

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

██████████, 2016
Signature Confirmation

Client ID # ██████████
Request # 733008

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████, 2015, the Department of Social Services (the "Department") sent ██████████ the Power of Attorney ("POA") for ██████████ (the "Appellant"), a Notice of Action ("NOA") denying her Long Term Care ("LTC") Medicaid application because her assets exceeded the Medicaid asset limit.

On ██████████ 2015, the Appellant requested an administrative hearing to contest the denial of LTC Medicaid benefits.

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

On ██████████ 2015, ██████████, the Appellant's POA requested a continuance which was granted.

On ██████████ 2015, OLCRAH issued a Notice scheduling the administrative hearing for ██████████ 2015.

On ██████████ 2015, the Appellant's POA requested a continuance which was granted.

On [REDACTED] 2015, OLCRAH issued a Notice scheduling the administrative hearing for [REDACTED] 2015.

On [REDACTED] 2015, the Appellant's POA requested a continuance which was granted.

On [REDACTED] 2015, OLCRAH issued a Notice scheduling the administrative hearing for [REDACTED] 2016.

On [REDACTED] 2016, 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 POA
 Amelia Duarte, Department's Representative
 Thomas Monahan, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny LTC Medicaid benefits was correct.

FINDINGS OF FACT

1. On [REDACTED], 2015, the Appellant fell at home and was admitted to St. Francis Hospital. (POA's testimony)
2. The Appellant entered St. Mary's Nursing Home (the "facility") in [REDACTED], CT, on [REDACTED] 2015, and stayed there through [REDACTED] 2015. She was admitted from St. Francis hospital. (Hearing record)
3. The Appellant went from St. Mary's Nursing Home to Herbert T. Clarke Assisted living on about [REDACTED] 2015. (POA's testimony)
4. On [REDACTED] 2015, the Department received an application for Long Term Care ("LTC") Medicaid for the Appellant. (Exhibit 1: Application form, [REDACTED] 15)
5. In [REDACTED] of 2015, [REDACTED] was appointed the Appellant's POA. (Stipulated)
6. On [REDACTED] 2015, the Department sent a Verification We Need form to the Appellant's POA requesting proof of face and surrender values of the Appellant's Nationwide Life insurance policy and if cashed how the money was spent. (Ex. 7: Case narrative)

7. The Appellant's only other asset other than the life insurance policy was a First Niagara checking account. On [REDACTED] 2015, the balance in the checking account was \$805.09. (Ex. 5 Bank statement, [REDACTED] 15).
8. As of [REDACTED] 2015, the face value of the Nationwide life insurance policy was \$3,063.000 and the cash surrender value was \$1,872.20. (Ex. 2: Life insurance verification)
9. The Appellant receives Social Security Benefits of \$672.00 per month. (Ex. 1: Application form, [REDACTED] 15)
10. The Appellant receives a monthly Canadian pension between \$98.00 and \$101.00 per month depending on the exchange rate. (Hearing record, Ex. 1: Application form, [REDACTED] 15)
11. On [REDACTED] 2015, the Appellant submitted a Surrender Request for Life Insurance Policy form to Nationwide Insurance. (Appellant's Exhibit A: Surrender request, [REDACTED] 15)
12. On [REDACTED] 2015, the Department received verification that the Appellant submitted a request to cash in her life insurance. (Ex. 7: Case narrative)
13. On [REDACTED] 2015, the Department sent the Appellant's POA a request for verification that the Appellant's Nationwide Life Insurance policy was cashed in and how the money was spent. (Ex. 7: Case narrative)
14. On [REDACTED] 2015, the Department denied the Appellant's LTC application because her assets exceeded the limit allowed to qualify for Medicaid assistance. (Ex. 6: Notice of Denial, [REDACTED] 15)
15. On [REDACTED] 2015, the Appellant requested the Nationwide life insurance cash surrender check be resent to her because when she initially received it she returned it to Nationwide. (Appellant's Ex. A: Appellant's letter [REDACTED] 15 and surrender request, [REDACTED] 15)
16. The Appellant suffers from memory loss and has symptoms of dementia. (POA's testimony)
17. The Appellant's Nationwide Life insurance policy was deposited in her checking account on [REDACTED] 2015. (POA's testimony)

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. 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, 42 USC 1396p.
4. Regulation 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 unit. UPM § 4005.05 (A)
5. Regulation provides that the cash surrender value of life insurance policies owned by an individual are counted towards the asset limit. If the face value of all insurance policies owned by the individual does not exceed \$1,500.00, the cash surrender value of such policies is excluded. UPM § 4030.30(C)
6. Regulation 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 (B)(2)
7. Regulation 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. UPM § 4005.05 (D)
8. Regulation provides that the Medicaid asset limit for a needs group of one is \$1,600.00. UPM § 4005.10
9. Regulation 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. UPM § 4005.15
10. Regulation 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 (A)
11. Regulation provides that the burden is on the assistance to demonstrate that an asset is inaccessible. 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. UPM 4015.05 B

12. The Department correctly counted the Appellant's life insurance policy as accessible.
13. Although, the POA eventually cashed the life insurance policy and spent down the assets, the Appellant's assets exceeded the Medicaid asset limit of \$1,600.00 from the date of application through the date of denial of [REDACTED] 2015.
14. The Department correctly determined that the Appellant was ineligible for Medicaid due to excess assets.
15. The Department correctly denied the Appellant's LTC Medicaid application.

DISCUSSION

Although the Nationwide policy was not cashed prior to [REDACTED] 2015, through no fault of the POA and Appellant, there is no provision in regulation to allow for eligibility in any month that assets exceed the \$1,600.00 asset limit. The Department correctly denied the Appellant's LTC Medicaid application due to excess assets.

DECISION

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

Thomas Monahan
Thomas Monahan
Hearing Officer

Pc: John Hesterberg, Operations Manager, Manchester Regional Office
Amelia Duarte, Hearing Liaison

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 060105-3725.

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 06105-3725. 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.