

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

On ██████████, 2017, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a notice granting the Appellant’s Medicaid application for Long Term Care (“LTC”) benefits effective ██████████ 2017.

On ██████████, 2018, the Appellant’s representative, Attorney ██████████, requested an administrative hearing to contest the effective date of the LTC Medicaid benefits as determined by the Department.

On ██████████, 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████, 2018.

On ██████████, 2018, OLCRAH, at Attorney ██████████, issued a notice rescheduling the administrative hearing for ██████████ 2018

On ██████████, 2018, OLCRAH, at Attorney ██████████, issued a notice rescheduling the administrative hearing for ██████████, 2018.

On ██████████, 2018, in accordance with sections 17b-60, 17b-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:

Attorney [REDACTED], 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 [REDACTED] 2017 as the effective date of the Appellant's LTC assistance.

FINDINGS OF FACT

1. On [REDACTED], 2015, the Appellant entered Apple Rehab/Laurel Woods of [REDACTED]. (Exhibit 1: W-1 LTC application)
2. On [REDACTED], 2017, the Appellant's Key Bank checking account contained \$8,012.71. (Exhibit 5: Key Bank statements)
3. On [REDACTED], 2017, Attorney [REDACTED] was appointed the Appellant's Conservator effective [REDACTED], 2017. (Exhibit 2: Certificate of Conservatorship)
4. On [REDACTED], 2017, Appellant's Key Bank checking account contained \$8,781.84. (Exhibit 5)
5. On [REDACTED], 2017, Appellant's Key Bank checking account contained \$6,883.47. (Exhibit 5)
6. On [REDACTED] 2017, the Department received an application for Medicaid LTC benefits from the Appellant's conservator Attorney [REDACTED]. The asset page of the application was left blank. (Exhibit 1: W-1 LTC application)
7. On [REDACTED], 2017, the Appellant's resident trust account contained \$1,467.93. (Exhibit 7: Trust account statement)
8. On [REDACTED], 2017, Appellant's Key Bank checking account contained \$7,652.60. (Exhibit 5)
9. On [REDACTED], 2017, the Appellant's resident trust account contained \$210.97. (Exhibit 7)

10. On [REDACTED], 2017, the Department sent Attorney [REDACTED] a W-1348LTC requesting an estate inventory, foreclosure deed for [REDACTED] property, copy of resident trust account statement, verification of gross pensions, KeyBank statements from [REDACTED] 2016 to present or close out date. A [REDACTED]/17 due date was given. The 1348 noted if assets exceed \$1,600 take immediate steps to reduce. (Exhibit 4: W1348LTC; Hearing summary)
11. On [REDACTED], 2017, the Department sent Attorney [REDACTED] a W-1348LTC requesting an estate inventory, verification of gross pension amounts, KeyBank statements for [REDACTED] and [REDACTED] 2017, copy of resident trust account statement, foreclosure deed for [REDACTED] property, and a copy of funeral contract(s). A [REDACTED]/17 due date was given. (Exhibit 4: W1348LTC)
12. On [REDACTED], 2017, the Key Bank account contained \$8,421.73. (Exhibit 5)
13. On [REDACTED], 2017, the Appellant's resident trust account contained \$233.02. (Exhibit 7)
14. On [REDACTED], 2017, the Department sent Attorney [REDACTED] a W-1348LTC requesting an estate inventory, verification of gross pension amount from [REDACTED] and [REDACTED], KeyBank statements for [REDACTED] and [REDACTED] 2017, copy of funeral contract(s). A [REDACTED]/17 due date was given. (Exhibit 4; Hearing summary)
15. On [REDACTED], 2017, the Key Bank account contained \$9,190.86. (Exhibit 5)
16. On [REDACTED], 2017, Attorney [REDACTED] purchased a \$7,500 prepaid funeral contract for the Appellant. (Exhibit 6: Copy of check dated [REDACTED]/17)
17. On [REDACTED], 2017, an inventory of the Appellant's assets was filed with Connecticut Probate Courts listing \$8,012.71 held in deposit for a Key Bank checking account. The accounting references a Schedule A dated [REDACTED] 2017. (Exhibit 3: Probate Court inventory)
18. On [REDACTED], 2017, Attorney [REDACTED] wrote a \$1,501.00 check payable to herself for a conservator fee. (Exhibit 6: Check dated [REDACTED]/17)
19. On [REDACTED], 2017, the Appellant's resident trust account contained \$219.02. (Exhibit 7)
20. On [REDACTED], 2017, the Department's representative reviewed the Appellant's application and determined all needed information was received from Attorney [REDACTED]. The Appellant's assets were now below \$1,600.00. (Hearing summary)

21. The Appellant's Key Bank and Trust account balances for [REDACTED] 2017, [REDACTED] 2017 and [REDACTED] 2017 were the following:

Month	Key Bank	[REDACTED] Trust	Total
[REDACTED] 2017	\$7,652.60*	\$210.97	\$7,863.57
[REDACTED] 2017	\$8,421.73*	\$233.02	\$8,654.75
[REDACTED] 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 [REDACTED], 2017, the Department granted the Appellant's LTC application with an effective date of [REDACTED]/17. (Exhibit 8B: Notice dated [REDACTED]/17; Hearing summary)
23. Attorney [REDACTED] is requesting a LTC effective date of [REDACTED] 2017. (Attorney [REDACTED]'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 [REDACTED] 2017. (Attorney [REDACTED]'s testimony)

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 [REDACTED] 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 [REDACTED] 2017 as the first month of eligibility based on the Appellant's assets not exceeding \$1,600.00.

DISCUSSION

The Department correctly determined [REDACTED] 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 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 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.