

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

[REDACTED] 2016
Signature confirmation

Client: [REDACTED]
Request: 727506

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2015, the Department of Social Services (the "Department") issued [REDACTED] (the "Appellant") a notice stating that the Department had denied his [REDACTED] 2015 Medicaid application.

On [REDACTED] 2015, the Appellant filed a request for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") to dispute the Department's action.

On [REDACTED] 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") scheduled the administrative hearing for [REDACTED] 2015. The Appellant's conservator requested a postponement of the administrative hearing; the OLCRAH granted the request.

On [REDACTED] 2015, the OLCRAH initiated an administrative hearing, 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 OLCRAH reconvened the administrative hearing on [REDACTED] 2015.

The following individuals attended the [REDACTED] 2015 administrative hearing:

[REDACTED], Appellant's conservator
[REDACTED], Arden House financial counselor, Appellant's witness
Willette Barnett, Department's initial representative

Eva Tar, Hearing Officer

The following individuals attended on [REDACTED] 2015 for the reconvened session:

[REDACTED], Appellant's conservator
[REDACTED], Arden House financial counselor, Appellant's witness
Maureen Harry, Department's subsequent representative
Eva Tar, Hearing Officer

On [REDACTED] 2015, the hearing record closed.

STATEMENT OF ISSUE

The issue to be determined is whether the Department correctly denied the Appellant's [REDACTED] 2015 Medicaid application.

FINDINGS OF FACT

1. On [REDACTED] 2015, the Hamden Probate Court appointed Attorney [REDACTED] to be the Appellant's conservator. (Appellant's conservator's testimony)
2. Prior to [REDACTED] 2015, the Appellant's niece held the Appellant's power of attorney. (Appellant's witness's testimony)
3. The Appellant's niece was active in the Appellant's financial affairs prior to the appointment of his conservator. (Appellant's conservator's testimony)
4. The Appellant is a resident of Arden House, a long-term care facility. (Appellant's witness's testimony)
5. On [REDACTED] 2015, the Appellant filed an application for medical assistance with the Department. (Department's Exhibit 2: Notice Content-NCON, [REDACTED] 15)
6. On [REDACTED] 2015, [REDACTED] 2015, and [REDACTED] 2015, the Department issued W-1348LTC: *Verification We Need* forms to the Appellant's conservator, requesting proof of certain information so as to be able to determine the Appellant's eligibility. (Department's Exhibit 1: W-1348LTCs, varying dates)
7. The [REDACTED] 2015 W-1348LTC: *Verification We Need* form requested the submission of documentation of what the Appellant did with two checks (\$16,509.79 received [REDACTED] 2013 and \$58,682.00 received [REDACTED] 2013). (Department's Exhibit 1)
8. The [REDACTED] 2015 W-1348LTC: *Verification We Need* form stated that if the requested documentation was not submitted to the Department by [REDACTED],

2015 or if the Appellant did not ask for more time by [REDACTED] 2015, the Department may deny the [REDACTED] 2015 application. (Department's Exhibit 1)

9. On [REDACTED] [REDACTED] 2015, the Appellant's conservator directly emailed the Department's initial representative to request an extension of time so that she could get in touch with the Appellant's niece as to the questioned transactions. The Appellant's conservator had left a message for the niece, but had not received a response. (Appellant's Exhibit A: Emails, varying dates)
10. The Appellant's conservator's [REDACTED] 2015 email to the Department's initial representative listed the conservator's name, post office box, office phone number, cell phone number, and fax number; the email was also copied to the Appellant's witness. (Appellant's Exhibit A)
11. The Appellant's conservator followed the instructions listed on the [REDACTED] 2015 W-1348LTC: *Verification We Need* form by requesting an extension of time for the submission of documents *prior to* [REDACTED] 2015.
12. The Department's initial representative gets a lot of emails. (Department's initial representative's testimony)
13. The Department's initial representative did not inform the Appellant's conservator as to whether her [REDACTED] 2015 request for an extension of time had been granted or denied. (Appellant's conservator's testimony)
14. The Appellant's conservator submitted the requested documentation to the Department within the 10-day period following [REDACTED] 2015. (Appellant's conservator's testimony)
15. The Appellant's witness has been in communication with the Department's initial representative by email during the pendency of the Appellant's [REDACTED] 2015 application. (Appellant's Exhibit A)(Appellant's witness's testimony)
16. The Department's representative received some documentation from the Appellant's witness in the period between [REDACTED] 2015 and [REDACTED] 2015 by email. (Appellant's Exhibit A)
17. The Department's representative did not open the email she received from the Appellant's witness in the period between [REDACTED] 2015 and [REDACTED] 2015. (Appellant's Exhibit A)
18. A Medicaid case may be granted with a penalty period of ineligibility due to unreconciled transfers, if all other factors of program eligibility are met. (Department's subsequent representative's testimony)
19. The Appellant's conservator's testimony is credible.

