

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: 137920

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the "Department") issued a *Notice of Action* denying ██████████' (the "Appellant") Medicaid long-term care application.

On ██████████ 2019 ██████████, the Appellant's ██████████, filed a request with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") for an administrative hearing.

On ██████████, 2019, the OLCRAH scheduled an ██████████, 2019 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 an administrative hearing. The following individuals attended the hearing by video- or telephone-conferencing:

██████████, Appellant's representative (██████████)
██████████, Appellant's counsel
██████████, Appellant's witness
Kimberly DiVirgilio, Department's representative
Graham Shaffer, Department's counsel
Taneisha Hayes, Department's observer
Eva Tar, Hearing Officer

On ██████████ 2019, the hearing record closed.

STATEMENT OF ISSUE

The issue is whether the Department correctly determined that the Appellant was ineligible to receive Medicaid long-term care coverage for the service months incorporating [REDACTED] 2018 through [REDACTED] 2018.

This decision addresses the Department's [REDACTED] 2019 denial of the Appellant's [REDACTED] 2018 Medicaid long-term care application.

FINDINGS OF FACT

1. In [REDACTED] 2015, [REDACTED] [REDACTED], a skilled nursing facility, admitted the Appellant. (Appellant's representative's testimony)
2. The Appellant had a diagnosis of [REDACTED]. (Appellant's representative's testimony)
3. On [REDACTED], 2017, OLCRAH hearing officer [REDACTED] (the "[REDACTED] Decision") issued a Notice of Decision that ordered the Department to reopen and grant medical assistance back to [REDACTED] 2016. (Department's Ex. 11)
4. On [REDACTED] 2018, OLCRAH hearing officer [REDACTED] (the "[REDACTED] Decision") issued a Notice of Decision upholding the Department's [REDACTED] 2017 denial of the Appellant's [REDACTED] 2017 Medicaid long-term care application. The [REDACTED] Decision concluded that the Appellant's assets of [REDACTED] (U.S. \$19,142.29) exceeded the Medicaid program's \$1,600.00 asset limit. (Department's Ex. 12)
5. On [REDACTED] 2018, the Appellant filed [REDACTED] [REDACTED] (*Docket: [REDACTED]-[REDACTED]*) with the [REDACTED] Superior Court to appeal the [REDACTED], 2018 [REDACTED] Decision. (Department's Ex. 15)(Appellant's Ex. V)
6. On [REDACTED] 2019, OLCRAH hearing officer [REDACTED] (the "[REDACTED] Decision") issued a Notice of Decision ordering the Department to reopen the Appellant's [REDACTED], 2018 Medicaid long-term care application. (Department's Ex. 13)
7. The Appellant solely owned [REDACTED] Bank Account ([REDACTED]) (the "[REDACTED] account"). (Department's Ex. 9)(Appellant's Ex. N)
8. The Appellant funded the [REDACTED] account with his private pension. (Stipulated)
9. The value of the [REDACTED] account exceeded the Medicaid asset limit from [REDACTED] 2018 through [REDACTED] 2018. (Stipulated)
10. [REDACTED] [REDACTED] administered the [REDACTED] account. (Appellant's representative's testimony)(Appellant's Ex. L)(Department's Ex. 9)
11. As a condition for the Appellant's representative to access the funds in the [REDACTED] account, [REDACTED] required an Order appointing the Appellant's representative as the Appellant's Deputy for Property and Affairs. (Appellant's representative's testimony)

