

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 # 829380

NOTICE OF DECISION

PARTY

██████████  
C/O ██████████  
██████████  
██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████ 2017, the Department of Social Services (the “Department”) sent ██████████ ██████████ (the “Applicant”), and her Conservator at the time ██████████ (“the Applicant’s sister”) a Notice of Action (“NOA”) denying Medicaid benefits for exceeding the asset limit.

On ██████████ 2017, the Applicant’s newly appointed Conservator ██████████ (the “Appellant”) requested an administrative hearing to contest the denial of Medicaid benefits.

On ██████████ 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a Notice scheduling the administrative hearing for ██████████ ██████████ 2017.

On ██████████ 2017, the Appellant requested a reschedule.

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

On ██████████, 2017 the Appellant requested a second reschedule.

On [REDACTED] 2017, OLCRAH issued a Notice rescheduling the administrative hearing for [REDACTED] 2017.

On [REDACTED] 2017, OLCRAH issued a Notice rescheduling the administrative hearing for [REDACTED] 2017.

On [REDACTED] 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 participated in the hearing:

[REDACTED] Appellant, Applicant's Conservator of Estate  
 [REDACTED], Appellant's Attorney, Attorney for [REDACTED]  
 [REDACTED], Business Office  
 [REDACTED], Assistant Director of Nursing  
 Victor Robles, Department's Representative  
 Marci Ostroski, Hearing Officer

The Applicant, [REDACTED] [REDACTED], was not present at the hearing due to her institutionalization at a long term care facility.

The Hearing record remained open for the submission of additional information. Exhibits were received from the Department and the Appellant and the record closed [REDACTED] [REDACTED] 2017.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department's decision to deny the [REDACTED], 2017, Medicaid application due to exceeding the asset limit was correct.

### **FINDINGS OF FACT**

1. The Applicant's sister [REDACTED] was named the Applicant's co-conservator of estate and co-conservator of person along with [REDACTED], the Applicant's brother on [REDACTED], 2009. (Ex. 1: Probate Court Decree, [REDACTED]/07)
2. On [REDACTED] [REDACTED] 2015 [REDACTED] [REDACTED] was removed as co-conservator leaving the Applicant's sister as sole conservator of estate and conservator of person. (Ex. 2: Probate court decree, [REDACTED]/15)
3. In [REDACTED] 2016, the Applicant was admitted to [REDACTED] Manor. (Appellant's Attorney's testimony)
4. On [REDACTED] 2016, the Department received from the Applicant's sister, an application for Long Term Care/Waiver ("LTSS") Medicaid. (Ex. P: Long Term Care Application, Hearing Summary)

5. On [REDACTED] 2017, the application was denied for failure to provide information in a timely manner. (Hearing Summary)
6. On [REDACTED] [REDACTED] 2017, the Department received requested verifications and reopened the application effective [REDACTED] 2017. (Hearing Summary)
7. The Applicant is the owner of a checking account and a savings account through Connecticut State Employees (“CSE”) Credit Union and a checking account through Wells Fargo. (Ex. P: Long Term Care Application, Ex. D: CSE Credit Union statement)
8. On [REDACTED] 2017, the Applicant’s CSE checking account had a balance of \$8592.32. (Ex. D: CSE statement)
9. On [REDACTED] 2017, the Department sent a W-1348 LTC Verification We Need form to the Applicant’s sister requesting verification of income and assets. The form stated “Provide bank statements for [REDACTED]/16-[REDACTED]/16 and [REDACTED]/17-present. As of right now there is \$15,692.59 effective [REDACTED]/17. The asset limit is \$1600”. The form later stated “there is no eligibility for Title 19 Long Term Care benefits in any month in which counted assets exceed \$1,600.00.” The information was due by [REDACTED] 2017 and no later than [REDACTED] 2017. (Exhibit C: W-1348LTC dated [REDACTED] 2017)
10. On [REDACTED], 2017, the Applicant’s sister contacted the Department by telephone. The Department reviewed the asset limit with the Applicant’s sister (Hearing Summary)
11. On [REDACTED] 2017, a hearing was held with the [REDACTED] Probate Court as requested by [REDACTED] Manor calling for the removal of the Applicant’s sister as conservator. (Hearing Summary, Appellant’s Attorney’s Argument, [REDACTED]/17)
12. On [REDACTED] 2017, the Probate Court continued the hearing for 45 days to allow the Applicant’s sister to continue to pursue Medicaid eligibility. The Court did not remove the Applicant’s sister as conservator. (Ex 3: Probate Court Decree, [REDACTED]/17)
13. On [REDACTED] 2017, the Applicant’s CSE checking account had a balance of \$11,561.60. (Ex. D: CSE statement)
14. On [REDACTED] 2017, the Department reviewed bank statements that had been received and sent the Applicant’s sister a second 1348 LTC Verification we Need form requesting information on a withdrawal and credit union statements for [REDACTED]/17-present. Information was due [REDACTED] 2017. (Ex. J: Narrative, Ex. E: W-1348LTC dated [REDACTED] 17)
15. The Department received Wells Fargo bank statements and on [REDACTED] 2017, the Department sent the Applicant’s sister a third W1348LTC requesting information on a checking account withdrawal, credit union statements [REDACTED]/17 to present, and Wells Fargo statements from [REDACTED]/17 to present. Information was due [REDACTED] 2017. (Ex. J: Narrative, Ex. F: W-1348LTC, dated [REDACTED]/17)

