

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 # 791574

NOTICE OF DECISION

PARTY

████████████████████
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PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent Attorney ██████████, ("Conservator") the Conservator of the Person and Estate of ██████████ (the "Appellant") a Notice of Action ("NOA") granting Medicaid benefits under the Long Term Care ("LTC") program effective ██████████ 2016.

On ██████████ 2016, the Conservator on behalf of the Appellant requested an administrative hearing to contest the Department's determination of the effective date for Medicaid under the LTC program.

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:

████████████████████, Conservator of the Person and Estate for the Appellant
Ilirjana Sabani, Department Representative
Lisa Nyren, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined the Appellant eligible under the Medicaid Long Term Care (“LTC”) program effective [REDACTED] 2016.

FINDINGS OF FACT

1. On [REDACTED] 2015, the Appellant entered St. Mary’s Home (“nursing facility”), a long term care nursing facility. (Hearing Record)
2. In [REDACTED] 2015, the Probate Court appointed [REDACTED], Esquire (“Former Conservator”) as the Appellant’s Conservator of the Person and Conservator of the Estate. (Hearing Record)
3. On [REDACTED], 2015, the Appellant applied for Medicaid under the LTC program. (Exhibit 1: Case Narrative and Hearing Summary)
4. On [REDACTED] 2015, the Department denied the Appellant’s application for Medicaid under the LTC program filed on [REDACTED], 2015 for failure to provide verification. (Exhibit 1: Case Narrative and Hearing Summary)
5. On [REDACTED], 2015, the Department received a call from the nursing facility requesting status of the Appellant’s application for Medicaid. The Department informed the nursing facility that there was no application pending on behalf of the Appellant. (Exhibit 1: Case Narrative)
6. On [REDACTED] 2015, the Appellant applied for Medicaid under the LTC program. (Exhibit 1: Case Narrative and Hearing Summary)
7. On [REDACTED], 2015, the Department denied the Appellant’s application for Medicaid under the LTC program filed on [REDACTED] 2015 for failure to provide verification. (Exhibit 1: Case Narrative and Hearing Summary)
8. On [REDACTED], 2015, the Appellant applied for Medicaid under the LTC program. (Exhibit 1: Case Narrative and Hearing Summary)
9. On [REDACTED] 2016, the Department denied the Appellant’s application for Medicaid under the LTC program filed on [REDACTED], 2015 for failure to provide verification. (Exhibit 1: Case Narrative and Hearing Summary)
10. On [REDACTED] 2016, the Appellant applied for Medicaid under the LTC program. (Exhibit 1: Case Narrative, Exhibit 4: Notice of Action, and Exhibit 5: Notice of Action)

11. The Appellant owns checking account [REDACTED] (“DDA [REDACTED]”) with Bank of America (the “bank”). (Exhibit 1: Case Narrative and Exhibit 2: Bank Statements)
12. The Appellant receives a pension of \$941.23 per month that is direct deposited to the DDA [REDACTED] account. (Exhibit 1: Case Narrative and Exhibit 2: Bank Statements)
13. The Appellant receives social security benefits of \$2,003.00 per month. (Exhibit 1: Case Narrative)
14. The balance in the DDA [REDACTED] for the months [REDACTED] 2015 through [REDACTED] 2016 is noted in the chart below. (Exhibit 2: Bank Statements and Hearing Summary)

Month	[REDACTED] 2015	[REDACTED] 2016	[REDACTED] 2016	[REDACTED] 2016	[REDACTED] 2016
Balance	\$891.34	\$1,807.59	\$2,723.85	\$00.00	\$00.00

15. The Former Conservator opened a guardianship checking account [REDACTED] (“guardian DDA [REDACTED]”) on behalf of the Appellant with the bank. The bank lists the account name as guardianship account for the Appellant, Former Conservator as specified by court order dated [REDACTED] 2015. (Exhibit 3: Bank Statements and Conservator’s Testimony)
16. The balance in the guardian DDA [REDACTED] for the months [REDACTED] 2015 through [REDACTED] 2016 is noted in the chart below. (Exhibit 3: Bank Statements and Hearing Summary)

