

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

██████████ 2017
Signature Confirmation

Client ID # ██████████
Request # 798417

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") granting Long Term Care Medicaid benefits effective ██████████ 2016, and denying such benefits for the months of ██████████ 2016 and ██████████ 2016.

On ██████████ 2016, Attorney ██████████, the Appellant's Conservator, requested an administrative hearing to contest the effective date of the Long Term Care Medicaid benefits as determined by the Department.

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

On ██████████ 2016, OLCRAH issued a notice rescheduling the administrative hearing for ██████████ 2017.

On ██████████ 2017, 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:

Attorney ██████████, the Appellant's Conservator
John DiLeonardo, Department's Representative
Veronica King, Hearing Officer

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

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to grant Long Term Care benefits effective [REDACTED] 2016 was correct.

FINDINGS OF FACT

1. On [REDACTED] 2015, Attorney [REDACTED] was appointed as the Conservator for the Appellant by the New London Probate Court. (Hearing Record)
2. On [REDACTED] 2016, the Department received an application for Medicaid for Long Term Care for the Appellant. The Application was completed by the Conservator on behalf of the Appellant. (Exhibit 1: Application form, [REDACTED]/16)
3. On [REDACTED] 2016, the Department reviewed the application and sent the Conservator a Verification We Need Form ("W1348LTC") requesting [REDACTED]/16-current bank statements for Citizens Bank account xxx[REDACTED] and [REDACTED]/16-current statements from First Niagara account xx[REDACTED]. (Exhibit 6: Narratives screen print)
4. The First Niagara xxx[REDACTED] account has the Appellant and the Conservator's names on it. (Exhibit 5: First Niagara bank statements and Hearing Record)
5. The Citizens Bank xxx[REDACTED] account is under the Appellant's name. (Exhibit 4: Citizens Bank statements)
6. On [REDACTED] 2015, the Conservator transferred the Appellant's DFAS-Cleveland retirement benefits direct deposit from the Citizens Bank account to the First Niagara bank account. (Exhibit 4, Exhibit 5 and Conservator's Testimony)
7. On [REDACTED] 2016, the First Niagara bank had a balance of \$258.64. (Exhibit 5)
8. On [REDACTED] 2016, the First Niagara bank account had a total of \$11,838.81 deposits, \$2,959.40 income and \$8,879.41 transferred from other accounts. (Exhibit 5)
9. The Citizen Bank account had a balance of \$7,534.41 since [REDACTED] 2016 up till its closing on [REDACTED]/16. No income was deposited within account in 2016. (Exhibit 4 and Hearing Record)
10. On [REDACTED] 2016, the Conservator paid \$14,500.00 to the skilled nursing facility. (Hearing Record)

11. On [REDACTED] 2016, the First Niagara bank account had a balance of \$796.38. (Exhibit 5)

12. On [REDACTED] 2016, the Appellant held the following countable assets:

First Niagara (Appellant and Conservator) checking account xxx [REDACTED]	\$243.65
Citizens Bank checking account xxx [REDACTED]	\$7,534.41

(Exhibit 4 and Exhibit 5)

13. On [REDACTED] 2016, the Appellant held the following countable assets:

First Niagara (Appellant and Conservator) checking account xxx [REDACTED]	\$10,737.51
Citizens Bank checking account xxx [REDACTED]	\$0.00closed

(Exhibit 4 and Exhibit 5)

14. On [REDACTED] 2016, the Appellant held the following countable assets:

First Niagara (Appellant and Conservator) checking account xxx [REDACTED]	\$796.31
Citizens Bank checking account xxx [REDACTED]	\$0.00closed

(Exhibit 4 and Exhibit 5)

15. The Medicaid asset limit is \$1,600.00. (Hearing Record)

16. On [REDACTED] 2016, the Department granted Medicaid for Long Term Care for the Applicant effective [REDACTED] 2016. (Exhibit 3: Notice of Approval for Long Term Care Medicaid)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes, authorizes the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual ("UPM") § 1505.15 (C)(1)(3) states in part that a conservator, guardian or other appointed fiduciary individual are qualified to request cash or medical assistance, be interviewed and, complete the application process on behalf who they represent.
3. UPM Section 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.
4. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.

5. Section 17b-261(c) of the Connecticut General Statutes provides in part 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.
6. UPM § 4000.01 defines available assets 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) speaks to the asset limit and states in part:
 1. The Department counts the assistance unit's equity in an asset towards 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.
 2. 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 § 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.
9. UPM § 4030.05 (B) provides that part of a checking account to be considered as counted assets during a giving 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 or that month.
10. The Department correctly determined that the Citizens Bank and First Niagara bank accounts balances were counted towards the asset limit.
11. The Department correctly determined that the Appellant was ineligible for Medicaid for Long Term Care for the months of [REDACTED] 2016 and [REDACTED] 2016 because the Appellant's assets exceeded the allowable asset limit of \$1600.
12. UPM § 4005.15 provides that in the Medicaid program, 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.
13. The Department correctly determined that the Applicant's assets were reduced to below \$1600 in [REDACTED] 2016.
14. The Department correctly granted Medicaid for Long Term Care effective [REDACTED] 2016.

DISCUSSION

Regulations provide that eligibility for the Medicaid program begins the first day of the month in which the assistance unit reduces its equity in counted assets to within the asset limit. The record reflects that the Applicant's assets were within the Medicaid limits effective [REDACTED] 2016, the month in which the funds in both checking accounts were properly reduced. Prior [REDACTED] 2016, the funds were accessible to the Applicant and exceeded the Medicaid asset limit.

The conservator's argument that he planned on reducing the Applicant's funds and that the assets were allocated to pay bills does not change the fact that the action was not taken timely and the funds remained accessible and available. The conservator testified that the checking account under his and the Appellant's name was inaccessible to the Appellant. Regulation it's clear regarding accessibility of checking and savings accounts. Additionally, the conservator testified that in [REDACTED] 2015 he transferred the Appellant's DFAS-Cleveland retirement benefits direct deposit from the Citizens Bank account to the First Niagara bank account showing that he had knowledge and access of both accounts. The fact is that the Appellant's total assets exceeded the allowable limit until the Appellant reduced those assets in [REDACTED] of 2016.

Based on policy and regulations, the Department properly granted benefits beginning in the month of [REDACTED] 2016 when he became asset eligible. The Department properly denied the Applicant assistance for the months of [REDACTED] and [REDACTED] 2016.

DECISION

The Appellant's appeal is DENIED.

Veronica King

Veronica King
Hearing Officer

Cc: Lisa Wells, DSS Operations Manager, DO#20 New Haven.
Brian Sexton, DSS Operation Manager, DO#20 New Haven.
Cheryl Stuart, DSS Program Manager, DO#20 New Haven.
John Dileonardo, DSS Eligibility Services Specialist, DO#20 New Haven.
[REDACTED] Appellant's Conservator.

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.