16. On [REDACTED], 2017 the Applicant's CSE checking account had a balance of \$14,863.61. (Ex. H: CSE statement)
17. On [REDACTED] 2017, the Applicant's sister contacted the Department via telephone for clarification on items requested on the [REDACTED]/17 W-1348 Verification We Need form. (Ex. J: Narrative)
18. On [REDACTED], 2017, the Department sent the Applicant and the Applicant's sister a Notice of Action denying the application for medical assistance and stating that the Applicant's assets exceeded the Department's asset limit. (Ex. I: Notice of Action, [REDACTED]/17)
19. On [REDACTED] 2017, the Probate Court accepted the Applicant's sister's agreement to resign as the Applicant's conservator of estate. Her resignation would become effective as of the filing of the final account which was due 30 days from the date of the order. [REDACTED] was appointed successor conservator of estate for the Applicant. (Ex. 4: Probate Court Order, [REDACTED]/17)

### **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. 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.
4. UPM 3525.05(A)(1) provides specific requirements of the application process for cooperation related to eligibility processes: 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
5. The Department did not make an eligibility determination on the applicant's cooperation with the application process.

6. UPM § 3525.05(B)(1) provides for penalties for noncompliance with the application process; An application is denied when an applicant refuses to cooperate with the Department. It must be clearly shown that the applicant failed to take the necessary steps to complete the application process without good cause before the application is denied for this reason.
7. UPM § 3525.05(C) provides for Good Cause for Noncompliance-AFDC, AABD, MA Penalties for noncooperation with the application and review processes are not imposed under the following conditions, which are considered good cause for noncompliance:
  1. circumstances beyond the assistance unit's control;
  2. failure of a representative to act in the best interests of an incompetent or disabled assistance unit.
8. The Department did not deny the application for noncompliance with the application process
9. UPM § 4005.05 (A) provides that the Department counts the assistance unit's equity in an asset toward the asset limit if the asset is not excluded by state or federal law and is either available to the unit, or deemed available to the unit.
10. UPM § 4005.05 (B)(2) provides that 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.
11. The Applicant had the legal right to have the funds in her bank accounts applied for her general medical support through her conservator.
12. UPM § 4005.05 (D) provides that 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.
7. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
8. The Department correctly determined that the Applicant's assets of \$8592.32 in the month of ██████████ 2017 exceeded the \$1600.00 asset limit.
9. The Department correctly determined that the Applicant was ineligible for benefits in the month of ██████████ 2017.
10. The Department correctly determined that the Applicant's assets of \$11,561.60 in the month of ██████████ 2017 exceeded the \$1600.00 asset limit.
11. The Department correctly determined that the Applicant was ineligible for benefits in the month of ██████████ 2017.

12. The Department correctly determined that the Applicant's assets of \$14,863.61 in the month of █████ 2017 exceeded the \$1600.00 asset limit.
13. The Department correctly determined that the Applicant was ineligible for benefits in the month of █████ 2017.
14. UPM § 4005.15 (A) (2) 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.
15. The Department correctly determined that the Applicant's assets were not reduced to within the asset limit.
16. The Department correctly denied the Applicant's application for Medicaid benefits for exceeding the asset limit.

### **DISCUSSION**

After reviewing the evidence and testimony presented, I find the Department correctly denied the Applicant's Medicaid assistance.


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 not reduced to within the Medicaid limits; the funds were owned by the Applicant and exceeded the Medicaid asset limit. The funds in the Applicant's bank accounts were still legally owned by the Applicant at the time of the denial. UPM provides that an available asset is one that she has the legal right, authority or power to obtain, *or to have it applied for*, his or her general or medical support. The Applicant's conservator had the ability to access the assets and apply them for the Applicant's care regardless of whether or not she actually acted on that ability.

The Appellant's argument centered on the Applicant's conservator's failure to act in the best interest of the Applicant. UPM only provides for good cause as an exception for denial of applications for noncompliance with the application process. This application however was not denied for noncompliance, the application was denied for exceeding the asset limit. Cooperation with the application process is defined in UPM as fully completing and signing the application form; and responding to a scheduled appointment for an interview; and providing and verifying information as required. Spending down assets is not classified as a cooperation requirement. The Department did not penalize the Applicant for noncooperation with the application process therefore the alleged failure of the representative to act in the best interests of the Applicant is moot.

**DECISION**

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

  
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Marci Ostroski  
Hearing Officer

cc: Musa Mohamud, Judy Williams, Tricia Morelli, Operations Managers, Hartford  
Regional Office  
Jay Bartolomei, Fair Hearing Liaison Supervisor, Hartford Regional Office  
Emily Loveland, Victor Robles, Fair Hearing Liaisons, Hartford Regional Office  


### **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.