

**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: 737400

**NOTICE OF DECISION**

**PARTY**

Attorney [REDACTED]  
Re: [REDACTED] deceased  
[REDACTED]  
[REDACTED]  
[REDACTED]

**PROCEDURAL BACKGROUND**

On [REDACTED] 2015, the Department of Social Services (the "Department") issued [REDACTED] (the "Appellant") a notice denying his [REDACTED] 2015 Medicaid application for coverage of his long-term care services.

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

On [REDACTED] 2015, the OLCRAH issued a notice scheduling the administrative 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, the OLCRAH held a hearing. The following individuals attended the hearing:

[REDACTED] Appellant's conservator of estate  
[REDACTED] NewBridge International Realty Group, Appellant's witness  
Sarah Bradley, Department's representative  
Michael Briggs, Department's representative  
Mark Leonard, Department's witness  
Eva Tar, Hearing Officer

On [REDACTED] 2015, the hearing record closed.

### **STATEMENT OF ISSUE**

The issue to be decided by this administrative hearing is whether the Department correctly determined that the Appellant was ineligible for Medicaid coverage of his long-term care services for the reason that he failed to make a bona fide effort to sell his non-home property.

### **FINDINGS OF FACT**

1. On [REDACTED] 2015, the [REDACTED] Probate Court appointed Attorney [REDACTED] the Appellant's conservator of estate. (Appellant's conservator's testimony)
2. On [REDACTED] 2015, the Department received the Appellant's Medicaid application for long-term care services provided by Cassena Care [REDACTED]. (Stipulated)
3. The Appellant's [REDACTED] 2015 Medicaid application reported that the Appellant had been admitted to Cassena Care [REDACTED] on [REDACTED] [REDACTED] 2015. (Department's representative's testimony)
4. The Appellant and his wife co-owned property located at [REDACTED], in [REDACTED] [REDACTED] (the "property"). (Appellant's conservator's testimony)
5. The Appellant's wife died several years ago. (Appellant's conservator's testimony)
6. The Appellant's wife's name remains on the property's title. (Appellant's conservator's testimony)
7. The Appellant's wife's estate has not been settled. (Appellant's conservator's testimony)
8. The Appellant and his adult daughter lived together at the property prior to his admission to Cassena Care [REDACTED]. (Appellant's conservator's testimony)
9. The Appellant's adult daughter continues to reside at the property. (Appellant's conservator's testimony)
10. On [REDACTED] 2015, the Department issued to the Appellant's conservator a request for verification that the adjoining property was listed for sale if the Appellant's admission to the nursing facility was expected to be long-term. (Department's Exhibit 1: W-1348LTC: *Verification We Need*, varying dates)
11. On [REDACTED] 2015, the Appellant's conservator listed the property for sale with New Bridge International Realty Group, LLC in an *Exclusive Right to Sell Listing Contract* for the period from [REDACTED] 2015 through [REDACTED] 2016, subject to probate court approval. (Appellant's Exhibit A: Fax, [REDACTED]/15)
12. The Appellant's witness is the owner of New Bridge International Realty Group, LLC. (Appellant's witness's testimony)

13. The Appellant's witness attempted several times to access the property to inspect it for the purpose of placing it into active status on the Multiple Listing Service ("MLS"). (Appellant's witness's testimony)
14. The MLS rules and regulations prohibit placing a listing on active status if the property is unavailable for showings within 48 hours after entry on the MLS. (Appellant's witness's testimony)
15. The Appellant's daughter refused access to the Appellant's witness to the property, referring the Appellant's witness to the daughter's lawyer. (Appellant's witness's testimony)(Appellant's Exhibit A)
16. The Appellant's daughter's lawyer does not return the calls of the Appellant's witness or the Appellant's conservator.
17. The Appellant's witness's testimony is credible.
18. On ██████████ 2015, the Department issued a notice to the Appellant, denying the Appellant's ██████████ 2015 Medicaid application for long-term care services for the reason that the value of his assets exceeded the program's limits. (Department's Exhibit 3: Notice Content-NCON, ██████████/15)
19. In concluding that the value of the Appellant's assets exceeded the Medicaid program's limits, the Department used the value of the property. (Department's representative's testimony)
20. The Appellant died on ██████████ 2015. (Stipulated)
21. The Appellant's conservator did not inform the Department of the existence of the ██████████ 2015 *Exclusive Right to Sell Listing Contract* until ██████████ 2015. (Appellant's conservator's testimony)(Department's representatives' testimonies)(Appellant's Exhibit A)