A/O Month	[REDACTED] 2015	[REDACTED] 2016	[REDACTED] 2016	[REDACTED] 2016	[REDACTED] 2016	[REDACTED] 2016	[REDACTED] 2016
Balance	\$1,770.18	\$1,245.43	\$554.73	\$3,752.05	\$3,074.68	\$2,621.68	\$2,113.09

17. The Appellant owns a mobile home in [REDACTED] [REDACTED] [REDACTED] (Conservator’s Testimony and Exhibit 1: Case Narrative)
18. On [REDACTED] 2016, the nursing facility petitioned probate court to remove the Former Conservator as Conservator of the Person and Conservator of the Estate for the Appellant. (Exhibit A: Court of Probate Decree and Conservator’s Testimony)
19. On [REDACTED] 2016, the Former Conservator withdrew \$4,600.00 from the DDA [REDACTED] account and deposited the funds into the guardianship DDA [REDACTED] leaving a balance in the DDA [REDACTED] account of (-\$18.64). (Exhibit 2: Bank Statements and Exhibit 3: Bank Statements)
20. On [REDACTED], 2016, a deposit of \$922.59 was made to the guardianship DDA [REDACTED] effectively closing out the DDA [REDACTED] account. (\$941.23 direct deposit (-\$18.64))

DDA balance = \$922.59 deposit) (Exhibit 2: Bank Statements, Exhibit 3: Bank Statements, and Hearing Summary)

21. On [REDACTED] 2016, the Former Conservator for the Appellant resigned her conservatorship. (Exhibit A: Court of Probate Decree)
22. On [REDACTED] 2016, [REDACTED] (“Conservator”) accepted the position of Conservator of the Person and Conservator of the Estate on behalf of the Appellant from Probate Court. (Exhibit A: Court of Probate Decree)
23. On [REDACTED] 2016, the Department issued a request for information to the Conservator. The Department requested bank information due by [REDACTED] 2016. (Exhibit 1: Case Narrative)
24. On [REDACTED] 2016, the Department received some of the requested information and issued a new request for information for outstanding bank statements. The information was due [REDACTED], 2016. (Exhibit 1: Case Narrative)
25. On [REDACTED] 2016, the Department granted the Conservator’s request for additional time to obtain verification. The new date for information was [REDACTED], 2016. (Exhibit 1: Case Narrative)
26. On [REDACTED], 2016, the Conservator obtained proof of open and closed bank accounts owned by the Appellant with the bank. The bank did not list the guardianship DDA [REDACTED] as an account owned by the Appellant. (Exhibit B: Bank Profile)
27. On [REDACTED], 2016, the Department received some of the requested information and issued a new request for information for additional bank information. The date for the information was [REDACTED] 2016. (Exhibit 1: Case Narrative)
28. On [REDACTED] 2016, the Department issued a request for bank information with a due date of [REDACTED] 2016. (Exhibit 1: Case Narrative)
29. On [REDACTED] 2016, the Conservator notified the Department of a delay in obtaining the Appellant’s bank information via email because the bank has no record of the Appellant owning the guardian DDA [REDACTED] or a bank account ending in [REDACTED]. The Conservator notified the Department that he has requested the information from the former conservator. The Conservator attached a copy of the request sent to the former conservator. (Exhibit C: Email [REDACTED] 16)
30. On [REDACTED], 2016, the Department issued a request for bank information with a due date of [REDACTED] 2016. (Exhibit 1: Case Narrative)
31. The Former Conservator continued to access the guardianship DDA [REDACTED], as noted in the chart below, after resigning as Conservator of the Estate and

Conservator of the Person for the Appellant. The Former Conservator continued to pay expenses associated with the Appellant's mobile home. (Exhibit 3: Bank Statements and Conservator's Testimony)

