

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

██████████ 2016
Signature confirmation

Client: ██████████
Request: 774267

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") notified ██████████ ██████████ (the "Appellant") that the agency was granting her Medicaid application for coverage of her long-term care services effective ██████████ 2016.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received from Attorney ██████████, the Appellant's successor conservator of estate, a request for an administrative hearing to dispute the effective date of Medicaid coverage.

On ██████████ 2016, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2016. The OLCRAH granted the Appellant's request for a postponement to ██████████ 2016.

On ██████████ 2016, 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:

██████████, Appellant's representative and counsel
Lauren Kimbro, Department's representative
Eva Tar, Hearing Officer

On ██████████ 2016, 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's ownership interest in real property in South Carolina rendered her ineligible for Medicaid coverage of her long-term care services prior to [REDACTED] 2016.

FINDINGS OF FACT

1. The Appellant's spouse was [REDACTED] [REDACTED]. (Appellant's Exhibit E: Correspondence with attachments, [REDACTED]16)
2. The Appellant's spouse died on [REDACTED] 2014. (Department's Exhibit 2: Narrative-NARR, varying dates)(Appellant's Exhibit E)
3. The Appellant's adult son is [REDACTED] [REDACTED] (the "son"). (Department's representative's testimony)
4. The Appellant has a one-third ownership interest in the real property located at [REDACTED] [REDACTED] (the "Connecticut real property"). (Appellant's Exhibit E)
5. Along with the Appellant, the Appellant's son has an ownership interest in the Connecticut real property. (Department's representative's testimony)
6. The Appellant and her spouse purchased the real property located at [REDACTED] [REDACTED] (the "South Carolina real property"); they are listed on that property's title. (Appellant's Exhibit D: *Know all Men by these Presents*, undated)
7. Since [REDACTED] 2014, the Appellant has been institutionalized. (Department's representative's testimony)
8. The Appellant is a patient at Golden Hill Rehab Pavilion, a skilled nursing facility. (Appellant's Exhibit B)
9. On [REDACTED] 2015, the [REDACTED] Probate Court (Connecticut) appointed the Appellant's son to be the Appellant's conservator of person and estate, in a voluntary conservatorship proceeding. (Appellant's Exhibit A: *Decree/Appointment of Conservator/Voluntary Representation*, [REDACTED] 15)
10. In the period of time that the Appellant's son was held the position of conservator of estate, the Appellant's son did not file an inventory with the [REDACTED] Probate Court (Connecticut). (Appellant's Exhibit B)

11. On [REDACTED] 2015, the [REDACTED] Probate Court (Connecticut) affirmed the Appellant's son as the Appellant's conservator of person, but removed him as the Appellant's conservator of estate for cause, over the Appellant's objection. (Appellant's Exhibit B: *Decree*, [REDACTED] 15)
12. On [REDACTED] 2015, the [REDACTED] Probate Court (Connecticut) appointed Attorney [REDACTED] to be the Appellant's successor conservator of person. (Appellant's Exhibit C: *Fiduciary's Probate Certificate/Conservatorship*, [REDACTED] 16)
13. On [REDACTED] 2016, the Department received the Appellant's Medicaid application for long-term care services. (Department's Exhibit 1: *Verification We Need*, varying dates)
14. With respect to this administrative hearing proceeding, the Appellant's successor conservator did not submit a copy of the initial inventory she filed with the [REDACTED] Probate Court (Connecticut). (Hearing record)
15. On [REDACTED] 2016, the Appellant's successor conservator filed a substitute or corrected inventory of the Appellant's estate with the [REDACTED] Probate Court (Connecticut). (Appellant's Exhibit E)
16. The grand total of the value of the Appellant's interests in the Connecticut real property, the South Carolina real property, and two Chase Bank accounts, as listed on the [REDACTED] 2016 Inventory filed with the [REDACTED] Probate Court (Connecticut), equaled \$171,974.88. (Appellant's Exhibit E)
17. The Appellant's successor conservator of estate represented to the [REDACTED] Probate Court (Connecticut) that the Appellant's 50 percent interest in the South Carolina real property equaled \$90,500.00. (Appellant's Exhibit E)
18. The value of the South Carolina real property exceeds the Medicaid asset limit. (Department's representative's testimony)
19. On or around [REDACTED] 2016, the Appellant's spouse's estate was opened in the [REDACTED] County Probate Court (South Carolina). (Appellant's Exhibit E)
20. On or around [REDACTED] 2016, the Appellant's son was appointed to probate the Appellant's spouse's estate in South Carolina. (Appellant's Exhibit E)
21. On [REDACTED] 2016, the Appellant's son put an advertisement for sale "by owner" on Craigslist a three-bedroom townhouse in the Lands End Resort community for \$250,000.00, "subject to probate court approval." (Department's Exhibit 3: Fax, [REDACTED] 16)

