

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

Case ID # ██████████
Client ID # ██████████
Request # 113855

NOTICE OF DECISION

PARTY

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Susan Debevac

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PROCEDURAL BACKGROUND

On ██████████, the Department of Social Services (the "Department") sent ██████████ (the Appellant) a notice of action ("NOA") denying benefits to ██████████ (the "Applicant") under the Medicaid for Long Term Care program effective ██████████.

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

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

On ██████████, the Appellant's Attorney requested a reschedule of the hearing.

[REDACTED]
[REDACTED]
[REDACTED]
the Applicant
[REDACTED]
[REDACTED]

Marc Blake, Department's representative
Kimberly Divirgillio, Hearing Liaison via Telephone
Swati Sehgal, Hearing Officer

Hearing record left open for the submission of additional evidence. On [REDACTED]
[REDACTED], 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 medical assistance for excess asset was correct.

FINDINGS OF FACT

1. The Applicant owns an account with U.K. Barclay Bank. (Exhibit 17: Barclay Bank statement, Appellant's Testimony)
2. The Applicant has a diagnosis of end stage dementia and he cannot speak or assist with his affairs at this time. (Appellant's testimony)
3. The Appellant is the spouse, and power of attorney of the Applicant. (Hearing record and Appellant's testimony)
4. On [REDACTED], the Applicant sent a letter to Barclays bank in England to transfer funds from Barclays Bank account to his bank account in United States. (Exhibit 5: Letter to Barclays bank signed by the Applicant, Hearing Summary)
5. In [REDACTED], Barclays bank sent a letter to the Applicant requesting a phone contact by [REDACTED]. Barclays bank was not contacted. (Hearing summary)

6. On [REDACTED], the Department mailed the Applicant and the Appellant notices notifying them of Medicaid eligibility. The Department also informed them that the Appellant is entitled to keep [REDACTED] 5 of their joint assets and that amount needed to be transferred to the Appellant's name by [REDACTED]. Notices also advised them that any portion of asset which is not transferred to the Appellant by next redetermination date would be counted to the Applicant when determining eligibility for Medicaid. (Exhibit 1: W1656 and W1657)
7. There is no evidence that efforts were made between [REDACTED] and [REDACTED] to reduce funds in the Applicant's Barclays account. (Hearing Record)
8. On [REDACTED], the Appellant completed the redetermination of the eligibility form for the Applicant. (Hearing Summary)
9. On [REDACTED], the Department reviewed the renewal form and sent W1348 to the Appellant requesting additional information. (Hearing summary)
10. On [REDACTED], the Department discontinued the Applicant's medical assistance for not completing redetermination process. (Hearing Summary)
11. On [REDACTED], the Department reopened the medical case in pending status and mailed a W1348 asking for additional documents. The Department also advised the Appellant that the Applicant's asset exceeded the allowable limit of \$1600.00 and they should send a proof that assets has been spent down below the allowable limit. (Hearing Summary)
12. On [REDACTED], the Department sent another W1348 advising the Appellant that the Applicant's asset exceeded the allowable limit of \$1600.00 and they should send a proof that assets has been spent down below the allowable limit with a due date of [REDACTED]. (Hearing Summary)
13. On [REDACTED], the Department denied the medical benefits for failure to provide requested information. (Hearing Summary and Exhibit G: Case Notes)
14. On [REDACTED] the Appellant contacted the Department and advised that she was unable to access the funds in the Applicant's Barclays account because her Power of Attorney was not recognized by British law.

- The Appellant also stated that she is in process of obtaining services of an Attorney in this matter. (Exhibit G)
15. On [REDACTED] the Applicant's daughter contacted Office of Public Guardian, in England via email seeking guidance on how to access the Appellant's U.K. Barclay Bank account. (Exhibit24)
 16. On [REDACTED], the Office of public Guardian directed Applicant's daughter to contact the Court of Protection to seek more information on how to get authorization to use USA power of attorney in UK or to get Court Appointed Deputyship to manage the Appellant's asset. (Exhibit 24)
 17. On [REDACTED], the Applicant's daughter sent an email to Court of Protection enquiring about how to obtain UK Power of Attorney. (Exhibit 24)
 18. On [REDACTED], the Department received Long Term Care Application dated [REDACTED]. (Exhibit H)
 19. The Department reinstated medical benefits from [REDACTED] through [REDACTED]. (Hearing Summary)
 20. On [REDACTED], the Department screened the application and issued first W1348LTC with a due date of [REDACTED]. The Department requested bank statement from U.K. Barclay Bank, Santander bank, Patient Trust account at Hebrew Home and MetLife Annuity from [REDACTED] to present, Proof of gross monthly pension amount from MetLife and U.K. pension. The form also advised the Applicant's allowable asset limit is \$1600. The Appellant should provide verification that assets are below \$1600 that they should send proof that the assets had been spent down below the limit (Exhibit H, Exhibit 8: Copies of W1348LTC)
 21. On [REDACTED], the Department reviewed the received information and determined that it was an old bank statement and was not requested on W1348 sent on [REDACTED]. (Exhibit H)
 22. On [REDACTED], The Department issued second W1348LTC with a due date of [REDACTED], requesting all the information listed on the first W1348LTC. (Exhibit H and Exhibit 8)
 23. On [REDACTED], the Applicant's daughter e-mailed the Court of Protection, in England and requested further information in regards to pursue reorganization of United States power of attorney in England. (Exhibit 24: Copy of Emails)

