

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3730

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

Client ID ██████████  
Request #755295

**NOTICE OF DECISION**

**PARTY**

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

**PROCEDURAL BACKGROUND**

On ██████████, 2016, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying her application for Long Term Care Medicaid benefits.

On ██████████, 2016, the Appellant requested an administrative hearing to contest the denial of the Long Term Care Medicaid benefits.

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

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice rescheduling 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:

██████████, Appellant's son, Power of Attorney ("POA")  
██████████, Attorney, Appellant's Advocate  
Enkelejda Trifoni, Department's Representative  
Miklos Mencseli, Hearing Officer

The Appellant was not present.

### **STATEMENT OF THE ISSUE**

The issue is whether the Department correctly denied the Appellant's application for Long Term Care ("LTC") Medicaid benefits as her assets exceed the program limit.

### **FINDINGS OF FACT**

1. The Appellant is a resident of Hebrew Healthcare Center. (Exhibit 3: [REDACTED] Victim Trust)
2. On [REDACTED], 2015, the Department received the Appellant's application for Medicaid long term care assistance. (Summary, Testimony)
3. The Appellant receives income from Social Security, dividends and Nazi Persecution Compensation. (Testimony)
4. The Appellant receives Nazi Persecution Compensation income in the amount of \$1580.00 per month from the government of Germany. This is deposited into Webster account [REDACTED]. (Summary, Exhibit 4B: Webster Bank [REDACTED] statement, Testimony)
5. The Appellant received a lump sum payment in 1954 and has been receiving on-going monthly payments since [REDACTED] 1975 from the government of Germany. (Testimony, Appellant's Memorandum Attachment #8)
6. The Appellant has received restitution payments totaling in excess of \$546,000.00 during her lifetime. (Testimony, Attachment #8 spreadsheet with supporting documents)
7. On [REDACTED], 2015, the Appellant established the [REDACTED]. (Summary, Exhibit 3)
8. On [REDACTED], 2015, a Wells Fargo [REDACTED] (hereafter "trust account") was opened with \$107,592.05 transferred from Wells Fargo [REDACTED]. (Summary, Exhibit 7A: Wells Fargo statement for [REDACTED])
9. On [REDACTED] 2015, the Department sent the trust to the Office of Legal Counsel for review. (Summary)
10. On [REDACTED] 2015, The Office of Legal Counsel advised the Department that the trust is self-settled revocable trust and the trust principal is available for Medicaid eligibility purposes. (Summary)

11. On [REDACTED], 2010, the Appellant transferred \$106,099.46 from Wells Fargo [REDACTED] to Wells Fargo [REDACTED]. (Summary, Exhibit 7F: Wells Fargo statement for [REDACTED])
12. On [REDACTED] 2010, the Appellant deposited \$167,733.25 into Webster Bank [REDACTED]. (Exhibit 7B: Webster Bank statement for [REDACTED])
13. On [REDACTED] 2010, the Appellant transferred \$150,000.00 from Webster Bank [REDACTED] to Wells Fargo [REDACTED]. (Summary, Exhibit 7B, Exhibit 7C: Wells Fargo [REDACTED])
14. On [REDACTED] 2012, the Appellant transferred \$144,560.35 from Wells Fargo [REDACTED] to Wells Fargo [REDACTED]. (Summary, Exhibit 7D: Wells Fargo statement for [REDACTED], Exhibit 7E: Wells Fargo statement for [REDACTED])
15. The Department determined that the Nazi Persecution Compensation income is excluded income in determining the Appellant's monthly applied income based on Departmental policy and Public Law.
16. The Department determined that the Appellant's Nazi Persecution Compensation funds are not excluded as an asset because they were not kept separate from counted assets. (Summary, Testimony)
17. The Department determined based on Departmental Policy and the Code of Federal Regulations the Appellant's Nazi Persecution Compensation funds do not meet the criteria of the funds must be segregated and not commingled with other countable resources so that the excludable funds are identifiable. (Summary, Exhibit 5: Department's Uniform Policy Manual section 4020.10 (pages 3-5), Exhibit 6: 20 C.F. R. § 416.1236)
18. The Department based on facts #11 through #14 determined that the Appellant's Nazi Persecution Compensation funds were not separate and were commingled with other countable resources.
19. On [REDACTED], 2016, the Department denied the Appellant's application for Medicaid benefits as her assets exceed the program limit. (Summary, Exhibit 4: Appellant's bank statement for Wells Fargo [REDACTED], Webster Bank [REDACTED], Webster Bank [REDACTED], Exhibit 1: Department's assistance status computer screen printout, Exhibit 2: Department's Assets 1 computer screen printout)
20. The Appellant's representatives cite Social Security Administration Policy with regards to excluded funds that have been commingled with non-excluded funds. (Appellant's Memorandum Attachment #4)

