

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105

████████████████████
SIGNATURE CONFIRMATION

CLIENT ID #: ██████████
HEARING ID #: 143260

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2019, the Department of Social Services (the “Department”) issued a notice of action (“NOA”) to ██████████ (the Appellant) proposing to discontinue his benefits from the Connecticut Home Care Program for Elders (“CHCPE”) effective ██████████, 2019, for the reason, “A review of financial eligibility is conducted annually. You have been found to be over assets.”

On ██████████ 2019, the Appellant requested an administrative hearing to appeal the Department’s proposal to discontinue his CHCPE benefits. Accompanying his hearing request, the Appellant provided signed authorization for his attorney, ██████████ ██████████, Esq. (Appellant’s “Counsel”), to be his authorized representative with regard to the fair hearing.

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

On ██████████, 2019, Counsel asked that the hearing be rescheduled to a date after ██████████, 2019. On ██████████ 2019, OLCRAH issued a notice rescheduling the hearing for ██████████, 2019.

On ██████████, 2019, Counsel left a voice mail asking to postpone the

hearing for at least 3-4 weeks because the Appellant had a medical issue. On [REDACTED], 2019, OLCRAH issued a notice rescheduling the hearing for [REDACTED], 2019.

On [REDACTED] 2019, Counsel left a voice mail asking to reschedule the hearing at least 3-4 weeks out because the Appellant was hospitalized and wished to participate in the hearing.

On [REDACTED], 2019, OLCRAH issued a notice rescheduling the hearing for [REDACTED] 2019.

On [REDACTED] 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:

[REDACTED], Esq., Counsel representing the Appellant, his POA
Tanisha Hayes, Department employee not participating in the hearing
Maria Figueroa, Representing the Department's Community Options Unit
Pamela Adams, Representing the Department's Community Options Unit
Daniel T. Butler, Esq., Principal Attorney, OLCRAH, via telephone
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department was correct when it proposed to discontinue the Appellant's CHCPE benefits because his assets exceeded the limit for the program.

FINDINGS OF FACT

1. The Appellant has received benefits from the state-funded CHCPE, Category 2 services for assisted living, since [REDACTED], 2018. (Hearing Record)
2. The Appellant is a widower. (Counsel's testimony, Hearing Record)
3. When the Department processed a review of the Appellant's eligibility on [REDACTED], 2019, it learned that the Appellant was owner of an irrevocable trust. The value of the trust was reported on the review form to be \$71,738.23. (Hearing Record, Ex. 6: W-1LTC Review Form dated [REDACTED], 2019)
4. The Appellant established The [REDACTED] Irrevocable Trust (the "Trust") on [REDACTED], 2018. (Ex. 17: Trust Agreement for The [REDACTED] Irrevocable Trust)

5. On [REDACTED], 2018, a \$76,558.23 deposit was made to open a new account at [REDACTED], account number ending in [REDACTED] (the "Trust Account"). The Appellant is listed on the statement as the owner of the account, but not in his capacity as trustee of the Trust. (Ex. 15: [REDACTED] statement [REDACTED], 2018 – [REDACTED], 2018)
6. The Trust Agreement includes the following pertinent language: "This is a trust agreement made by me, [REDACTED], of [REDACTED], Connecticut as donor, with myself, [REDACTED], who, with all successors in trust, are called the "Trustee".... Payment of income and principal. If any property is placed in trust during my life, my trustee shall pay me as much of the income and principal as I request in writing....This Trust agreement is irrevocable....At present my trustee is myself, [REDACTED]...." The document was signed in two places by the Appellant, as "[REDACTED], Donor/Grantor" and as "[REDACTED], Trustee." (Ex. 17)
7. On [REDACTED], 2018, [REDACTED], 2018 and [REDACTED] 2018, the Appellant wrote checks payable to himself from the Trust Account in the amounts of \$300.00, \$200.00 and \$300.00, respectively. All three checks were printed with the name, "[REDACTED] IRRV Trust, [REDACTED] Trustee" (Ex. 15, Ex. 16: [REDACTED] statement [REDACTED])
8. As of [REDACTED], 2018, the balance in the Trust Account was \$73,138.23. As of [REDACTED], 2018, the balance in the Trust Account was \$71,738.23. (Ex. 15, Ex. 16)
9. On [REDACTED], 2019, the Department wrote Case Maintenance Activity Notes for the Appellant's case documenting that it had received the Trust Agreement documents and had referred them to its legal team for review. (Ex. 4: IMPACT Notes)
10. On [REDACTED], 2019, the Department wrote in the Case Notes that it received a response from its legal team. The legal opinion stated, in part, "The trust, established by the client, is irrevocable and the trustee is authorized to distribute trust income and principal to the client or for the client's benefit. Therefore, the trust assets are available for Medicaid eligibility...." (Ex. 4)
11. On [REDACTED], 2019, the Department issued a NOA to the Appellant proposing to discontinue his CHCPE benefits effective [REDACTED] 2019 because a Department review of his financial eligibility found him to be over assets. (Ex. 2: NOA dated [REDACTED], 2019)
12. On [REDACTED] 2019, the Appellant requested a fair hearing. (Hearing Record)
13. The Department did not discontinue the Appellant's CHCPE benefits on [REDACTED],

2019, as proposed, because the Appellant requested a fair hearing. Instead, it continued the Appellant's benefits pending the outcome of the hearing. (Hearing Record)

14. No evidence was presented that the Trust assets have been reduced to less than the amount the Department informed the Appellant was the asset limit for the program. (Hearing Record)
15. 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. The hearing was originally scheduled for [REDACTED], 2019, but was rescheduled three times at the request of the Appellant, adding 77 days to the time. Therefore, this decision is due not later than [REDACTED].

