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

[redacted] 2017
Signature confirmation

Client: [redacted]
Request: 796782

NOTICE OF DECISION

PARTY

Attorney [redacted]
Administrator of Estate of [redacted] (dec)
[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2016, the Department of Social Services (the "Department") denied [redacted] (the "Appellant")'s [redacted] 2016 Medicaid application for payment of long-term care services.

On [redacted] 2016, Attorney [redacted] as the Appellant's then-conservator, filed a request for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") to dispute the Department's action.

On [redacted] 2016, the OLCRAH scheduled the administrative hearing for [redacted], 2016.

On [redacted], 2016, Attorney [redacted] in writing withdrew his [redacted] 2016 administrative hearing request contingent on the Department reopening the denied [redacted] 2016 application. In reliance of Attorney [redacted] withdrawal, the OLCRAH did not conduct an administrative hearing on [redacted] 2016.

On [redacted] 2016, the OLCRAH issued an *Acknowledgment of Withdrawal of Hearing Request,* asking that the Appellant or Attorney [redacted] contact the OLCRAH within 10 days of the [redacted], 2016 notice if he disagreed with the dismissal of the hearing request. As of [redacted] 2016, Attorney [redacted] had not rescinded his [redacted] 2016 withdrawal.

The Department did not reopen the Appellant's [redacted] 2016 Medicaid application.

On [redacted], 2017, the Appellant died.

On [redacted] 2017, the [redacted] Probate Court appointed Attorney [redacted]. as the administrator of the Estate of [redacted]

On [redacted] [redacted] 2017, Attorney [redacted] filed a request with the OLCRAH for an administrative hearing. Included in his request for an administrative hearing was a copy of Attorney [redacted] [redacted] 2016 contingent withdrawal.

On [redacted] 2017, the OLCRAH scheduled the administrative hearing for [redacted] 2017. Attorney [redacted] requested a postponement; the OLCRAH granted the request.

On [redacted] 2017, the OLCRAH held an administrative hearing in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes. The following individuals participated in the administrative hearing:

[redacted] Appellant's representative (administrator of estate)
[redacted], Appellant's representative's counsel
[redacted] Appellant's witness (former conservator)
Paula Wilczyski, Department's representative
Saya Miyakoshi, Department's observer
Eva Tar, Hearing Officer

The administrative hearing record closed [redacted] 2017.

STATEMENT OF ISSUE

The issue to be determined is whether the Department correctly denied the Appellant's [redacted] 2016 Medicaid application for long-term care services.

FINDINGS OF FACT

1. The Appellant was born on [redacted], 1933. (Department's Exhibit 1)

2. The Appellant died on [redacted], 2017. (Appellant's Exhibit A)

3. [redacted] [redacted] (the "wife") is the Appellant's widow. (Appellant's witness's testimony)

4. The Appellant's wife lived in the community until March 2017, when she was admitted to a nursing home as a resident. (Appellant's witness's testimony)

5. From [redacted] 2016 through the Appellant's death, Attorney [redacted] [redacted] (the "former conservator") was the Appellant's conservator. (Appellant's witness's testimony)

6. The former conservator has years of experience with filing Medicaid applications. (Appellant's witness's testimony)

7. On [redacted], 2016, the Department received the Appellant's Medicaid application for long-term care services. (Department's Exhibit 1)

8. The [redacted] 2016 Medicaid application listed the former conservator as the Appellant's representative. (Department's Exhibit 1)

9. From [redacted], 2016 through [redacted] 2016, the Department issued four 1348LTC: *We Need Verification from You* forms to the former conservator requesting verification of the Appellant's income and assets in order to determine program eligibility. (Department's Exhibits 3, 4, 5, and 6)

10. On [redacted] 2016, the former conservator petitioned the [redacted] Probate Court for a case status conference. (Appellant's Exhibit B, page 3)

11. The Department is not listed on the former conservator's [redacted] 2016 petition to the [redacted] Probate Court. (Appellant's Exhibit B, page 3)

12. On [redacted], 2016, the Department issued a fifth 1348LTC: *We Need Verification from You* form to former conservator, requesting the submission of the following items regarding the wife's assets: Merrill Lynch investment account ([redacted]) monthly or quarterly statements from [redacted] 2014 and [redacted] only statements from 2011, 2012, and 2013; and Prudential Life Insurance Policy ([redacted]) letter from Prudential verifying current cash surrender value, or, if surrendered, where were the funds spent. (Department's Exhibit 7)

