

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: 144157

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████, 2019, the Department of Social Services (the “Department”) denied ██████████
██████████ (the “Appellant”) ██████████ 2019 Medicaid long-term care application.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings
 (“OLCRAH”) received the Appellant’s ██████████ 2019 faxed hearing request.

On ██████████ 2019, the OLCRAH issued a notice scheduling an 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 in the proceeding:

██████████ ██████████, Appellant
 ██████████, Appellant’s witness
 ██████████, Appellant’s witness
 Marissa Luciani, Department’s representative (by telephone)
 Edward Carter, Department’s observer
 Eva Tar, Hearing Officer

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

STATEMENT OF ISSUE

The issue is whether the Department correctly determined that the Appellant was ineligible to receive Medicaid long-term care coverage in [REDACTED] 2019 and [REDACTED] 2019.

FINDINGS OF FACT

1. The Appellant's date of birth is [REDACTED]. (Department's Exhibit 1)
2. The Appellant is divorced. (Department's Exhibit 1)
3. Since [REDACTED] 2018, the Appellant has been a Medicare recipient. (Department's Exhibit 1)
4. From [REDACTED] 2018 through [REDACTED] 2019, the Appellant was a resident of the skilled nursing facility [REDACTED] (the "Facility"). (Department's Exhibit 1)
5. Effective [REDACTED] 2019, the Appellant grossed \$1,026.00 per month in Social Security benefits. (Department's representative's testimony)
6. The Facility is seeking Medicaid payment of the Appellant's long-term care services for [REDACTED] 2019 and [REDACTED] 2019. (Department's Exhibit 1)
7. On [REDACTED] 2019, the Appellant signed a pre-need funeral agreement with a local funeral home but did not submit payment at that time. (Appellant's Exhibit B)
8. In the period from [REDACTED] 2018 through [REDACTED] 2019, the Appellant was the sole owner of [REDACTED] (the "[REDACTED] account"). (Department's Exhibit 2)(Appellant's Exhibit C)
9. Prior to its closure in [REDACTED] 2019, the Appellant had her Social Security benefits directly deposited to the [REDACTED] account. (Appellant's Exhibit C)
10. On [REDACTED] 2019, the Appellant had a balance of \$15,235.09 in the [REDACTED] account. (Appellant's Exhibit C)
11. On [REDACTED] 2019, the Department received the Appellant's Medicaid application for long-term care coverage, signed by the Appellant on [REDACTED] 2019. (Department's Exhibit 1)(Department's Exhibit 3)
12. On [REDACTED] 2019, [REDACTED] 2019, [REDACTED] 2019, and [REDACTED] 2019, the Department notified the Appellant in writing that there was no eligibility for Medicaid long-term care benefits in any month in which the Appellant's counted assets exceeded \$1,600.00. (Department's Exhibits 3, 4, 5, and 6)
13. On [REDACTED] 2019, the Facility discharged the Appellant to the community. (Appellant's witness testimony)(Department's Exhibit 1)

14. On [REDACTED] 2019, the Appellant had a balance of \$9,809.27 in the [REDACTED] account. (Appellant's Exhibit C)
15. On [REDACTED] 2019, the Appellant opened [REDACTED] account (the [REDACTED] account"). (Appellant's Exhibit D)
16. On [REDACTED], 2019, the Appellant paid the local funeral home \$8,000.00 by bank check for an irrevocable, pre-need funeral agreement. (Appellant's Exhibit A)
17. On [REDACTED] 2019, the Appellant closed the [REDACTED] account by transferring funds to the [REDACTED] account. (Appellant's Exhibit C)
18. On [REDACTED], 2019, the Appellant had a balance of \$1,926.55 in the [REDACTED] account. (Appellant's Exhibit D)
19. On [REDACTED], 2019, the Department denied the Appellant's Medicaid long-term care application, citing that the value of her assets exceeded the program's requirements. (Department's Exhibit 8)
20. Connecticut General Statutes § 17b-61 (a) provides that a final decision be issued within 90 days of a request for an administrative hearing. On [REDACTED] 2019, the OLCRAH received the Appellant's faxed hearing request. This decision would have become due by [REDACTED] 2019. This decision is timely.

CONCLUSIONS OF LAW

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

"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. As one of the conditions of eligibility, recipients of medical coverage through the Medicaid for the Aged, Blind, and Disabled-Categorically Needy ("MAABD-CN") coverage group must comply with the program's asset limit. Uniform Policy Manual ("UPM") § 2540.88.

The MAABD-CN coverage group's asset limit is \$1,600.00 for a needs group of one. UPM § 4005.10 A.2.a.

For the purposes of the MAABD-CN coverage group, the Appellant was a needs group of one.

As a condition of eligibility to participate in the MAABD-CN coverage group, the Appellant's assets could not exceed \$1,600.00.

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..." Conn. Gen. Stat. § 17b-261 (c).

"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.

"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.

For the purposes of the Medicaid program, the Appellant's [REDACTED] account and [REDACTED] account were available assets, as the Appellant had the legal right to obtain those assets and use them for her general or medical support.

4. "Money which is received as income during a month and deposited into an account during the month is not considered an asset for that month, unless the source of the money is: 1. an income tax refund; or 2. cash received upon the transfer or sale of property; or 3. a security deposit returned by a landlord." UPM § 4030.05 C.

For the purposes of the Medicaid program, the value of the Appellant's assets equaled \$14,209.09 in [REDACTED] 2019 and \$8,603.27 in [REDACTED] 2019, after the deduction of her deposited Social Security income.

5. "The Department compares the assistance unit's equity in counted assets with the program asset limit when determining whether the unit is eligible for benefits." UPM § 4005.05 D. 1.

"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...." UPM § 4005.05 D.2.

The Department correctly determined that the Appellant was ineligible to receive Medicaid long-term care coverage for [REDACTED] 2019 and [REDACTED] 2019 as the Appellant's available assets exceeded the program's \$1,600.00 asset limit in those months.

DISCUSSION

The Appellant argues that the Department should waive the Medicaid asset limit of \$1,600.00 as: 1) [REDACTED] would not issue her a bank check of the balance of her account to close the account, instead requiring that she open an account in a different bank

account for a bank-to-bank transfer; 2) [REDACTED] at first required photo identification which the Appellant was unable to secure to open an account; and 3) the funeral home would not accept a credit or debit card payment to purchase a pre-need funeral contract. The Appellant's argument is flawed.

With respect to the Medicaid program, an asset's availability does not rely on an owner's ease in liquidating the asset. Section 17b-261 (c) of the Connecticut General Statutes provides that an asset is available to an individual if she has the legal right, authority or power to obtain it or to have it applied for her general or medical support. If a person has a legal right to an asset, the asset is available regardless of when the asset finally is liquidated or the circumstances that might cause that liquidation to be delayed.

The hearing officer affirms the Department's denial of the Appellant's Medicaid long-term care application for the service months of [REDACTED] 2019 and [REDACTED] 2019 as the value of her available assets in those months exceeded the program's \$1,600.00 asset limit.

DECISION

The Appellant's appeal is DENIED.

Eva Tar - electronic signature
Eva Tar
Hearing Officer

Pc: Marissa Luciani, DSS-Bridgeport
Fred Presnick, DSS-Bridgeport
Yecenia Acosta, DSS-Bridgeport
Tim Latifi, DSS-Bridgeport
Carol Sue Shannon, DSS-Danbury

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.