

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 # 810210

NOTICE OF DECISION

PARTY

██████████  
██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying benefits under the Medicaid for Long Term Care program for failing to provide required verification.

On ██████████ 2017, Attorney ██████████ ██████████, Counsel for the Appellant requested an administrative hearing to contest the Department's decision to deny such benefits.

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  
Attorney ██████████, Counsel representing the Appellant  
██████████, son and power of attorney ("POA # 1) of the Appellant  
██████████, Appellant's Son's Girlfriend and Power of Attorney ("POA # 2)  
Cathy Sullivan, Business Office Manager, Windsor Health & Rehabilitation  
Center

Lara Alatise, Owner/Administrator, Windsor Health & Rehabilitation Center  
Maureen Foley-Roy, Hearing Officer

The hearing officer held the hearing record open 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 deny the Applicant's application for long-term care medical assistance for failing to provide information was correct.

### **FINDINGS OF FACT**

1. On [REDACTED] 2010, the Appellant appointed his son, [REDACTED] to act as his power of attorney. (Appellant's Exhibit F: Durable Power of Attorney form signed [REDACTED] 2010)
2. On [REDACTED] 2016, the Appellant was admitted to a skilled nursing facility.
3. On [REDACTED] 2016, the Department received an application for Medicaid for long term care for the Appellant. The application was signed only by the Appellant but it listed his son as an authorized representative. The application did not indicate that the son was the POA, Conservator or Guardian of the Appellant. The application included a form authorizing the Department to disclose information regarding the application to the Appellant's son, the son's girlfriend and the business office manager at the facility. (Exhibit 1: Long Term Care/Waiver Application)
4. On the application form, it stated that the Appellant had a disability and needed special help but the response to the question as to what type of special help was left blank. (Exhibit 1)
5. On [REDACTED] 2016, the Appellant appointed his son's girlfriend, [REDACTED], to act as his power of attorney. (Appellant's Exhibit F: Durable Power of Attorney form signed [REDACTED] 2016)
6. On [REDACTED] 2016, the Department sent a W1348 Verification We Need form listing outstanding information that the Department needed to determine eligibility to the Appellant's son listed as authorized representative on the application. The form also requested a copy of Power of Attorney or Conservator documents, if they existed. (Exhibit 3a: W1348 LTC Request # 1)

7. On [REDACTED] 2016, the business office manager at the facility sent an email to the Department stating that the Appellant's son had been incarcerated. The Department issued a new W1348 LTC to the Appellant at the facility and extended the deadline to [REDACTED] 2016. (Exhibit 4: Case Narrative)
8. On [REDACTED] 2016, the Department extended the deadline to [REDACTED] 2016. (Exhibit 4)
9. On [REDACTED] 2016, Ascend Management Innovations LLC, ("Ascend"), the Department's contractor that administers approval of nursing home care, determined that due in part to the Appellant's unspecified dementia; the Appellant was in need of skilled nursing care. (Appellant's Exhibit I: Connecticut Level of Care Determination form)
10. On [REDACTED] 2016 the Department extended the deadline to [REDACTED] 2016. (Exhibit 4)
11. On [REDACTED] 2016, the Department issued a W1348 Verification We Need Request # 2 to the Appellant at the facility listing the outstanding information necessary to determine eligibility and a deadline to provide such information as [REDACTED] 2016. The form also requested a copy of Power of Attorney or Conservator documents, if they existed. (Exhibit 3b: Request # 2)
12. On [REDACTED] 2016, the Department issued a W1348 Verification We Need Request # 3 to the Appellant's son listing the outstanding information required to determine eligibility and a deadline to provide the information as [REDACTED] 2016. The form also requested a copy of Power of Attorney or Conservator documents, if they existed. (Exhibit 3C: Request #3)
13. On [REDACTED] 2016, the Appellant's son contacted the Department and stated that he was having difficulty obtaining information from one of his father's insurance companies. The Department advised the Appellant's son that it would extend the deadline if the information was not received by the [REDACTED] 2016 deadline. (Exhibit 4)
14. On [REDACTED] 2016, the Department issued a W1348 Verification We Need Request # 4 to the Appellant's son listing the outstanding information required to determine eligibility and a deadline to provide the information as [REDACTED] 2016. The form also requested a copy of Power of Attorney or Conservator documents, if they existed. (Exhibit 3d: Request #4)
15. On [REDACTED] 2016, the Department issued a W1348 Verification We Need Request # 5 to the Appellant's son listing the outstanding