12. On [REDACTED] 2018, the Court of Protection in [REDACTED] appointed the Appellant's representative as Deputy to make decisions on behalf of the Appellant and "to withdraw all of the [Appellant]'s money from the [REDACTED] account] to pay any outstanding fees and expenses at the [REDACTED] in [REDACTED]...." (Appellant's Ex. M)(Department's Ex. 7)
13. The Appellant and the Appellant's representative jointly owned [REDACTED] account [REDACTED] (the "[REDACTED] account #1"). (Department's Ex. 8)
14. The Appellant's representative solely owned [REDACTED] account ([REDACTED]) (the "[REDACTED] account #2"). (Department's Ex. 8)
15. On [REDACTED] [REDACTED] 2018, [REDACTED] [REDACTED] transferred [REDACTED] (converted to U.S. \$12,368.00) from the [REDACTED] account to [REDACTED] account #1. (Department's Ex. 8)
16. On [REDACTED] 2018, [REDACTED] account #1 transferred \$12,368.00 to [REDACTED] account #2. (Department's Ex. 8)
17. On [REDACTED] [REDACTED] 2018, [REDACTED] [REDACTED] transferred [REDACTED] (converted to U.S. \$8,220.01) from the [REDACTED] account to [REDACTED] account #1. (Department's Ex. 8)
18. On [REDACTED] 2018, [REDACTED] account #1 transferred \$8,220.01 to [REDACTED] account #2. (Department's Ex. 8)
19. On [REDACTED] 2018, the [REDACTED] account had a closing balance of [REDACTED]. (Department's Ex. 9)
20. On [REDACTED] 2018, the Appellant expired. (Appellant's Ex. AA)
21. The Appellant's representative is not seeking Medicaid coverage of the Appellant's long-term care services for [REDACTED]2018. (Stipulated)
22. On [REDACTED] 2019, the Department denied the Appellant's Medicaid long-term care application, granting ancillary Medicaid coverage effective [REDACTED] [REDACTED] 2018. (Department's Ex. 5)(Appellant's Ex. DD)(Appellant's Ex. EE)
23. As of [REDACTED] 2019, the [REDACTED] Superior Court had not decided [REDACTED] (Hearing record)
24. Connecticut General Statutes § 17b-61 (a) provides that a final decision be issued within 90 days of a request for an administrative hearing. The OLCRAH received the Appellant's faxed hearing request on [REDACTED] 2019. This final decision is not due until [REDACTED] 2019. This decision is timely.

CONCLUSIONS OF LAW

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

“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. “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).

“In no event shall an individual eligible for medical assistance under section 17b-261 be guaranteed eligibility for such assistance for six consecutive months without regard to changes in certain circumstances that would otherwise cause the individual to become ineligible for assistance.” Conn. Gen. Stat. § 17b-261c.

The Department had the authority to consider the Appellant’s available income and resources in making a determination as to whether the Appellant met the financial eligibility requirements of the Medicaid program.

3. “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)) (emphasis added).

“Administrative Duties of Fair Hearing Official. ... 2. The Fair Hearing official: ... c. determines the issue of the hearing....” Uniform Policy Manual (“UPM”) § 1570.25 C.2.c.

4. Section 17b-261 (a) of the Connecticut General Statutes provides in part that “[a]ny 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).
5. “Assets [N]ot Counted Toward the Asset Limit. The Department does not count the assistance unit’s equity in an asset toward the asset limit if the asset is either: 1. excluded by state or federal law; or 2. not available to the unit.” UPM § 4005.05 C.

“There are certain assets which an assistance unit may own, but which the Department does not require the unit to convert to cash or otherwise use for support and maintenance. Such assets, called excluded assets, do not affect the unit’s eligibility for assistance....” UPM § 4020.

Section 4020.10 of the Uniform Policy Manual identifies “excluded assets” with respect to the Medicaid program.

The [REDACTED] account is not an excluded asset, as it does not meet the criteria listed at UPM § 4020.10.

6. “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. If the terms of a trust provide for the support of an applicant, the refusal of a trustee to make a distribution from the trust does not render the trust an unavailable asset....” Conn. Gen. Stat. § 17b-261 (c) (emphasis added).

Section 4000.01 of the Uniform Policy Manual provides in part the following definitions:

Available Asset. 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.

...

Counted Asset. A counted asset is an asset which is not excluded *and either available* or deemed available to the assistance unit.

...

Excluded Asset. An excluded asset is an asset which is not counted by the Department in determining the assistance unit’s eligibility for assistance.

...

Legal Owner. The legal owner of an asset is the person who is legally entitled to enjoy the benefit and use of the asset.

...

UPM § 4000.01 (emphasis added).¹

“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. (emphasis added).

“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.” UPM § 4005.05 B.2. (emphasis added).

The [REDACTED] account is an available asset as the term “available asset” is defined at Conn. Gen. Stat. § 17b-261 (c) and UPM § 4000.01.

For the purposes of the Medicaid program, the [REDACTED] account is a counted asset, as the term “counted asset” is defined at UPM § 4000.01.

7. With respect to the Medicaid program associated with coverage of long-term care services, the asset limit is \$1,600.00 for a needs group of one. UPM § 4005.10 A.2.a.

