

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: 143661

**NOTICE OF DECISION**

**PARTY**

██████████  
██  
██████████  
████████████████████

**PROCEDURAL BACKGROUND**

On ██████████, 2019, the Department of Social Services (the “Department”) issued ██████████  
██████████ (the “Appellant”) a *Notice of Action* denying his Medicaid application.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received a ██████████, 2019 postmarked request for an administrative hearing, filed by ██████████, one of the Appellant’s two conservators of person and estate.

On ██████████ 2019, the OLCRAH issued a notice scheduling an administrative hearing for ██████████ 2019. The OLCRAH granted the request of the Appellant’s conservator for a postponement.

On ██████████ 2019, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the undersigned hearing officer initiated the proceedings with respect to an administrative hearing. Due to unforeseen time constraints, the ██████████ 2019 proceeding did not conclude on that date. With the agreement of all participants, the hearing officer scheduled the administrative hearing to reconvene on ██████████ 2019, the earliest date agreed upon by the participants.

On ██████████ 2019 and ██████████ 2019, the following individuals appeared for the proceedings:

- ██████████, Appellant’s conservator of person and estate (son)
- ██████████, Appellant’s conservator of person and estate (daughter)
- ██████████, Appellant’s counsel
- ██████████, Appellant’s witness

Ellen Wissner, Department's representative  
Saya Myakoshi, Department's observer  
Eva Tar, Hearing Officer

The hearing record closed [REDACTED] 2019.

### **STATEMENT OF ISSUE**

The Appellant seeks the finding of "good cause" for failing to submit the requested verification of his spouse's assets by the Department's [REDACTED] 2019 deadline. The Appellant requests the Department reopen his [REDACTED] 2018 Medicaid application.

### **FINDINGS OF FACT**

1. The Appellant's date of birth is [REDACTED]. (Department Exhibit 14)
2. On [REDACTED] [REDACTED], the Appellant married [REDACTED] [REDACTED] (dob [REDACTED]). (Department Exhibit 14)
3. Prior [REDACTED] 2018, the Appellant resided at [REDACTED] in [REDACTED] with his spouse. (Department Exhibit 1) ([REDACTED] testimony)
4. In or around [REDACTED] 2018, the Appellant's spouse asked one of the Appellant's daughters, a Connecticut resident, to take the Appellant as the spouse was unable to continue to care for him. [REDACTED] testimony)
5. The Appellant has a permanent cognitive deficiency that causes him to experience memory loss, limited or poor insight and judgment, and difficulty with problem solving. (Appellant Exhibit A)
6. On [REDACTED] [REDACTED] 2018, the Appellant was admitted to [REDACTED] [REDACTED] [REDACTED] (the "Facility"), a skilled nursing facility, for a stay expected to last six months or longer. (Department Exhibit 1)
7. The Appellant's spouse has spoken to the Appellant not more than three times by telephone since his admittance to the Facility, the most recent call occurring a few weeks prior to the date of this hearing. The spouse has not visited the Appellant. ([REDACTED] testimony)
8. On [REDACTED], 2018, the [REDACTED] Probate Court (the "Court") appointed two of the Appellant's adult children, [REDACTED] [REDACTED] and [REDACTED] [REDACTED] (the "conservators"), to be the Appellant's co-conservators of the estate and the person. (Appellant Exhibit A)
9. On [REDACTED] 2018, the Department received the Appellant's Medicaid application as submitted on-line by one of the Appellant's conservators. (Department Exhibit 1)
10. One of the Appellant's stepchildren lives with the Appellant's spouse in Florida. [REDACTED] testimony)

