

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

Client ID # ██████████
Request # 130663

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") granting long term care medical assistance under the Medicaid program effective ██████████ 2018.

On ██████████ 2018, ██████████ ("Conservator") requested an administrative hearing through ██████████ to contest the Department's decision to deny certain months of 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 of the Connecticut General Statutes, inclusive, OLCRAH held an administrative hearing. The following individuals were present at the hearing:

██████████, Appellant's Conservator of the Person and Estate
██████████
Nancy Sciascia, Department's Representative
Shelley Starr, Hearing Officer

The Appellant, [REDACTED], was not present at the hearing due to his institutionalization and health reasons.

The Hearing record remained open for the submission of additional evidence from the Department and for the opportunity for the review and response. The additional evidence was received from the Department and a post hearing brief was received from [REDACTED]. On [REDACTED] 2018, the hearing record closed.

STATEMENT OF THE ISSUE

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

FINDINGS OF FACT

1. On [REDACTED] 2017, the Appellant was admitted to [REDACTED] ("the facility") in [REDACTED] with a primary medical diagnosis of Traumatic Brain Injury. (Appellant's Exhibit 2 (C) Face Sheet; [REDACTED])
2. [REDACTED] of [REDACTED], is the Appellant's [REDACTED] appointed Conservator of the Person and Estate from approximately [REDACTED] 2017 to [REDACTED] 2018. (Appellant's Exhibit 1: Court of Probate Document dated [REDACTED] 2018; Hearing Record)
3. On [REDACTED] 2018, the Department received an application for Long Term Care Medicaid assistance from the Appellant's Conservator, [REDACTED]. The Application listed [REDACTED], [REDACTED] and [REDACTED], Conservator of Person and Estate to receive notices and the disclosure of information. (Hearing Summary; Department's Exhibit 1: W-1 LTC long term care application received [REDACTED], 2018)
4. On [REDACTED] 2018, the Department sent the Conservator and [REDACTED], a W-1348 LTC Verification We Need form requesting Farmington Bank and Webster Bank history from [REDACTED] 2017 to the present. The notice indicated "there is no eligibility for Title 19 for any month in which assets exceed \$1,600.00 ". The information was due by [REDACTED], 2018. (Exhibit 2: W-1348LTC; Hearing Summary)
5. On [REDACTED], 2018, the Appellant's [REDACTED] was closed. (Hearing Summary; Department's Exhibit 4: W-36 document and bank statements)

6. The Department did not receive any information requested on the W1348 LTC Verification We Need form by the designated [REDACTED] 2018, due date. (Hearing Summary; Hearing Record)
7. On [REDACTED] 2018, the Department sent a W-36 Authorization for Disclosure of Property of Applicants or Recipients of State Aid to the [REDACTED] and [REDACTED] Banks for account information. (Hearing Summary; Exhibits 4 & 5: W-36 Authorization for Disclosure; Hearing Record)
8. On [REDACTED], 2018, the Probate Court removed [REDACTED], as Conservator and appointed [REDACTED] as the Successor Conservator of the Person and Estate. (Appellant's Exhibit 2 (B) [REDACTED], 2018 [REDACTED]).
9. On [REDACTED], 2018, the Department reviewed the documents returned by the [REDACTED] and [REDACTED] banks and determined that the Appellant is over the \$1,600.00 asset limit. The Department contacted the [REDACTED] [REDACTED] to discuss assets needing to be reduced. (Exhibit 4 & 5 [REDACTED] r and [REDACTED] account history; Hearing Record)
10. On [REDACTED] 2018, the [REDACTED] sent the Department verification of the appointment of a new Conservator. (Department's Exhibit 8: Case Notes)
11. On [REDACTED] 2018, the Department sent the newly appointed Conservator and the [REDACTED], a W-1348LTC request for verification requesting the [REDACTED] history from [REDACTED], 2018 thru ongoing and the patient trust account history from [REDACTED] 2018 to the present. The form indicated "there is no eligibility for Title 19 for any month in which assets exceed \$1,600.00. (Department's Exhibit 2: W-1348LTC dated [REDACTED], 2018; Exhibit 8: Case Notes)
12. On [REDACTED] 2018, the Appellant's [REDACTED] was closed. (Hearing Summary; Department's Exhibit 5: [REDACTED] letter dated [REDACTED] 2018.)
13. On [REDACTED] 2018, a new checking account [REDACTED] was opened with [REDACTED] Bank. (Hearing Summary; Department's Exhibit 6: [REDACTED] history)
14. The Department sent a total of eight (8) W-1348 LTC requests for verification between [REDACTED] through [REDACTED], 2018. Six (6) of the W-1348 LTC requests for verification were sent between [REDACTED], 2018 through [REDACTED], 2018, to the new Conservator and the [REDACTED]. The W-1348 LTC forms requested bank account verification, resident trust verification and the reduction of assets. It was noted on the forms "there is no eligibility for Title 19