Transaction Date	Transaction Type	Transaction Amount
██████ 16	Deposit	\$922.59
██████ 16	Check 128	\$622.28
██████ 16	Check 124	\$187.80
██████ 16	Check 126	\$479.80
██████ 16	Check 127	\$60.08
██████ 16	Check 129	\$250.00
██████ 16	Check 130	\$453.00
██████ 16	Check 131	\$453.00
██████ 16	Check 132	\$55.59

32. On ██████ 2016, the bank prevented the Conservator from accessing the guardianship DDA ██████ because the account was in the Former Conservator's name and not linked to the Appellant's name or social security number. (Conservator's Testimony, Exhibit B: Bank Profile, and Exhibit D: Facsimile ██████ 16)
33. On ██████ 2016, the Conservator requested Appellant bank records that included the guardianship DDA ██████ account from the Former Conservator via email. (Exhibit D: Facsimile ██████ 16)
34. On ██████ 2016, the Department issued a request for bank information. (Exhibit 1: Case Narrative)
35. On ██████ 2016, the Conservator requested additional bank records that included the guardianship DDA ██████ account from the Former Conservator via fax after receiving the bank statement dated ██████ 2016 through ██████ 2016. (Exhibit E: Facsimile ██████ 16)
36. On ██████ 2016, the Conservator notified the Department that he was having difficulty obtaining the requested information. (Exhibit 1: Case Narrative)
37. On ██████ 2016, Attorney ██████, ██████ contacted the Former Conservator requesting Appellant bank records. (Exhibit F: Email ██████ 16)
38. In ██████ 2016, the Former Conservator reduced the Appellant's assets to under \$1,600.00 by writing a check for \$2,000.00 from the guardian DDA account to the nursing facility. (Conservator's Testimony and Exhibit G: Conservator Brief)

39. On [REDACTED] 2016, the Department denied the Appellant's application for Medicaid under the LTC program effective [REDACTED] 2016, [REDACTED] 2016, [REDACTED] 2016, and [REDACTED] 2016 because her assets exceeded the \$1,600.00 Medicaid asset limit as noted below. (Department Representative's Testimony and Exhibit 2: Bank Statements and Exhibit 3: Bank Statements)

Month	[REDACTED] 2015	[REDACTED] 2016	[REDACTED] 2016	[REDACTED] 2016	[REDACTED] 2016	[REDACTED] 2016	[REDACTED] 2016
Guardian DDA	\$1,770.18	\$1,245.43	\$554.73	\$3,752.05	\$3,074.68	\$2,621.68	\$2,113.09
DDA	\$891.34	\$1,807.59	\$2,723.85	\$00.00	Closed	Closed	Closed
Total	\$2,661.52	\$3,053.02	\$3,278.58	\$3,752.00	\$3,074.68	\$2,621.68	\$2,113.09

40. On [REDACTED] 2016, the Department granted Medicaid under the LTC program for the Appellant effective [REDACTED] 2016 because the Appellant reduced her assets to within the \$1,600.00 Medicaid asset limit.

41. The Conservator is seeking a Medicaid effective date as of [REDACTED] 2016. (Exhibit G: Conservator Letter)

CONCLUSIONS OF LAW

1. Connecticut General Statute ("Conn. Gen. Stats.") § 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. Statute defines "conservator of the estate" as a person, a municipal or state official, or a private profit or nonprofit corporation except a hospital, nursing home facility, as defined in section 19a-521, or residential care home, as defined in section 19a-521, appointed by the Court of Probate under the provisions of sections 45a-644 to 45a-663, inclusive, to supervise the financial affairs of a person found to be incapable of managing his or her own affairs or of a person who voluntarily asks the Court of Probate for the appointment of a conservator of the estate, and includes a temporary conservator of the estate appointed under the provisions of section 45a-654. [Conn. Gen. Stats. § 45a-644(a)]
3. Statute defines "conservator of the person" as a person, a municipal or state official, or a private profit or nonprofit corporation, except a hospital or nursing home facility as defined in section 19a-521, appointed by the Court of Probate under the provisions of sections 45a-644 to 45a-663, inclusive, to supervise the personal affairs of a person found to be incapable of caring for himself or herself or of a person who voluntarily asks the Court of Probate for the appointment of a conservator of the person, and includes a temporary conservator of the person appointed under the provisions of section 45a-654. [Conn. Gen. Stats. § 45a-644(b)]