As a condition of eligibility to participate in the Medicaid program, the total equity of the Appellant’s counted assets had to be less than or equal to \$1,600.00 in each service month for which he was seeking medical coverage.

¹ “Inaccessible asset” is not defined at UPM § 4000.01).

8. "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. (emphasis added).

"MA, AABD Residents of Long-Term Care Facilities. 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." UPM § 4005.15 A.2. (emphasis added).

The Department correctly determined that the Appellant was ineligible to receive Medicaid long-term care coverage for the service months incorporating ██████████ 2018 through ██████████ 2018, as his counted assets exceeded the Medicaid program's \$1,600.00 asset limit.

DISCUSSION

Familiarity with prior administrative hearing decisions issued by OLCRAH hearing officers on ██████████ 2017 (██████████ Decision), ██████████ 2018 (██████████ Decision), and ██████████ 2019 (██████████ Decision) is presumed. The ██████████ Decision remains pending appeal with the ██████████ Superior Court.

The Appellant's representative opines that the ██████████ account is not a counted asset with respect to the Medicaid program's \$1,600.00 asset limit in the period from ██████████ 2018 through ██████████ 2018. The Appellant's representative argues that if the ██████████ account is an "inaccessible asset," then Section 4015.05 A.1. of the Department's Uniform Policy Manual controls, which states: "Subject to the conditions described in this section, equity in an asset which is inaccessible to the assistance unit is not counted as long as the asset remains inaccessible."

The Appellant's representative argues that although the Appellant was the legal owner of the ██████████ account, the combination of the Appellant's diminished mental capacity, ██████████ lack of implementation of a transnational online banking system, and delays associated with the navigation of the ██████████ legal system rendered the ██████████ account inaccessible to the Appellant for the purposes of the Medicaid program. The Appellant's representative's argument is not persuasive.

The Appellant's representative ignores the statutory definition of "available asset" with respect to the Medicaid program. Section 17b-261 (c) of the Connecticut General Statutes provides that "[f]or 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...."²

As the legal owner of the ██████████ account, the Appellant had the legal right to have the approximately \$20,500.00 in that account used for his general or medical support. The Appellant's diminished capacity did not eliminate his legal ownership of the ██████████

² Emphasis added.

account. The appointment of a Deputy to act on the Appellant's behalf also did not void the Appellant's legal ownership of the [REDACTED] account; this appointment allowed the Appellant's representative to access the funds in the account on the Appellant's behalf.

Further, to apply Section 4015.05 A.1. of the Uniform Policy Manual in conjunction with Section 17b-261 (c) of the Connecticut General Statutes would yield an absurd result. To do so would make the [REDACTED] account "an available asset"³ that had to be compared to the Medicaid program's \$1,600.00 asset limit *at all times by virtue of its legal ownership by the Appellant*, but, *at the same time*, would be "an unavailable asset"⁴ and not compared to the Medicaid program's \$1,600.00 asset limit during those months that the Appellant's representative—who was *not the legal owner of the [REDACTED] account*—attempted to access the funds in that account. The hearing officer declines to adopt this circuitous and convoluted interpretation.

The Department does not have the authority or power to negate the provisions of state statute. When a state regulation or agency rule is in conflict with state statute, the statute takes precedence. Section 17b-261 (c) of the Connecticut General Statutes' definition of "an available asset" is controlling.

The value of the Appellant's [REDACTED] account exceeded the \$1,600.00 Medicaid asset limit in the period from [REDACTED] 2018 through [REDACTED] 2018. As the Appellant's counted assets exceeded the Medicaid asset limit, the Appellant was not eligible to receive Medicaid coverage of his long-term care services in the relevant period.

DECISION

The Appellant's appeal is DENIED.

Eva Tar - electronic signature
Eva Tar
Hearing Officer

cc: Attorney [REDACTED]
Attorney Graham Shaffer, DSS-CO
Kimberly DiVirgilio, DSS-Waterbury
Peter Bucknall, DSS-Waterbury
Jamel Hilliard, DSS-Waterbury
Jay Bartolomei, DSS-Hartford/Windsor
Musa Mohamud, DSS-Hartford/Windsor
Judy Williams, DSS-Hartford/Windsor
Jessica Carroll, DSS-Hartford/Windsor

³ Conn. Gen. Stat. § 17b-261 (c).

⁴ UPM § 4015.05 A.1.

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.