

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

██████████, 2019  
Signature confirmation

Case: ██████████  
Client: ██████████  
Request: 129579

**NOTICE OF DECISION**

**PARTY**

██  
██  
██  
██

**PROCEDURAL BACKGROUND**

On ██████████, 2018, the Department of Social Services (the “Department”) issued a *Notice of Approval for Long-Term Care Medicaid* and a *Notice of Action* to ██████████ (the “Appellant”) granting her HUSKY-C Medicaid for long-term care services effective ██████████ 2018.

On ██████████ 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received by fax an administrative hearing request contesting the Department’s determination of the effective date of Medicaid long-term care coverage. The request petitioned for an ██████████ 2017 effective date.

On ██████████ 2018, the OLCRAH scheduled the Appellant’s administrative hearing for ██████████ 2019. The OLCRAH granted ██████████, the Appellant’s conservator, multiple postponements to the administrative hearing.

On ██████████ 2019, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held this administrative hearing. The following individuals attended the administrative hearing:

- ██ Appellant’s conservator
- ██, Appellant’s counsel
- ██, Appellant’s witness
- ██, Appellant’s witness
- ██, Appellant’s observer (minor)
- Angela Querette, Department’s representative
- Trish Gethers, Department’s observer

Noel Lord, Department's observer  
Eva Tar, Hearing Officer

At the Appellant's conservator's request, the close of the hearing record for the submission of evidence was extended through [REDACTED] 2019, with written comment to be submitted by [REDACTED] 2019. On [REDACTED] 2019, the record closed.

### **STATEMENT OF ISSUE**

The issue to be decided is whether the Department correctly determined the effective date of the Appellant's Medicaid long-term care coverage to be [REDACTED] 2018. The Appellant seeks Medicaid long-term care coverage to begin effective [REDACTED] 2017.

### **FINDINGS OF FACT**

1. On [REDACTED] 2007, the Appellant purchased real property located at [REDACTED] [REDACTED] [REDACTED] [REDACTED] the "[REDACTED] property") for \$42,000.00. (Department's Exhibit 12)
2. On [REDACTED] 2016, a Connecticut Probate Court appointed [REDACTED] (the "conservator") as the Appellant's conservator of estate. (Appellant's Exhibit M: [REDACTED] 19 email)
3. On [REDACTED], 2016, a certified residential appraiser appraised the value of the [REDACTED] property to equal \$18,000.00 as of [REDACTED] 2016. (Department's Exhibit 12)
4. The Department does not dispute the accuracy of the certified residential appraiser's determination of the appraised value of the [REDACTED] property. (Department's representative's testimony)
5. As of [REDACTED] 2016, the Appellant owed \$26,676.06 on the principal of a mortgage held on the [REDACTED] property. (Appellant's Exhibit M)
6. On or before [REDACTED] 2017, the Appellant became a resident of [REDACTED], a skilled nursing facility, in [REDACTED] Connecticut. (Department's Exhibit 9)
7. The Appellant's conservator hired [REDACTED] to facilitate the Appellant's Medicaid long-term care application. (Appellant's conservator's testimony)(Department's Exhibit 1)
8. [REDACTED] listed the [REDACTED] property for sale in [REDACTED] 2017, [REDACTED] 2017, [REDACTED] 2017, and from [REDACTED], 2018 forward. (Department's Exhibit 13)
9. On [REDACTED] 2017, the Department received the Appellant's application for Medicaid coverage for her care in a facility. (Department's Exhibit 1)

10. On the [REDACTED] 2017 Medicaid application, the Appellant reported ownership of the following assets: a [REDACTED] checking account, an [REDACTED] account, a [REDACTED], and the [REDACTED] property. (Department's Exhibit 1)
11. As of [REDACTED], 2018, the outstanding lien owed on the [REDACTED] property equaled \$30,270.62. (Appellant's Exhibit E)
12. On [REDACTED] 2018, [REDACTED] emailed verification to the Department's representative that the [REDACTED] property had a mortgage balance of \$26,676.06 as of [REDACTED], 2016. (Appellant's Exhibit M)
13. The [REDACTED] 2018 [REDACTED] email stated that the Appellant's family had "walked away from the mortgage." (Appellant's Exhibit M)
14. The Department did not grant the Appellant Medicaid long-term care coverage for the months in which the [REDACTED] property had not been listed for sale. (Department's representative's testimony)
15. On [REDACTED], 2018, the Department granted the Appellant Medicaid long-term care coverage effective [REDACTED] 2018. (Department's Exhibit 8)
16. The Department did not evaluate the Appellant's eligibility for Medicaid long-term care coverage for the three retroactive months immediately prior to the Appellant's [REDACTED], 2017 Medicaid application: i.e., [REDACTED] 2017, [REDACTED] 2017, and [REDACTED] 2017. (Department's representative's testimony)
17. The hearing record lacks specificity as to the value of the Appellant's assets (unrelated to the [REDACTED] property) in each month in the period from [REDACTED] 2017 through [REDACTED], 2018.
18. On [REDACTED] 2018, the [REDACTED] property sold as a foreclosed property at a sheriff's sale. (Appellant's Exhibit E)
19. The hearing record closed for the submission of evidence on [REDACTED] 2019, with the Department and the Appellant being given the opportunity to submit written comment through [REDACTED] 2019. The Appellant's conservator and the Department's representative agreed that statutory timeliness would be met with the issuance of this final decision within 90 days from the close of the hearing record.<sup>1</sup> This final decision was due by [REDACTED]; this final decision is timely.