13. All five 1348LTC: *We Need Verification from You* forms noted that the Department had to make a decision on the application within 45 days for long-term care Medicaid program (no disability determination needed) and 90 days for long-term care Medicaid program applications (disability determination needed). (Department's Exhibits 3, 4, 5, 6, and 7)

14. The Department required the documentation listed on the fifth 1348LTC: *We Need Verification from You* form to complete a spousal assessment, as part of the process for determining the Appellant's Medicaid eligibility. (Department's Exhibit 13)

15. The fifth 1348LTC: *We Need Verification from You* form provided a deadline of [redacted] 2016. (Department's Exhibit 7)

16. The fifth 1348LTC: *We Need Verification from You* form noted that the Department would make a decision on the Appellant's application on [redacted] 2016. (Department's Exhibit 7)

17. On [redacted] 2016, the [redacted] Probate Court issued a NOTICE TO RECIPIENT in response to the former conservator's petition for a hearing on behalf of the Appellant, scheduling a hearing for 3:00 p.m. on [redacted] 2016; a copy of the document was sent eight individuals. (Appellant's Exhibit B, page 11)

18. The Department was not listed as a recipient of the [redacted] Probate Court's [redacted], 2016 NOTICE TO RECIPIENT. (Appellant's Exhibit B, page 11)

19. On [redacted] 2016, the former conservator notified the Department in writing that there was a probate court hearing scheduled for [redacted] 2016 at 3:00 p.m.; the correspondence did not identify the probate court, but indicated that the hearing was related to the Department's request for documentation. (Appellant's Exhibit B, pages 4 and 5)

20. On [redacted]2016, the former conservator informed the Department in a voicemail that he was unable to get the requested documents. (Department's Exhibit 13)

21. On[redacted], 2016, the former conservator notified the Department in writing that he believed that he would be unable to access the requested documents without a subpoena or a court order. (Appellant's Exhibit B, pages 9 and 10)

22. As of [redacted], 2016, the former conservator did not establish to the Department's satisfaction that he had attempted to get the requested documents. (Department's Exhibit 13)

23. On [redacted] 2016, the Department denied the Appellant's [redacted], 2016 Medicaid application. (Department's Exhibit 13)

24. After [redacted], 2016, the Department's representative did not receive anything from the former conservator with respect to the Appellant's [redacted] 2016 Medicaid application. (Department's representative's testimony)

25. On [redacted] 2016, the [redacted] Probate Court in part ordered the following: 1) Merrill Lynch to provide information regarding account ([redacted] to the former conservator; 2) Prudential Life to provide information regarding policy ([redacted]) to the former conservator. The submission of documents was for informational only, for the sole purpose of obtaining state aid and assistance for the Appellant. (Appellant's Exhibit B, page 12)

26. The [redacted]Probate Court did not mail a copy of its [redacted] 2016 order to the Department. (Appellant's Exhibit B, page 13)

27. The former conservator did not provide a copy of the [redacted] Probate Court's [redacted] 2016 order to the Department's representative. (Department's representative's testimony)

28. In [redacted] 2017, the Appellant's former conservator was appointed the Appellant's wife's conservator. (Appellant's witness's testimony)

29. In [redacted] 2017, the Appellant's former conservator filed a Medicaid application on behalf of the Appellant's wife. (Appellant's witness's testimony)

30. In [redacted] 2017, the Appellant's former conservator cashed out the Appellant's wife's Merrill Lynch investment account. (Appellant's witness's testimony)

CONCLUSIONS OF LAW

1. Section 17b-60 of the Connecticut General Statutes provides for fair hearings by commissioner.

   Section 1570.05 of the Uniform Policy Manual ("UPM") contains general provisions for fair hearings.

2. The purpose of the Fair Hearing process is to allow the requester of the Fair Hearing to present his or her case to an impartial hearing officer if the requester claims that the Department has either acted erroneously or has failed to take a necessary action within a reasonable period of time. UPM § 1570.05 (A).