22. The Department accepts the [REDACTED] 2016 Craigslist advertisement to be evidence of a bona fide effort to sell the South Carolina real property, for the purposes of the Medicaid program. (Department's representative's testimony)
23. On [REDACTED] 2016, the Department notified the Appellant that the agency was granting her Medicaid application for coverage of her long-term care services effective [REDACTED] 2016. (Department's Exhibit 4: Correspondence, [REDACTED] 16)
24. In its [REDACTED] 2016 correspondence, the Department noted that the Appellant's applied income of \$2,748.78 should be paid to the Golden Hill Rehab Center toward an outstanding bill of \$61,340.00 owed by her for the period from [REDACTED] 2015 through [REDACTED] 2016. (Department's Exhibit 4)
25. On [REDACTED] [REDACTED] 2016, the Appellant's son, in his capacity as the personal representative of the Estate of [REDACTED], signed an **Exclusive Right to Sell Agreement/Listing Agreement** with Chicora Real Estate, dba Coldwell Banker-Chicora Real Estate, to sell the South Carolina real property for \$200,000.00, contingent on probate court approval. (Appellant's Exhibit E)
26. On or around [REDACTED] 2016, an inventory was filed with the [REDACTED] County Probate Court (South Carolina). (Appellant's Exhibit E)
27. As of [REDACTED] 2016, the Appellant's successor conservator had not contacted the [REDACTED] County Probate Court (South Carolina) directly to inquire as to proceeding taking place involving the Appellant's spouse's estate. (Appellant's Exhibit E)
28. As of [REDACTED] 2016, the Appellant's successor conservator has not taken affirmative steps with the [REDACTED] County Probate Court (South Carolina) to ensure that the interests of the Appellant as the surviving spouse (and the presumptive beneficiary of her spouse's estate) are preserved. (Hearing record)(Appellant's Exhibit E)
29. The hearing record is silent as to whether the Appellant's spouse's estate is undergoing probate proceedings in Connecticut, for any Connecticut assets that may remain in his name.
30. The Department is not requiring that the Appellant place the Connecticut real property for sale as an eligibility requirement, as the Appellant's son resides at the Connecticut real property and is a co-owner of it. (Department's representative's testimony)
31. The Department has placed a lien on the Appellant's one-third ownership interest in the Connecticut real property. (Department's representative's testimony)
32. The Department has placed a lien on the Appellant's share of the South Carolina real property. (Department's representative's testimony)

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 the purposes of the Medicaid program, the South Carolina real property is treated as non-home property.
4. For every program administered by the Department, there is a definite asset limit. UPM § 4005.05 (A).
5. With respect to the Medicaid coverage group associated with the Aid to the Aged, Blind, and Disabled program, the asset limit is \$1,600.00 for a needs group of one. UPM § 4005.10 (A)(2)(a).
6. 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 a particular program, unless the assistance unit is categorically eligible for the program and the asset limit requirement does not apply. UPM § 4005.05 (D)(2).
7. 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).
8. The Appellant is subject to the Medicaid program's asset limit.

9. 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).
10. 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).
11. 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).
12. 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).
13. UPM § 4030.65 (D)(1) addresses the treatment of real property previously used as the primary residence with respect to the Medicaid program.
14. All other non-home property is excluded for as long as the individual is making a bona fide effort to sell it. UPM § 4030.65 (D)(2)(a).
15. The exclusion period begins with the first month in which all of the following conditions are met: (1) the assistance unit is otherwise eligible for assistance; (2) the assistance unit owns the property; (3) the property is available to the assistance unit; (4) the assistance unit is making a bona fide effort to sell the property. UPM § 4030.65 (D)(2)(b).
16. Legal ownership of jointly held real property is considered to be shared equally on a pro-rata basis by the owners of record unless the deed specifies otherwise. UPM § 4010.10 (A)(5).
17. The Appellant had the legal right to sell her ownership interest in the South Carolina real property
18. Prior to the death of her spouse, the Appellant had an ownership interest in the South Carolina real property of at least 50 percent.
19. Prior to ■■■■ 2016, the Appellant did not make a bona fide effort to sell her ownership interest in the South Carolina real property.
20. Property in Probate. Property in probate is inaccessible to an individual only in the case where he or she has an interest in a decedent's estate that is undergoing administration provided that: a. the individual does not have the legal right to make the assets available until the probate court completes such administration; and b. the

individual takes reasonable steps to ensure that the administration of the decedent estate is not unduly prolonged. UPM § 4015.10 (A)(1).

21. It is reasonable to conclude that the Appellant, as a surviving spouse, has an interest in her spouse's decedent estate, as being administered through the Horry County Probate Court (South Carolina).
22. The hearing record is silent as to whether as a surviving spouse and presumptive beneficiary of her decedent spouse's South Carolina estate, the proportion of the Appellant's ownership interest in the South Carolina real property will: 1) increase to a full ownership interest, 2) increase by a different proportional amount, or 3) remain unchanged upon the finalization of the decedent spouse's estate.
23. The Appellant's spouse's decedent estate did not begin undergoing administration through probate proceedings in South Carolina until [REDACTED] 2016.
24. The Department correctly determined that the Appellant's ownership interest in real property in South Carolina rendered her ineligible for Medicaid coverage of her long-term care services prior to [REDACTED] 2016.

DECISION

The Appellant's appeal is DENIED.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

cc: Attorney [REDACTED], [REDACTED]
[REDACTED]
Lauren Kimbro, DSS-New Haven (20)
Ellen Croll-Wissner, DSS-New Haven (20)
Lisa Wells, DSS-New Haven (20)
Cheryl Stuart, DSS-New Haven (20)
Brian Sexton, DSS-New Haven (20)

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.