

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

██████████ 2018
Signature Confirmation

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

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

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

On ██████████, 2017, 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, 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:

██
██
██
██

Victor Robles, Department’s Representative

Marci Ostroski, Hearing Officer

The Applicant, [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] 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. On [REDACTED], 2009 the Derby at Ansonia Probate Court found the Applicant "has Alzheimer's dementia that results in the respondent being unable to receive and evaluate information to make or communicate decisions to the extent that the respondent is unable even with appropriate assistance to perform the functions inherent in managing his or her affairs" and the court appointed a conservator of estate and conservator of person. The Probate Court granted the conservator of estate in part the power to manage any and all banking and investments whether in the State of Connecticut or elsewhere. (Ex. 1: Probate Court Decree, [REDACTED]/09)
2. On [REDACTED] 2017, the Probate court accepted the resignation of the Applicant's sister as Conservator of Estate and the appointment of the Appellant as temporary Conservator of Estate effective as of the filing of a final account. The Probate Court ordered the final account to be filed within 30 days. (Ex. 4: Probate Court Decree, [REDACTED]/17)
3. On [REDACTED] [REDACTED] 2017, the Department received an application for Long Term Care/Waiver ("LTSS") Medicaid for the Applicant signed by her former Conservator of Estate. (Ex. K: Long Term Care Application, Hearing Summary)
4. 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)
5. On [REDACTED], 2017, the Department sent a W-1348 LTC Verification We Need form to the Appellant requesting verification of income and assets. Specifically the form requested CSE statements from [REDACTED]/17-present and Wells Fargo statements from [REDACTED] 17-present. The form 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 L: W-1348LTC dated [REDACTED], 2017)

6. On [REDACTED], 2017, the Probate Court issued an order immediately removing the Applicant's former conservator of Estate and appointing the Appellant as temporary Conservator of Estate. (Ex. 5: Probate Court Order, [REDACTED]/17)
7. On [REDACTED], 2017, the Derby Probate Court issued a decree confirming the temporary appointment of the Appellant as the Applicant's Conservator of Estate valid until June 26, 2017. (Ex. 6: Probate Court Decree, [REDACTED]/17)
8. On [REDACTED] 2017, the Department received CSE credit union statements requested. (Ex. O: Narrative)
9. On [REDACTED] 2017, the Department discovered that the Applicant was an owner of 33 shares of Prudential stock with a value of \$3538.76. (Ex. O: Narrative)
10. On [REDACTED] 2017, the Department sent a W-1348 LTC Verification We Need form to the Appellant requesting proof of ownership of Prudential stocks from [REDACTED] present and verification that the stocks have been cashed out and how the proceeds were spent down. The form 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 (Ex. M: W-1348LTC dated [REDACTED] 2017)
11. On [REDACTED], 2017, the Appellant contacted the Department and requested an extension to provide the information. The Department granted an extension to [REDACTED], 2017. (Ex. O: Narrative)
12. On [REDACTED] [REDACTED] 2017 the Appellant submitted the W-9 Request for Taxpayer Identification Number and Certification and the Authorization for Electronic Funds Transfer to Computershare/Prudential to begin the process of liquidating the stocks to be spent down. (Appellant's Testimony, Ex. 16: Computershare surrender documents)
13. On [REDACTED] 2017, the Appellant's status as temporary conservator expired. (Ex. 6: Probate Court Decree, [REDACTED]/17)
14. The Appellant contacted Computershare via telephone to inquire on the liquidation of the stocks. Computershare informed the Appellant that they would no longer proceed with the transfer of stocks to the conservator bank account as his conservatorship had expired. (Appellant's testimony)
15. On [REDACTED], 2017, the Department had not received verification that the stocks had been cashed out and spent down. The Department denied the application for exceeding the asset limit. (Ex O: Narrative, Ex. N: Notice of Action, [REDACTED]/17)
16. On [REDACTED] 2017, the Department sent the Applicant and the Appellant a Notice of Action denying the application for medical assistance and stating that the Applicant's assets exceeded the Department's asset limit. (Ex. N: Notice of Action, [REDACTED]/17)

17. On [REDACTED] 2017, the Probate Court determined and stated that the Appellant was to be named the Applicant's Conservator of Estate. (Ex. 7: Probate Court decree dated [REDACTED]/17)
18. On [REDACTED] 2017, the Probate Court issued a decree naming the Appellant the Applicant's Conservator of Estate with a date of appointment of [REDACTED], 2017. (Ex. 16: Computershare surrender documents; Probate Court Decree dated [REDACTED] 17)
19. On [REDACTED] 2017, the Appellant provided the Probate court decree dated [REDACTED] [REDACTED] 2017, naming him the Applicant's Conservator of Estate and a second request to liquidate the Computershare stocks to Computershare. (Ex. 16: Computershare Surrender Documents)

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 § 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.
5. 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.
6. UPM § 4030.75 (A)(1) Treatment of Assets provides the equity value of a share of stock is the net amount the owner would receive upon selling the share.
7. The Department was incorrect when it determined that the Applicant's stocks were an available asset because the Applicant had been found to be unable to manage her own financial affairs and there was no one appointed to act on her behalf that could legally access her assets from [REDACTED], 2017 through [REDACTED] 2017.

8. UPM § 4015.05 (A)(1) provides that subject to the conditions described in this section, equity in an asset which is inaccessible to the assistance unit is not counted as long as the asset remains inaccessible.
9. UPM § 4015.05 (B)(2) provides that for all programs except Food Stamps, in order for an asset to be considered inaccessible, the assistance unit must cooperate with the Department, as directed, in attempting to gain access to the asset.
10. 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.
11. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
12. The Department incorrectly determined that the value of the Applicant's stocks was a counted asset because it was inaccessible on [REDACTED] 2017.
13. The Department incorrectly determined that the Applicant's assets exceeded the allowable limit based on the value of the stocks.
14. The Department was incorrect when it denied the Applicant's application for Medicaid for Long Term care for exceeding the allowable limit based on the value of the stocks on [REDACTED], 2017.

DISCUSSION


Available assets are defined as those that can be used for an individual's general or medical support and those that she has the legal right, authority or power to obtain, or to have it applied for, his or her general or medical support. In this case, the Applicant's assets could not be used for her support because there was no one who could legally access them from [REDACTED], 2017 through [REDACTED] 2017. The Probate court had determined that the Applicant was unable to manage her own affairs when it originally appointed a conservator of estate and conservator of person for her in 2009. The Probate court also only appointed a replacement conservator on a temporary basis and failed to make any provisions for the Applicant once the temporary conservatorship expired on [REDACTED], 2017.

The Appellant's initial designation as the Applicant's "temporary conservator" created a situation in which the Applicant was without representation for a small period of time. It was during that window that the Department made its eligibility determination. I find that the Department was incorrect in denying the Applicant's application for Medicaid for

Long Term Care on [REDACTED], 2017 for excess assets because at that time those assets were not available or accessible to the Applicant. On [REDACTED], 2017 the Applicant did not have the legal right to access the assets as a conserved individual and on [REDACTED] 2017 the Applicant did not have a conservator with the legal right to access those assets on her behalf.

DECISION

The Appellant's appeal is GRANTED


Marci Ostroski
Hearing Officer

ORDER

1. The Department will rescreen the Applicant's [REDACTED] 2017 application and continue to process.
2. The Department will classify the Applicant's stocks as inaccessible from the time period of [REDACTED], 2017 through [REDACTED] 2017.
3. Compliance with this order will be due 10 days from the date of this decision or [REDACTED] 2018.

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

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.