# 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

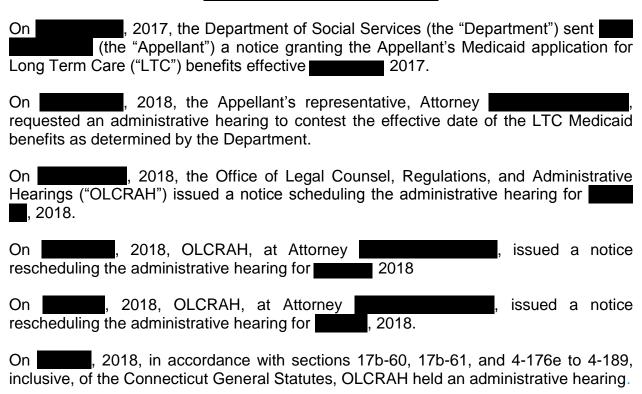
Request # 113414	
Case ID #	
Client ID #	

# **NOTICE OF DECISION**

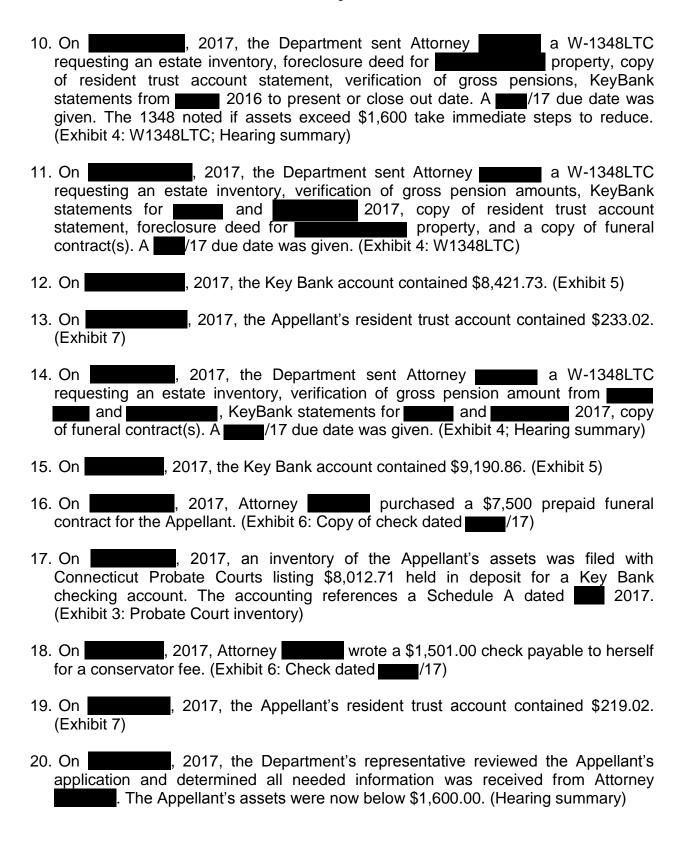
#### **PARTY**



### PROCEDURAL BACKGROUND



The following individuals were present at the hearing:
Attorney , for the Appellant William Johnson, Department's Representative Christopher Turner, Hearing Officer
STATEMENT OF THE ISSUE
The issue to be decided is whether the Department correctly determined 2017 as the effective date of the Appellant's LTC assistance.
FINDINGS OF FACT
1. On, 2015, the Appellant entered Apple Rehab/Laurel Woods of (Exhibit 1: W-1 LTC application)
2. On, 2017, the Appellant's Key Bank checking account contained \$8,012.71. (Exhibit 5: Key Bank statements)
3. On, 2017, Attorney was appointed the Appellant's Conservator effective, 2017. (Exhibit 2: Certificate of Conservatorship)
4. On, 2017, Appellant's Key Bank checking account contained \$8,781.84. (Exhibit 5)
5. On, 2017, Appellant's Key Bank checking account contained \$6,883.47. (Exhibit 5)
6. On 2017, the Department received an application for Medicaid LTC benefits from the Appellant's conservator Attorney 2017. The asset page of the application was left blank. (Exhibit 1: W-1 LTC application)
7. On, 2017, the Appellant's resident trust account contained \$1,467.93. (Exhibit 7: Trust account statement)
8. On, 2017, Appellant's Key Bank checking account contained \$7,652.60. (Exhibit 5)
9. On (Exhibit 7) 2017, the Appellant's resident trust account contained \$210.97.



