

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
25 SIGOURNEY STREET
HARTFORD, CT 06106-5033

██████████, 2017
Certified Mail

Client ID # ██████████
Request # 791112

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

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

On ██████████, 2016, the Appellant requested an administrative hearing to contest the Department’s decision to deny the Appellant’s application for Medicaid.

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

On ██████████ 2016, the Appellant requested a continuance of the hearing, which was granted. OLCRAH issued a Notice scheduling the administrative hearing for ██████████ 2016.

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On [REDACTED] 2016 OLCRAH issued a Notice scheduling the administrative hearing for [REDACTED], 2016.

On [REDACTED] 2016, in accordance with sections 19a-535, 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:

[REDACTED], Appellant
 Nancy Sciacia, Department Representative
 [REDACTED], Attorney, [REDACTED]
 [REDACTED], Attorney, [REDACTED]
 Maria Sutton, Business Office Manager, Waterbury Gardens
 Almelinda McLeod, Hearing Officer

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

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny the Appellant's application for Long Term care was correctly denied due to failure to submit information needed to establish eligibility.

FINDINGS OF FACT

1. The Appellant was admitted into Waterbury Gardens on [REDACTED] 2015. (Exhibit #B, Admission Record)
2. The Appellant's date of birth ("DOB") is [REDACTED]/56, he is age 60. (Exhibit #B, Admission Record)
3. The Appellant is married and separated from his spouse. (Exhibit 1, W-1LTC application)
4. The Appellant is a quadriplegic. (Appellant's testimony)
5. On [REDACTED], 2016, the Appellant submitted an application for Long Term care. Waterbury Gardens was the Appellant's authorized representative. (Exhibit #1, W-1LTC application & Exhibit 7, case narrative)
6. The Appellant has a power of attorney ("POA"), [REDACTED]. (Exhibit 3, W-298, Authorization for disclosure of information signed on [REDACTED]/15 and Exhibit C, Statutory short form power of attorney)

7. The POA did not apply for the Appellant and was not involved in the application process. (Appellant's testimony)
8. On ██████ 2016, the Department sent W-1348 requesting information. The due date was ██████, 2016. (Exhibit 7, case narrative)
9. The authorized representative sent whatever information she was able to send from the facility. (Appellant's testimony)
10. On ██████ 2016, an E-mail exchange between the Department and the authorized representative regarding outstanding verifications needed to complete the application indicated that the Department requested information regarding the POA's involvement with the application and requested the POA's address to send her a W-1348 checklist. The authorized representative indicated the POA did not respond to her calls nor mailings and the POA's address was provided. (Exhibit I, e-mail dated ██████/16)
11. The Authorized representative informed the Department that the Appellant's POA may have been derelict in her responsibilities as the POA. (Appellant's testimony)
12. On ██████ 2016, the Department received some verification and issued a second W-1348 requesting proof of date of institutionalization, copy of marriage certificate, bank statements for all accounts from 2011 to the present, life insurance policies, copy of automobile registration or title, property deed, other assets, and shelter expenses. The Department provided an extension of 10 days to provide the requested verifications. The new due date was ██████, 2016. (Exhibit 2, W-1348, We Need Verification from you form)
13. The Appellant was not able to physically provide requested verification because of his disability. (Appellant's testimony)
14. The Authorized representative sent a copy of the W-1348 to the Appellant's POA and to the Appellant's spouse and did not get a response from neither the Appellant's POA nor spouse.
15. The Department consulted with a supervisor regarding questionable POA and determined that sending the W-1348 to the POA would have been a breach of confidentiality. (Department's testimony)
16. The Department referred all matters regarding the application and verifications to the authorized representative listed on the Appellant's application. (Department testimony)

17. On [REDACTED] 2016, the Department did not get at least one item from the W-1348 verification list issued on [REDACTED] 2016. The Department did not receive a request for an extension from the authorized representative. (Department's testimony)
18. On [REDACTED] 2016, the Department denied the LTSS application due to failure to provide verification needed to establish eligibility because none of the requested verifications had been received by [REDACTED] 2016, the due date. (Exhibit 5, Notice of denial)

CONCLUSIONS OF LAW

1. Section §17b-2 (6) of the Connecticut General Statutes (CGS) , authorizes the Department of Social Services to administer the Medicaid Program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual 1010.05 (A) (1) provides that the assistance unit must supply the Department in an accurate and timely manner as defined by the Department, all pertinent information and verification which the Department requires to determine eligibility and calculate the amount of benefits.

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.

The Department correctly sent the Appellant's representative the Verification We Need Lists requesting the information needed to establish eligibility.

3. UPM 1005.05 provides the assistance unit has the right to apply for assistance under any of the programs administered by the Department.

UPM 3525.05 (A) (1) provides applicants are responsible for cooperating with the Department in completing and signing the application form; and responding to scheduled appointment for an interview and providing and verifying information as required.

UPM 1505.15 (C) (1) (a)(3) (b) provides that for the AFDC, AABD, MA programs the following individuals are qualified to request cash or medical assistance, be interviewed and complete the application process on the behalf of other who they represent: (3) a conservator, guardian or other

court appointed fiduciary. If the above individual is not available, the following persons may file the application on the assistance unit's behalf: (1) another responsible assistance unit member; or (2) an authorized representative.