4. Statute 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, 42 USC 1396p. The provisions of this subsection shall not apply to a special needs trust, as defined in 42 USC 1396p(d)(4)(A). For purposes of determining whether a beneficiary under a special needs trust, who has not received a disability determination from the Social Security Administration, is disabled, as defined in 42 USC 1382c(a)(3), the Commissioner of Social Services, or the commissioner's designee, shall independently make such determination. The commissioner shall not require such beneficiary to apply for Social Security disability benefits or obtain a disability determination from the Social Security Administration for purposes of determining whether the beneficiary is disabled. [Conn. Gen. Stats. § 17b-261(c)]
5. Uniform Policy Manual ("UPM") § 4030 provides in part that the Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.
6. UPM § 4000.01 defines available asset as 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.
7. 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.
8. UPM § 4000.01 defines a counted asset as an asset which is not excluded and either available or deemed available to the assistance unit.
9. 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:
 - a. Available to the unit; or
 - b. Deemed available to the unit.
10. UPM § 4030.05(A)(2) provides that bank accounts include the following. This list is not all inclusive. Checking account.

11. The Department correctly determined the DDA [REDACTED] account as an available asset.
12. UPM § 4015.05(A)(1) provides that subject to the conditions described in this section, equity in an asset which is inaccessible to the assistance unit is not counted as long as the asset remains inaccessible.
13. UPM § 4015.05(B)(1) provides that the burden is on the assistance unit to demonstrate that an assets is inaccessible.
14. UPM § 4099.15(A)(1) provides that the assistance unit must verify that an otherwise counted asset is inaccessible to the unit if the unit claims it cannot convert the asset to cash.
15. UPM § 4099.15(A)(2) provides that if the unit is unable to verify that the asset is inaccessible, the asset is considered a counted asset.
16. UPM § 4015.05(B)(2) provides that for all programs except Food Stamps, in order for an asset to be considered inaccessible, the assistance unit must cooperate with the Department, as directed, in attempting to gain access to the asset.
 - a. If the unit does not cooperate as described above, the asset is considered available to the unit, and the unit's equity in the asset is counted toward the asset limit.
 - b. If the unit's equity in the asset is unknown, the non-cooperative adult member of the unit is ineligible for assistance.
17. UPM § 3525.15(A)(1) provides that an assistance unit is required to cooperate in pursuing inaccessible assets, as determined by the Department. Cooperation may require one or more the following: personal property in someone else's possession.
18. 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.
19. Prior to [REDACTED] 2016, the Department correctly determined the guardian DDA [REDACTED] account as an available asset.
20. Effective [REDACTED], 2016, the guardian DDA [REDACTED] account became inaccessible. Upon accepting the position as Conservator of the Person and Conservator of the Estate, the Conservator was not able to access the guardian DDA [REDACTED] account. The bank prohibited the Conservator from accessing the guardian DDA [REDACTED] account because the Former Conservator continued to maintain control over this account after the termination of her conservatorship. The Conservator

demonstrated his continued cooperation with the Department at each request for information by contacting the Former Conservator on several occasions to gain access to the account.

21. As of [REDACTED] 2016, the Department incorrectly determined the Appellant guardian DDA account as an available asset.

22. UPM § 4000.01 defines asset limit as 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.

23. UPM § 4005.05(D)(1) provides that 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 § 4000.01 defines equity value as the fair market value of an asset minus encumbrances.

UPM § 4000.01 defines encumbrance as a legal claim against an asset which a person must pay off in order to convert the asset to cash.

24. UPM § 4030.05(B) provides for that part of a checking account to be considered as a counted asset during a given month is calculated by subtracting the actual amount of income the assistance unit deposits into the account that month from the highest balance in the account for that month.

