

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

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

CL ID # ██████████
REQUEST ID #770163

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") to Inform Medicaid Recipients of a Lien being place on her home property at ██████████ ██████████.

On ██████████ 2016, the Appellant requested an administrative hearing to contest the Department's decision.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("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:

██████████, Appellant's Attorney
██████████, Appellant's Daughter-In-law, Conservator of Person and Estate
Lindsey Meyer, Department's Representative, ESW
Mark Leonard, Department's Representative, Investigator
Miklos Mencseli, Hearing Officer

The hearing officer at the Department's request held the record open for the Department to review the submission of evidence presented at the hearing. On [REDACTED] 2016, the hearing officer closed the record.

The hearing officer at the Department's request granted an additional 10 days to hold the record open for the submission of additional evidence that was presented by the Appellant's representatives. On [REDACTED] 2016, the hearing officer closed the record.

STATEMENT OF ISSUES

The issue to be decided is whether the Department's was correct to issue a Notice of Intent to Place a Lien on Property due to the Appellant's Medicaid application for Long Term Services and Support ("LTSS") benefits.

FINDING OF FACTS

1. On [REDACTED] 2016, the Appellant entered the Carlton Convalescent Home. (Appellant's Exhibit 1: application packet from [REDACTED], Department's Exhibit G: Ascend Level of Care and PASRR Activity sheet)
2. On [REDACTED] 2016, the Appellant applied for LTSS Medicaid benefits. (Summary, Department's Exhibit F: W-1LTC application, Appellant's Ex. 1)
3. On [REDACTED] 2016, the Appellant's daughter in-law ([REDACTED]) was appointed Conservator of Estate and Person for the Appellant by [REDACTED] Probate Court. (Appellant's Attorney Hearing Summary)
4. The Conservator is the wife of [REDACTED], the Appellant's son. (Appellant's Attorney Hearing Summary, Exhibit 2: Birth Certificate for [REDACTED], [REDACTED], DOB: [REDACTED]50)
5. [REDACTED] receives monthly disability benefits from the Social Security Administration. [REDACTED] was determined to be a disabled individual as of [REDACTED] 2006. (Exhibit 1: Social Security Administration verifications)
6. The Appellant owns home property at [REDACTED]. (Summary, Testimony)
7. [REDACTED] does not live with the Appellant. He lives with his wife (Appellant's Conservator) at [REDACTED]. (Testimony)
8. On [REDACTED] 2016, the Conservator filed a motion with [REDACTED] Probate Court to transfer the Appellant's home property to [REDACTED], the Appellant's disabled son. (Exhibit 2: Probate document dated [REDACTED] 16 with attachments)

9. On [REDACTED] 2016, the Appellant's Conservator entered a listing agreement to sell the property at [REDACTED]. (Testimony)
10. On [REDACTED] 2016, the Appellant's other child, [REDACTED] filed a motion to transfer the Appellant's home property to him for other valuable consideration for provided care while sharing the home. (Exhibit 4: Probate document dated [REDACTED] 16)
11. On [REDACTED] 2016, the Department granted the Appellant LTSS medical assistance with an effective date of [REDACTED] 2016. (Department's Hearing Summary)
12. On [REDACTED] 2016, the Department sent the Appellant a Notice to Inform Medicaid Recipients of a Lien. The Appellant had 10 days from the date of the notice to request a hearing to not have the lien placed. (Department's Exhibit D: W-1662 notice dated [REDACTED] 16)
13. The Appellant's request for a hearing was received by fax on [REDACTED] 2016.
14. On [REDACTED] 2016, the Department issued a Certificate of Lien for the Appellant's property at [REDACTED]. (Department's Exhibit C: Certificate of lien dated [REDACTED] 16)
15. On [REDACTED] 2016, the lien was recorded in the [REDACTED] Land Records. (Department's Exhibit B: Record Property Lien document)
16. The Appellant's matter regarding her home property has had several Probate hearings. (Exhibit 6: Court of Probate notices)
17. As of the hearing date the Appellant's property has not been transferred to any individual. (Testimony)
18. The Appellant has not returned to her home property since she was admitted to the Carlton Convalescent Home.
19. On [REDACTED] 2016, the Appellant was admitted to [REDACTED] hospital. (Department's Exhibit J: Connecticut Probate Courts document dated [REDACTED] 16)
20. The Appellant's proposed placement has been granted for Long-Term Care. The facility is [REDACTED] Rehabilitation and Health Care Center. (Exhibit J)

CONCLUSION 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. Sec. 17b-261b(a) of the Connecticut General Statutes states that the Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department.
3. The Court of Probate does not determine eligibility for assistance for Department of Social Services programs.
4. Sec. 17b-79 of the Connecticut General Statutes states that No person shall be deemed ineligible to receive an award under the state supplement program, medical assistance program, temporary family assistance program, state-administered general assistance program or supplemental nutrition assistance program for himself or herself or for any person for whose support he or she is liable by reason of having an interest in real property, maintained as his or her home, provided the equity in such property shall not exceed the limits established by the commissioner. The commissioner may place a lien against any property to secure the claim of the state for all amounts which it has paid or may thereafter pay to such person or in such person's behalf under any such program, or to or on behalf of any person for whose support he or she is liable, except for property maintained as a home in aid to families of dependent children cases, in which case such lien shall secure the state only for that portion of the assistance grant awarded for amortization of a mortgage or other encumbrance beginning with the fifth month after the original grant for principal payment on any such encumbrance is made, and each succeeding month of such grant thereafter. The claim of the state shall be secured by filing a certificate in the land records of the town or towns in which any such real estate is situated, describing such real estate. Any such lien may, at any time during which the amount secured by such lien remains unpaid, be foreclosed in an action brought in a court of competent jurisdiction by the commissioner on behalf of the state. Any real estate to which title has been taken by foreclosure under this section, or which has been conveyed to the state in lieu of foreclosure, may be sold, transferred or conveyed for the state by the commissioner with the approval of the Attorney General, and the commissioner may, in the name of the state, execute deeds for such purpose. Such lien shall be released by the commissioner upon payment of the amount secured by such lien, or an amount equal to the value of the beneficiary's interest in such property if the value of such interest is less than the amount secured by such lien, at the commissioner's discretion, and with the advice and consent of the Attorney General, upon a compromise of the amount due to the state. At the discretion of the commissioner, the beneficiary, or, in the case of a husband and wife living together, the survivor of them, as long as he or she lives, or a dependent child or children, may be permitted to occupy such real property.

