

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

██████████
Request # 129955

NOTICE OF DECISION
PARTY

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PROCEDURAL BACKGROUND

██████████ 2018, the Department of Social Services (the "Department") sent (the "Applicant") and ██████████ (the "Appellant") a notice of action ("NOA") denying benefits to the Applicant under the Medicaid for Long Term Care ("LTC") program.

██████████, 2018, the Appellant requested an administrative hearing to contest the Department's decision to deny such benefits.

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

██████████, 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. The following individuals were present at the hearing:

██████████, the Appellant, wife and power of attorney ("POA") for ██████████, the Applicant

██████████, Appellant's Attorney
Kimberly Divirgilio, Department's Representative via Telephone
Veronica King, Hearing Officer

██████████, 2018, the Appellant's Attorney requested the hearing be reconvened. The undersigned granted the Attorney's request.

██████████, 2018, the OLCRAH issued a notice stating that the hearing would be reconvened on ██████████, 2018. The undersigned hearing officer received additional documents from both parties.

██████████, 2018, the undersigned hearing officer reconvened the # 129955 hearing. The following individuals were present at the reconvened hearing.

██████████, the Appellant, wife and power of attorney ("POA") for ██████████, the Applicant

██████████, Appellant's Attorney

██████████, Applicant's Authorized Representative

Kimberly Divirgilio, Department's Representative via Telephone

Veronica King, Hearing Officer

The hearing record closed on ██████████, 2018.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny the Applicant's application for medical assistance for failing to provide required verifications within specified timeframe was correct.

FINDINGS OF FACT

1. ██████████, 2018, the Department received an online application form for the Applicant. The Application was for Long Term Care/ Home Care Services. (Exhibit T: Application ██████████/18)
2. The Department determined the ██████████/18 online application form was incorrect for the LTC program. (Department's Representative Testimony)
3. The Department determined that the Applicant's date of application for LTC was ██████████, 2018, when the Department received the W1LTC form. (Department's Representative Testimony)
4. ██████████, 2018, the Department sent the Appellant a W1348-LTC We Need Verification From You ("W1348-LTC") form requesting:

1. Complete and return the application form W-1LTC; 2. For [REDACTED] Provide statements from [REDACTED], 2017 to present and provide proof that you have attempt to access & close this account and / or transfer the money from this account to another and had no success; 3. For Santander account # [REDACTED] provide bank verification of closing date; 4. Provide proof of current gross monthly pension amount. The direct deposit alone is not sufficient verification. Provide a pension stub, [REDACTED] or letter from the pension company from [REDACTED] (If unable to get anything other than what we have, provide proof that you have attempt to access this information and had no success); 5. Provide proof of any shelter expenses.

Note: You must provide something new and it must be an item from the requested above list of items or application will be denied.

Please provide the requested information by [REDACTED]. Failure to respond by the 30th day will result in a denial of benefits. The 30th day is [REDACTED]/18.

(Exhibit A: W1348LTC #1 and supporting documents and Exhibit

1:W1348LTC #1, [REDACTED]/18)

5. The Appellant provided [REDACTED]'s bank statement from [REDACTED], 2017- [REDACTED] 0, 2017; and [REDACTED] bank statement from [REDACTED] 2017- [REDACTED], 2017 showing \$0 balance and she wrote, "closed" at the statement. (Exhibit A)
6. [REDACTED], 2018, the Department sent the Appellant a W1348-LTC form requesting:

1. Complete and return the application form W-1LTC DSS requires at least pages 8-11 & 16 and any other part of the application regarding assets: This is the proper form for LTSS to determine eligibility.; 2. For [REDACTED] Bank account # [REDACTED] Provide statements from [REDACTED], 2017 to present, provide proof that you have attempt to access & close this account and / or transfer the money from this account to another and had no success, Note: The verifications provided advise the spouse how to obtain access to this account. Provide proof that the spouse has followed and began these steps as advised to access the above account. Provide a letter from [REDACTED] indicating steps have been taken to obtain Power of Attorney under [REDACTED] from the office of [REDACTED]. PLEASE