3. The Department denies or dismisses a request for a Fair Hearing if: 1. the request for the Fair Hearing is not made within the time limits described in this section; or 2. the requester or his or her representative withdraws the request in writing; or 3. the requestor or his or her representative fails to appear at the scheduled hearing without good cause; or 4. the sole issue is one of state or federal law requiring automatic benefit adjustment for a class of recipients. In such cases, the requester has a right to a hearing only if the issue is that the Department has misapplied the law or that the Department has made an error in computation. UPM § 1570.05 (C).

4. The request for a Fair Hearing must be made within a specified period of time from the date that the Department mails a notice of action. For all programs except Food Stamps, this period is 60 days. UPM § 1570.25 (H)(1)(a).

5. Any member of the assistance unit, as well as the unit's authorized representative, or conservator of a unit member, has the right to request a Fair Hearing. UPM § 1570.05 (D)(1).

6. Section 45a-650 of the Connecticut General Statutes provides in part for the appointment of conservator. Subsection (h) of this section notes in part that in considering whom to appoint as conservator or successor conservator, the court shall consider (1) the extent to which a proposed conservator has knowledge of the respondent's or conserved person's preferences regarding the care of his or her person or the management of his or her affairs, (2) the ability of the proposed conservator to carry out the duties, responsibilities and powers of a conservator, (3) the cost of the proposed conservatorship to the estate of the respondent or conserved person, (4) the proposed conservator's commitment to promoting the respondent's or conserved person's welfare and independence, and (5) any existing or potential conflicts of interest of the proposed conservator.

7. Within 60 days of the Department's [redacted], 2016 denial of the Appellant's [redacted] 2016 Medicaid application, the former conservator had the authority to request an administrative hearing to dispute the Department's action.

8. The former conservator's [redacted] 2016 request was within the 60-day statutory time frame to request an administrative hearing.

9. On [redacted] 2016, the former conservator acted within his authority to withdraw his [redacted] 2016 request for an administrative hearing.

10. The former conservator's [redacted] 2016 withdrawal was contingent on the Department reopening the [redacted], 2016 Medicaid application.

11. In the Medicaid program, the following persons have the right to request a Fair Hearing on behalf of a deceased unit member: a. spouse; b. child or parent; c. executor, administrator or conservator; d. any other person who, during the deceased's lifetime, assumed personal financial liability for the deceased's medical debts which would be covered under Medicaid. UPM § 1570.05 (D)(2).

12. The Fair Hearing official: a. makes decisions regarding the scheduling of the hearing; b. administers oaths or affirmations; c. determines the issue of the hearing; d. considers all relevant issues; e. determines who may be a party to a hearing requested by another; f. determines who may be an intervenor; g. limits intervenor's participation in a hearing to issues in which he or she has stated an interest in a written request; h. requests, receives, and makes part of the Fair Hearing record all evidence necessary to decide the issues being raised; i. regulates the conduct and course of the Fair Hearing consistent with due process to insure an orderly Fair Hearing; j. maintains a Fair Hearing record; k. renders a Fair Hearing decision in the name of the Department, in accordance with the criteria in this chapter, to resolve the dispute. UPM § 1570.25 (C)(2).

13. Under the unique circumstances of this specific case—i.e. the former conservator's [redacted] 2016 *contingent withdrawal* of his [redacted] 2016 administrative hearing request and the Department's subsequent failure to reopen the denied June 16, 2016 Medicaid application—it is appropriate to reinstate the [redacted] 2016 hearing request.

14. Section 17b-2 of the Connecticut General Statutes in part designates the Department of Social Services as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

15. Section 17b-261 (a) of the Connecticut General Statutes provides in part that medical assistance shall be provided for any otherwise eligible person whose income, including any available support from legally liable relatives and the income of the person's spouse or dependent child, is not more than one hundred forty-three per cent, pending approval of a federal waiver applied for pursuant to subsection (e) of this section, of the benefit amount paid to a person with no income under the temporary family assistance program in the appropriate region of residence and if such person is an institutionalized individual as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3), and has not made an assignment or transfer or other disposition of property for less than fair market value for the purpose of establishing eligibility for benefits or assistance under this section. Any such disposition shall be treated in accordance with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). Any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, person authorized to make such disposition pursuant to a power of attorney or other person so authorized by law shall be attributed to such applicant, recipient or spouse. A disposition of property ordered by a court shall be evaluated in accordance

with the standards applied to any other such disposition for the purpose of determining eligibility. The commissioner shall establish the standards for eligibility for medical assistance at one hundred forty-three per cent of the benefit amount paid to a household of equal size with no income under the temporary family assistance program in the appropriate region of residence.

