

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3730

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

Client ID # ██████████  
Request # 809298

**NOTICE OF DECISION**

**PARTY**

██████████, Conservator  
██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████, 2017, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") granting Long Term Care Medicaid benefits effective ██████████ 2016 for his mother ██████████ (the "Applicant") and denying such benefits for the months of ██████████ and ██████████ of 2016.

On ██████████, 2017, the Appellant requested an administrative hearing to contest the effective date of the Long Term Care Medicaid benefits as determined by the Department.

On ██████████, 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling 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:

██████████, the Appellant,  
Linda Fassbender, Business Office Manager ██████████  
Paula Wilchinski, Eligibility Worker, for the Department  
Maureen Foley-Roy, Hearing Officer

The hearing officer held the hearing record open until [REDACTED], 2017 for the submission of additional evidence. On [REDACTED], 2017, 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], 2016, the Department received an application for Medicaid for long term care. (Exhibit 1: Application for Long Term Care)
2. The Applicant is married and she and her spouse were living in the community. (Exhibit 1)
3. On [REDACTED] 2016, the Department sent a W1348- We Need Verification form request #1 advising the Appellant of outstanding documents needed to determine eligibility and setting a deadline of [REDACTED] 2017 for the documentation. (Exhibit 3: W1348 LTC-Request #1)
4. On [REDACTED] 2016, the Department sent a W1348- We Need Verification form request #2 advising the Appellant of outstanding documents needed to determine eligibility and setting a deadline of [REDACTED] 2017. (Exhibit 4: W1348 LTC-Request #2)
5. On [REDACTED], 2016, the Applicant was admitted to a skilled nursing facility. (Exhibit 5: Admission notice)
6. On [REDACTED], 2016, the combined assets of the Applicant and her spouse were \$50,251.45. (Liberty bank account \$38,213.71, 61 shares of MetLife stocks valued at \$2,902.38 and 192 shares of MetLife stocks valued at \$9,135.36) (Exhibit 7: W1SA-N)
7. On [REDACTED] 2016, the Department sent a W1348- We Need Verification form request # 3 advising that the Department still needed burial contracts, and statements from Metlife Computershare by [REDACTED] 2016. (Exhibit 21: Case Narrative)<sup>1</sup>
8. On [REDACTED] 2017, the Department sent a W1-SA-N advising the Applicant that the maximum amount of assets that she and her husband could retain

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<sup>1</sup> The W1348 Request # 3 (Exhibit 6) indicates that it was sent on [REDACTED], 2016, the same date as request #5. That appears to be an error. The case narrative (Exhibit 21) indicates that request #3 with a deadline of [REDACTED] 2016 was sent on [REDACTED] 2016.

without causing ineligibility for Medicaid for long term care was \$26,725.73. The form also advised her that she was ineligible for Medicaid at that time. (Exhibit 7)

9. On [REDACTED] 2016, in addition to sending the spousal assessment results, the Department attempted to contact the Appellant by telephone and left a detailed voice mail message. (Exhibit 21)
10. On [REDACTED], 2016, the Department sent a W1348 We Need Verification form to the Appellant advising that that he must send bank statements from [REDACTED] 2016 to track spend down of funds and also copies of receipts, checks to verify how the funds were spent. The deadline was set for [REDACTED] 2016. (Exhibit 10: W1348 Request #4)
11. After receiving the W1-SAN, the Appellant tried unsuccessfully on several occasions to reach the Department because he had questions about the types of expenses that would be allowed as he was spending down his parents' assets. (Appellant's testimony)
12. On [REDACTED] 2016, the Appellant did speak with the Department's representative regarding spending down the excess assets. (Exhibit 24: Department's post hearing rebuttal and Appellant's Exhibit G: Response to Department's rebuttal)
13. On [REDACTED], 2016, the Appellant used funds from the Liberty bank account in the amount of \$9,884.47 to purchase a used car for the Applicant's spouse. (Exhibit 12: Liberty Bank History Account and Appellant's testimony)
14. On [REDACTED], 2016, the Department sent a W1348 We Need Verification form to the Appellant advising that that he must send bank statements from [REDACTED] 2016 to track spend down of funds. A deadline of [REDACTED] 2016 was established. (Exhibit 11: W1348 Request #5)
15. On [REDACTED], 2016, the balance in the Liberty Bank account was \$17,819.71. (Exhibit 12)
16. On [REDACTED] 2016, the 61 shares of MetLife stock were valued at \$3,355.61 and the 192 shares of MetLife stock were valued at \$10,561.92. (Exhibit 13: Printout from Yahoo Financial of stock value dated [REDACTED] 2016)
17. On [REDACTED], 2016, the Applicant and her spouse had a total of \$31,737.24 in assets. (Facts # 14 and 15)
18. On [REDACTED], 2016, the Department sent a W1348 We Need Verification form advising the Appellant that the value of the assets as of [REDACTED], 2016 (\$31,737.24) exceeded the limit (\$26,725.73) for program eligibility and requesting that the Appellant spend down the excess assets. A deadline of [REDACTED] 2016 was established. (Exhibit 14: W1348 Request #6)