20. The Appellant's witness's testimony is credible.

CONCLUSIONS OF LAW

1. The Department is the designated state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act. Conn. Gen. Stat. § 17b-2.
2. As a condition of eligibility, members of the assistance unit are required to cooperate in the initial application process and in reviews, including those generated by reported changes, redeterminations and Quality Control. (Cross reference: Eligibility Process 1500). Applicants are responsible for cooperating with the Department in completing the application process by: a. fully completing and signing the application form; and b. responding to a scheduled appointment for an interview; and c. providing and verifying information as required. UPM § 3525.05 (A)(1).
3. The Department must inform the assistance unit regarding the eligibility requirements of the programs administered by the agency and regarding the unit's rights and responsibilities. UPM § 1015.10 (A).
4. The Department must tell the assistance unit what the unit has to do to establish eligibility when the agency does not have sufficient information to make an eligibility determination. UPM § 1015.05 (C).
5. The Department correctly informed the Appellant's conservator of what she had to do in order to establish eligibility when the agency issued the [REDACTED] 2015 written request for verification.
6. The assistance unit must supply the Department, in an accurate and timely manner as defined by the Department, all pertinent information and verification which the Department requires to determine eligibility and calculate the amount of benefits. The assistance unit must permit the Department to verify information independently whenever the unit is unable to provide the necessary information, whenever verification is required by law, or whenever the Department determines that verification is necessary. UPM § 1010.05 (A).
7. The following provisions apply if the applicant failed to complete the application without good cause: (1) if eligibility has been established to the extent that assistance can be granted to all or a part of the assistance unit, the case is processed between the day after the expiration of the applicant's deadline for completing the required action; and (2) the last day of the agency promptness standard for processing the application. UPM § 1505.40 (B)(1)(a).
8. The Department determines eligibility within the standard of promptness for Medicaid program except when verification needed to establish eligibility is delayed

and one of the following is true: a. the client has good cause for not submitting verification by the deadline;¹ or b. the client has been granted a 10-day extension to submit verification which has not elapsed; or c. the Department has assumed responsibility for obtaining verification and has had less than 10 days; or d. the Department has assumed responsibility for obtaining verification and is waiting for material from a third party. UPM § 1505.35 (D)(2).

9. Delays Due to Good Cause (AFDC, AABD, MA Only). The eligibility determination is delayed beyond the AFDC, AABD or MA processing standard if because of unusual circumstances beyond the applicant's control, the application process is incomplete and one of the following conditions exists: (1) eligibility cannot be determined; or (2) determining eligibility without the necessary information would cause the application to be denied. UPM § 1505.40 (B)(4)(a).
10. Delays Due to Good Cause (AFDC, AABD, MA Only). If the eligibility determination is delayed, the Department continues to process the application until: (1) the application is complete; or (2) good cause no longer exists. UPM § 1505.40 (B)(4)(b).
11. Good Cause for Noncompliance-AFDC, AABD, MA. Penalties for noncooperation with the application and review processes are not imposed under the following conditions, which are considered good cause for noncompliance: 1. circumstances beyond the assistance unit's control; 2. failure of a representative to act in the best interests of an incompetent or disabled assistance unit. UPM § 3525.05 (C).
12. The Appellant's conservator was unable to get the requested documentation from a third party by the Department's [REDACTED] 2015 deadline, due to circumstances beyond her control.
13. The Appellant's conservator had good cause for not submitting the requested verification by the Department's [REDACTED] 2015 deadline.
14. The Department did not evaluate the Appellant's conservator's good cause for failing to provide documentation to the Department.
15. On [REDACTED] 2015, the Department processed the Appellant's [REDACTED] 2015 Medicaid application as an incomplete application.
16. The Department incorrectly denied the Appellant's [REDACTED] [REDACTED] 2015 Medicaid application.

DISCUSSION

Based on the credible testimony provided by the Appellant's conservator and witness as well as probative evidence submitted for the hearing record, the hearing officer finds that the Department failed in its ministerial duty to: 1) respond to a written request by

¹ *Emphasis added.*

the Appellant's conservator for an extension of time; and 2) to evaluate whether Appellant's conservator's reported circumstances met the criteria for a finding of good cause.

The Appellant's conservator had good cause for a delay in complying with the Department's [REDACTED] 2015 deadline, due to the unavailability of a third party.

The Department must reopen the Appellant's [REDACTED] 2015 Medicaid application.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department is hereby ordered to reopen the Appellant's [REDACTED] 2015 Medicaid application.
2. Provided all eligibility factors are met, the Department will grant the Appellant's [REDACTED] 2015 Medicaid application.
3. Within 21 calendar days of the date of this decision, or [REDACTED] 2016, documentation of compliance with this order is due to the undersigned.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

cc: Attorney [REDACTED]
Lisa Wells, DSS-New Haven (20)
Bonnie Shizume, DSS-New Haven (20)
Brian Sexton, 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.