16. Prior to making an eligibility determination the Department conducts a thorough investigation of all circumstances relating to eligibility and the amount of benefits. UPM § 1505.40 (A)(1).

17. For every program administered by the Department, there is a definite asset limit. UPM § 4005.05 (A).

18. The Department counts the assistance unit's equity in an asset toward the asset limit if the asset limit 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).

19. 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).

20. 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 the 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).

21. MCCA Spouses. MCCA spouses are spouses who are members of a married couple one of whom becomes an institutionalized spouse on or after September 30, 1989, and the other spouse becomes a community spouse.

22. For the purposes of the Medicaid program, the Appellant's wife was part of a MCCA couple as the "community spouse" until the 30thd day following her initial date of continuous institutionalization.

23. UPM § 4025.67 addresses MCCA spouses and how a Community Spouse Protected Amount is calculated. This section outlines deeming methodology.

24. The asset limit for the Medicaid program associated with the aged, blind, and disabled is $1,600 for a needs group of one. UPM § 4005.10 (A)(2)(a).

25. In [redacted] 2016, the Appellant was a needs group of one.

26. The Appellant was subject to the Medicaid program's asset limit.

27. The Department must tell the assistance unit what the unit has to do to establish eligibility when the agency does not have sufficient information to make an eligibility determination. UPM § 1015.05 (C).

28. The Department correctly requested verification of the Appellant's spouse's assets as

part of its evaluation of the Appellant's potential eligibility to participate in the Medicaid program.

29. Applicants are responsible for cooperating with the Department in completing the application process by: a. fully completing and signing the application form; and b. responding to a scheduled appointment for an interview; and c. providing and verifying information as required. UPM § 3525.05 (A)(1).

30. 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 § 1010.05 (A)(1).

31. Standard of Promptness for Processing Applications. The following promptness standards are established as maximum time periods for processing standards:
    a. thirty calendar days for eligible FS applicants that do not qualify for expedited service;
    b. thirty calendar days for FS applicants who are found to be ineligible for FS benefits. However, the Department is allowed an additional seven days to issue the denial notice to ineligible applicants;
    c. forty-five calendar days for:
        (1) AFDC applicants; and
        (2) AABD or MA applicants applying on the basis of age or blindness;
    d. ninety calendar days for AABD or MA applicants applying on the basis of disability. UPM § 1505.35 (C)(1).

32. The standard of promptness associated with the Appellant's [redacted], 2016 Medicaid application was [redacted]2016, as an individual applying for Medicaid on the basis of age.

33. Processing standards are not used as a waiting period for granting assistance. Applications are processed with reasonable promptness as soon as the Department is able to make an eligibility determination. UPM § 1505.35 (D)(3).

34. Processing standards are not used as the basis for denying assistance. Denial results from the failure to meet or establish eligibility within the applicable time limit. UPM § 1505.35 (D)(4).

35. The Department determines eligibility within the standard of promptness for the AFDC, AABD, and MA programs except when verification needed to establish eligibility is delayed and one of the following is true: a. the client has good cause for not submitting verification by the deadline; or b. the client has been granted a 10 day extension to submit verification which has not elapsed; or c. the Department has assumed responsibility for obtaining verification and has had less than 10 days; or d. the Department has assumed responsibility for obtaining verification and is waiting for material from a third party. UPM § 1505.35 (D)(2).

36. 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)(a).

37. 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. UPM § 1505.40 (B)(5)(b).

38. Verification (All Programs). 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. UPM § 1545.35 (D).

39. The Department correctly gave the Appellant a written deadline of 10 days to provide verification of items necessary to establish his eligibility to participate in the Medicaid program.

40. The Department's deadline of [redacted], 2016 had expired without the former conservator providing the requested information to the Department.

