

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

Case ID ██████████
Client ID ██████████
Hearing ID ██████████

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 denying his LTC application due to excess assets.

On ██████████ 2019, the Appellant's Attorney requested an administrative hearing to contest the denial of the Appellant's LTC application based on an incorrect date of institutionalization as determined by the Department.

On ██████████ OLCRAH issued a notice scheduling an administrative hearing for ██████████ 2019.

On ██████████ in accordance with sections § 17b-60, 17b-61 and § 4-176e to § 4-184, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

██████████ Appellant's Spouse
██████████ Appellant's Son, and Authorized Representative
██████████ Appellant's Counsel
Patricia Dixon, Department's Representative by telephone
Christopher Turner, Hearing Officer

The hearing record was left open for the submission of additional information. On [REDACTED] 2019, the record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department determined the correct Date of Institutionalization ("DOI") for the Appellant.

FINDINGS OF FACT

1. [REDACTED] 2016, the Department, as part of a Spousal Assessment, determined a DOI of [REDACTED] 14. (Exhibit B: W-18 Functional Eligibility Outcome; Hearing summary, Testimony)
2. There is no evidence that the appellant or his attorney disputed this DOI determination. (Hearing record)
3. On [REDACTED] 2018, the Appellant was admitted to [REDACTED] with Long Term Care approval. (Hearing summary)
4. On [REDACTED] 2018, the Department received an application for Medicaid Long Term Care ("LTC") assistance for the Appellant. (Exhibit A: Application; Hearing summary)
5. On [REDACTED] 2018, the Appellant died. (Testimony)
6. On [REDACTED] 2018, the Department denied the Appellant's LTC application due to assets in excess of the program limit based on the previously determined [REDACTED] 14 DOI. (Exhibit I: Notice dated [REDACTED] 18)
7. The Appellant's attorney is requesting a [REDACTED] 2014 DOI with a [REDACTED] 2018 LTC eligibility effective date as this would be most advantageous for the Appellant. (Brief; Testimony)
8. 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] 2019, and the hearing was held on [REDACTED] 2019. This decision was due no later than [REDACTED] 2019 but do to a five-day delay for the exchange and comment of more information, this decision was due no later than [REDACTED] 2019 and is therefore timely.

CONCLUSIONS OF LAW

1. Connecticut General Statutes § 17b-2 provides that the Department of Social Services is designated as the state agency for the administration of (6) the Medicaid program pursuant to Title XIX of the Social Security Act.
2. "The department's uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990)).
3. Uniform Policy Manual ("UPM") § 1507.05 (A) (1) provides the Department provides an assessment of assets: a. at the request of an institutionalized spouse or a community spouse: (1) when one of the spouses begins his or her initial continuous period of institutionalization; and (2) whether or not there is an application for Medicaid; or b. at the time of application for Medicaid whether or not a request is made.

UPM § 1507.05 (C) (1) provides the Department provides a notification of the results of the assessment to each spouse.

The Department correctly sent to the Appellant the results of his functional eligibility for the purpose of assessment of spousal assets on [REDACTED] 2016

4. UPM § 1504.05(3) provides that the assessment is completed using the assets which existed as of the date of the beginning the initial continuous period of institutionalization which started on or after September 30, 1989.

The Department was correct in its action to use the assets which existed on the [REDACTED] 14 DOI date to determine eligibility for the [REDACTED] 2018 Medicaid application.

DISCUSSION

At the request of the appellant's counsel, this hearing decision only addresses the request to change the Appellant's DOI from ██████14 to ██████14. The Department determined the DOI to be ██████14 on ██████16 based on a functional eligibility outcome. Regulations provide that a DOI is established when a spouse begins a continuous period of institutionalization which in this case was established as ██████14. I found no language in the regulations that allow for the change in a DOI once determined.

DECISION

The Appellant's appeal is denied.

Christopher Turner

Christopher Turner
Hearing Officer

Cc: CarolSue Shannon, Operations Manager Danbury
Patricia Dixon, DSS Hartford

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, 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 06105-3725.

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 06105-3725. 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.