

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 # 750510

NOTICE OF DECISION

PARTY

██████████
c/o ██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") granting her application for Long-Term Care benefits under the Medicaid program effective ██████████ 2015.

On ██████████ 2016, Attorney ██████████, the Appellant's Attorney (the "Appellant's Attorney"), requested an administrative hearing to contest the Department's decision to grant the Appellant's application for Medicaid benefits effective ██████████ 2015.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2016.

The administrative hearing was rescheduled at the Appellant's request. On ██████████ 2016, OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2016.

On ██████████ 2016, 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:
██████████, Community Spouse

██████████, Appellant's Power of Attorney and daughter
 Atty. ██████████, Appellant's Attorney,

██████████, Paralegal, Law Offices of ██████████, ██████████, ██████████
 ██████████, Appellant's Witness'

Yadira McLaughlin, Department's Representative

Michael Briggs, Department's Representative

Sybil Hardy, Hearing Officer

The record was held open for the submission of additional evidence. On ██████████ 2016, the record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly determined that the effective date of the Appellant's long-term care Medicaid assistance is ██████████ 2015.

FINDINGS OF FACT

1. On ██████████ 2015, the Appellant was admitted to the skilled nursing facility, Jewish Home for the Elderly (the "Nursing Facility"), Fairfield, Connecticut. (Exhibit 1: Long-term Care/Waiver ["W-1LTC"] Application, ██████████ 15, Exhibit 5: Assessment of Spousal Assets Notification of Results ["W1SA-N"], Exhibit 7: W-1LTC, ██████████ 05)
2. On ██████████ 2015, the Department received from the POA a long-term care application document for Appellant. (Exhibit 1)
3. The Appellant is 86 years old (DOB ██████████), married and living in a skilled nursing facility. (Power of Attorney's Testimony, Exhibit 1, Exhibit 5, Exhibit 7)
4. The Community Spouse is ██████████ years old (DOB ██████████) and lives at ██████████ ██████████. (Community Spouse's Testimony, Exhibit 1, Exhibit 7)
5. The Appellant receives a monthly payment from the Social Security Administration ("SSA") for the amount of \$606.00. These benefits are not directly deposited into the Appellant's bank accounts. (POA's Testimony, Exhibit 3e: Peoples United Banks Statement ██████████ Exhibit 4: Notice of Approval for Long Term Care Medicaid, ██████████ 16, Exhibit 7)
6. The Appellant receives a monthly pension from ██████████ in the Amount of \$606.00. (Exhibit 3e, Exhibit 7)

7. The Community Spouse receives a monthly payment from SSA for the amount of \$1,655.80. These benefits are not directly deposited into the Appellant's bank accounts. (Exhibit 8)
8. Effective the Appellants date of institution ("DOI") her total assets were \$53,608.00. (Exhibit 5)
9. Effective [REDACTED] 2015, the couple had the following assets:

Name of Asset	Balance as of DOI	Owner
People's United Bank SV [REDACTED]	\$10,022.05	Appellant
People's United Bank SV [REDACTED]	\$ 1,443.67	Appellant
People's United Bank SV [REDACTED]	\$13,412.08	Appellant/Spouse
People's United Bank CH [REDACTED]	\$ 9,896.59	Appellant
People's United Bank SV [REDACTED]	\$ 957.07	Appellant
People's United Bank CH [REDACTED]	\$ 656.67	Appellant/Spouse
People's United Bank CH [REDACTED]	\$ 4,262.16	Appellant/Spouse
People's United Bank IRA [REDACTED]	\$ 7,842.83	Spouse
Polish National Alliance (LIP) [REDACTED]	\$ 2,351.91	Appellant
Polish National Alliance (LIP) [REDACTED]	\$ 2,762.97	Appellant

(Exhibit 3a: Spousal Assessment Worksheet)

10. [REDACTED] is the Appellant's Power of Attorney and daughter. (POA's Testimony, Exhibit 1, Exhibit 7)
11. On [REDACTED] 2015, the Department sent the POA and the Appellant's Attorney a Verification We Need ["W-1348"] Form requesting the following information: Copies of 2010, 2011, 2012, 2013 and 2014 tax returns, verify total assets are below \$1,600.00, verify how funds were spent, provide copies of bills, receipts or cancelled checks. (Exhibit 2b: W-1348LTC, [REDACTED] 15)
12. The POA and the Community Spouse were not aware of all assets owned by the Appellant and had difficulty reducing the assets. (Appellant's Witness' Testimony)
13. For the period of [REDACTED] 2015 through [REDACTED] 2015, the Appellant was over the asset limit for the Medicaid program. (Exhibit 3a: Spousal Assessment Worksheet)
14. On [REDACTED] 2015, the Department denied the Appellant's application for long-term medical assistance because she was over the asset limit for the program for the period of [REDACTED] 2015 through [REDACTED] 2015. (Hearing Record)
15. On [REDACTED] 2015, the Department received for the Appellant a new application document for long-term medical assistance from the Power of Attorney. The

application was reopened effective the date the new application was received. (Hearing Record, Exhibit 7)

