

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: 149322

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████, 2019, the Department of Social Services (the "Department") denied ██████████ (the "Appellant"), his ██████████ 2019 Medicaid application.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received a request for an administrative hearing to dispute the denial.

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

██████████, Sr., Appellant  
██████████ Appellant's representative (daughter)  
██████████, ██████████ specialist, Appellant's witness  
Glenda Gonzalez, Department's representative  
Saya Myakoshi, Department's observer  
Eva Tar, Hearing Officer

The hearing record closed ██████████ 2019.

**STATEMENT OF ISSUE**

The issue is whether the Department correctly denied the Appellant's ██████████ 2019 Medicaid application.

### **FINDINGS OF FACT**

1. The Appellant lives at [REDACTED] (the “residence”), his private home in the community. (Appellant’s testimony)
2. The Appellant’s authorized representative lives at a different address from that of the Appellant. (Department’s Exhibit 1)
3. From [REDACTED] 2019 through [REDACTED] 2019, the Appellant was a patient at [REDACTED] (the “Facility”), a skilled nursing facility. (Appellant’s witness testimony)
4. On [REDACTED] 2019, the Department received the Appellant’s Medicaid application for coverage of his care at the Facility. (Department’s Exhibit 1)
5. On [REDACTED], 2019, the Facility notified the Department’s representative by email of its [REDACTED] 2019 discharge of the Appellant to his residence. (Appellant’s Exhibit A)
6. On [REDACTED] 2019, the Department’s representative mailed a *Verification We Need* form to the Facility, requiring the submission by [REDACTED] 2019 of several documents as well as a listing contract for the Appellant’s residence. (Department’s Exhibit 2)
7. On [REDACTED] 2019, the Department denied the Appellant’s Medicaid application, mailing its *Notice of Action* to the Appellant’s authorized representative. (Department’s Exhibit 5)
8. Through [REDACTED] 2019, the Department continued to treat the Appellant as a current patient of the Facility in its correspondence. (Hearing Summary)
9. 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 faxed hearing request. This decision would have become due by [REDACTED] 2020. 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 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 \(1990\)](#)).

2. “The Department assesses the individual’s expectation to return to the home, if necessary: a. at the time of the initial application for assistance; and b. every six months, beginning six months from the latter of the following dates: (1) the effective date of assistance; or (2) the date of admission to the long-term care facility.” Uniform Policy Manual (“UPM”) § 4030.20 D. 3.

**The Appellant was reasonably expected to return to his home within six months of his ██████████ 2019 admittance to the Facility, as evidenced by the Appellant’s ██████████ 2019 discharge to his residence.**

3. “Home property owned by a member of the assistance unit is not counted in the determination of the unit’s eligibility for assistance as long as the unit uses the property as its principal residence....” UPM § 4030.20 A. 1.

Section 4030.20 D. 2. of the Uniform Policy Manual provides:

If the individual enters a long-term care facility and none of the persons listed above is lawfully residing in the individual’s home, the home’s status as an excluded asset depends upon the expectation of the individual to return to the home.

- a. *If the individual can reasonably be expected to return to the home, the home continues to be excluded as home property.*
- b. If the individual cannot reasonably be expected to return to the home, the home is considered non-home property, and is subject to the policies and procedures described in this chapter.

UPM § 4030.20 D.2. (emphasis added).

**The Appellant’s residence was excluded home property.**

**The Department’s ██████████ 2019 Verification We Need form requested at least one item—i.e. a listing contract for the Appellant’s residence—that was not a requirement for establishing the Appellant’s Medicaid coverage for his ██████████ 2019 through ██████████ 2019 care at the Facility.**

4. “The Department acts promptly to determine the effect on eligibility or benefit level whenever changes become known to the Department.” UPM § 1555.30 A.1.

“Whenever possible, the Department attempts to effect necessary actions within thirty calendar days after receiving notification of the change in circumstances.” UPM § 1555.30 B.2.b.

**The Department failed to act upon the information provided by the Facility’s ██████████ 2019 email within 30 calendar days of the report of the change.**

5. "The Department must inform *the assistance unit* regarding the eligibility requirements of the programs administered by the Department, and regarding the unit's rights and responsibilities." UPM § 1015.10 A. (emphasis added)

"Assistance units incurring a change in circumstances are notified of actions taken by the Department which affect eligibility or benefit level." UPM § 1555.25 A.

**The Department committed procedural error when it failed to inform the Appellant of necessary eligibility requirements of the Medicaid program; the Department did not issue its *Verification We Need* form to the Appellant's reported address.**

**The Department incorrectly denied the Appellant's [REDACTED] 2019 Medicaid application.**

### DECISION

The Appellant's appeal is GRANTED.

### ORDER

1. The Department will reopen the Appellant's [REDACTED], 2019 Medicaid application.
2. The Department will update its records to incorporate the Appellant's current address.
3. The Department will issue to the Appellant and his authorized representative an updated *Verification We Need* form, listing any documents that the Department requires to determine the Appellant's Medicaid eligibility.
4. Within 15 calendar days of the date of this decision, or [REDACTED], documentation of compliance with this order is due to the undersigned.

*Eva Tar - electronic signature*  
Eva Tar  
Hearing Officer

Pc: [REDACTED]  
Glenda Gonzalez, 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.