

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

██████████ 2019
Signature Confirmation

██████████
Hearing ID# 129635

NOTICE OF DECISION

PARTY

██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (the "Department") sent ██████████ (the "Applicant") a Notice of Action ("NOA") granting Long Term Care medical assistance under the Medicaid program ██████████ 2018.

On ██████████ 2018, the Applicant's Attorney, ██████████, requested an administrative hearing to contest the Department's decision.

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

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

██████████, Applicant's Spouse
██████████, Attorney, Representing Applicant and Community Spouse
██████████, Legal Assistant for ██████████
Ryan Barganier, Department's Representative (Observer)
Rutheven Williams, Department Representative, (via telephone)
Shelley Starr, Hearing Officer

The Applicant, ██████████ was not present at the hearing due to health reasons.

The hearing record was held open for the submission of additional evidence from the Department and for time for the Applicant's Representative to review the evidence and respond in writing. A response was received from the Representative. On [REDACTED], 2018, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly granted the Applicant's Medicaid for Long Term Care assistance [REDACTED], 2018.

FINDINGS OF FACT

1. On [REDACTED] 2018, the Applicant was admitted to [REDACTED], a skilled nursing facility ("the facility") located in [REDACTED]. (Attorney's Testimony; Hearing Record)
2. The Applicant is [REDACTED] [DOB [REDACTED], [REDACTED] and has a primary medical diagnosis of Amyotrophic Lateral Sclerosis ("ALS"). (Attorney's Testimony)
3. On [REDACTED] 2018, the Applicant's Spouse with the help of his Attorney, submitted an application for the Long Term Care Facility Medicaid program. (Attorney's Testimony; Hearing Record)
4. On [REDACTED] 2018, the Department reviewed the application and sent a W-1348 LTC Verification We Need request for verification needed for the pending application. The form indicated "There is no eligibility for Title 19 Long Term Care benefits in any month in which counted assets exceed \$92,924.81. You must prove that your total assets are below \$92,924.81 and also show how your funds are spent to reduce your assets below the allowable limit. Please provide copies of bills, receipts or cancelled checks that show how your reduced assets below \$92,924.81. The information was due by [REDACTED] 2018. (Exhibit 1: W-1348LTC dated [REDACTED] 2018, Hearing Summary, Attorney Testimony)
5. The Applicant's Attorney did not understand the Department's spousal assessment and questioned the calculation of assets via various methods, while continuing to provide information requested by the Department on the LTC Verification We Need requests for information. The hearing record reflects that the Applicant's Attorney made inquiries by methods including fax, email, written correspondence and telephone. The Attorney made eight (8) calls between [REDACTED] 2018 through [REDACTED] 2018 to the Department before receiving a worksheet demonstrating the Department's assessment. (Applicant's Attorney; Appellant's Exhibit's B; Department's Testimony; Hearing Record)

6. The Department issued eight (8) W-1348 LTC Verification We Need requests for information for the period [REDACTED] 2018 through [REDACTED] 2018. Requests one through five issued between [REDACTED], 2018 and [REDACTED] 2018 listed an erroneous asset calculation of \$92,924.81. (Exhibit 1: Verification We Need documents 1 - 5; Department Testimony; Applicant's Attorney; Hearing Record)
7. The Department did not respond to the Attorney's inquiries regarding the assessment and calculation of assets until [REDACTED] 2018, and did not provide any formal notification of the assessment such as the W-1SA or W-1SAN documents. (Hearing Record; Department's Testimony; Attorney's Testimony)
8. On [REDACTED] 2018 and [REDACTED] 2018, the Applicant's Attorney contacted the Department's Supervisor and continued to question the spousal assessment figures and the spend-down amount. (Appellant's Exhibit B: Attorney Testimony; Department Testimony; Hearing Record)
9. On [REDACTED] 2018, in an effort to explain the Department's calculation of assets, the Department emailed the Applicant's Attorney a copy of the Department's spousal assessment worksheet reflecting the assets used in the calculation. The worksheet reflected that an equity line of credit of \$129,813.85 was incorrectly counted as part of the total countable assets recorded as \$184,486.97. (Appellant's Exhibit B #23; Hearing Record)
10. On [REDACTED], 2018, the Department sent the Applicant's Attorney a W-1348 Verification We Need form requesting asset information. The notice stated "There is no eligibility for Title 19 Long Term Care benefits in any month in which counted assets exceed \$92,924.81. You must prove that your total assets are below \$92,924.81 and also how your funds are spent to reduce your assets below the allowable limit. Please provide copies of bills, receipts or cancelled checks that show how you reduced assets to or below \$28,017.89. This is using the [REDACTED] 18 date of institutionalization." The information was due by [REDACTED] 2018. (Applicant's Exhibit B # 26; Hearing Record)
11. On [REDACTED] 2018, the Department sent the Applicant's Attorney a revised W-1348 LTC Verification We Need requesting asset information. The notice stated " There is no eligibility for Title 19 Long Term Care benefits in any month in which counted assets exceed \$28,017.89. You must prove that your total assets are below \$28,017.89 and also show how your funds are spent to reduce your assets below the allowable limit. Please provide copies of bills, receipts or cancelled checks that show how you reduced assets to or below \$28,017,89. This is using the

██████ 18 date of institutionalization.” The information was due by ██████ 2018. (Hearing Record; Applicant’s Exhibit B #26 Revised W-1348.)