11. The Appellant's stepchild hangs up or otherwise refuses to accept the telephone calls of the Appellant's conservators, limiting access of the Appellant's conservators to the spouse. (██████████ testimony)
12. On ██████████ 2019, the Department received a written request from one of the Appellant's conservators to have a social worker in Florida assist the Appellant's spouse with the Medicaid application process. (Department Exhibit 4)
13. The Department is a Connecticut agency; the Department doesn't have the authority to assign a task to an employee of another State. (Department representative testimony)
14. On ██████████ 2019, the Appellant's conservators, an attorney appointed by the Court to represent the Appellant, the Appellant's spouse, and one of the Appellant's stepchildren participated in a hearing conducted by the Court. (Appellant Exhibit B)
15. The Appellant's spouse and stepchild participated in the ██████████ 2019 Court proceeding by telephone. (██████████ testimony)
16. On ██████████ 2019, the Court ordered the parties to "continue to work cooperatively to provide the [Department] with the requisite information/documentation." (Appellant Exhibit B)
17. On ██████████ 2019, the Department received an *Aplicacion Para La Determinacion de Bienes Personales Del Esposo (de la Esposa)* signed by the Appellant's spouse on ██████████ 2019. (Department Exhibit 6)
18. The Appellant's spouse identified ██████████ (the "Florida credit union") account ██████████ as her asset on the *Aplicacion Para La Determinacion de Bienes Personales Del Esposo (de la Esposa)*. (Department Exhibit 6)
19. On ██████████ 2019, the Department issued a *Certificate and Authorization for Disclosure of Property of Applicants or Recipients of State Aid* to the Florida credit union, requesting the balance(s) of the spouse's account(s) at that financial institution. (Department Exhibit 10)
20. The Florida credit union did not respond to the Department's ██████████ 2019 *Certificate and Authorization for Disclosure of Property of Applicants or Recipients of State Aid*. (Department representative testimony)
21. The Department's subpoena power is limited to financial institutions doing business in Connecticut. (Department representative testimony)(Department Exhibit 10)
22. In the period from ██████████ 2018 through ██████████ 2019, the Department issued a series of *Verification We Need* or *Verificaciones que necesitamos* forms to the Appellant, his conservators, the Appellant's spouse, and one of the Appellant's stepchildren. (Department Exhibits 3, 5, 7, 11)

23. On [REDACTED] 2019, the Department issued a *Verificaciones que necesitamos* form to the Appellant's conservators, the Appellant's spouse, and the Appellant's stepchild requesting the submission by [REDACTED] 2019 of the following Florida credit union account [REDACTED] statements: [REDACTED] 2013, [REDACTED] 2014, [REDACTED] 2015, and [REDACTED] 2016. (Department Exhibit 11)
24. The [REDACTED] [REDACTED], 2019 *Verificaciones que necesitamos* form cautioned that if the documents were not submitted to the Department by [REDACTED] 2019, the Department would deny the Appellant's Medicaid application. (Department Exhibit 11)
25. The Department did not receive the requested documents as identified on the [REDACTED] 2019 *Verificaciones que necesitamos* form. (Department representative testimony)
26. On [REDACTED] [REDACTED] 2019, the Department denied the Appellant's Medicaid application. (Department Exhibit 12)
27. The Facility has not threatened the Appellant with eviction. [REDACTED] testimony)
28. The value of the Appellant's personal assets—i.e., those assets in his name only—do not exceed \$1,600.00. (Stipulated)
29. Connecticut General Statutes § 17b-61 (a), as amended on passage by Section 309 of *Public Act No. 19-117 (January Session)*, in part provides that a final decision shall be rendered not later than 90 days from the date the Commissioner receives a request for a fair hearing, provided the time for rendering a final decision shall be extended whenever the aggrieved person requests or agrees to an extension, or when the Commissioner documents an administrative or other extenuating circumstance beyond the Commissioner's control.

On [REDACTED] 2019, the OLCRAH received the Appellant's hearing request postmarked [REDACTED] 2019. This final decision initially would have become due by [REDACTED] 2019. However, the OLCRAH granted the request by one of the Appellant's conservators for a postponement of the scheduled [REDACTED] 2019 hearing date, and the OLCRAH rescheduled the hearing to [REDACTED] 2019. The OLCRAH also granted a reconvene of the [REDACTED] 2019 hearing to [REDACTED] 2019, the first date available to the attendees after consideration of their schedules, to allow for additional testimony by the Appellant's conservators and witness.