41. The Department may complete the eligibility determination at any time during the application process when: a. the applicant withdraws the application; or b. all requirements for determining eligibility on a FS expedited service application are met; or c. the application process is complete and all required verification has been obtained; or d. adequate information exists to determine ineligibility because one or more eligibility requirements are not satisfied; or e. the applicant refuses to cooperate in completing an eligibility requirement rendering the entire assistance unit ineligible. UPM § 1505.40 (A)(4).

42. On [redacted] 2016, the Department correctly denied the Appellant's [redacted] 2016 Medicaid application as the Appellant failed to provide the requested documentation to it by its [redacted], 2016 deadline.

43. The applicant's failure to provide required verification by the processing date causes: (1) one or more members of the assistance unit to be ineligible if the unverified circumstance is a condition of eligibility; or (2) the circumstance to be disregarded in the eligibility determination if consideration of the circumstance is contingent upon the applicant providing verification. UPM § 1505.40 (B)(1)(c).

44. Delays Due to Good Cause (AFDC, AABD, MA Only). The eligibility determination is delayed beyond the AFDC, AABD or MA processing standard if because of unusual circumstances beyond the applicant's control, the application process is incomplete and one of the following conditions exists: (1) eligibility cannot be determined; or (2) determining eligibility without the necessary information would cause the application to be denied. UPM § 1540.40 (B)(4)(a).

45. The requirement of a subpoena or probate court order to compel a financial institution to surrender documents for the non-estranged spouse of an applicant is an unusual circumstance beyond the applicant's control.

46. The Appellant had good cause when he failed to provide the requested documents, as listed on the [redacted], 2016 1348LTC: *We Need Verification from You* form, to the Department by its [redacted] 2016 deadline, as the production of the documents from the relevant financial institutions required a subpoena or a probate court order.

47. If the eligibility determination is delayed, the Department continues to process the application until: (1) the application is complete; or (2) good cause no longer exists. UPM § 1505.40 (B)(4)(b).

48. The Appellant's barrier to providing the requested documentation to the Department by its [redacted] 2016 deadline ceased to exist [redacted], 2016, with the issuance of the [redacted] Probate Court order.

49. The Appellant's good cause expired on [redacted], 2016.

50. Verification received after the date that an incomplete application is processed: (1) is used only with respect to future case actions; and (2) is not used to retroactively determine a corrective payment. UPM § 1505.40 (B)(1)(d).

51. The hearing record is silent as to whether the Appellant eventually provided the documentation to the Department that had been requested on the agency's [redacted] 2016 1348LTC: *We Need Verification from You* form.

52. The Appellant failed in good faith to provide requested verification of a condition of eligibility to the Department in the immediate period following the expiration of his good cause not to do so.

DISCUSSION

After [redacted] 2016, the Appellant (through his then-conservator) ceased submitting requested verification as associated with his [redacted] 2016 Medicaid application to the Department. On [redacted], 2016, the Department denied the Appellant's [redacted] 2016 Medicaid application as he had failed to establish his eligibility for the program.

One day subsequent to the Department's [redacted] 2016 denial, the [redacted] Probate Court issued an order that granted the Appellant's then-conservator permission to obtain the Appellant's wife's financial information for the purpose of obtaining state aid for the Appellant. The Appellant's good cause for failing to provide the requested documentation to the Department by its deadline expired on [redacted] 2016.

The Appellant did not provide a copy of the [redacted] 2016 [redacted] Probate Court order to the Department within a reasonable period of time subsequent to its issuance.[1] Had he done so, the Department would have reopened the [redacted] 2016 application and given him a new 10-day deadline to submit the requested information.

[1] The court order was provided to the Department for the [redacted] 2017 administrative hearing, as part of the Appellant's Exhibit B.

The hearing record is silent as to whether the requested documents eventually were provided to the Department.

The Department's denial of the Appellant's [redacted] 2016 Medicaid application is upheld, as the Appellant failed to provide the requested verification to the Department expeditiously after the [redacted] 2016 expiration of his good cause.

DECISION

The Appellant's appeal is DENIED.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

cc: Attorney [redacted]
Paula Wilcyzski, DSS-New Haven
Rachel Anderson, DSS-New Haven
Cheryl Stuart, DSS-New Haven
Lisa Wells, DSS-New Haven
Tricia Morelli, DSS-Manchester

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.