

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 # 128631

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 Action (“NOA”) informing her that the Department placed a lien against home property located at ██████████, ██████████ (“home property”) for repayment of Medicaid benefits while residing in a long term care facility.

On ██████████ 2018, the Appellant requested an administrative hearing to challenge the validity of the lien filed by the Department to secure reimbursement of Medicaid benefits.

On ██████████ 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“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 by telephone.

The following individuals participated by telephone at the administrative hearing:

██████████, Appellant
██████████, Social Worker, ██████████, Witness
for the Appellant
Sayaka Miyakoshi, 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 the Appellant's home property for repayment of Medicaid benefits under the long term care program was correct.

FINDINGS OF FACT

1. The Appellant owns her home located at [REDACTED] [REDACTED] ("home property") where she resided for over 15 years prior to her admission to [REDACTED] ("nursing facility"), a nursing facility, on [REDACTED] 2017. (Hearing Record)
2. The Appellant's admitting diagnosis was [REDACTED]. The Appellant has [REDACTED]. The Appellant uses a wheelchair and wears leg braces. (Appellant's Testimony and Social Worker's Testimony)
3. The nursing facility provided the Appellant with [REDACTED] services and currently provides occupational therapy and physical therapy to the Appellant. (Social Worker's Testimony)
4. The Appellant is a recipient of Medicaid under the long term care program. (Department Representative's Testimony)
5. Ascend is the Department of Social Service's contractor for reviewing nursing home level of care requests for authorization of Medicaid payment. (Department Representative's Testimony)
6. Upon admission to the nursing facility, Ascend authorized a short term 90 day stay under Medicaid for the Appellant. (Department Representative's Testimony)
7. On [REDACTED] 2018, Ascend authorized long term care at the nursing facility for the Appellant under Medicaid. (Department Representative's Testimony and Hearing Summary)
8. Effective [REDACTED] 2018, the Department transferred the Appellant's Medicaid coverage under a waiver program which provided home and community based services to the Appellant while residing in her home to Medicaid L01 Long Term Care Program because the Appellant resides in a nursing facility. (Department Representative's Program)
9. The Community Options division of the Department which administers home care services for Medicaid recipients terminated the Appellant's

home care services effective [REDACTED] 2018 due to her placement in a nursing facility. (Department's Representative's Testimony and Hearing Summary)

10. After reviewing the Appellant's continued residence at the nursing facility, Ascend's long-term care approval for placement in a nursing facility, and Community Options termination of home care services, the Department determined the Appellant was not expected to return home. (Department Representative's Testimony)
11. On [REDACTED] 2018, the Department issued the Appellant a Notice to Inform Medicaid Recipients of a Lien to the Appellant. The notice stated that because you are residing in a long-term care facility and not expected to return home, the Department plans to place a lien against your home property. (Exhibit A: Notice of Lien, Department Representative's Testimony and Hearing Summary)
12. On [REDACTED] 2018, the Appellant requested an administrative hearing to challenge the validity of the lien filed by the Department to secure reimbursement of Medicaid benefits. (Hearing Record)
13. On [REDACTED], 2018, the Department recorded a lien against the home property after the Department determined the Appellant was not expected to return home. (Exhibit B: Case Notes and Department Representative's Testimony)
14. On [REDACTED] 2018, the Department released the lien against the home property because the Appellant requested an administrative hearing. (Exhibit B: Case Notes)
15. On [REDACTED] 2018, the hearing officer reopened the hearing record upon receipt of additional evidence from the Department which included the date the Department recorded the lien and the date the Department released the lien and issued a letter of continuance to the Appellant. (Exhibit C: Letter of Continuance)
16. On [REDACTED] 2018, the hearing record closed. (Exhibit C: Letter of Continuance)
17. 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 requested an administrative hearing on [REDACTED] [REDACTED] 2018. Therefore, this decision is due not later than [REDACTED] [REDACTED] 2018.

CONCLUSIONS OF LAW

1. The 2018 Supplement to the Connecticut General Statutes § 17b-2(a)(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. Title 42 of the Code of Federal Regulations (“CFR”) § 433.36(a) provides that this section implements sections 1902(a)(18) and 1917(a) and (b) of the Act, which describe the conditions under which an agency may impose a lien against a beneficiary's property, and when an agency may make an adjustment or recover funds in satisfaction of the claim against the individual's estate or real property.
3. Title 42 of the CFR § 433.36(b) defines *property* for the purposes of this section includes the homestead and all other personal and real property in which the beneficiary has a legal interest.
4. Title 42 of the CFR § 433.36(g)(2) provides that except as provided in paragraph (g)(3) of this section, the agency may place a lien against the real property of an individual at any age before his or her death because of Medicaid claims paid or to be paid for that individual when-
 - i. An individual is an inpatient of a medical institution and must, as a condition of receiving services in the institution under the State plan, apply his or her income to the cost of care as provided in §§435.725, 435.832 and 436.832; and
 - ii. The agency determines that he or she cannot reasonably be expected to be discharged and return home. The agency must notify the individual of its intention to make that determination and provide an opportunity for a hearing in accordance with State established procedures before the determination is made. The notice to an individual must include an explanation of liens and the effect on an individual's ownership of property.
5. 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. [Conn. Gen. Stats. § 17b-93(a)]

6. Uniform Policy Manual (“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.

UPM § 7500.01 defines *lien* as a legal claim against property as security for a debt.

7. UPM § 7510.15(C) provides that the Department determines whether the individual can be expected to be discharged from the long-term care facility to return home based on the following:
 1. Diagnosis of the individual’s medical condition as documented by the long-term care facility’s authorizing physician; and
 2. The physician’s prognosis for the individual’s recovery; and
 3. Availability of private care which the individual could receive at home as an alternative to institutionalization; and
 4. Statement from the individual, if he or she is competent, regarding the intent to return home; and
 5. Financial ability of the individual to maintain home.

UPM § 7500.01 defines *long-term care facility* as a skilled nursing facility, intermediate care facility, or other medical institution, where the applicant is required, as a condition of receiving services in such institution under the state medical assistance plan, to spend for costs of medical care all but a minimal amount of any existing income for personal needs.

8. The Department correctly determined the Appellant not expected to be discharged from the nursing facility to return home.
9. The Department correctly placed a lien against the home property.

DISCUSSION

Testimony provided by the Appellant and the social worker at the administrative hearing suggested the Appellant would be discharged home with supportive services within the next couple of weeks. Should the nursing facility discharge the Appellant home, the Department can release the lien as outlined under Department policy UPM § 7510.15(D) which states the Department removes a lien placed against real property described in 7510.15B if the individual is discharged from the long-term care facility and returns home, regardless of the length of the institutionalization.

DECISION

The Appellant's appeal is DENIED.



Lisa A. Nyren
Fair Hearing Officer

CC: Patricia Ostroski, DSS RO #52
Sayaka Miyakoshi, DSS RO #11

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.