

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

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

Client ID # ██████████
Request # 114860

NOTICE OF DECISION

PARTY

████████████████████
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PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Lien informing her a lien to be placed against property located at ██████████ Connecticut.

On ██████████ ██████████ ("Attorney"), Attorney for the Appellant, requested an administrative hearing to contest the Department's decision to place a lien on the Appellant's property.

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

On ██████████ 2018, the Attorney requested a continuance which OLCRAH granted.

On ██████████ 2018, the OLCRAH issued a notice scheduling 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:

██████████ Power of Attorney for the Appellant
██████████ Attorney for the Appellant and Power of Attorney
Jeffrey Sheldon, Department Representative
Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to place a lien on property owned by the Appellant was correct.

FINDINGS OF FACT

1. Effective ██████████ 2017, the Appellant is a recipient of Medicaid under the Long Term Care ("L01") program. (Hearing Record)
2. The Appellant resides at a nursing facility and is not expected to return home. (Exhibit A: Brief and Exhibit 2: Notice of Lien)
3. The Appellant owns real property located a ██████████ ██████████ Connecticut (the "property"). The property is a two-family home where the Appellant resided prior to her admittance to the nursing facility. (Hearing Record)
4. ██████████ (the "son") is the Appellant's adult son, age sixty (60). The son is not disabled. (Attorney's Testimony)
5. The son resides at the property in a separate unit from the Appellant's residence. (Hearing Record)
6. On ██████████ 2018, the Department issued a Notice to Inform Medicaid Recipients of a Lien to the Appellant. The notice states the Department plans to place a lien against the property for benefits paid under Medicaid while residing in a long term care facility. The notice states, "DSS will not place a lien against your home if your spouse or your disabled child under 21 years old is living in your home or if your sibling has an ownership interest in the home and was living in your home for at least one year before you went into the long-term care facility. (Exhibit 2: Notice of Lien)
7. On ██████████ 2018, the Department placed a lien on the property. (Exhibit 4: Certificate of Lien)
8. The property is listed for sale. (Attorney's Testimony)

9. The Appellant disagrees with the Department's decision to place the lien against the property while the son lawfully resides on the property and requests the lien to be removed. (Exhibit A: Brief)

CONCLUSIONS OF LAW

1. Connecticut General Statute ("CGS") § 17b-2(6) provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. State statute provides that no person shall be deemed ineligible to receive an award under the state supplement program, medical assistance program, temporary family assistance program, state-administered general assistance program or supplemental nutrition assistance program for himself or herself or for any person for whose support he or she is liable by reason of having an interest in real property, maintained as his or her home, provided the equity in such property shall not exceed the limits established by the commissioner. The commissioner may place a lien against any property to secure the claim of the state for all amounts which it has paid or may thereafter pay to such person or in such person's behalf under any such program, or to or on behalf of any person for whose support he or she is liable, except for property maintained as a home in aid to families of dependent children cases, in which case such lien shall secure the state only for that portion of the assistance grant awarded for amortization of a mortgage or other encumbrance beginning with the fifth month after the original grant for principal payment on any such encumbrance is made, and each succeeding month of such grant thereafter. The claim of the state shall be secured by filing a certificate in the land records of the town or towns in which any such real estate is situated, describing such real estate. Any such lien may, at any time during which the amount secured by such lien remains unpaid, be foreclosed in an action brought in a court of competent jurisdiction by the commissioner on behalf of the state. Any real estate to which title has been taken by foreclosure under this section, or which has been conveyed to the state in lieu of foreclosure, may be sold, transferred or conveyed for the state by the commissioner with the approval of the Attorney General, and the commissioner may, in the name of the state, execute deeds for such purpose. Such lien shall be released by the commissioner upon payment of the amount secured by such lien, or an amount equal to the value of the beneficiary's interest in such property if the value of such interest is less than the amount secured by such lien, at the commissioner's discretion, and with the advice and consent of the Attorney General, upon a compromise of the amount due to the state. At

the discretion of the commissioner, the beneficiary, or, in the case of a husband and wife living together, the survivor of them, as long as he or she lives, or a dependent child or children, may be permitted to occupy such real property. [CGS § 17b-79]