for any month in which assets exceed \$1,600.00.” (Department’s Exhibit 2: W-1348LTC Requests #1,2,3,4,5,6,7 & 8; Department’s Exhibit 8: Case Notes)

15. The newly appointed Conservator, had a good communication with the Department Representative and the [REDACTED]. The Conservator was aware of the \$1,600.00 asset limit and was working as quickly as possible to reduce the Appellant’s assets . (Conservator’s Testimony)
16. On [REDACTED] 2018, the Department determined that the Conservator spent down the Appellant’s funds in [REDACTED] 2018, and he became asset eligible effective [REDACTED] 2018. (Hearing Summary; Department’s Exhibit 8: Case Notes)
17. On [REDACTED] 2018, the Department granted Medicaid for long term care assistance effective [REDACTED] 2018, the first month the Appellant was under the \$1,600.00 asset limit. The Department issued a Notice of Action advising that the Husky C Long Term Care Medicaid Program was denied for the months of [REDACTED] 2018 through [REDACTED] 2018 and was granted effective [REDACTED] 2018. (Hearing Summary; Department’s Exhibit 7: Notice of Action dated [REDACTED] 2018)
18. In [REDACTED] 2018, the Appellant’s countable assets totaled \$ 1,452.66. The resident trust account balance is \$802.81 and the [REDACTED] checking account balance is \$649.85. (Department’s Testimony; Conservator’s Testimony; Hearing Record.)
19. All parties are in agreement that the Appellant’s countable assets from the Appellant’s resident trust and [REDACTED] were reduced below the \$1,600.00 asset limit in the month of [REDACTED]. (Department’s Testimony; Conservator’s Testimony; [REDACTED] Testimony)
20. 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’s Conservator 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], 2018, to allow the opportunity for review and comment. Because of the [REDACTED] day delay in the close of the hearing record, this final decision is due not later later than [REDACTED] 2019.

CONCLUSIONS OF LAW

1. Connecticut General Statutes §17b-2 authorizes the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual (“UPM”) Section 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.
3. UPM § 1015.10 (A) provides the Department must inform the assistance unit regarding the eligibility requirements of the programs administered by the Department, and regarding the units rights and responsibilities.

UPM § 1500.01 provides the definition of Authorized Representative and provides an Authorized Representative is an adult, over the age of eighteen, who has written authorization to act on the behalf of an assistance unit of which he or she is not currently a member, and who would otherwise not be eligible to act without such authorization.

UPM § 1525.05 (G) provides that the appointment of an Authorized Representative does not relieve the assistance unit of any responsibilities. Both the assistance unit and the representative may be held responsible for assistance improperly obtained through action by the authorized representative.

UPM § 1505.15(C)(a) provides in part that the following individuals are qualified to request cash or medical assistance, be interviewed and complete the application process on behalf of others who they represent: (3) a conservator, guardian or other court appointed fiduciary.