NOTE: As advised prior: DSS has exhausted resources and advised on numerous occasions that they cannot help with access to these funds and you have been advised that the burden remains with the client and the spouse and authorized representative to gain access to these funds and remove them from the client's name. To date DSS has not received PROOF that these funds are inaccessible and DSS has not received to date any form of proof that suffice as evidence of attempts to gain access with failure; 3. For Santander account # [REDACTED] provide bank verification of closing date or current statement from [REDACTED] 2017 to present; 4. Provide proof of current gross monthly pension amount. The direct deposit alone is not sufficient verification. Provide a pension stub, 1099 or letter from the pension company from [REDACTED]. If unable to get anything other than what we have, provide proof that you have attempt to access this information and had no success; 5. Provide proof of any shelter expenses.

Note: You must provide something new and it must be an item from the requested above list of items or application will be denied.

Please provide the requested information by [REDACTED]. Failure to respond by the 30th day will result in a denial of benefits. The 30th day is [REDACTED]/18.

(Exhibit B: W1348LTC #2 and supporting documents and Exhibit 2:W1348LTC #2, [REDACTED]/18)

7. [REDACTED], 2018, [REDACTED], 2018, [REDACTED], 2018, [REDACTED], 2018, [REDACTED], 2018, [REDACTED], 2018, [REDACTED], 2018, [REDACTED], 2018, the Department sent the Appellant W1348LTCs requesting specific documents to be provided within specified timeframes. (Exhibit 3: W1348LTC #3, [REDACTED]/18, Exhibit 4: W1348LTC #4, [REDACTED]/18, Exhibit 5: W1348LTC #5, [REDACTED]/18, Exhibit 6: W1348LTC #6, [REDACTED]/18, Exhibit 7: W1348LTC #7, [REDACTED]/18, Exhibit 8: W1348LTC #8, [REDACTED]/18, Exhibit 9: W1348 #9, [REDACTED]/18, Exhibit 10: W1348LTC #10, [REDACTED]/18)
8. Between [REDACTED] 2018, and [REDACTED], 2018, the Appellant provided the following items to the Department:
 - [REDACTED] account bank statements from [REDACTED], 2017-[REDACTED], 2018.
 - Print out of [REDACTED]'s online Banking registration steps.
 - [REDACTED] account statement [REDACTED], 2017-[REDACTED], 2017.
 - Appellant's letter to [REDACTED]. Pension Company dated [REDACTED]/18 requesting verification of pension gross amount and change of the deposits to a different account.

-Appellant's letter to [REDACTED]. Pension Company dated [REDACTED]/18 requesting verification of pension gross amount and change of the deposits to a different account.

-Marriage Certificate.

-CT Durable Power of Attorney.

-Pages 8, 9, 10, 11 and 16 of W1LTC application form.

[REDACTED] Life Insurance check dated [REDACTED]/18.

-Completed [REDACTED]. Court of Protection Deputy's declaration application .

-Signed [REDACTED]. Court of Protection application dated [REDACTED]/18.

-Verification that [REDACTED]. Court of Protection application was send on [REDACTED]/18 and received by the [REDACTED]. Court of Protection.

-Verification of receipt for payment of application fee dated [REDACTED]/18.

-Signed Annex A [REDACTED]. Court of Protection document.

-Verification that Annex A [REDACTED]. Court of Protection document was sent on [REDACTED]/18 and delivered at [REDACTED]. Court of Protection on [REDACTED]/18.

(Exhibit A, Exhibit B, Exhibit C: W1348LTC #3 and supporting documents, Exhibit D: W1348LTC #4 and supporting documents, Exhibit E: W1348 #5 and supporting documents, Exhibit F: W1348LTC #6 and supporting documents, Exhibit G: W1348LTC #7 and supporting documents, Exhibit H: W1348LTC #8 and supporting documents, Exhibit I: W1348LTC #9 and supporting documents, Exhibit J: W1348LTC #10 and supporting documents)

9. [REDACTED] 2018, the Department sent the Appellant a W1348LTC requesting:

1. For [REDACTED] Bank account # [REDACTED] Provide statements from [REDACTED], 2018 to present, provide proof that you have attempt to access & close this account and / or transfer the money from this account to another and had no success. Provide proof that the spouse has followed and began these steps as advised to access the above account. Provide a letter from [REDACTED] indicating steps have been taken to obtain Power of Attorney under [REDACTED] from the office of Public Guardian. NOTE: The verifications provided on [REDACTED].2018 from [REDACTED]; advise the spouse how to obtain access to this account. NOTE: As advise prior: DSS has exhausted resources and advised on numerous occasions that they cannot help with access to these funds and you have been advised that the burden remains with the client and the spouse and authorized representative to gain access to these founds and remove them from the client's name NOTE: To date DSS has not received PROOF that these funds are inaccessible and DSS has not received to date any form of proof that suffice as evidence of attempts to gain access with failure. NOTE: the email recently submitted to DSS does not suffice as evidence to prove the

proper steps are being taken to obtain the excess funds [the email from [REDACTED] daughter does not indicate names or account numbers or have any identifying factors; also it is not the steps advised by [REDACTED] bank to gain access to these funds as advised in the letter dated [REDACTED].2018]; 2. Provide proof of current gross monthly pension amount. The direct deposit alone is not sufficient verification. Provide a pension stub, [REDACTED] or letter from the pension company from [REDACTED] Pension for [REDACTED]. If unable to get anything other than what we have thus far; provide proof that you have attempted to access this information and had no success.

Note: You must provide something new and it must be an item from the requested above list of items or application will be denied.

Please provide the requested information by [REDACTED]/18. Failure to respond by the 30th day will result in a denial of benefits. The 30th day is [REDACTED]/18.

(Exhibit K: W1348LTC #11 and supporting documents and Exhibit

11:W1348LTC #11, [REDACTED]/18)

10. [REDACTED], 2018, the Applicant's Authorized Representative hand delivered the following items to the Department:
 - [REDACTED] 2018 letter from [REDACTED] Bank.
 - Applicant's medical records.
 - Verification that the Applicant's spouse has followed and taken steps as advised to access the [REDACTED] Bank Account [REDACTED] (Fact #6).
 - Verification that the Applicant's spouse has followed and taken steps to obtain Power of Attorney under [REDACTED] from the office of [REDACTED] (Fact #6).
11. [REDACTED], 2018, the Applicant's Authorized Representative provided a letter dated [REDACTED] 18. The Applicant's Authorized Representative requested good cause based on third party delay because as of [REDACTED], 2018 (Fact #6) they were waiting on the [REDACTED] Court of Protection action. (Exhibit K and Hearing Record)
12. [REDACTED], 2018, the Department sent the Applicant and the Applicant's Authorized Representative a NOA denying benefits to the Applicant under the Medicaid for Long Term Care program. The NOA stated that the Applicant is not eligible because he did not return all of the required proofs by the date asked. (Exhibit 21: NOA, [REDACTED]/18)

13. The Department's [REDACTED], 2018, denial was solely based on the Department's position that the Applicant's Representatives did not provide requested verifications within specified timeframe. (Department's Representative Testimony)
14. 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], 2018. This decision, therefore, was due no later than [REDACTED], 2018. However, the hearing held on [REDACTED] 2018, was reconvened on [REDACTED], 2018, at the request of the Appellant's Attorney. The record was closed on [REDACTED] 2018, with agreement of both parties. Because this [REDACTED] day delay resulted from the Appellant's Attorney request, this decision is not due until [REDACTED] 2019. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Uniform Policy Manual ("UPM") § 1505.10 (A) (2) states that the Department may utilize a single uniform application for multiple programs, or separate applications for individual programs.
3. UPM § 1505.10 (B) (3) states that for requesting assistance at minimum, the following information must be presented: a. the full name and address of the applicant; and b. the signature of the applicant, caretaker relative or other individual who is requesting assistance on behalf of the applicant.
4. UPM § 1505.10 (D) (1) provides for date of application and states that for AFDC, AABD and MA applications, except for the Medicaid coverage groups noted below in 1510.10 D.2, the date of application is considered to be the date that a signed application form is received by any office of the Department.
5. UPM § 1505.10 (D) provides for date of application and states in part that the applicant must indicate the programs for which he or she is applying and that the date of application is protected retroactively to the original filing date as long as the applicant informs the Department of the programs for which he or she is applying by the appropriate date noted above in 1510.10 D.5.
6. The Applicant's [REDACTED] 2018, online application presented the Applicant's full name and address, an electronic signature and the program for which he was applying.

