

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

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

Client ID # ██████████
Request # 142553

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the “Department”) sent ██████████ (the “Conservator”), the Conservator of the Estate and Person for ██████████ (the “Appellant”), a Notice of Action (“NOA) discontinuing the Appellant’s medical assistance under the Aid to Aged, Blind, and Disabled program (“MAABD”) effective ██████████ 2019.

On ██████████ 2019, the Conservator on behalf of the Appellant requested an administrative hearing to contest the Department’s decision to discontinue such benefits.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2019.

On ██████████ 2019, in accordance with sections 17b-60, 17b-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:

██, Conservator of the Person and the Estate for the Appellant

Attorney Daniel Butler, Principal Attorney for the Department

Christine Moffet, Department Representative

Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to terminate the Appellant's medical benefits under the Aid to Aged, Blind, and Disabled ("MAABD") program effective ██████████ 2019 was correct.

FINDINGS OF FACT

1. The Appellant is age ██████████ born on ██████████ and disabled. (Exhibit 1: Application)
2. On ██████████ 2016, the ██████████ ("██████████ Court") appointed ██████████ ("former conservator"), sister of the Appellant, as the Appellant's Conservator. (Exhibit 2: Trust Agreement)
3. On ██████████ ██████████ 2017, the Appellant received proceeds from a compromised settlement agreement totaling \$102,352.58 which the ██████████ Court used to fund a Special Needs Trust (the "trust"), a supplemental/special needs self-funded trust agreement, on behalf of the Appellant to provide for the Appellant's special needs in accordance with 42 U.S. C. § 1396p(d)(4)(A). (Exhibit 2: Trust Agreement, Exhibit 6: Bank Check, and Conservator's Testimony)
4. The Appellant is the sole and exclusive beneficiary of the trust. Unless terminated due to the exhaustion of the principal, the trust may be terminated in the event of the death of the beneficiary or only after a court has determined that the beneficiary of the trust is no longer disabled. Upon termination of the trust and after payment of all unpaid trust administration fees, costs, and expenses, the trustee shall distribute any available funds to each and every government entity for medical assistance pursuant to a plan established under 42 U.S.C. § 1396 *et. seq.* prior to the distribution of any trust property to any person, entity, devisee, heir or residual beneficiary including but not limited to the beneficiary. If the trust is terminated due to the death of the beneficiary, the trustee must

- pay for the costs of funeral expenses for the beneficiary then distribute any remaining funds to the former conservator. If the trust is terminated because a court has determined the beneficiary not disabled, then the trustee shall distribute any remaining trust property to the beneficiary only after full distribution of trust property to each government entity. (Exhibit 2: Trust Agreement)
5. The [REDACTED] Court appointed [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] ("trustee") as the trustee of the trust. (Exhibit 2: Trust Agreement)
 6. On [REDACTED] 2018, the State of Connecticut appointed [REDACTED] [REDACTED] the "Conservator") as the Appellant's Conservator of the Person and the Conservator of the Estate replacing the former conservator. (Conservator's Testimony)
 7. On [REDACTED] 2018, [REDACTED] ("boarding home"), a licensed boarding home and residential care home, admitted the Appellant to the boarding home. (Exhibit 1: Application and Conservator's Testimony)
 8. The Appellant appointed the boarding home as her authorized representative for the purpose of completing an application for public assistance. (Exhibit 1: Application)
 9. On [REDACTED] 2018, the boarding home submitted an application for long term care medical benefits on behalf of the Appellant to the Department but failed to list the trust on the application. (Exhibit 1: Application)
 10. The Department determined the Appellant eligible for medical assistance benefits under the MAABD program effective [REDACTED] 2018. (Hearing Record)
 11. On [REDACTED] 2018, the Department learned of the trust. (Hearing Summary and Conservator's Testimony)
 12. On [REDACTED] 2018, the trustee invested \$90,000.00 of the trust with a wealth management company. (Exhibit 3: Bank Statement and Exhibit 4: Wealth Management Account Statement)
 13. As of [REDACTED] 2019, the balance of the trust held by the wealth management company is \$88,607.66. (Stipulated)
 14. As of [REDACTED] 2019, the remaining balance in the trust account is \$6,942.82. (Stipulated)

15. The asset limit under the MAABD program is \$1,600.00. (Hearing Record)
16. The Department determined the trust assets as available assets to the Appellant because the trust contains an early termination provision. (Hearing Record)
17. The Department determined the Appellant ineligible for Medicaid effective [REDACTED] 2019 because the total value of the Appellant's trust assets exceed the \$1,600.00 Medicaid asset limit.
18. On [REDACTED] 2019, the Department discontinued the Appellant's Medicaid benefits under the MAABD program effective [REDACTED] 2019.
19. 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. Therefore, this decision is due not later than [REDACTED] 2019.

CONCLUSIONS OF LAW

1. Connecticut General Statute § 17b-2(6) provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. "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. Stats. § 17b-261b(a)
3. 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. Notwithstanding the provisions of this subsection, the availability of funds in a trust or similar instrument funded in whole or in part by the applicant or the applicant's spouse shall be determined pursuant to the Omnibus Budget Reconciliation Act of 1993, 42 USC 1396p. The provisions of this subsection shall not apply to a special needs trust, as defined in 42 USC 1396p(d)(4)(A), as amended from time to time. For purposes of determining whether a beneficiary under a special needs trust, who has not received a disability determination from the Social

Security Administration, is disabled, as defined in 42 USC 1382c(a)(3), the Commissioner of Social Services, or the commissioner's designee, shall independently make such determination. The commissioner shall not require such beneficiary to apply for Social Security disability benefits or obtain a disability determination from the Social Security Administration for purposes of determining whether the beneficiary is disabled.

Conn. Gen. Stats. § 17b-261(c)

4. 42 U.S. Code § 1396p(d)(4)(A) that this subsection shall not apply to any of the following trusts:

A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1614(a)(3)) and which is established for the benefit of such individual by the individual, a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this title.

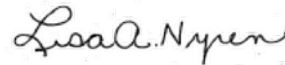
5. The Department incorrectly determined the trust failed to comply with 42 USC 1396p(d)(4)(A). The trust complies with the provisions found in 42 USC 1396p(d)(4)(A). Upon the establishment of the trust, the trust contains the assets of the Appellant- a disabled individual under the age of 65, established for the sole benefit of the Appellant through the actions of the Appellant, and provides for reimbursement to the State for all medical assistance paid on behalf of the Appellant from any remaining assets upon the Appellant's death. There is no provision under 42 USC 1396p(d)(4)(A) which negates the exempt status of a special needs trust for an early termination clause.
6. The Department incorrectly determined the trust as a counted asset. The trust is an excluded asset under MAABD.
7. The Department incorrectly determined the Appellant's assets exceeded the Medicaid asset limit. As the trust is an excluded asset, the Appellant's assets do not exceed the MAABD asset limit.
8. The Department incorrectly discontinued the Appellant's MAABD benefits effective [REDACTED] 2019.

DECISION

The Appellant's appeal is granted.

ORDER

1. The Department must exclude the trust from the Appellant's countable assets under the MAABD program.
2. The Department must reopen the Appellant's MAABD benefits effective [REDACTED] 2019, with no loss of medical coverage.
3. Compliance is due 10 days from the date of this decision.



Lisa A. Nyren
Fair Hearing Officer

CC: Tanya Cook-Beckford, DSS, RO 42
Daniel Butler, Principle Attorney, DSS, CO
Kenneth Smiley, DSS RO # 42

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.