CONCLUSIONS OF LAW

1. The Department is the state agency that administers the Medicaid program pursuant to Title XIX of the Social Security Act. The Department may make such regulations as are necessary to administer the medical assistance program. Conn. Gen. Stat. § 17b-2; Conn. Gen. Stat. § 17b-262
2. Section 17b-342 of the Connecticut General Statutes (Conn. Gen. Stat.) authorizes the Commissioner of Social Services to administer the Connecticut home-care program for the elderly state-wide to prevent the institutionalization of certain elderly persons, and directs the Commissioner to make the program available to individuals including those "who meet the criteria for the state-funded portion of the program under subsection (i) of this section."
3. Conn. Gen. Stat. § 17b-342(i)(1) provides, in relevant part, as follows:

On and after July 1, 2015, the Commissioner of Social Services shall, within available appropriations, administer a state-funded portion of the program for persons (A) who are sixty-five years of age and older; (B) who are inappropriately institutionalized or at risk of inappropriate institutionalization; (C) whose income is less than or equal to the amount allowed under subdivision (3) of subsection (a) of this section; and (D) whose assets, if single, do not exceed one hundred fifty percent of the federal minimum community spouse protected amount pursuant to 42 USC 1396r-5(f)(2)..."

4. Section 1396r-5(f)(2) of Title 42 of the United States Code (“USC”) defines the “Community Spouse Resource Allowance” and provides that the minimum amount of such allowance is “\$12,000 (subject to adjustment under subsection (g)), **or, if greater** (but not to exceed the amount specified in clause (ii)(II)) **an amount specified under the State plan...**” (emphasis added)
5. **The Connecticut State Plan under Title XIX of the Social Security Act specifies an amount for the minimum Community Spouse Protected Amount (“CSPA”) which is greater than \$12,000. The State Plan specifies that the minimum CSPA as of July 1, 2019 is \$25,284.00.**
6. The Department’s Uniform Policy Manual (“UPM”) “is the equivalent of a state regulation and, as such, carries the force of law.” *Bucchere v. Rowe*, 43 Conn. Supp. 175, 177 (1994) (citing Conn. Gen. Stat. 17-3f(c) [now 17b-10]; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A. 2d 712(1990)).
7. With reference to the Connecticut Home Care Program for Elders program, “For an individual, assets may not exceed 150% of the minimum Community Spouse Protected Amount. (cross ref. 4022.1) UPM § 8040.35(B)(1)
8. **The CHCPE asset limit that applies to the Appellant is \$37,926.00, the amount that is equal to 150% of the minimum CSPA specified in the Department’s State Plan.**
9. “Assets in the Connecticut Home Care Program for Elders are treated in the same way and to the same extent as in the Medicaid Program except for the Spousal Assessment provision covered under the Medicare Catastrophic Coverage Act (MCCA)...” UPM § 8040.35(A)
10. Conn. Gen. Stat. § 17b-261(c) provides, in relevant part, as follows:

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....

11. "For purposes of determining an individual's eligibility for, or amount of, benefits under a State plan under this subchapter, subject to paragraph (4), the rules specified in paragraph (3) shall apply to a trust established by such individual." 42 USC § 1396p(d)(1)

12. 42 USC § 1396p(d)(3)(B) provides, in relevant part, as follows:

In the case of an irrevocable trust –

(i) if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income –

(I) to or for the benefit of the individual, shall be considered income of the individual, and

(II) for any other purpose, shall be considered a transfer of assets by the individual subject to subsection (c)

...

13. UPM § 4030.80(D)(5) provides, in relevant part, as follows:

With respect to an irrevocable trust, the following principles apply:

a. The Department considers the portion of the corpus of an irrevocable trust, or the income generated by the corpus of such trust to be an available asset of the individual if there are any circumstances under which a payment from the trust could be made to or on behalf of the individual.

14. The Appellant's Trust is an available asset with respect to determining eligibility for the CHCPE program. The Appellant has unrestricted access to the Trust assets at any time he wishes, at his sole discretion. He is the Donor/Grantor of the Trust as well as the Trustee and is also, at this time, the only Beneficiary. He has already distributed funds from the Trust to himself. The Appellant's means to access the funds in the Trust to make payments on his own behalf make the Trust an available asset.

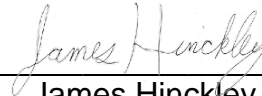
15. The Trust assets exceeded the \$37,926.00 asset limit for the CHCPE

program at the time the Department issued a NOA on [REDACTED], 2019 proposing to discontinue the Appellant's benefits.

16. The Department was correct when it issued a NOA on [REDACTED], 2019 proposing to discontinue the Appellant's CHCPE benefits. The Appellant was not eligible for benefits from the program because his assets exceeded the limit for the program.

DECISION

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



James Hinckley
Hearing Officer

cc: Community Options Distributions List, hearings.commops@ct.gov
[REDACTED], Esq.
Daniel T. Butler, Esq.

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 06105-3725.

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. 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.