25. The Department correctly determined the counted equity in DDA [REDACTED].

Month	[REDACTED] 2015	[REDACTED] 2016	[REDACTED] 2016	[REDACTED] 2016	[REDACTED] 2016	[REDACTED] 2016	[REDACTED] 2016
Balance	\$891.34	\$1,807.59	\$2,723.85	\$00.00	Closed	Closed	Closed

26. The Department correctly determined the counted equity in the guardian DDA 3046 for the period [REDACTED] 2015 through [REDACTED] 2016.

Month	[REDACTED] 2015	[REDACTED] 2016	[REDACTED] 2016	[REDACTED] 2016
Balance	\$1,770.18	\$1,245.43	\$554.73	\$3,752.05

27. UPM § 4026.05 provides for the amount of assets counted in determining the assistance unit's eligibility is calculated in the following manner:

- A. The Department determined the amount of the assistance unit's available non-excluded assets by subtracting the value of the following assets owned by the assistance:
 - 1. Those assets considered to be inaccessible to the assistance unit at the time of determining eligibility; and
 - 2. Assets which are excluded from consideration.

28. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid under the Medical Aid for the Aged, Blind, and Disabled program (“MAABD”) for a needs group of one is \$1,600.00.

29. UPM § 4005.05(D)(2) provides that an assistance unit is not eligible for benefits under a particular program if the equity in counted assets exceeds the asset limit for the particular program, unless the assistance unit is categorically eligible for the program and the asset limit requirement does not apply. (Cross reference 2500 Categorical Eligibility Requirements)

30. The Department correctly determined the Appellant’s total countable assets for [REDACTED] 2015 through [REDACTED] 2016 exceed the \$1,600.00 Medicaid asset limit.

Month	[REDACTED] 2015	[REDACTED] 2016	[REDACTED] 2016	[REDACTED] 2016
Guardian DDA [REDACTED]	\$1,770.18	\$1,245.43	\$554.73	\$3,752.05
DDA [REDACTED]	\$891.34	\$1,807.59	\$2,723.85	\$00.00
Total counted assets	\$2,661.52	\$3,053.02	\$3,278.58	\$3,752.00

31. The Department incorrectly determined the Appellant’s total countable assets for [REDACTED] 2016 through [REDACTED] 2016 exceed the \$1,600.00 Medicaid asset limit. The Appellant’s countable assets for [REDACTED] 2016 through [REDACTED] 2016 are below the Medicaid asset limit of \$1,600.00.

Month	[REDACTED] 2016	[REDACTED] 2016	[REDACTED] 2016
Guardian DDA [REDACTED]	Inaccessible	Inaccessible	Inaccessible
DDA [REDACTED]	\$00.00	\$00.00	\$00.00
Total counted assets	\$00.00	\$00.00	\$00.00

32. The Department incorrectly denied the Appellant’s application for Medicaid under the LTC program for [REDACTED] 2016, [REDACTED] 2016, and [REDACTED] 2016 because the Appellant’s assets exceed the \$1,600.00 asset limit under the Medicaid LTC program. For the months of [REDACTED] 2016, [REDACTED] 2016, and [REDACTED] 2016, the Appellant’s assets are below the \$1,600.00 Medicaid asset limit.

33. The Department incorrectly determined the Appellant asset eligible under the Medicaid LTC program as [REDACTED] 2016. The Appellant is asset eligible under the Medicaid LTC program effective [REDACTED] 2016.

DECISION

The Appellant’s appeal is GRANTED.

ORDER

1. The Department must reopen the Appellant application for Medicaid under the LTC program effective [REDACTED] 2016 and continue to process eligibility.
2. The Department must exclude the guardianship DDA [REDACTED] account for the period [REDACTED] 2016 through [REDACTED] 2016 due to its inaccessibility in the determination of asset eligibility.
3. The Department must issue a corrected notice of eligibility to the Appellant.
4. Compliance is due [REDACTED] 2017.

Lisa A. Nyren

Lisa A. Nyren
Fair Hearing Officer

CC: Musa Mohamud, Social Services Operations Manager
Judy Williams, Social Services Operations Manager
Tricia Morelli, Social Services Program Manager
Ilirjana Sabani, Eligibility Services

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.