3. State statute provides that if a beneficiary of aid under the state supplement program, medical assistance program, aid to families with dependent children program, temporary family assistance program or state-administered general assistance program has or acquires property of any kind or interest in any property, estate or claim of any kind, except moneys received for the replacement of real or personal property, the state of Connecticut shall have a claim subject to subsections (b) and (c) of this section, which shall have priority over all other unsecured claims and unrecorded encumbrances, against such beneficiary for the full amount paid, subject to the provisions of section 17b-94, to the beneficiary or on the beneficiary's behalf under said programs; and, in addition thereto, the parents of an aid to dependent children beneficiary, a state-administered general assistance beneficiary or a temporary family assistance beneficiary shall be liable to repay, subject to the provisions of section 17b-94, to the state the full amount of any such aid paid to or on behalf of either parent, his or her spouse, and his or her dependent child or children, as defined in section 17b-75. The state of Connecticut shall have a lien against property of any kind or interest in any property, estate or claim of any kind of the parents of an aid to dependent children, temporary family assistance or state administered general assistance beneficiary, in addition and not in substitution of its claim, for amounts owing under any order for support of any court or any family support magistrate, including any arrearage under such order, provided household goods and other personal property identified in section 52-352b, real property pursuant to section 17b-79, as long as such property is used as a home for the beneficiary and money received for the replacement of real or personal property, shall be exempt from such lien. [CGS § 17b-93(a)]
4. Uniform Policy Manual ("UPM") § 4000.01 defines real property as an asset in the form of real estate- that is, land and buildings, or campers, trailers or mobile homes which have been permanently affixed to the land.
5. UPM § 7500.01 defines a lien as a legal claim against property as security for a debt.
6. UPM § 7510.15(B)(1) provides that the Department places a lien against all of the individual's real property, except as noted below, because of Medicaid claims paid or to be paid if the individual is an inpatient of a long-term care facility and cannot reasonably be expected to be discharged and return home.

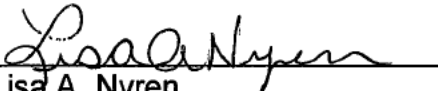
7. UPM § 7510.15(B)(2) provides that the Department does not place a lien on real property that was used as the individual's primary residence prior to entering the LTCF if any of the following persons is lawfully residing in the home.
 - a. The individual's spouse;
 - b. The individual's child who is under age 21 or blind or disabled;
 - c. The individual's sibling if the sibling:
 1. Is joint owner of the home; and
 2. Was residing in the home for at least one year immediately before the individual entered the long-term care facility.
8. The Department correctly determined the Appellant resided at the property prior to her admission to the nursing facility and is not expected to be discharged and return home.
9. The Department correctly determined the Appellant as the owner of the property.
10. The Department correctly determined the Appellant's spouse does not reside at the property.
11. The Department correctly determined a child of the Appellant's who is under age 21 or blind or disabled does not reside at the property.
12. The Department correctly determined the Appellant's sibling(s) does not reside at the property.
13. The Department correctly placed a lien on the property owned by the Appellant.

DISCUSSION


Counsel argues the placement of the lien violates procedural policy under the UPM Procedures page P-7510.10. As outlined in UPM 0200, the UPM has two basic components: Policy and Procedures. UPM Policy pages reflect the laws governing the administration of its various programs and are used as the legal basis for decisions regarding program eligibility and related matters. UPM Procedure pages are used as a guide for Department staff when implementing Department Policy. Although the son is the Appellant's child, he is over the age of 21, not disabled, nor blind; therefore he does not meet the criteria under Department Policy regarding the exceptions to the placement of a lien on real property owned by Medicaid recipients. The Department correctly placed a line on the property owned by the Appellant.

DECISION

The Appellant's appeal is **denied**.


Lisa A. Nyren
Fair Hearing Officer

CC:


Stephen Markowski, Quality Assurance, CO
Odette Olmeda, Fraud and Recoveries, CO
Aimee Yuskas, Resources Supervisor, RO # 20
Jeffrey Sheldon, Lead Investigator, RO # 20

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.