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes in part designates the Department of Social Services as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

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<sup>1</sup> Conn. Gen. Stat. § 4-180 (a).

“The Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department.” Conn. Gen. Stat. §17b-261b (a).

2. “Medical assistance shall be provided for any otherwise eligible person whose income, including any available support from legally liable relatives and the income of the person's spouse or dependent child, is not more than one hundred forty-three per cent, ... , of the benefit amount paid to a person with no income under the temporary family assistance program in the appropriate region of residence and if such person is an institutionalized individual as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3), and has not made an assignment or transfer or other disposition of property for less than fair market value for the purpose of establishing eligibility for benefits or assistance under this section. Any such disposition shall be treated in accordance with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). Any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, person authorized to make such disposition pursuant to a power of attorney or other person so authorized by law shall be attributed to such applicant, recipient or spouse....” Conn. Gen. Stat. § 17b-261 (a).
3. “...The commissioner shall grant aid only if he finds the applicant eligible therefor, in which case he shall grant aid in such amount, determined in accordance with levels of payments established by the commissioner.... The commissioner, ... , shall in determining need, take into consideration any available income and resources of the individual claiming assistance....” Conn. Gen. Stat. § 17b-80 (a).

“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....” Conn. Gen. Stat. § 17b-261 (c).

“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.” Uniform Policy Manual (“UPM”) § 4005.05 (B)(2).

**The Appellant’s ██████████ property was an “available asset,” as “available asset” is defined at Section 17b-261 (c) of the Connecticut General Statutes and Section 4005.05 (B)(2) of the Department’s Uniform Policy Manual.**

4. Section 4000.01 of the Uniform Policy Manual (“UPM”) provides definitions with respect to the treatment of assets as it relates to the Medicaid program. This section provides the following definitions:
  - “Counted Asset. A counted asset is an asset which is not excluded and either available or deemed available to the assistance unit.
  - “Equity Value. Equity value is the fair market value of an asset minus encumbrances.
  - “Fair Market Value. Fair market value is the amount at which an asset can be sold on the open market in the geographic area involved at the time of the sale as a result of

reasonable, bona fide efforts to gain the highest possible price in an arm's-length transaction.

"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)(1).

"The assistance unit must verify the following for the Department to evaluate each asset held by the assistance unit. The list is not necessarily all-inclusive. ... 3. the amount of equity the assistance unit has in the asset." UPM § 4099.30 (A)(3).

"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 § 4005.05 (D)(2).

With respect to the Medicaid program associated with the Aged, Blind and Disabled, the asset limit is \$1,600.00 for a needs group of one. UPM § 4005.10 (2)(a).

**As one of the conditions of eligibility to participate in the Medicaid program, the Appellant had to verify that her equity in counted assets equaled \$1,600.00 or less in each service month for which she was seeking coverage.**

5. "Non-home property which would render the assistance unit ineligible is excluded for as long as the assistance unit is making a bona fide effort to sell the property and: 1. Agrees in writing to dispose of the property; and 2. Immediately lists the property for sale; and 3. Does not refuse any offer which approximates fair market value; and 4. In AABD, grants the Department a security mortgage on the property pending its sale." UPM § 4020.10 (J).

"The exclusion period begins with the first month in which all of the following conditions are met: (1) the assistance unit is otherwise eligible for assistance; (2) the assistance unit owns the property; (3) the property is available to the assistance unit; (4) the assistance unit is making a bona fide effort to sell the property." UPM § 4030.65 (D)(2)(b).

**Section 4020.10 (J) of the Uniform Policy Manual is used to determine whether a Medicaid applicant's or recipient's equity in the non-home property is a "counted asset" or an "excluded asset."**

**In all service months in which a Medicaid applicant's non-home real property is not an excluded asset, the equity of that non-home real property is counted toward the Medicaid program's asset limits.**

**The Department erred when it mandated that the Appellant must list the [REDACTED] property for sale as a technical requirement of the Medicaid program in each month that the Appellant was seeking Medicaid coverage.**

**DECISION**

The issue is REMANDED to the Department for further action.

**ORDER**

1. The Department will reopen the Appellant's [REDACTED] 2017 Medicaid application. In addition to evaluating the Appellant's Medicaid eligibility from [REDACTED] 2017 forward, the Department will evaluate the Appellant's Medicaid eligibility for [REDACTED] 2017, [REDACTED] 2017 and [REDACTED] 2017.
  - For each month in which the Appellant is seeking Medicaid long-term care coverage, the Department will review verify the value of the Appellant's other counted assets to determine whether the Appellant's assets were within the Medicaid asset limits.
  - For each month in which the [REDACTED] property was listed for sale, the Department will treat the real property as an excluded asset.
  - For each month in which the [REDACTED] property was not listed for sale, the Department will use "\$0.00" to represent the Appellant's equity in that property.
2. Within 14 calendar days of the date of this decision, or [REDACTED] 2019, documentation of compliance with this order is due to the undersigned.

*Eva Tar - electronic signature*  
Eva Tar  
Hearing Officer

Cc: [REDACTED]  
Angela Querette, DSS-Bridgeport  
Noel Lord, DSS-Stamford  
Fred Presnick, DSS-Bridgeport  
Tim Latifi, DSS-Bridgeport  
Yecenia Acosta, DSS-Bridgeport, Stamford

### **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.