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes designates the Department as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Section 4000.01 of the Uniform Policy Manual ("UPM") provides:
  - Asset Limit  
The asset limit is the maximum amount of equity in counted assets which an assistance unit may have and still be eligible for a particular program administered by the Department.
  - Available Asset  
An available asset is 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.
  - Counted Asset

A counted asset is an asset which is not excluded and either available or deemed available to the assistance unit.

Excluded Asset

An excluded asset is an asset which is not counted by the Department in determining the assistance unit's eligibility for assistance.

Non-Home Property

Non-home property is real property which a person owns but is not using as principal residence.

3. For every program administered by the Department, there is a definite asset limit. UPM § 4005.05 (A).
4. MA, AABD Residents of Long-Term Care Facilities: 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 (A)(2).
5. 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)(1).
6. 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. Assets not Counted Toward the Asset Limit. 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 § 4005.05 (C).
8. 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. UPM § 4005.05 (D)(1).
9. Property previously used as a primary residence becomes non-home property when the individual enters a long-term care facility and: (1) no relative of acceptable relationship is lawfully residing in the home; and (2) the individual cannot reasonably be expected to return to the home. (Cross Reference: 7510). UPM § 4030.65 (D)(1)(a).
10. For the purposes of the Medicaid program, the Appellant's property is non-home property.
11. Non-home property that was the recipient's primary residence prior to entering the nursing home is excluded for as long as the individual making a bona fide effort to sell it. UPM § 4030.65 (D)(1)(b).
12. The exclusion period begins with the first month of eligibility during which the person owns the property and is cumulative for all months in which the person receives assistance. UPM § 4030.65 (D)(1)(c).

13. The Appellant began making a bona fide effort to sell his non-home property on [REDACTED] 2015, when his conservator listed the property with a real estate broker.
14. The Department incorrectly determined that the Appellant was ineligible for Medicaid coverage of his long-term care services for the reason that he failed to make a bona fide effort to sell his non-home property.

### **DISCUSSION**

The Appellant's witness is an experienced real estate broker. The hearing officer found the Appellant's witness's testimony credible; the testimony was plausible, reasonable, exhibited first-hand knowledge. The Appellant's witness has no interest in delaying or preventing the sale of the Appellant's property; to the contrary, she would financially benefit from the property's sale by receiving a commission.

The Appellant's daughter, the property's current resident, has prohibited the Appellant's witness from inspecting the property, a necessary requirement to be actively listed on the Multiple Listing Service.

The Appellant's conservator has established by a preponderance of the evidence that he began making a bona fide effort to sell the Appellant's share of the non-home property by listing it with an experienced real estate broker on [REDACTED] 2015. For the purposes of the Medicaid program as it relates to long-term care services, the hearing officer finds that the non-home property is an "excluded asset."

### **DECISION**

The Appellant's appeal is GRANTED.

### **ORDER**

1. The Department will reopen the Appellant's [REDACTED] 2015 Medicaid application for long-term care services.
2. The Department will consider the Appellant's non-home property to be an "excluded asset" for the purposes of the Medicaid program.
3. Within 21 calendar days of the date of this decision, or [REDACTED] [REDACTED] 2016, documentation of compliance with this order is due to the undersigned.

*Eva Tar-electronic signature*  
Eva Tar  
Hearing Officer

cc: Sarah Bradley, DSS-Bridgeport (30)  
Michael Briggs, DSS-Bridgeport (30)  
Poonam Sharma, DSS-Bridgeport (30)  
Fred Presnick, DSS-Bridgeport (30)  
Yecenia Acosta, DSS-Bridgeport (30)  
Cheryl Stuart, DSS-Bridgeport (30)

### **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.