

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVE.  
HARTFORD, CT 06105-3725

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

Client ID # ██████████  
Request # 783693

**NOTICE OF DECISION**

**PARTY**

██████████  
For: ██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████ ("POA"), Power of Attorney and Conservator of the Person, on behalf of ██████████ (the "Appellant") a Notice of Action ("NOA) discontinuing the Appellant's benefits under the Long Term Care Medicaid program effective ██████████ 2016.

On ██████████ 2016, the POA on behalf of the Appellant requested an administrative hearing to contest the Department's decision to discontinue such benefits.

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, 17-61 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:

██████████, Power of Attorney for the Appellant  
Fred Jenkins, Department Representative  
Lisa Nyren, Fair Hearing Officer

The hearing record remained open for the submission of additional evidence. On [REDACTED] 2016, the hearing record closed.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department's decision to discontinue the Appellant's Long Term Care ("LTC") Medicaid benefits was correct.

### **FINDINGS OF FACT**

1. The Appellant is a recipient of LTC Medicaid benefits. (Hearing Record)
2. On [REDACTED] 2014, Marlborough Health Care Center (the "facility"), a skilled nursing facility, admitted the Appellant. (Exhibit 4: Case Narrative, Exhibit 5: Institution Screenprint and POA's Testimony)
3. [REDACTED] ("POA") has Power of Attorney for the Appellant and is Conservator of the Person for the Appellant. (POA's Testimony)
4. The Appellant owns property at [REDACTED] ("property") where he resided prior to entering the facility. (Hearing Record)
5. The POA resides at the property. (POA's Testimony)
6. Beginning [REDACTED] 2009, the Appellant held a reverse mortgage on the property with Wells Fargo Bank (the "bank"). (POA's Testimony)
7. On [REDACTED] [REDACTED] 2016, the Department received the Appellant's redetermination document signed by the POA. (Exhibit 1: Renewal of Eligibility and Exhibit 4: Case Narrative)
8. On [REDACTED] 2016, the Department issued the POA and the Appellant a W1348 Verification We Need form ("W1348"). The Department requested asset verification: a current bank statement and the real estate listing agreement for the property. The Department requested the Appellant list the property for sale. The requested information was due [REDACTED] 2016. (Exhibit 2: Verification We Need and Exhibit 4: Case Narrative)
9. On [REDACTED] 2016, the Department received the requested bank statement. (Exhibit 4: Case Narrative and Department Representative's Testimony)
10. On [REDACTED] 2016, the Department issued the POA and the Appellant a W1348. The Department requested a real estate listing agreement for the

property. The Department requested the Appellant list the property for sale. The requested information was due [REDACTED] 2016. (Exhibit 3: Verification We Need and Exhibit 4: Case Narrative)

11. On [REDACTED] 2016, the Department discontinued the Appellant's LTC Medicaid benefits effective [REDACTED] [REDACTED] 2016 for failure to provide verification necessary to complete the review of medical benefits. (Department Representative's Testimony, Exhibit 4: Case Narrative, and Exhibit 7: Notice of Action)
12. On [REDACTED] 2016, the Department issued a notice of action to the POA on behalf of the Appellant. The notice stated LTC Medicaid will be discontinued effective [REDACTED] 2016 because you did not return all of the required verification we asked for. (Department Representative's Testimony, Exhibit 4: Case Narrative, and Exhibit 7: Notice of Action)

### **CONCLUSIONS OF LAW**

1. Connecticut General Statute 17b-2(6) provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual ("UPM") § 1545 provides that the Department periodically redetermines the eligibility of an assistance unit. During the redetermination, all factors relating to eligibility and benefit level are subject to review.

UPM § 1545.05(A)(1) provides that eligibility is redetermined regularly on a scheduled basis.

UPM § 1545.25(A) provides that assistance units are required to complete a redetermination form at each redetermination.

3. The Appellant correctly completed the redetermination document.
4. UPM § 4000.01 defines home property as real property which someone owns and is using as principal residence; and life use which is the right of a person to occupy and/or enjoy the income proceeds of real property during the person's life time in accordance with the terms of a legal agreement.

UPM § 4030.20(A)(1) provides that home property owned by a member of the assistance unit is not counted in the determination of the unit's eligibility for assistance as long as the unit uses the property as its principal residence. Subject to the provisions of paragraph E below,

certain individual with substantial home equity may not be eligible for payment of nursing facility and other long-term care services under the Medicaid program.

UPM § 4030.20(A)(2)(a) provides that home property consists of the home itself which the assistance unit uses as principal residence, the surrounding property which is not separated from the home by intervening property owned by others, and any related outbuildings used in the operation of the home.

UPM § 4030.20(D)(1) provides that 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 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.

UPM § 4030.20(D)(2) provides that if the individual enters a long-term care facility and none of the persons listed above is lawfully residing in the individual's home, the home's status as an excluded asset depends upon the expectation of the individual to return to the home.