5. Sec. 17b-93 of the Connecticut General Statutes states that a beneficiary of aid under the state supplement program, medical assistance program, aid to families with dependent children program, temporary family assistance program or state-administered general assistance program has or acquires property of any kind or interest in any property, estate or claim of any kind, except moneys received for the replacement of real or personal property, the state of Connecticut shall have a claim subject to subsections (b) and (c) of this section, which shall have priority over all other unsecured claims and unrecorded encumbrances, against such beneficiary for the full amount paid, subject to the provisions of section 17b-94, to him or on his behalf under said programs; and, in addition thereto, the parents of an aid to dependent children beneficiary, a state-administered general assistance beneficiary or a temporary family assistance beneficiary shall be liable to repay, subject to the provisions of said section 17b-94, to the state the full amount of any such aid paid to or on behalf of either parent, his spouse, and his child or children. The state of Connecticut shall have a lien against property of any kind or interest in any property, estate or claim of any kind of the parents of an aid to dependent children beneficiary, in addition and not in substitution of its claim, for amounts owing under any order for support of any court or any family support magistrate, including any arrearage under such order, provided household goods and other personal property identified in section 52-352b, real property pursuant to section 17b-79, as long as such property is used as a home for the beneficiary and money received for the replacement of real or personal property, shall be exempt from such lien.

6. Uniform Policy 4030.20 (D) provides for treatment of Home property.

1. If the individual owns home property and enters a long-term care facility, the home property retains its status as an excluded asset for as long as any of the following persons is lawfully residing in the home:
 - a. the individual's spouse; or
 - b. the individual's child who is under age 21 or blind or disabled; or
 - c. the individual's sibling if the sibling:
 - (1) is joint owner of the home; and
 - (2) was residing in the home for at least one year immediately before the individual entered the long-term care facility.

7. The Department correctly determined the Appellant's home property is not an excluded asset as none of the criteria for exclusion was met.

8. Section 7500.01 of the Uniform Policy Manual (“UPM”) provides in part the following definitions:

Assignment: An assignment is the act of transferring one’s equitable interest in an asset or a claim to another person or an organization.

Lawfully residing: Lawfully residing is actually residing at a certain address and publically affirming this address as one’s residence to the local Post Office, Voters’ Registration Office, Immigration Office, or other governmental agencies.

Lien: A lien is a legal claim against property as security for a debt.

Recovery: Recovery is the process by which the Department collects certain income or assets of an individual who either received benefits from the Department, or who was legally liable for the support of a person when that person was receiving benefits from the Department.

9. UPM § 7510 provide that in certain circumstances, the Department places a lien against the real property of an assistance unit and the real property of a legally liable relative in the Aid to Families with Dependent Children, State Supplement, and Medical Assistance programs. This chapter describes the circumstances under which the Department places a lien against real property and also describes how the amount of the Department’s lien is computed.
10. UPM § 7510.15 (B)(1) provides the Department places a lien against all of the individual’s real property, except as noted below, because of Medicaid claims paid or to be paid if the individual is an inpatient of a long-term care facility and cannot reasonably be expected to be discharged and return home.
11. There was no medical indication the Appellant had an expectation to return to her home.
12. The Appellant has not been in her home since her admittance to the Carlton Convalescent Home on [REDACTED] 2016.
13. The Appellant per the Court of Probate has been granted to be place for Long Term Care at [REDACTED] Rehabilitation and Health Care Center.
14. UPM § 7510.15 (B)(2) provides the Department does not place a lien on real property that was used as the individual’s primary residence prior to entering the long term care facility if any of the following persons is lawfully residing in the home: a. the individual’s spouse; b. the individual’s child who is under age 21 or blind or disabled; c. the individual’s sibling if the sibling: (1) is joint owner of the home; and (2) was residing in the home for at least one year immediately before the individual entered the long-term care facility.

15. The Appellant's disabled child, [REDACTED] does not meet the criteria as he was not residing with the Appellant.
16. On [REDACTED] 2016, the Department had the authority to record a lien against the property, owned by the Appellant, to preserve the state of Connecticut's interest with respect to recovery of Medicaid funds.
17. UPM § 7510.15 (E) provides the amount of the Department's lien is equal to: 1. the amount of Medicaid benefits incorrectly paid on behalf of the individual; plus 2. the amount of any Medicaid benefits the Department paid on behalf of an institutionalized individual, as described in UPM § 7510.15 (B).

DISCUSSION

The Department was correct to place a lien on the property located at [REDACTED].

DECISION

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


Miklos Mencseli
Hearing Officer

C: Poonam Sharma, Operation Manager, DSS R.O. # 30 Bridgeport
[REDACTED]
[REDACTED]
Markowski, Stephen CFIU, Director
Olmeda, Odette DSS – Resource and Recoveries
Stygar, Denise Office of Quality Assurance

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.