- information required to determine eligibility and a deadline to provide the information as [REDACTED] 2016. The form also requested a copy of Power of Attorney or Conservator documents, if they existed. (Exhibit 3e: Request #5)
16. On [REDACTED] 2016, the Department extended the deadline to [REDACTED] 2016. (Exhibit 4)
  17. On [REDACTED] 2016, the Department issued a W1348 Verification We Need Request # 6 to the Appellant's son listing the outstanding information required to determine eligibility and a deadline to provide the information as [REDACTED] 2016. The form stated that if you had a disability, you could ask for special help.(Exhibit 3f: Request #6)
  18. On [REDACTED] 2016, the deadline was extended to [REDACTED] 2016. (Exhibit 4)
  19. On [REDACTED] 2016, the Department issued a W1348 Verification We Need Request # 7 to the Appellant's son listing the outstanding information required to determine eligibility and a deadline to provide the information as [REDACTED] 2016. The form stated that if you had a disability, you could ask for special help, stating that the Department could assist in obtaining the outstanding items or extended deadlines. The form stated that you would need to ask the worker for the help. (Exhibit 3g: Request #7)
  20. On [REDACTED] 2016, the Department extended the deadline to [REDACTED] 2016. (Exhibit 4)
  21. On [REDACTED] 2016, the Department extended the deadline to [REDACTED] 2016. (Exhibit 4)
  22. On [REDACTED] 2016, the Department issued a W1348 Verification We Need Request #8 to the Appellant's son stating that the Department needed Bank of America Account monthly statements from [REDACTED] 2016 through the present, verification of the proceeds of the surrender values from the MetLife Stock, Met Life Policy and Jackson Life Policy. The request stated that the total value of the stock and policies was \$15,760.31 and the letter and copy of the check provided did not equal that amount. The form also requested an itemization of services provided for compensation and number of hours care was provided and a copy of itemized funeral contract. The form set a deadline of [REDACTED] 2016. The form also stated that if you cannot do something we ask because of a disability, you may ask for special help. It stated that the Department could assist in obtaining some of the items needed or give extra time to obtain

the information. The form states that you need to ask the worker for this help. (Exhibit 3h: Request #8)

23. The Appellant's testimony that he was unaware of the Department's request number 8 is not credible. (Hearing record)
24. Other than requesting additional time to obtain information (which the Department granted on multiple occasions) there is no evidence in the record that the AREP needed or requested additional assistance due to a disability. (Hearing record)
25. On [REDACTED] [REDACTED] 2016, the Department denied the Appellant's application for long term care Medicaid because the Appellant's representative did not provide all of the verification required to determine eligibility. (Exhibit 2: Notice of Denial)
26. There was a hearing regarding appointing a conservator for the Appellant scheduled for [REDACTED] 2017. (Facility staff's testimony)

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Uniform Policy Manual ("UPM") § 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.
3. UPM § 1015.05 C states that 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.
4. The Department was correct when it issued eight W1348-Verification We Need forms with a listing of outstanding information needed to determine eligibility to the Appellant at the facility and to his son, listed on the application as authorized representative.
5. UPM § 1505.35 C1 c (2) provides that a standard of promptness is established as the maximum time period for processing applications. For applicants for Medical Assistance on the basis of age; that standard is forty-five calendar days.

6. UPM § 1505.40 B 5 a (1) and (2) provide that regardless of the standard of promptness, no eligibility determination is made when there is insufficient verification to determine eligibility when the Department has requested verification and 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.
7. UPM § 1505.40 B 5 b provides that an additional 10 day extension 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.
8. The Department was correct when it granted additional extensions upon receiving partial information.
9. UPM § 1505.40 B.1 (b) (1) provides that if the applicant failed to complete the application without good cause, cases are denied between the thirtieth day and the last day of the appropriate standard for processing the application.
10. UPM § 3525.05 A 1 c provides for specific requirements in cooperating with the application process and states that applicants are responsible for cooperating with the Department in completing the application process by providing and verifying information as required.
11. UPM § 3525.05 B 1 a provides for the penalties for not cooperating with the application process and states that an application is denied when an applicant refuses to cooperate with the Department.
12. UPM § 3525.05 C 2 provides that penalties for noncooperation with the application and review processes are not imposed when a representative fails to act in the best interests of an incompetent or disabled assistance unit, which is considered good cause for noncompliance.
13. The Department was incorrect when it denied the Appellant's application even though it had not received any of the four items listed on the eighth W1348-Verification We Need form that was issued on [REDACTED] 2016 and there had been no contact from any of the Appellant's representatives requesting either clarification or an extension. The Appellant's son and authorized representative failed to act in his father's best interests and the Appellant therefore had good cause for failing to cooperate with the application process.