- a. If the individual can reasonably expected to return to the home, the home continues to be excluded as home property.
  - b. If the individual cannot reasonably be expected to return to the home, the home is considered non-home property, and is subject to the policies and procedures described in this chapter.
5. UPM § 4000.01 defines non-home property as real property which a person owns but is not using as principal residence.

UPM § 4020.10(J) provides that non-home property which would render the assistance unit ineligible is excluded for as long as the assistance unit is making a bona fide effort to sell the property and:

1. Agrees in writing to dispose of the property; and
2. Immediately lists the property for sale; and
3. Does not refuse any offer which approximates fair market value; and
4. In AABD , grants the Department a security mortgage on the property pending its sale.

UPM § 4030.65(D)(1)(a) provides that 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.

UPM § 4030.65(D)(1)(b) provides that non-home property that was the recipient's primary residence prior to entering the nursing home is excluded for as long as the individual is making a bona fide effort to sell it.

6. The Department correctly determined the Appellant's property as non-home property.
7. The Department correctly determined the Appellant must list and sell the property as a condition of eligibility under the L01 program.
8. UPM § 4005.10(A)(2)(a) provides that the asset limit is \$1,600 for a needs group of one.
9. UPM § 1015.05(c) provides that the Department must tell the assistance unit what the unit has to do to establish eligibility when the Department does not have sufficient information to make an eligibility determination.

UPM § 1015.10(A) provides that the Department must inform the assistance unit regarding the eligibility requirements of the programs administered by the Department, and regarding the unit's rights and responsibilities.

UPM § P-4099.30(11) provides that the following are examples of verification that may be obtain in evaluating specific types of assets: statement from real estate agency showing that assistance unit is making a bona-fide effort to sell non-home property.

UPM § 4099.20(A)(1) provides that the assistance unit must verify the reason for the exclusion of an asset if there is a question regarding the validity of the exclusion.

UPM § 4099.20(A)(2) provides that if the unit is unable to verify that an asset should be excluded, the Department considers the asset a counted asset.

10. The Department correctly issued the POA and the Appellant the W1348 Verification We Need form requesting asset information needed to determine eligibility.

11. UPM § 1555.05(B)(1) provides that assistance units, with the exception of food stamp assistance units, are required to provide verification within ten calendar days of the date of the Department's request.

UPM § 1545.35(D)(2) provides that required verification has been timely submitted if it is provided to the appropriate district office by the later of the following dates:

1. The deadline for filing the redetermination form; or
2. Ten days following the date the verification is initially requested by the Department.

12. The Department correctly notified the Appellant of the required actions and allowed ample time, 10 days to complete.

13. UPM § 1505.40(B)(5)(a) provides that regardless of the standard of promptness, no eligibility determination is made when there is insufficient verification to determine eligibility when the following has occurred:

1. The Department has requested verification; and
2. At least one item of verification has been submitted by the assistance unit within a time period designated by the Department, but more is needed.

UPM § 1505.40(B)(5)(b) provides that additional 10 day extensions for submitting verification shall be granted, as long as after each subsequent request for verification at least one item of verification is submitted by the assistance unit within each extension period.

14. On ██████ 2016, the Department correctly granted the POA an additional 10 day extension for submitting outstanding verification.

15. On ██████ 2016, the Department correctly issued a second W1348 Verification We Need to the POA and Appellant requesting proof that the property is listed for sale.

16. UPM § 3599.25(C) provides that individual must verify that he or she has complied with any request from the Department for a direct collateral contact which does not involve Department personnel.

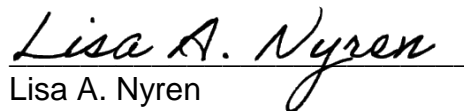
17. The Department correctly determined the Appellant failed to submit the requested verification by the due date.

18. UPM § 1540.05(D)(1)(b) provides that the penalty for failure to provide required verification depends upon the nature of the factor or

- circumstance for which verification is required: If the eligibility of the assistance unit depends directly upon a factor or circumstance for which verification is required, failure to provide verification results in ineligibility for that assistance unit. Factors on which unit eligibility depends directly include, but are not limited to: asset amounts.
19. UPM § 1545.40(A)(2) provides that unless otherwise stated, assistance is discontinued on the last day of the redetermination month if eligibility is not re-established through the redetermination process.
  20. The Department correctly discontinued the Appellant's LTC Medicaid benefits effective [REDACTED] 2016 for failure to provide verification.
  21. UPM § 1570.10(A)(1) provides that except in situations described below, the Department mails or gives adequate notice at least 10 days prior to the date of the intended action if the Department intends to: discontinue, terminate, suspend, or reduce benefits.
  22. On [REDACTED] 2016, the Department correctly issued a Notice of Action to the POA on behalf of the Appellant informing him that LTC Medicaid will end on [REDACTED] 2016 because you did not return all of the required verification we asked for.

### **DECISION**

The Appellant's appeal is DENIED.

  
Lisa A. Nyren  
Fair Hearing Officer

CC: Elizabeth Thomas, Social Services Operations Manager  
Fred Jenkins, Eligibility Services Worker

### **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.