UPM 3000.01 provides the definition of Fiduciary Duty and provides that Fiduciary duty is the duty of a person who stands in a special relationship of trust, confidence, or responsibility in his obligation to others.

The Department correctly determined that the Appellant had two appointed Conservators of the Person and Estate during his pending application period and an authorization to disclose information to [REDACTED].

The Department correctly informed the Representatives of the eligibility requirements of the pending Medicaid application.

4. Section 17b-261(c) of the Connecticut General Statutes provides in part 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.

UPM § 3525.05 (A)(1) provides specific requirements of the application process for cooperation related to eligibility processes: Applicants are responsible for cooperating with the Department in completing the application process by:

- a. fully completing and signing the application form; and
- b. responding to a scheduled appointment for an interview; and
- c. providing and verifying information as required.

The Department did not make an eligibility determined on the Appellant's cooperation with the application process.

5. UPM § 3525.05 (B)(1)(a) provides for penalties for noncompliance with the Application process; An application is denied when an applicant refuses to cooperate with the Department. (b) It must be clearly shown that the applicant failed to take necessary steps to complete the application process without good cause before the application is denied for this reason.

UPM § 3525.05 (C) provides for Good Cause for Noncompliance – AFDC, AABD, MA Penalties for noncooperation with the application and review processes are not imposed under the following conditions, which are considered good cause for non-compliance:

1. circumstances beyond the assistance unit's control;
2. failure of a representative to act in the best interests of an incompetent or disabled assistance unit.

The Appellant did not demonstrate that his appointed conservators did not act in his best interests during the pending Medicaid application.

The Department did not deny the application for noncompliance with the application process.

6. UPM § 4000.01 provides the definition of Available Asset and states that an available asset is cash or any item of value which is actually available to the individual or which the individual has the legal right, authority or power to obtain, or to have applied for, his or her general or medical support.

UPM § 4005.05 (A) 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 unit.

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.

The Appellant had the legal right to have the funds in his bank accounts applied for his general medical support through his conservator.

The Department correctly determined that the Appellant's Resident Trust Account and Bank Accounts was available assets to the Appellant.

The Department correctly determined that the Appellant has the legal right, authority or power to obtain his available assets.

7. 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.

UPM § 4005.10(A) provides that in the Medicaid program, the asset limit for one person is \$1,600.00.

UPM § 4005.15 (A) (2) provides that in the Medicaid program at the time of application, the assistance unit is ineligible until the first day of the month in which it reduces its equity in counted assets to within the asset limit.

The Department correctly determined that the Appellant's assets cannot exceed \$1,600.00.

The Department correctly determined that the Appellant's assets exceeded the \$1,600.00 asset limit in the [REDACTED] months of [REDACTED] 2017 through [REDACTED] 2018 and [REDACTED] 2018 through [REDACTED] 2018.

The Department correctly determined that the Appellant was ineligible for benefits in the months of [REDACTED] 2017 through [REDACTED] 2018.

8. UPM § 4015.05 (B) (1) & (2) provides that the burden is on the assistance to demonstrate that an asset is inaccessible. (2) For all programs except Food Stamps, in order for an asset to be considered inaccessible, the assistance unit must cooperate with the Department as directed, in attempting to gain access to the asset. (a) If the unit does not cooperate as described above, the asset is considered available to the unit, and the units equity in the asset is counted toward the asset limit.

The appointed Conservators did not demonstrate that the Appellant's assets were inaccessible.

The Department correctly determined that the Appellant's assets were accessible.

9. UPM § 4030.05 (B) provides that the part of a checking account to be considered as a counted asset during a given month is calculated by subtracting the actual amount of income the assistance unit deposits into the account that month from the highest balance in the account for that month.

The Department correctly counted the Appellant's assets and determined that his countable assets exceeded the \$1,600.00 asset limit for the months of [REDACTED] 2017 through [REDACTED] 2018.

The Department correctly granted the Appellant's application for Medicaid for Long Term Care [REDACTED] 2018, as the assets were reduced to the \$1,600.00 allowable limit.