19. On [REDACTED], 2016, the Department sent an identical W1348 We Need Verification as Request #6 but extending the deadline to [REDACTED] 2017. (Exhibit 15: W1348 Request #7)
20. On [REDACTED] 2016, the Applicant's Liberty Bank account balance was \$12,917.22. (Exhibit 16: Letter from Liberty Bank)
21. On [REDACTED], 2016, the 61 shares of MetLife stock were valued at \$3,287.29 and the 192 shares of MetLife stock were valued at \$10,346.88. (Exhibit 17: Printout from Yahoo Financial of stock value dated [REDACTED], 2016)
22. On D [REDACTED] 2016, the Applicant and her spouse had a total of \$26,551.39 in assets. (Facts #19 and 20)
23. On [REDACTED], 2017, the Department granted Medicaid for Long Term Care effective [REDACTED] of 2016. The Department denied Medicaid for Long term care for the months of [REDACTED], [REDACTED] and [REDACTED] of 2016. The Department allowed the Applicant to use her applied income to pay her outstanding balance at the facility. (Exhibit 19: Notice of Approval for Long Term Care Medicaid & Exhibit 23: Notices issued [REDACTED] 2017)

### **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") Section 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.
3. Uniform Policy Manual ("UPM") § 1507.05 provides in part that the Department provides an assessment of assets when one of the spouses begins his or her initial continuous period of institutionalization and at the time of application for Medicaid whether or not a request is made. The assessment is completed using the assets which existed as of the date of the beginning the initial continuous period of institutionalization which started on or after September 30, 1989. The assessment consists of: a computation of the total value of all non-excluded available assets owned by either or both spouses, and a computation of the spousal share of those assets. The results of the assessment are retained by the Department and used to determine the eligibility at the time of application for assistance as an institutionalized spouse.
4. UPM § 4025.67 provides in part that when the applicant or recipient who is a MCCA spouse begins a continuous period of institutionalization, the assets of his or her community spouse (CS) are deemed through the institutionalized spouse's initial month

of eligibility as an institutionalized spouse (IS). Any assets deemed from the CS are added to the assets of the IS and the total is compared to the Medicaid asset limit for the IS (the Medicaid asset limit for one adult). Every January 1, the Community Spouse Protected Amount ("CSPA") shall be equal to the greatest of the following amounts: the minimum CSPA, or the lesser of the spousal share calculated in the assessment of spousal assets or the maximum CSPA. The maximum CSPA in 2013 was \$115,920.00.

5. The Department correctly determined the CSPA was \$25,125.73 (\$50,251.45 total assets on the date of institutionalization divided by two).
6. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
7. 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.
8. The Department was correct when it determined and informed the Appellant that the total amount of assets that the Applicant and her spouse could retain and still be eligible for Medicaid was \$26,725.73. (\$25,125.73 + \$1600)
9. 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.
10. 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.
11. The Department correctly determined that the Applicant and her spouse's total assets of \$31, 737.24 exceeded the limit of \$26,725.73 for the months of [REDACTED] and [REDACTED] of 2016.
12. The Department correctly determined that the Applicant's assets were reduced to below \$1600 in [REDACTED] of 2016.
13. The Department correctly granted Medicaid for Long Term Care effective [REDACTED] 2016.

### **DISCUSSION**

The Department's responsibility was to tell the Appellant what the allowable asset limit was based upon their situation and the regulations. The Department in fact, did a remarkable job in that the Appellant received the results of the spousal assessment only 2 weeks after the Appellant was institutionalized. The Department then continued to request verification of the assets to determine when the assets were reduced and to

ensure that the assets were used for the benefit of the couple. The Appellant himself calculated the amount of assets that needed to be spent down. He based his calculations on the assets that his parents had on the date of the Applicant's institutionalization, which is what the Department correctly uses when conducting the spousal assessment. The "problem" in this case is that there was a significant increase in the value of their stock after the date of institutionalization, resulting in an increase in the assets that needed to be spent down. The Appellant claims that he did not know that the assets would be a "floating number" but he had the ability to monitor the assets and to see that the stock value was appreciating. Facility staff testified that based on their assumption that the community spouse would be retaining income and assets; they did not collect the applied income, which would have been one way to reduce the assets.

The undisputed fact is that the couple's total assets exceeded the allowable limit until the Appellant reduced those assets in [REDACTED] of 2016. The Appellant contends that he could have reduced those assets sooner if the Department had provided more information in a timely manner. There are no provisions or exceptions in policy that permit the Department to grant benefits in a month when there is no eligibility due to excess assets.

### **DECISION**

The Appellant's appeal is **DENIED**.

*Maureen Foley-Roy*  
Maureen Foley-Roy,  
Hearing Officer

### **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 06105-3730.

### **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.