21. The Appellan	nt's Key Bank and Trust account balances for	2017,	
2017 and	2017 were the following:		

Month	Key Bank	Trust	Total
2017	\$7,652.60*	\$210.97	\$7,863.57
2017	\$8,421.73*	\$233.02	\$8,654.75
2017	\$ 189.86	\$219.06	\$ 408.92

(Exhibit 5: Key Bank statements; Exhibit 7;\* Balance as of the 15'th of the month)

- 22. On \_\_\_\_\_\_, 2017, the Department granted the Appellant's LTC application with an effective date of \_\_\_\_\_/17. (Exhibit 8B: Notice dated \_\_\_\_/17; Hearing summary)
- 23. Attorney is requesting a LTC effective date of 2017. (Attorney 's testimony)
- 24. The Appellant's Attorney requests the Appellant's Key Bank account be considered a constructive trust and, as a result, inaccessible and not countable towards the \$1,600.00 asset limit until 2017. (Attorney 2017) stestimony)

## **CONCLUSIONS OF LAW**

- 1. Section 17b-2 and § 17b-260 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") § 4005.05 (B) (1) provides 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: (a) available to the unit or (b) deemed available to the unit.

UPM § 4005.05 (B) (2) provides that under all programs except Food Stamps, the Department considers as asset available when actually available to the individual or when the individual has the legal right, authority or power to obtain the asset, or have it applied for his or her general or medical support.

UPM § 4005.05 (D) (2) provides in relevant part, 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.

The Department correctly determined the Appellant's representative had the legal right and authority to access the Appellant's KeyBank checking account.

3. UPM § 4030.05 provides for the treatment of specific types of Bank Accounts.

UPM § 4030.05 (A) provides, in relevant part, for types of Bank Accounts. Bank accounts include the following: 1. Savings account 2. Checking account. 6. Patient account at long-term care facility.

UPM § 4030.05 (B) provides that part of a checking account to be considered as a counted asset during a given 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 for that month.

The Department correctly determined the balance of the Appellant's checking account for the month of 2017 to be \$8,421.73 and the Appellant's resident trust account to be \$233.02.

4. UPM § 4099.15 (A) provides for factors relating to inaccessibility of assets. (1) The assistance unit must verify that an otherwise counted asset is inaccessible to the unit if the unit claims it cannot convert the asset to cash. (2) If the unit is unable to verify that the asset is inaccessible, the asset is considered a counted asset.

UPM § 4099.20 (A) provides for verification of excluded assets. 1. The assistance unit must verify the reason for the exclusion of an asset if there is a question regarding the validity of the exclusion.

UPM § 4099.20 (B) provides the reasons for an exclusion of an asset include, but are not limited to: (1) source from which the assistance unit obtains the asset; (2) purpose for which the assistance unit uses the asset; (3) fair market value of the asset; (4) income generated by the asset; (5) expectations of an institutionalized individual to return to the home.

A **constructive trust** arises where a person who holds title to property is subject to equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it. (Gulack v Gulack, 30 Conn. App. 305 (1993)

The Department correctly determined the Appellant's Key Bank account is an accessible asset and not considered a *constructive trust*.

5. UPM § 1560.10 provides for beginning dates of Medicaid Assistance. The beginning date of assistance for Medicaid may be one of the following: A. the first day of the first, second or third month immediately preceding the month in which the Department receives a signed application when all non-procedural eligibility requirements are met and covered medical services are received at any time during that particular month.

UPM § 4005.10 (A) (2) (a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.

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.

UPM § 4099.05 (B) provides for the reduction of excess assets. 1. The assistance unit must verify that it has properly reduced its equity in counted assets to within the program's limit. 2. If the unit does not verify that it has properly reduced its equity in counted assets, the unit is ineligible for assistance

The Department correctly determined 2017 as the first month of eligibility based on the Appellant's assets not exceeding \$1,600.00.

# **DISCUSSION**

The Department correctly determined 2017 as the effective date of the Appellant's LTC coverage, the month in which the Appellant's assets were reduced below the asset limit.

## **DECISION**

The Appellant's appeal is denied.

Christopher Turner Hearing Officer

Cc: Rachel Anderson, Operations Manager New Haven Cheryl Stuart, Operations Manager New Haven Lisa Wells, Operations Manager New Haven William Johnson, DSS

# 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, law, and 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 <u>specific</u> 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 Legal Counsel, Regulations, and Administrative Hearings, 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, if 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 his 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.