DISCUSSION

After reviewing the evidence and testimony presented, I find the Department correctly determined the [REDACTED] 2018, effective date of the Appellant's Medicaid assistance.

The main issue at the hearing, is whether the Department erroneously denied the Appellant's Medicaid coverage from [REDACTED] 2017 through [REDACTED] 2018 due to the Appellant's assets over the \$1,600.00 limit. While all parties agree that the Appellant's countable assets were properly reduced below the \$1,600.00 asset limit in [REDACTED] 2018, the appeal is centered on the initial Conservator's alleged failure to perform his fiduciary duties and lack of compliance with the application process. Because of his lack of compliance, the Appellant was inappropriately denied because he lacked the ability to access his assets due to his incapacitation associated with his Traumatic Brain Injury.

The record reflects that the Appellant's initial Conservator submitted a Medicaid application on behalf of the Appellant on [REDACTED] 2018. The Department corresponded with both the Conservator and the facility business office manager informing of the asset limit and the requirements for the pending application. The Department Representative testified at the hearing that the Conservator communicated that he understood the asset limit and was working to obtain the Department's requested documentation and the record reflects that he closed the [REDACTED] on [REDACTED] 2018, prior to the removal of his fiduciary duties.

On [REDACTED], 2018, the initial Conservator was removed by the Probate Court of his fiduciary duties and a new successor Conservator of the Person and Estate was appointed. The hearing record and testimony reflect that the new Conservator had a good communication with both the Department and facility and from her appointment on [REDACTED] 2018, she worked diligently performing her

fiduciary duties by appropriately reducing the Appellant's assets, which she successfully achieved in [REDACTED] 2018.

Regulations provide that eligibility for the Medicaid program begins the first day of the month in which the assistance unit reduces its equity in counted assets to within the asset limit. The record reflects that the funds were owned by the Applicant and exceeded the Medicaid assets limit in the months of denial. UPM provides that an available asset is one that he has the legal right, authority or power to obtain, or to have it applied for, his or her general or medical support. The Appellant had appointed Conservator(s) who had the ability to access the assets and apply them for the Appellant's care regardless of whether or not he/she actually acted on that ability.

The Appellant's argument centered on the conservator's alleged failure to act in the best interest of the Appellant. UPM only provides for good cause as an exception for denial of applications for noncompliance. The Department did not deny the application for noncompliance with the application process and did not penalize the Appellant for noncooperation with the application process. The application was denied for exceeding the \$1,600.00 asset limit. Cooperation with the application process is defined in UPM as fully completing and signing the application form; and responding to a scheduled appointment for an interview; and providing and verifying information as required. Spending down assets is not classified as a cooperation requirement. Furthermore, the record demonstrates that the initial conservator applied for assistance on behalf of the Appellant, closed one bank account and was in the process of gathering information prior to his removal as conservator.

The newly appointed conservator testified that she worked diligently on her fiduciary duties from the time of her appointment in [REDACTED] and took until [REDACTED] to reduce the Appellant's accessible assets. The Appellant did not demonstrate that his assets were inaccessible or that he did not have the legal right, authority or power to obtain or have it applied for his general or medical support. The Department did not penalize the Appellant for noncooperation with the application process and based on the policy and regulations, the Department properly granted benefits beginning in the month of [REDACTED] 2018, when the Appellant became asset eligible. The Department properly denied the Appellant assistance for the prior months of [REDACTED] 2018 through [REDACTED] 2018, as well as the [REDACTED] months of [REDACTED] 2017, [REDACTED] 2018 and [REDACTED] 2018.

DECISION

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


Shelley Starr
Hearing Officer

Pc: Peter Bucknall, DSS, Operations Manager, Waterbury Regional Office
Karen Main, DSS, Operations Manager, Waterbury Regional Office
Nancy Sciascia, DSS, Eligibility Services Worker, Waterbury Regional Office

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.