# 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

# Susan Debevac

### 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 \_\_\_\_\_\_\_, 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 \_\_\_\_\_\_.

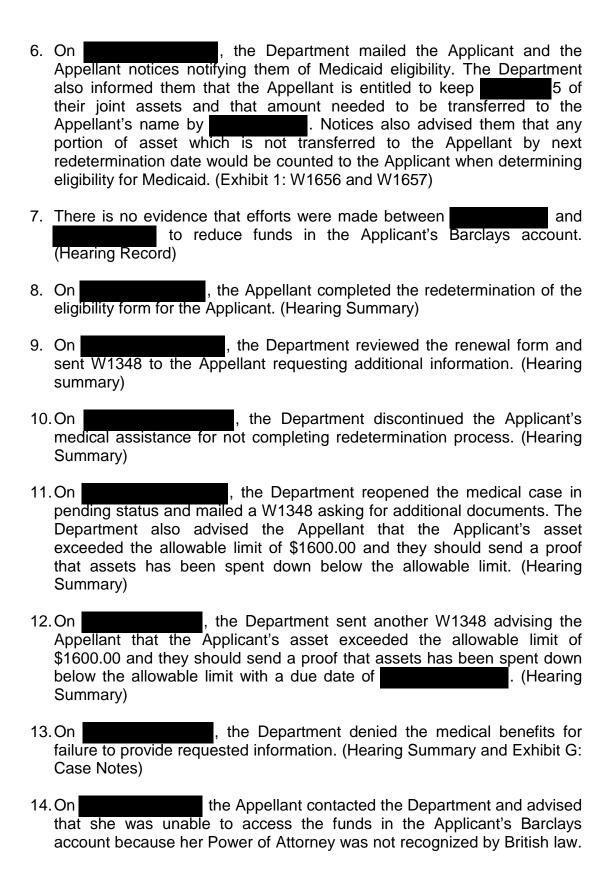
the Applicant
Marc Blake, Department's representative
Kimberly Divirgillio, Hearing Liaison via Telephone Swati Sehgal, Hearing Officer
Hearing record left open for the submission of additional evidence. On , the record closed.

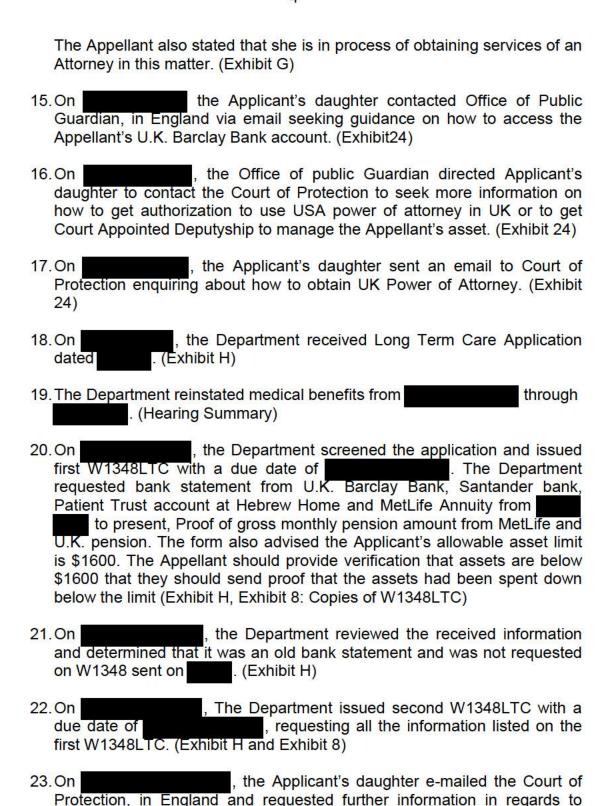
# STATEMENT OF THE ISSUE

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

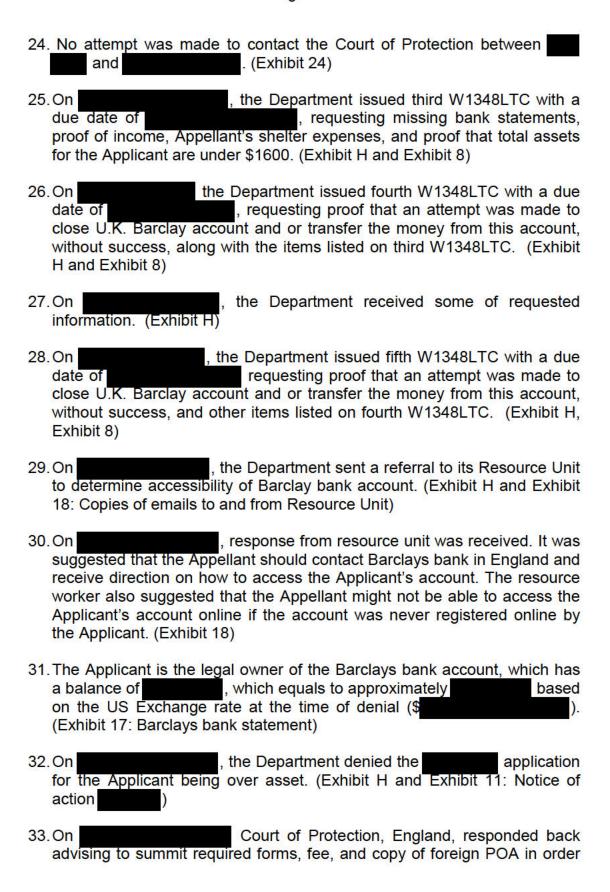
- The Applicant owns an account with U.K. Barclay Bank. (Exhibit 17: Barclay Bank statement, Appellant's Testimony)
- The Applicant has a diagnosis of end stage dementia and he cannot speak or assist with his affairs at this time. (Appellant's testimony)
- 3. The Appellant is the spouse, and power of attorney of the Applicant. (Hearing record and Appellant's testimony)
- 4. On \_\_\_\_\_\_, 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 \_\_\_\_\_, Barclays bank sent a letter to the Applicant requesting a phone contact by \_\_\_\_\_. Barclays bank was not contacted. (Hearing summary)





pursue reorganization of United States power of attorney in England.

(Exhibit 24: Copy of Emails)



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

- 34. On 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 Appellant to contact the Court of Protection. (Exhibit 13)
- 36. On 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 . (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 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 reduce the funds in the Applicant's Barclay bank account. The Applicant made an

effort back in 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 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 and did not contact them again until and the Applicant's Barclay Bank account. 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

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 the court of Protection, 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 <u>specific</u> grounds for the request: for example, indicate <u>what</u> error of fact or law, <u>what</u> new evidence, or <u>what</u> 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.