12. On ██████, 2018, ██████ 2018, ██████ 2018, ██████ 2018, ██████, 2018, ██████ 2018, and ██████, 2018, the Applicant’s Attorney sent emails to the Department Representative regarding the application and review for approval. (Applicant’s Exhibit 27, 28, & 29; Hearing Record; Letter from ██████ dated ██████ 2018.)
13. On ██████ 2018, the Applicant’s Attorney provided to the Department proof that the \$28,017.89 was spent down in ██████ 2018, and that the spenddown had been met. (Applicant’s Exhibit B # 31; Hearing Record; Attorney’s Testimony)
14. On ██████ 2018, the Department denied the Applicant’s application for the months of ██████ through ██████ 2018 and granted long term care facility Medicaid ██████ 2018. (Exhibit 8: Notice of Action dated ██████, 2018; Department’s Testimony; Attorney’s Testimony; Hearing Record)
15. The Department provided information to the Applicant that was inaccurate and did not issue a complete notification of the spousal assessment with the eligibility requirements of the program for which was applied. (Hearing Record; Department’s Testimony)
16. The Department and the Applicant’s Attorney are in agreement with the Applicant’s ██████ 2018, date of institutionalization (“DOI”) and the corrected calculation of assets with the revised notification issued by the Department on ██████ 2018, via W-1348 LTC Verification We Need form that states “There is no eligibility for Title 19 Long Term Care benefits in any month in which counted assets exceed \$28,017.89. The corrected calculation was based on total countable assets of \$52,835.77 with ½ share of \$26,417.89 (spousal share);\$1,600.00 (Applicant Limit). Hearing Record; Applicant’s Exhibit 26: Department’s Testimony; Attorney’s Testimony)
17. The Applicant’s Attorney is claiming equitable estoppel; that the Department should be precluded from denying benefits from ██████ 2018 to ██████, 2018, because if it was not for the delays, incorrect data, and incorrect conclusions by the Department during the application process, the Applicant could have, and would have, met the criteria required to be eligible for long term care assistance substantially sooner and is seeking an ██████ 2018, effective date. (Hearing Record; Attorney’s Testimony; Email ██████ dated ██████, 2018)

18. The Department Representative agrees that the effective date should be modified to [REDACTED] 2018, because the fault for the delay is on the State and that the Applicant's Attorney submitted the verification timely after the notification of the correct spend down. (Department's Testimony; Hearing Record)
19. The Applicant has demonstrated cooperation throughout the application process and the Applicant and her spouse would have been severely financially harmed if they had complied with the reduction of the incorrect spenddown requirements instructed by the Department on the Verification We Need forms issued between [REDACTED], 2018 to [REDACTED], 2018. The Applicant currently owes approximately \$74,000.00 to [REDACTED] for cost of care prior to the [REDACTED], 2018, Medicaid approval date. (Exhibit 1: W-1348 Verification We Need forms, Department's Testimony; Attorney's Testimony; Hearing Record)
20. The Department's assessment was confusing and did not include notification of the results of the assessment; the documents used for the assessment; the amount of the spousal share; and the maximum amount of assets which may be retained by the spouses at the time of the results of the assessment. The W-1SA and W-1SAN forms were not issued to either the Applicant or her Community Spouse. (Department's Testimony; Attorney's Testimony; Hearing Record)
21. 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 Applicant requested an administrative hearing on [REDACTED] 2018. Therefore, this decision is due not later than [REDACTED] 2019. However, the close of the hearing record was further extended to [REDACTED] [REDACTED] 2018, at the Representative's request to allow the opportunity for review and comment. Because of the [REDACTED] day delay in the close of the hearing, this final decision is not due until [REDACTED], 2019.

CONCLUSIONS OF LAW

1. Connecticut General Statutes §17b-2 provides in part that the Commissioner is authorized to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual ("UPM") § 1010.05(A)(1) provides that the assistance unit must supply the Department in an accurate and timely manner as defined by the

Department, all pertinent information and verification which the Department requires to determine eligibility and calculate the amount of benefits

UPM § 1015.10(A) provides that the Department must inform the assistance unit regarding the eligibility requirements of the programs administered by the Department, and regarding the unit's rights and responsibilities.