16. The Appellant's POA and Community Spouse are in agreement that the listed assets and balances were owned by the Appellant and the Community Spouse. (POA's Testimony)
17. The Community Spouse does not pay a mortgage or rent. His homeowner's insurance is \$205.41 and property taxes, \$747.81. (Exhibit 8: Community Spouse Allowance Calculation)
18. The Community Spouse receives the standard utility allowance ("SUA") in the calculation of his household expenses. (Exhibit 8)
19. The Community Spouse's daughter and granddaughter help him with household chores and there were no payments involved at that time. (Community Spouse's Testimony)
20. Effective [REDACTED] 2015 the Appellant's assets were below the \$1,600.00 asset limit and remained below the asset limit. (Exhibit 3a, Exhibit 4)
21. On [REDACTED] 2016, the Department determined that the Appellant was eligible for long-term care assistance effective [REDACTED] 2015 with a diversion for [REDACTED] 2015 through [REDACTED] 2015. (Hearing Record)
22. On [REDACTED] 2016, the Department sent a notice to the Conservator indicating that the Appellant was eligible for Long-Term Care benefits under the Medicaid program effective [REDACTED] 2015. (Exhibit 9: NOA, [REDACTED] 15)

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") § 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: available to the unit; or deemed available to the assistance unit.
3. UPM § 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.
4. 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, 42USC 1396p.

5. 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.
6. UPM § 4005.05(D) provides that the Department compare the assistance unit's equity in counted assets with the program asset limit when determining whether the unit is eligible for benefits and 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.
7. UPM § 4005.10 (A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.
8. The Department correctly determined that the Appellant's assets exceeded the \$1,600.00 asset limit for period of [REDACTED] 2015 through [REDACTED] 2015.
9. UPM§ 4005.15(B)(2)(b) provides in part that if the assistance unit does not reduce its excess to an allowable level by the end of the month the excess first occurs, the unit is ineligible as of the first day of the following month and remains ineligible until the first day of the month in which the unit properly reduces its assets to an allowable level.
10. The Department correctly determined that the Appellant was ineligible for Medicaid for the period of [REDACTED] 2015 through [REDACTED] 2015.
11. UPM § 1505.10(D)(1) provides that for AFDC, AABD and MA applications, except for the Medicaid coverage groups noted below in 1510.10(D)(2), the date of application is considered to be the date that a signed application form is received by any office of the Department.
12. UPM 1505.45(B) provides for reopening denied AABD, MA, application.
 1. The Department reopens the denied application of AABD or MA applicant who:
 - a. was denied assistance for failing to meet the disability criteria;
and:
 - b. successfully appeals the SSI decision.

2. The case is reopened retroactive to the original date of application when the Department is notified that SSI has been awarded due to a successful appeal
13. The Department correctly determined that the Appellant's application date is [REDACTED] 2015.
14. UPM § 1560.10 provides that the beginning date of assistance for Medicaid may be one of the following: A. the first day of the first, second or third month preceding the month in which the Department receives a signed application when all non-procedural eligibility requirements are met and covered medical services are received at any time during that particular month; or B. the first day of the month of application when all non-procedural eligibility requirements are met during that month; or C. the actual date in a spend-down period when all non-procedural eligibility requires are met. For the determination of income eligibility in spend-down, refer to Income Eligibility Section 5520; or D. the first of the calendar month following the month in which an individual is determined eligible when granted assistance as a Qualified Medicare Beneficiary (Cross Reference: 2540.94). The month of eligibility determination is considered to be the month that the Department receives all information and verification necessary to reach a decision regarding eligibility.
15. The Department correctly determined that the Appellant was within the asset limit for the Medicaid program effective [REDACTED] 2016.
16. The Department correctly granted the Appellant's long-term care Medicaid benefits effective [REDACTED] 2015.

DISCUSSION

After reviewing the testimony and evidence presented, I find that the Department correctly granted the Appellant's long-term care Medicaid assistance effective [REDACTED] 2015. The Department correctly determined that was the new application date and that he Appellant met all program requirements at that time.

During the month of [REDACTED] 2015, the Appellant's assets were reduced below the Medicaid program limits and remained below the asset limits for the following months. Regulations provide that the eligibility for the Medicaid program begins the first day of the month in which the assistance unit reduces it equity in counted assets to within the program asset limit.

The Department has already determined that the Appellant was over the program asset limit prior to [REDACTED] 2015 and denied the previous application for that reason. The Power of Attorney and Community Spouse agree that those assets were owned and accessible to the Appellant during that time but were previously unaware of the People's United Bank IRA and therefore not able to reduce the assets before [REDACTED] 2015.

The assets were owned to accessible to the Appellant and the Community Spouse, therefore they must be counted by the Department. The Department took the correct action to grant the Appellant's long-term care Medicaid assistance effective [REDACTED] 2015.

DECISION

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

Sybil Hardy
Sybil Hardy
Hearing Officer

Pc: Poonam Sharma, Operations Manager; DSS R.O. # 30; Bridgeport
Yadira McLaughlin, Fair Hearings Liaison, DSS R.O. # 30, Bridgeport
Michael Briggs, Fair Hearings Liaison, DSS R.O. # 30, Bridgeport
Atty. [REDACTED], [REDACTED]

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.