7. The Department incorrectly determined the date of application as [REDACTED] 2018.
8. 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.
9. The Department correctly sent the assistance unit's representatives the W1348LTC Verification List Forms requesting information needed to establish eligibility.
10. 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.
11. UPM § 1505.35 (D) (2) provides in part 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.
12. UPM § 1505.40 (B) (4) (a) provides for delays due to good cause and states that the eligibility determination is delayed beyond the AFDC, AABD or MA processing standard if because of unusual circumstances beyond the applicant's control, the application process is incomplete and one of the following conditions exists: (1) eligibility cannot be determined; or (2) determining eligibility without the necessary information would cause the application to be denied.
13. UPM § 1505.40 (B) (4) (b) provides for delay due to good cause and states that if the eligibility determination is delayed, the Department continues to process the application until: (1) the application is complete; or (2) good cause no longer exists.
14. The Appellant provided proof that she has followed and taken the steps as advised to obtain Power of Attorney under [REDACTED] Law from the office of [REDACTED] before the [REDACTED], 2018, due date established by the Department.
15. The Appellant provided verification that as of [REDACTED], 2018, they were waiting on the [REDACTED] [REDACTED] action, third party action.
16. The Department was incorrect when it failed to acknowledge that as [REDACTED], 2018, the Appellant was waiting on third party action to satisfy the Department's requests.

17. The Department was incorrect when it denied the Applicant's [REDACTED], 2018, LTC program application because, regarding the [REDACTED], 2018 LTC application, the Appellant provided verification that good cause exists because of unusual circumstances beyond the applicant's control.

DISCUSSION

It should be noted that while there were prior LTC applications and hearings, this hearing solely deals with the [REDACTED], 2018 LTC application and the subsequent denial.

Both sides made arguments regarding the accessibility of the [REDACTED] Bank account, however the issue to be decided in this decision is whether or not the denial due to failure to provide information is correct. The denial and Notice of Action did not reflect the Department's position on the Applicant's assets.

Counsel for the Appellant argued that a prior fair hearing decision by the Department was disregarded. The Administrative Hearing is not the correct venue to argue the Department noncompliance with previous Hearing Decision. The undersigned does not have jurisdiction on the matter.

Upon review of the facts of the case at the time of the [REDACTED], 2018 request, I conclude that the Department incorrectly denied the [REDACTED], 2018 LTC application for failure to provide verification within specified timeframe as the Appellant provided verification that she took the proper steps to obtain Power of Attorney under [REDACTED] from the office of [REDACTED] before the [REDACTED], 2018, due date established by the Department. Regulations provide for good cause and state that eligibility determination is delayed beyond the processing standard because of unusual circumstances beyond the applicant's control. The Appellant provided proof that as [REDACTED], 2018, she is waiting on third party action to provide the Department with information needed to establish eligibility. In addition, regulations provide that for delay due to good cause the Department continues to process the application until good cause no longer exists.

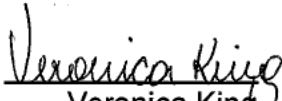
I agree that Department gave the Appellant copious time to act on the proper steps to obtain the necessary documentation to gain access to the [REDACTED] Bank account in question. However, this hearing speaks for the [REDACTED], 2018, application and it the [REDACTED], 2018 denial. The hearing record showed that the Appellant at this time took the appropriate steps and satisfied the Department's W1348LTC requests timely.

DECISION

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

ORDER

1. The Department is to reopen the LTC application to a pending status as [REDACTED], 2018.
2. The Department will continue to process the Applicant's [REDACTED], 2018, LTC application and will consider eligibility using all other applicable regulations.
3. Compliance with this order is due back to the undersigned by [REDACTED], 2019.


Veronica King
Hearing Officer

CC: Musa Mohamud, Judy Williams, Operations Managers
DSS R.O. #10, Hartford

[REDACTED]
Kimberly DiVirgilio, DSS Hearing Liaison, R.O. #60 Waterbury

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.