21. Excludable funds must be identifiable in order to be excluded. Identifiable does not require that funds that are excluded funds be kept physically apart from other funds (in a separate bank account). (Appellant's Memorandum Attachment #4)
22. The operating assumption is when withdrawals are made from an account with commingled funds in it, the non-excluded funds are withdrawn first, leaving as much of the excluded funds in the account as possible. (Appellant's Memorandum Attachment #4)
23. The Appellant has received both exempt and non-exempt funds during her lifetime. The Appellant began to receive Nazi Persecution Compensation funds prior to Public Law (P.L.) 103-286 the Nazi Persecution Victims Eligibility Act was enacted on August 1, 1994. (Appellant's Memorandum)
24. The Appellant's spreadsheet details her restitution payment history with conversion rates from Deutsche mark to dollar and Euro to dollar for every year the Appellant received restitution payments. (Appellant's Memorandum Attachment #6)
25. The Nazi Persecution Victims Eligibility Act provides exempt status to any and all restitution payments which a person receives at any period of their life. Exempting the funds does not hinge on the exempt funds having been kept separate and not commingled. (Appellant's Memorandum Attachment #3)
26. The Social Security Administration has updated their regulations regarding how to treat Nazi Persecution Compensation as inherited payments to Victims of Nazi Persecution. The funds were inherited from or can be traced back to an individual who received the funds as payments because of his or her status as a victim of Nazi persecution; the funds were or would have been excludable under the Victims of Nazi Persecution Act for the original recipient; the funds are identifiable as reparation payments; and the funds are unspent. (Appellant's Memorandum Attachment)

### **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. UPM § 3029.05 (C) (1)(2) provides that the look-back date for transfers of assets is a date that is 60 months before the first date on which both the following conditions exist: the individual is institutionalized and the individual is either applying for or receiving Medicaid.

3. The Department correctly determined that the Appellant had transfers that occurred within the 60 month look back period.
4. UPM § 5015.10 (F) provides for types of Excluded Income in AABD and MAABD.
  29. payments made to victims of Nazi persecution pursuant to Public Law 103-286
5. The Department correctly determined the Appellant's monthly income from Nazi Persecution Compensation is exempt in determining her monthly applied Income toward her cost of care.
6. 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 unit.
7. UPM § 4020.10 (G) provides for types of Excluded Assets in AABD and MAABD.

Payments Excluded by Federal Law

The following payments are excluded as assets as long as they are kept separate from counted assets:

15. Effective January 1, 1991, reparation payments made to Holocaust victims by the Federal Republic of Germany;
21. payments made to victims of Nazi persecution pursuant to Public Law 103-286

8. Public Law 103-286 states:

Section 1. CERTAIN PAYMENTS MADE TO VICTIMS OF NAZI PERSECUTION DISREGARDED IN DETERMINING ELIGIBILITY FOR AND AMOUNT OF NEED-BASED BENEFITS AND SERVICES.

- (a) IN GENERAL.—Payments made to individuals because of their status as victims of Nazi persecution shall be disregarded in determining eligibility for and the amount of benefits or services to be provided under any Federal or federally assisted program which provides benefits or services based, in whole or in part, on need.
- (b) APPLICABILITY.—Subsection (a) shall apply to determinations made on or after the date of the enactment of this Act with respect to payments referred to in subsection (a) made before, on, or after such date.

9. Title 20 of the Code of Federal Regulations (CFR) § 416.1236 provides for exclusions resources; provided by other statutes.
  - (a) For the purpose of § 416.1210(j), payments or benefits provided under a Federal statute other than title XVI of the Social Security Act where exclusion from resources is required by such statute include:
    - (18) Payments made to individuals because of their status as victims of Nazi persecution excluded pursuant to section 1(a) of the Victims of Nazi Persecution Act of 1994, Public Law 103–286 (108 Stat. 450).
    - (b) In order for payments and benefits listed in paragraph (a) to be excluded from resources, such funds must be segregated and not commingled with other countable resources so that the excludable funds are identifiable.
10. The evidence presented by the Appellant does not show that the Nazi persecution funds were separate and not commingled with other countable resources.
11. The evidence presented by the Appellant does not identify what funds remaining in the Appellant's account are identifiable as Nazi persecution funds.
12. The funds are not excluded in determining the Appellant's eligibility for Medicaid benefits.
13. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1600.00.
14. The Department correctly determined that the Appellant is not Medicaid eligible as her assets exceed the limit for the program.

### **DISCUSSION**

The Department correctly determined the Appellant is not asset eligible. The Appellant's representatives provided Social Security Administration policy to support their argument. The Department is bound by the Federal Regulations and Uniform Policy in determining Medicaid eligibility. Both the Federal Regulations and Uniform Policy clearly state the funds must be separate.

**DECISION**

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



Miklos Mencseli  
Hearing Officer

C: Musa Mohamud, Operations Manager, DSS R.O. #10 Hartford

[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.