

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

████████████████████  
Signature Confirmation

Client ID # ██████████  
Request # 127534

NOTICE OF DECISION

PARTY

██████████  
██████████  
██████████  
████████████████████

PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) denying her application for Long Term Care Medicaid benefits for the months of ██████████, inclusive, for the reason that her assets exceeded the limit in those months, and denying benefits for ██████████ and all future months because the Appellant had died.

On ██████████, ██████████ ██████████ the Appellant’s son and executor of her estate, requested an administrative hearing on her behalf to contest the denial of benefits.

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

On ██████████, 2018, OLCRAH issued a notice rescheduling the hearing for ██████████ 2018 at the request of the executor’s attorney due to a conflict with a previously scheduled court date.

On ██████████ 2018, OLCRAH issued a notice rescheduling the hearing for ██████████, 2018 at the request of the executor’s attorney due to a conflict with a previously scheduled court date.

On ██████████, 2018, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

██████████, acting in his authority as executor of the Appellant's estate, provided written authorization for his attorney to appear on his behalf at the hearing to represent the Appellant's interests.

The following individuals were present at the hearing:

██████████ Esq., for the Appellant  
Kimberly DiVirgilio, for the Department  
James Hinckley, Hearing Officer

### **STATEMENT OF THE ISSUE**

1. The issue to be decided is whether the Department was correct when it denied the Appellant's application for Long Term Care Medicaid on ██████████ 2018.

### **FINDINGS OF FACT**

1. On ██████████ ██████████ (the Appellant's "Son"), acting in his capacity as the Appellant's power of attorney, applied to the Department on the Appellant's behalf for Long Term Care Medicaid. (Hearing Record)
2. As part of the application process for Long Term Care Medicaid, the Department required the production of historical bank records to determine whether the Appellant transferred any assets during the look back period. (Ms. DiVirgilio's testimony)
3. The Appellant's Son, in compliance with the Department's request, asked the Appellant's bank to reproduce records for all of the Appellant's accounts, and the bank discovered during its research the existence of two accounts that the Son had been previously unaware of. (Hearing Record, testimony)
4. The two accounts that were discovered through the bank's research were retirement accounts, one of which maintained a balance consistently in excess of \$2,500.00 since at least ██████████ and the other which maintained a balance consistently in excess of \$1,500.00 since at least ██████████. (Ex. 2: ██████████ ██████████ ██████████ transaction history for account # ██████████ ██████████, Ex. 3: ██████████ ██████████ ██████████ transaction history for account # ██████████)
5. On ██████████ the Appellant died. (Hearing Record)
6. The Appellant's Son did not have time to liquidate and spend down the assets contained in the Appellant's two retirement accounts prior to her death, and made no withdrawals from either account. (testimony)

7. As of [REDACTED], one of the retirement accounts had a balance of \$2,620.16, and the other retirement account had a balance of \$1,738.72, for a total of \$4,358.88. (Ex. 2, Ex. 3)
8. Since the Son did not make any withdrawals from either account and the only activity regularly occurring on either of the accounts was the crediting of interest on the final day of each month, the accounts must have contained the same balances on the [REDACTED] date of the Appellant's death that they did on the [REDACTED] date the transaction history documents were created. (Facts #5, #6, #7)
9. On [REDACTED], the Department issued a NOA to the Appellant denying her application for Medicaid for the period from [REDACTED] for the reason "The value of your assets is more than the amount we allow you to have", and denying Medicaid for the period beginning [REDACTED] and ongoing for the reason "We have received information that the person listed has died". (Ex. 6: NOA dated [REDACTED])
10. The Appellant's representative disputes the accuracy of some of the information contained in the Department's [REDACTED] NOA, such as information regarding several whole life insurance policies listed among the counted assets which the Son has no knowledge of and disputes the existence of, and information regarding a car that the Appellant has not owned for years. (Mr. [REDACTED]'s testimony)
11. The Department's NOA may have contained some inaccuracies because some of the information in the notice was based on information existing in the Department's historical computer records; an automobile owned by the Appellant at the time of some past contact with the Department may have still been listed as an asset, even if no longer owned, if the sale or disposal of the vehicle was never verified and updated in the Department's computer. (Ms. DiVirgilio's testimony)
12. The existence or non-existence of the disputed assets, such as the car and the whole life insurance policies, had no bearing on the Department's decision to deny the Appellant's application, because the Appellant's assets exceeded the \$1,600.00 asset limit at the time of her death and in all of the application months from [REDACTED], even when just the balances in the two retirement accounts were counted, without consideration of any other assets. (Ms. DiVirgilio's testimony, Hearing Record)
13. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant's representative requested an administrative hearing on [REDACTED]. Therefore, this decision is due not

later than [REDACTED]. However, the hearing, which was originally scheduled for [REDACTED], was rescheduled twice at the request of the Appellant, which caused a 35-day delay. Because this 35-day delay resulted from the Appellant's request, this decision is due not later than [REDACTED].

### **CONCLUSIONS OF LAW**

1. Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Connecticut General Statutes § 17b-261 (c) defines an "available asset" for purposes of determining eligibility for the Medicaid program as "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."

Uniform Policy Manual ("UPM") § 4000.01 defines an "available asset" as "cash or any item of value which is actually available to the individual or which the individual has the legal right, authority or power to obtain, or to have applied for, his or her general or medical support".

3. UPM § 4005.05(A) provides that "For every program administered by the Department, there is a definite asset limit".

UPM § 4005.05(B)(1) 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:

- 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 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".

UPM § 4005.05(C) provides that "The Department does not count the assistance unit's equity in an asset toward the asset limit if the asset is either:

1. excluded by state or federal law; or
2. not available to the unit."

UPM § 4005.05(D) provides that:

“1. The Department compares the assistance unit’s equity in counted assets with the program asset limit when determining whether the unit is eligible for benefits.

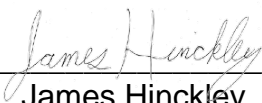
2. An assistance unit is not eligible for benefits under a particular program if the unit’s equity in counted assets exceeds the asset limit for the particular program, unless the assistance unit is categorically eligible for the program and the asset limit requirement does not apply (cross reference: 2500 Categorical Eligibility Requirements).”

UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1600.00.

**The Department was correct when it denied the Appellant’s Medicaid application for the months of [REDACTED], inclusive, for the reason that her assets exceeded the \$1,600.00 asset limit in each month. The balance in the Appellant’s two retirement accounts as of [REDACTED], the date of her death, was \$4,358.88, and the accounts held similar balances that well exceeded the \$1,600.00 asset limit in all of the preceding months of her application. Whether the Appellant or her Son had any knowledge or memory of the accounts, the account balances were still countable because they met the legal definition of available assets in the Medicaid program. They existed, and the Appellant had the legal right, authority or power to obtain them.**

**DECISION**

The Appellant’s appeal is **DENIED**.

  
\_\_\_\_\_  
James Hinckley  
Hearing Officer

cc: Peter Bucknall  
Karen Main  
[REDACTED], Esq.  
Kimberly DiVirgilio

## **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 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, 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 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.