UPM 1525.15 (C) (a) (b) (c) pertains to Institutions as Authorized Representatives and provides in part, resident of institutions may apply for assistance and be certified on their own, or through the use of an authorized representative who may be an individual of the applicant's choice or an employee designated by the institution for this purpose. In order for the institution to represent the applicant, the individual must be a current resident of the institution and in cases of incompetence or incapacity, the institution may act responsibly on behalf of the resident without prior authorization.

UPM 1525.05 (D) An assistance unit is permitted to have one authorized representative at a given time, except in the Food stamp program where separate representatives may be designated to perform the individual functions of making application and purchasing food with an EBT debit card.

UPM 1525.05 (G) The appointment of an authorized representative does not relieve the assistance unit of any responsibilities. Both the assistance unit and the representatives may be held responsible for assistance improperly obtained through action by the authorized representative.

In this case, the Appellant's POA was not available. The Appellant appointed Waterbury Gardens as his authorized representative.

Waterbury Gardens assumed the responsibility of being the authorized representative for the Appellant.

4. UPM 1540.10 provides the verification of information pertinent to an eligibility determination or a calculation of benefits is provided by the assistance unit or obtained through the direct efforts of the Department.

UPM 1540.10 (A) provides the assistance unit bears the primary responsibility for providing evidence to corroborate its declarations.

UPM 1540.10 (C) (1) (2) provides the Department obtains verification on behalf of the assistance unit when the following conditions exist:

- (1) the Department has the internal capability of obtaining the verification needed through such means as case files, microfiche records, or direct access to other official records; or

- (2) the Department has the capability to obtain the verification needed , and the assistance unit has done the following:
 - a. made a reasonable effort to obtain the verification on its own; and
 - b. been unable to obtain the verification needed ; and
 - c. requested the Department's help in obtaining the verification; and
 - d. continued to cooperate in obtaining the verification.

The Department has the capability of requesting some of the requested verifications from the W-1348 directly regarding bank accounts, automobile, property and life insurance .

The Authorized representative made a reasonable effort to obtain the verifications by providing to the Department the necessary verifications required from the Department that she was able to provide from the facility.

The Authorized representative made a reasonable effort to obtain the requested verifications by forwarding the W-1348 to the POA and the Appellant's spouse.

Since neither the POA nor the Appellant responded, the authorized representative was unable to obtain the verification needed.

The Authorized representative conveyed to the Department the difficulty in obtaining requested verification without the POA. The Department offered to send the W-1348 to the POA and requested the address. The Authorized accepted the offer and provided the Department with the POA's address as requested in the [REDACTED] 2016 e-mail.

5. UPM 1015.20 A. provides the Department must keep the facts concerning the assistance unit's eligibility for benefits confidential. Disclosure of such information is limited to purposes directly related to the administration of the program.

UPM 1020.10 D. provides that the Department informs the person or agency representative, to whom information is disclosed of the Department's policy concerning confidentiality, including that the information released must be kept confidential to the same extent as the Department does.

Since, the Appellant's application included form W-298 authorization to disclose information to VGW , (Village Green [REDACTED] aka Waterbury Gardens) was signed by the Appellant's POA regarding DSS application

and documentation relating to benefits applied for, received or receiving; the Department incorrectly determined that requesting information in the W-1348 from the POA would have been a breach of confidentiality.

The W-298 gave authorization to the authorized representative from the POA in all matters concerning the application for benefits.

6. UPM 1015.05 C. provides 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.

After the Department requested the POA's address and requested if the Authorized wanted to send the POA the W-1348 checklist, the Department decided not to send the W-1348 to the POA; thus the Department failed to inform the Authorized representative that the W-1348 issued on [REDACTED] 2016 to the authorized representative was not sent to the POA and what was needed from the authorized representative.

The Department incorrectly decided not to send the W-1348 checklist to the POA.

The Department incorrectly determined that communicating the decision not to send the W-1348 to the authorized representative was not necessary.

The Department incorrectly denied the Appellant's LTSS application.

DISCUSSION

The [REDACTED] 2016 e-mail exchange indicated the POA did not respond to calls or mailings. The Department requested the POA's address and asked the Authorized representative if they wanted the Department to send the W-13458 checklist. The Authorized responded in the affirmative and provided the Department with the POA's address.

Informal telephone conversations between the Department and Appellant indicated there was a problem with the POA, (the POA may have been derelict in her responsibilities as the Appellant's POA) but without the POA, the requested verification could not be obtained.

Although, the application included a W-298 from the POA to the Authorized Representative to apply on the Applicant's behalf, the Department chose not to send the W-1348 to the POA and incorrectly cited that doing so would have been breach of confidentiality.

The Authorized representative assumed the W-1348 was sent to the POA.

The Department failed to inform the Authorized representative that the W-1348 would not be sent to the POA.

As a result, the Department denied the application when none of the verifications requested was received by the due date.

I find no reason why the Department would not send the W-1348 to the POA, especially since the authorized representative stated they were unable to get required verification that only the POA was able to get.

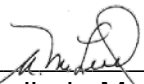
The Department is not upheld in the denial of the Appellants LTSS application.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department shall re-open the LTSS application effective [REDACTED] 2016.
2. The Department shall process the application and allow 10 days for the Appellant to supply any necessary verification.
3. Compliance to the undersigned and proof of compliance with this order is due no later than [REDACTED], 2017.



Almelinda McLeod
Hearing Officer

CC: Peter Bucknall, SSOM Waterbury Regional Office
Karen Main, SSOM, Waterbury Regional Office
Nancy Sciacia, Fair Hearing Liaison, Waterbury Regional Office
[REDACTED], Attorney, [REDACTED]
[REDACTED], Attorney, [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 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.