need* form. (Department testimony)

22. On [REDACTED] 2015, the Department sent the Appellant a NOA advising her that her application for Medicaid was denied because she did not provide the Department with all the information it requested. (Ex. 13: [REDACTED], 2015 NOA)
23. The Facility is now providing the funds necessary to proceed with the eviction process, because it wishes to expedite the process of the Appellant becoming eligible for Long Term Care Medicaid. (Testimony)
24. The Conservator is now in the process of filing with the court to have the squatter summoned for an eviction hearing. (Conservator's testimony)

CONCLUSIONS OF LAW

1. Section 17b-2 and § 17b-260 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.

Uniform Policy Manual (“UPM”) § 4005.05(A) provides that for every program administered by the Department, there is a definite asset limit.

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.”

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.

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

UPM § 4030.20(A)(1) provides in part that home property owned by a member of the assistance unit is not counted in the determination of the unit's eligibility for assistance as long as the unit uses the property as its principal residence.

UPM § 4030.20(D) provides in part that if an individual enters a long term care facility and the home is not being lawfully resided in by the individual's spouse, or child who is under age 21 or blind or disabled, or their sibling who meets certain conditions, the home's status as an excluded asset depends upon the expectation of the individual to return to the home.

- a. If the individual can reasonably be expected to return to the home, the home continues to be excluded as home property.
- b. If the individual cannot reasonably be expected to return to the home, the home is considered non-home property, and is subject to the policies and procedures described in this chapter.

The Appellant's former residence is non-home property because no relative of acceptable degree of relationship is lawfully residing in the home, and the Appellant is in a nursing facility and not expected to return home.

UPM § 4030.65(D)(1)(c) provides that for Long Term Care Medicaid, non-home property that was the recipient's primary residence prior to entering the nursing home is excluded for as long as the individual is making a bona fide effort to sell it.

UPM § 4015.05(A) 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 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.

- a. If the unit does not cooperate as described above, the asset is considered available to the unit, and the unit's equity in the asset is counted toward the asset limit.

UPM § 4099.15 provides for Verification of Inaccessible Assets

A. Factors Relating to Inaccessibility

1. The assistance unit must verify that an otherwise counted asset is inaccessible to the unit if the unit claims it cannot convert the unit to cash.
2. If the unit is unable to verify that the asset is inaccessible, the asset is considered a counted asset.

B. Factors Once the Asset Becomes Available

1. Once an inaccessible asset becomes available to the unit, the unit must verify the amount of equity the unit has in the asset.
2. If the unit does not verify the amount of equity it has in the asset, it is ineligible for assistance.

It is not practicable to list the Property for sale while a squatter is occupying it, therefore the Property cannot currently be converted to cash through sale.

The Appellant has demonstrated that she is cooperating with the Department in gaining access to the asset by proceeding with eviction of the squatter so that the Property can be made available for sale once the squatter has vacated the premises.

The Property is currently an inaccessible asset and the Appellant's equity in the asset cannot be counted.

The Department was incorrect to deny the Appellant's Medicaid application on [REDACTED] 2015 for not providing confirmation that the Property was being listed for sale.

DISCUSSION

In order for the Property to retain its status as an inaccessible asset, the Appellant must continue to cooperate in making the asset available.

Once the asset becomes available, the Appellant must follow the Department's rules regarding the treatment of non-home property in order for the Property to remain excluded, including that she make a bona fide effort to sell the Property at that time.

DECISION

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

ORDER

1. The Department shall reopen the Appellant's Medicaid application as of [REDACTED] 2015 and shall consider the Property an inaccessible asset for as long as the Appellant is cooperating in making the asset available by evicting the squatter.
2. The Department shall send proof of compliance to the undersigned no later than [REDACTED], 2015.

James Hinckley
Hearing Officer

cc: [REDACTED]
Cheryl Parsons, SSOM, Norwich

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, law, and 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, if 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.