The hearing officer extended the close of the hearing record for the submission of additional documents by Appellant's counsel and allowed the Department the opportunity to submit written comment of these submissions. On [REDACTED] 2019, the Department submitted written comment. On [REDACTED] 2019, the hearing record closed.

The delays to the close of the proceedings extended the deadline for the issuance of a final decision to [REDACTED] 2019. This final decision is timely.

## CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes designates the Department as the state agency for the administration of so identified state and federal programs.

“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 of Social Services may make such regulations as are necessary to administer the medical assistance program....” Conn. Gen. Stat. § 17b-262.

“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 \(1990\)](#)).

“The fair hearing official: ... c. determines the issue of the hearing...” Uniform Policy Manual (“UPM”) § 1570.25 C.2.c.

3. Section 4000.01 of the Uniform Policy Manual (“UPM”) in part provides the following definitions:

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

Deemed Asset. A deemed asset is an asset owned by someone who is not a member of the assistance unit but which is considered available to the unit.

...

Institutionalized Spouse. An institutionalized spouse is a spouse who resides in a medical facility or long term care facility, or who receives home and community based services (CBS) under a Medicaid waiver, and who is legally married to someone who does not reside in such facilities or who does not receive such services.

...

“An individual is considered institutionalized if he or she is receiving: a. LTCF [long-term care facility] services....” UPM § 3029.05 B. 2. a.

**For the purposes of the Medicaid program, the Appellant is an “institutionalized spouse.”**

4. Section 17b-261 (a) of the Connecticut General Statutes provides in part that:  
Medical assistance shall be provided for any otherwise eligible person whose income, ... , is not more than one hundred forty-three per cent, ... , of the benefit amount paid to a person with no income under the temporary family assistance program in the appropriate region of residence and if such person is an institutionalized individual as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3), and *has not made an assignment or transfer or other disposition of property for less than fair market value* for the purpose of establishing eligibility for benefits or assistance under this section. Any such

disposition shall be treated in accordance with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). *Any 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) (emphasis added).

“Prior to making an eligibility determination the Department conducts a thorough investigation of all circumstances relating to eligibility and the amount of benefits.” UPM § 1505.40 A. 1.

“There is a period established, subject to the conditions described in this chapter, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back date specified in 3029.05 C. This period is called the penalty period, or period of ineligibility.” UPM § 3029.05 A.

“Look-Back Date for Transfers. The look-back date for transfers of assets is a date that is 60 months before the first date on which both the following conditions exist: 1. the individual is institutionalized; and 2. the individual is either applying for or receiving Medicaid.” UPM § 3029.05 C.

**The Appellant’s look-back date with respect to the evaluation of transfers of assets is [REDACTED] 2013.**

**The Department acted within its authority to review the Appellant’s and his spouse’s asset activity during the look-back period.**

5. The Medicaid asset limit for an individual residing in a skilled nursing facility equals \$1,600.00. UPM § 4005.10 A. 2.

**Although the Appellant’s personal assets were within the Medicaid program limit for an individual, the Appellant’s Medicaid eligibility as an institutionalized individual could not be accurately determined in the absence of documentation of his spouse’s assets and transfer activity.**

6. The standard of promptness for processing a Medicaid application for Medicaid applicants who are applying on the basis of age or blindness is 45 calendar days; it is 90 calendar days for Medicaid applicants applying on the basis of disability. UPM § 1505.35 C. 1. c. (2) and UPM § 1505.35 C. 1. d.

“Regardless of the standard of promptness, no eligibility determination is made when there is insufficient verification to determine eligibility when the following has occurred: (1) the Department has requested verification; and (2) at least one item of verification has been submitted by the assistance unit within a time period designated by the Department, but more is needed.” UPM § 1505.40 B. 5. a.

“Additional 10 day extensions for submitting verification shall be granted, as long as after each subsequent request for verification at least one item of verification is submitted by the assistance unit within each extension period.” UPM § 1505.40 B. 5. b.

