

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

██████████  
██████████

**NOTICE OF DECISION**

**PARTY**

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

**PROCEDURAL BACKGROUND**

On ██████████ 2017, ██████████ (the "Appellant") requested an administrative hearing to contest the Department of Social Service's (the "Department") denial of the Medicaid Home and Community Based Services ("W01") program due to excess assets.

On ██████████ 2017, 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 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:

██████████ Appellant's Spouse  
Gary Sardo, Department's Representative  
Carla Hardy, Hearing Officer

The hearing was held open until [REDACTED], 2018 in order to give the Department time to submit additional evidence. The Department did not submit any evidence.

The hearing was reopened in order to request additional evidence from the Department. The Department did not submit any evidence. The hearing record closed on [REDACTED] 2018.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department correctly denied the Appellant's Medicaid Home and Community Based Services program ("W01").

The issue regarding the denial of the MSP-Qualified Medicare Beneficiary program will be addressed in another fair hearing decision.

### **FINDINGS OF FACT**

1. The Appellant was admitted to the [REDACTED] ("the facility") in [REDACTED] 2015. (Spouse's Testimony)
2. The Appellant applied for the W01 approximately six months ago. (Spouse's Testimony)
3. The Appellant is married to [REDACTED]. (Hearing Record)
4. The spouse expects that the Appellant to be discharged to their home in the near future. (Spouse's Testimony)
5. The Appellant was granted Medicaid Long Term Care effective [REDACTED] 2017 on [REDACTED], 2018. (Exhibit 1: Eligibility Determination Results; Hearing Summary)
6. The Department did not provide evidence showing when the Appellant applied for the W01, when it was denied, and what assets were used in the excess assets determination. (Hearing Record)
7. The Appellant submitted a Transfer of Asset notice from the Department and a letter from the facility which was not forwarded to this Hearing Officer. (Hearing Record)
8. The Department could not explain why the W01 was denied. (Hearing Record)
9. The Appellant's W01 was denied for excess assets. The date of the denial is not known. (Hearing Record)

### **CONCLUSIONS OF LAW**

1. Section 17b-260 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Uniform Policy Manual (“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: available to the unit; or deemed available to the assistance unit.
3. UPM § 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit’s eligibility for benefits.
4. Connecticut General Statutes 17b-261(c) provides 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. If the terms of a trust provide for the support of an applicant, the refusal of a trustee to make a distribution from the trust does not render the trust an unavailable asset. Notwithstanding the provisions of this subsection, the availability of funds in a trust or similar instrument funded in whole or in part by the applicant or the applicant’s spouse shall be determined pursuant to the Omnibus Budget Reconciliation Act of 1993, 42USC 1396p.
5. 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.
6. 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.
7. UPM § 4005.10 (A) (2) (a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.
8. UPM § 4005.15 provides that at the time of application, the assistance unit is ineligible for assistance until the first day it reduces its equity in counted assets to within the particular program asset limit.
9. The Department did not provide any evidence regarding the Appellant’s assets and the values held by those assets.
10. The Department did not provide enough information to make a determination regarding the Appellant’s eligibility.

### **DISCUSSION**

The Department's hearing summary and evidence shows that the Long Term Care program was granted effective [REDACTED] 2017. However, there was no evidence provided as to when they received the W01 application, why it was denied and when it was denied. The record was left open in order to give the Department time to submit that information and reopened to give the Department additional time. The Department failed to supply any additional information. This Hearing Officer was unable to make a determination regarding the Appellant's eligibility.

### **DECISION**

The Appellant's appeal is **REMANDED** to the Department for further action.

### **ORDER**

1. The Department shall rescreen the Appellant's W01 Medicaid effective the date of application and continue to process for ongoing eligibility.
2. Compliance with this order shall be forwarded to the undersigned no later than [REDACTED] 2018.

  
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Carla Hardy  
Hearing Officer

Pc: Tyler Nardine, DSS, Norwich  
Gary Sardo, DSS, Norwich

### **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.