UPM § 1015.10 (C) provides the Department must send the assistance unit a notice regarding the Department's determination of the unit's initial eligibility, and subject to conditions described in Section 1570, adequate notice before action to change the unit's eligibility status or the amount of benefits.

The Department did not inform the Applicant and her Community Spouse of the eligibility requirements for the Long Term Care Medicaid program.

The Department did not properly notify the results of the spousal assessment with instruction of spend down during the period of [REDACTED] 2018 through [REDACTED], 2018.

3. UPM § 1507.05 (C) (1) provides for the Assessment Process and states that the Department provides a notification of the result of the assessment to each spouse.

UPM §1507.05 (C)(2) provides the notification contains the following information:

- (a.) the result of the assessment; and
- (b.) the documents used for the assessment; and
- (c.) the amount of the spousal share; and
- (d.) the maximum amount of assets which may be retained by the spouses at the time of the results of the assessment which would not adversely affect eligibility; and
- (e.) the Department's determination of the assistance unit's current eligibility status in regard to assets; and
- (f) the right of each spouse to request a Fair Hearing (Cross Reference 1570)

The Department did not provide proper notification of the results of the assessment throughout the application process.

The Department did not provide the results of the assessment; the documents used for the assessment, the amount of the spousal share and the amount of assets which may be retained.

4. UPM § 1505.35(D)(2) provides that the Department determines eligibility within the standard of promptness for the AFDC, AABD, and MA programs except when verification needed to establish eligibility is delayed and one of the following is true: the client has good cause for not submitting verification by the deadline, or the client has been granted a 10 day extension to submit verification which has not elapsed.

The Applicant provided information by the designated due dates to comply with the Department's requests for information, while continuing to inquire via email, phone inquiries, faxes and written requests for assessment information.

The Applicant did not provide verification of the reduction of assets because the Department did provide notification or respond to the requests for information regarding the spenddown until [REDACTED] 2018.

5. UPM § 1599.10 (A) provides for Good Cause Circumstances and states that the Department requires verification of good cause claims by the assistance unit which has failed to comply with the time limits in the eligibility process if:
 1. the circumstances are questionable; and
 2. taking good cause into consideration would affect eligibility or benefit level for a current or retroactive period of time, or otherwise alter the Department's actions.

The Applicant and her Community Spouse did not initially reduce assets within the time limit provided by the Department because they were not properly informed of the Department's assessment and did not understand how the computation of assets and how spend down was determined.

The Applicant and her Community Spouse demonstrated good cause for delaying the reduction of assets because they would have been severely financially harmed if they had complied with the reduction of assets prior to obtaining the results and documentation used by the Department in their assessment; which was not presented to the Applicant until [REDACTED]

6. Blacks Law Dictionary defines Estoppel and states that "estoppel" means a party is prevented by his own acts from claiming a right to detriment of other party who was entitled to reply on such conduct and has acted accordingly.

In Kimberly-Clark Corporation V. Dubno, 204 Conn.,148 (1987), the Connecticut Supreme Court stated that, “[u]nder our well-established law, any claim of estoppel is predicated on proof of two essential elements; the party against whom estoppel is claimed must do or say something calculated or intended to induce another party to believe that certain facts exist and to act on that belief; and the other party must change its position in reliance on those facts, thereby incurring some injury.

The court also noted that estoppel against a public agency is limited, and stated further that when estoppel may be invoked against the state: “It is the burden of the person claiming estoppel to show that he exercised due diligence to ascertain the truth and that he not only lacked knowledge of the true state of things but had no convenient means of acquiring that knowledge.”Id.

The Applicant and her Community Spouse has established a valid claim for equitable estoppel. The Department did not properly notify the Applicant and her Community Spouse of the results of the assessment and provided misinformation that would have caused severe financial hardship if they had acted as instructed by the Department between the months of [REDACTED] through [REDACTED]. In [REDACTED] of 2018, the assessment results were communicated based on the [REDACTED] 2018 assessment and appropriate action was taken. The testimony and evidence demonstrates that the Applicant and her Community Spouse demonstrated due diligence to ascertain the Department’s assessment and continued to be diligent by cooperating with the Department’s requests for information.

DECISION

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

ORDER

1. The Department shall grant the Applicant's effective date as of [REDACTED] 2018.
2. Proof of compliance shall be submitted to the undersigned by providing proof of the [REDACTED] 2018, Medicaid effective date by [REDACTED] 2019.


Shelley Starr
Hearing Officer

Pc: Peter Bucknall, DSS, R.O. #60 Waterbury
Karen Main, DSS, R.O. # 60 Waterbury
Rutheven Williams, DSS, # 20 New Haven

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.