**As the Medicaid applicant, the Appellant had the responsibility for submitting verification to the Department within the Department’s deadlines.**

7. Section 1505.35 D. 2. of the Uniform Policy Manual provides:

The Department determines eligibility within the standard of promptness for the AFDC, AABD, and MA programs except when verification needed to establish eligibility is delayed and one of the following is true:

- a. *the client has good cause for not submitting verification by the deadline;* or
- b. the client has been granted a 10 day extension to submit verification which has not elapsed; or
- c. the Department has assumed responsibility for obtaining verification and has had less than 10 days; or
- d. the Department has assumed responsibility for obtaining verification and is waiting for material from a third party.

UPM § 1505.35 D.2. (emphasis added).

**It is reasonable to conclude that the Department had not assumed responsibility for obtaining verification of the value of the assets of the Appellant’s spouse, as the Department continued to issue *Verification We Need* and *Verificaciones que necesitamos* forms subsequent to its ██████████ 2019 to the Florida credit union.**

8. “The eligibility determination is delayed beyond the ... MA [Medicaid] processing standard if because of unusual circumstances beyond the applicant’s control, the application process is incomplete and one of the following conditions exists: (1) eligibility cannot be determined; or (2) determining eligibility without the necessary information would cause the application to be denied.” UPM § 1505.40 B. 4. a.

“If the eligibility determination is delayed, the Department continues to process the application until: (1) the application is complete; *or* (2) *good cause no longer exists.*” UPM § 1505.40 B. 4. b. (emphasis added).

“The Department requires verification of good cause claims by the assistance unit which has failed to comply with the time limits in the eligibility process if: 1. the circumstances are questionable; and 2. taking good cause into consideration would affect eligibility or benefit level for a current or retroactive period of time, or otherwise alter the Department’s actions.” UPM § 1599.10 A.

**In the aggregate, as documented throughout the hearing record, the Appellant demonstrated that he had unusual circumstances beyond his control.**

**The Appellant had good cause when he failed to submit the requested documentation of his marital assets remaining in the control of his estranged spouse residing in another state to the Department by its ██████████ 2019 deadline.**

### DISCUSSION

The testimony of the Appellant's conservators as to their efforts in seeking documentation of the couple's assets that are currently in control of the Appellant's spouse in another state was plausible, consistent, compelling, and supported by the evidence in the hearing record. Their testimony was credible.

Based on the unique circumstances of this specific case, the Appellant had good cause for failing to provide the requested resource information to the Department by its [REDACTED] 2019 deadline. This finding by the undersigned hearing officer of good cause is recognition that there were one or more *temporary* obstacles that delayed the Appellant from submitting the requested documents as to the value of the couple's assets to the Department.

The Department must reopen the Appellant's [REDACTED] 2018 Medicaid application.

The Appellant's conservators are advised not to discontinue, delay, or be remiss in their efforts to attain the required documents and to submit these documents to the Department. The Department may require the Appellant's conservators to provide further proof of their efforts and progress of the same, as provided by Section 1599.10 A. of its Uniform Policy Manual, in order to grant subsequent findings of good cause.

### DECISION

The Appellant's appeal is GRANTED. This Decision does not waive the eligibility requirements of the Medicaid program with respect to the Appellant's [REDACTED] 2018 Medicaid application.

### ORDER

1. The Department will reopen the Appellant's [REDACTED] 2018 Medicaid application.
2. The Department will take appropriate action in accordance with its policy.
3. Within 14 calendar days of the date of this decision, or [REDACTED] - [REDACTED], 2019, documentation of compliance with this order is due to the undersigned.

*Eva Tar - electronic signature*  
Eva Tar  
Hearing Officer

Pc: Attorney [REDACTED]  
[REDACTED]  
[REDACTED]  
Ellen Wissner, DSS-New Haven  
Rachel Anderson, DSS-New Haven  
Cheryl Stuart, DSS-New Haven  
Lisa Wells, DSS-New Haven  
Tricia Morelli, DSS-Manchester



### **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.