24. No attempt was made to contact the Court of Protection between [REDACTED] and [REDACTED]. (Exhibit 24)
25. On [REDACTED], the Department issued third W1348LTC with a due date of [REDACTED], requesting missing bank statements, proof of income, Appellant's shelter expenses, and proof that total assets for the Applicant are under \$1600. (Exhibit H and Exhibit 8)
26. On [REDACTED] the Department issued fourth W1348LTC with a due date of [REDACTED], requesting proof that an attempt was made to close U.K. Barclay account and or transfer the money from this account, without success, along with the items listed on third W1348LTC. (Exhibit H and Exhibit 8)
27. On [REDACTED], the Department received some of requested information. (Exhibit H)
28. On [REDACTED], the Department issued fifth W1348LTC with a due date of [REDACTED] requesting proof that an attempt was made to close U.K. Barclay account and or transfer the money from this account, without success, and other items listed on fourth W1348LTC. (Exhibit H, Exhibit 8)
29. On [REDACTED], the Department sent a referral to its Resource Unit to determine accessibility of Barclay bank account. (Exhibit H and Exhibit 18: Copies of emails to and from Resource Unit)
30. On [REDACTED], response from resource unit was received. It was suggested that the Appellant should contact Barclays bank in England and receive direction on how to access the Applicant's account. The resource worker also suggested that the Appellant might not be able to access the Applicant's account online if the account was never registered online by the Applicant. (Exhibit 18)
31. The Applicant is the legal owner of the Barclays bank account, which has a balance of [REDACTED], which equals to approximately [REDACTED] based on the US Exchange rate at the time of denial (\$ [REDACTED]). (Exhibit 17: Barclays bank statement)
32. On [REDACTED], the Department denied the [REDACTED] application for the Applicant being over asset. (Exhibit H and Exhibit 11: Notice of action [REDACTED])
33. On [REDACTED] Court of Protection, England, responded back advising to submit required forms, fee, and copy of foreign POA in order

to make an application to authorize the foreign POA so it could be used in England. (Exhibit 24)

34. On [REDACTED] the Appellant sent a letter to the Barclays bank seeking guidance on how to access the Applicant's funds with a United States power of attorney. (Exhibit 13: letter to Barclays Banks and response from Barclays bank)
35. On [REDACTED], the Barclays bank responded back advising the Appellant to contact the Court of Protection. (Exhibit 13)
36. On [REDACTED], the Appellant's attorney mailed required documents to Court of Protection with required fee. (Exhibit 23: Copy of application for appointment of deputy, copy of check and Fed ex Label)
37. No application was submitted to the Court of Protection prior to [REDACTED]. (Hearing Record)

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. 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
4. Section 17b-261(c) of the Connecticut General Statues 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

5. 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.
6. 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.
7. The Department correctly determined that the Applicant has the legal right to the Barclay Bank account.
8. 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.
9. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
10. The Department correctly determined that the Applicant's assets of [REDACTED] [REDACTED] exceeded the \$1600.00 asset limit.
11. 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.
12. The Department correctly determined that the Applicant's assets were not reduced to within the asset limit.
13. UPM § 4015.05 (B) (1) provides that the burden is on the assistance unit to demonstrate that an asset is inaccessible.
14. The Appellant failed to demonstrate that monies in Barclay bank account is not accessible to the Applicant.

DISCUSSION

It appears from the testimony and evidence provided by the Appellant and her attorney that they did come across some difficulties to get access to the Applicant's Barclay Bank account. But that does not change the fact that the Applicant has the legal right to this account, and he is the primary account holder. The Department had been asking the Appellant as far back as [REDACTED] to reduce the funds in the Applicant's Barclay bank account. The Applicant made an

effort back in [REDACTED] to transfer the funds from his Barclays account to his account in United States. Barclays bank requested the Applicant to make a phone contact but the contact was never made. The Department continuously asked the Appellant to provide evidence that the Applicant's assets were spent down to allowable amount, and the attempts were being made to close or transfer the funds from Barclays account.


The family contacted Office of Public Guardian in [REDACTED] and was advised to contact the Court of Protection in order to receive further directions on how to approach about the topic of Court Appointed Deputyship which would allow the appointed deputy to manage the Applicant's funds. The family sent an email to The Court of Protection in [REDACTED] and did not contact them again until [REDACTED]. It is very clear that there were some steps needed to be taken by the Appellant to gain access to the Applicant's Barclay Bank account. However that process does not make the Applicant's asset inaccessible. The Applicant is the legal owner of Barclays bank account, and funds in that account are over the allowable asset limit of \$1600.00. The Department was correct when it counted the monies in the Barclay account and determined the Applicant to be over the asset limit and denied his application on [REDACTED].

There appear to be large lapses of time between the Appellant's attempts to gain access to the Applicant's Barclays bank account.

It should be noted that the Appellant's Attorney mailed the required Application form to gain Court Appointed Deputyship with the fee to the Court of Protection, London on [REDACTED], day this hearing was held.

DECISION

The Appellant's appeal is DENIED.


Swati Sehgal
Hearing Office

CC: Musa Mohamud, Operations Manager, DSS R.O. #10, Hartford
Judy Williams, Operations Manager, DSS R.O. #10, Hartford
Jessica Carroll, Operations Manager, DSS R.O. #10, Hartford
Kimberly Divirgilio, Hearing Liaison, DSS, 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.