## DISCUSSION

At the outset, the undersigned notes that some arguments presented by the Appellant's counsel are not relevant to the denial of the Appellant's application for long-term care medical assistance.

For instance, the fact that the Appellant received the hearing summary four days prior to the hearing rather than the five days as recommended in the Department's procedures is irrelevant. If Counsel believed that this one-day delay would harm her client, she could have requested a continuance. Furthermore, Counsel has erroneously cited Departmental procedures as if they were regulation, and has presented argument that relies upon regulations governing the State-Administered General Assistance and Temporary Family Assistance programs, which are cash assistance programs administered by the Department and therefore, have no relevance to the Appellant's denial of long-term care medical assistance.

Counsel argues that there was no one correctly identified as responsible for providing information to the Department. The responsibility for the denial of this application for Medicaid lies with the Appellant's son, who was named as authorized representative ("AREP") on the application. (The AREP/son was incarcerated for a brief period during the pendency of the application but the Department granted an extension to the deadline to accommodate the unavailability of the AREP.) The section of the application form to indicate the type of authorized representative, i.e. Power of Attorney, Conservator, is unmarked. Realizing the possibility that such documents existed, the Department requested power of attorney or conservator documents five times and the AREP failed to provide them, even though he had been appointed power of attorney in 2010 and was able to provide the documents for this hearing. On [REDACTED] 2016, [REDACTED] was named power of attorney. Initially, [REDACTED] had been named on the application as a person to whom the Department could disclose information regarding the application. Such a designation would not make [REDACTED] a representative and the Department had no responsibility to send requests for information to a person listed on the application's "Authorization to Disclose Information" section. Again, in spite of five requests, the documents naming [REDACTED] as power of attorney were not provided to the Department until the day of the hearing. There is no indication that the Department was informed prior to the hearing that [REDACTED] had been named power of attorney.

Appellant's counsel maintains that the Department did not offer reasonable accommodation to the Appellant or his AREP, due to their disabilities. The application indicated that the AREP was representing his father and there was no indication that he would be unable to do so based on his own disability, or even that he had a disability at all. It is not clear if or when the Department was made aware that the AREP was also disabled, and the record on appeal does not

indicate the nature of the AREP's disability or whether it is of such a type that it would naturally hinder his ability to complete the application process on behalf of his father. The W1348 Verification We Need forms sent to the AREP clearly state that if the AREP needed help due to disability, he should ask the Department worker for such help. The form goes on to state that one example of a type of help is "giving extra time to give us the information." Many deadline extensions were in fact granted by the Department. There was no indication that the AREP would need assistance to obtain current bank statements, as requested on the Verification We Need form. The Department also requested verification of how certain funds were spent. Counsel stated that she had gone to the Appellant's town and obtained proof of property tax and water payments and questioned why the Department had not taken such steps. However, there was never an assertion that funds were spent for such expenses and, even if they were, there was no reason for the Department to believe that the AREP, currently living in the home, needed assistance to obtain these documents.

The Department afforded the AREP every opportunity to cooperate with the application process and provide the information needed to make an eligibility determination, but he failed to do so. Nevertheless, UPM 3525.05 clearly states that the failure of a representative to act in the best interest of an incompetent or disabled assistance unit does not result in a penalty for non-cooperation (denial of the application). The Department cannot deny the Appellant's application due to the failure of his son to act in his best interests. Now that the Appellant has retained Counsel and had a hearing for a conservator, it is hoped that he can be represented adequately in the matter of his Medicaid for long-term care application.

### **DECISION**

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

### **ORDER**

The Department is to reopen the Appellant's application back to the application date of [REDACTED] 2016, review the Application and issue a ninth W1348 Verification We Need form to the AREP, the Appellant's Counsel and his Conservator, if one has been appointed. Compliance with this order is due by [REDACTED] 2017 and shall consist of documentation that the application has been reopened and the W1348 issued.

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



CC: Musa Mohamud, Judy Williams, Operations Managers  
DSS R.O. #10, Hartford  
Cariah Barrieau, DSS Eligibility Specialist, R. O. # 60, Waterbury

### **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.