

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

██████████ 2020
Signature Confirmation

Client ID # ██████████
Request # 150229

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████, 2019, the Department of Social Services (the "Department") sent ██████████, (the "Applicant") care of his conservator, ██████████ ("the Appellant") a Notice of Action ("NOA") denying the application for Medicaid Long Term Care Assistance program for failure to provide information.

On ██████████, 2019, the Appellant requested an administrative hearing to contest the Department's decision to deny the Applicant's application for Medicaid.

On ██████████, 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2020.

On ██████████ 2020, the Appellant requested a reschedule of the administrative hearing.

On ██████████, 2020, OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2020.

On ██████████, 2020, the Appellant requested a reschedule of the administrative hearing.

On ██████████, 2020, OLCRAH issued a notice rescheduling the administrative hearing for ██████████ 2020.

On [REDACTED] 2020, 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], Appellant, Applicant's former conservator and current Administrator of his estate

[REDACTED], Attorney for [REDACTED], participated by telephone
Rose Montinat, Department's observer

Michelina Zogby, Department's Representative, participated by telephone
Marci Ostroski, Hearing Officer

The Applicant is deceased and was not present at the administrative hearing.

The hearing record remained open for the submission of additional evidence. A fax was received from the Appellant on [REDACTED], 2020. The Department did not provide additional information. On [REDACTED], 2020, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny the Applicant's application for Medicaid due to failure to submit information needed to establish eligibility was correct.

FINDINGS OF FACT

1. In [REDACTED] 2019, the Applicant was admitted to [REDACTED] [REDACTED] ('the facility') for long term care. (Appellant's Fair Hearing Summary)
2. On [REDACTED], 2019, the Appellant was named the Applicant's conservator by the [REDACTED]. The Probate Certificate listed the Appellant's address as [REDACTED] (Ex. D: Fiduciary's Probate Certificate of Conservatorship)
3. The Department had information regarding the Applicant's potential assets in its computer system due to a previous denied application for Long Term Care Medicaid. (Ex. B: Case Notes, Department's testimony)
4. On [REDACTED] 2019, the Department received an application for Long Term Care Medicaid assistance for the Applicant which listed the Appellant as the Applicant's conservator and her address as [REDACTED]

- ████████████████████ The application provided the Applicant's status as a veteran but did not reflect any asset information. (Department's Hearing Summary, Ex. A: Long Term Care/Waiver Online Application)
5. On ██████████ 2019, the Department sent the Appellant a W-1348 Request for Proofs to the ██████████ address requesting information needed to determine eligibility. The due date for the requested information was ██████████ 2019. (Department's Hearing Summary, Appellant's Hearing Summary)
 6. On ██████████ 2019, the Appellant submitted the odd pages of the W1LTC Application for Long Term Care. (Department's Hearing Summary, Ex. C: W1LTC; Long Term Care Waiver Application)
 7. On ██████████ 2019, the Department sent the Appellant a W-1348, Request for Proofs, requesting additional information needed to determine eligibility. The requested information was due within ten (10) days. (Department's Hearing Summary, Ex. B: Case Notes)
 8. On ██████████ 2019, the Appellant submitted a letter from ██████████ stating that the Applicant did not have a bank account with them within the last five years. (Ex. B: Case Notes)
 9. On ██████████ 2019, the Department sent the Appellant a W1348LTC We Need Verification From You to her address at ██████████. The form requested a completed W1LTC Application form, bank statements from ██████████ for █/14, █/15, █/16, and █/17-present, any/all other bank accounts owned in the last five years, and verification of gross Veteran's Benefits. The due date for the requested information was ██████████, 2019. (Ex. E: W1LTC We Need Verification From You)
 10. On ██████████ 2019, the Appellant sent an email to the Department requesting additional information on the ██████████ account that they were requesting, specifically the account number or branch location as the banks that she had attempted to contact had no record of any accounts under the Applicant's name. (Ex. 4: ██████████ 19 Email from Appellant to Michelina Zogby, DSS)
 11. The Department did not respond to the Appellant's request for assistance with the bank information. (Appellant's testimony, Department's testimony, Hearing record)
 12. On ██████████ 2019, the Department determined that it had not received any of the requested verifications by the deadline of ██████████

2019. The Department denied the Appellant's Long Term Care Medicaid Application for the reason, "You did not return all of the required proofs by the date we asked; and does not meet program requirements". (Hearing Summary, Ex. F: Notice of Action dated [REDACTED]/19)

13. On [REDACTED] 2020, the Appellant was named Administrator of the Applicant's estate. (Ex. 1: Fiduciary's Probate Certificate)
14. 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. This decision, therefore, was due no later than [REDACTED] 2020. The hearing, however, which was originally scheduled for [REDACTED] 2020, was rescheduled for [REDACTED] [REDACTED] 2020, at the request of the Appellant, which caused a 39-day delay. The hearing which was rescheduled to [REDACTED] [REDACTED] 2020, was rescheduled to [REDACTED] 2020, at the request of the Appellant which caused an additional 27 day delay. Because this 66-day delay resulted from the Appellant's requests, this decision was not due until [REDACTED], 2020. However, the hearing record, which had been anticipated to close on [REDACTED], 2020, did not close for the admission of evidence until [REDACTED] [REDACTED], 2020, at the Appellant's request. Because this 14-day delay in the close of the hearing record arose from the Appellant's request, this final decision was not due until [REDACTED] 2020, and is therefore timely. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-2 and § 17b-260 of the Connecticut General Statutes, authorizes the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. "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. 175 178 (194) (citing Conn. Gen. Stat. § 17b-10; *Richard V. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d712 (1990)).
3. UPM § 3029.05 (A) provides that 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.

4. UPM § 3029.05 (B)(1) provides that the policy contained in this chapter pertains to institutionalized individuals and to their spouses.
5. UPM § 3029.05 (B)(2) An individual is considered institutionalized if he or she is receiving LTCF services; or services provided by a medical institution which are equivalent to those provided in a long-term care facility; or home and community-based services under a Medicaid waiver (cross references: 2540.64 and 2540.92).
6. UPM § 3029.05 (C) provides that 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: the individual is institutionalized; and the individual is either applying for or receiving Medicaid.
7. The Department was correct when it determined that it must review assets for the Applicant for the 60 month period immediately preceding his application for Medicaid.
8. UPM § 1010.05(A)(1) provides that the assistance unit must supply the Department in an accurate and timely manner as defined by the Department, all pertinent information and verification which the Department requires to determine eligibility and calculate the amount of benefits.
9. UPM § 1015.10(A) provides that 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.
10. The Department correctly sent the Appellant application requirements lists requesting information needed to establish eligibility, however they were not sent to the address she directed on the application form.
11. UPM § 3525.05(A)(c) provides in part for cooperation in the eligibility process that Applicants are responsible for cooperating with the Department in completing the application process by: providing and verifying information as required.
12. UPM § 1505.40(B)(5)(a) provides that for delays due to insufficient verification, 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.

13. UPM § 1505.40(B)(5)(b) provides that 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.
14. The Appellant was unable to submit at least one item of verification within the extension period.
15. UPM § 1505.35(D)(2) provides that 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: the client has good cause for not submitting verification by the deadline, or the client has been granted a 10 day extension to submit verification which has not elapsed.
16. UPM § 3525.05 (C) provides for good cause for noncompliance with the application process: Penalties for noncooperation with the application and review processes are not imposed under the following conditions, which are considered good cause for noncompliance:
 1. circumstances beyond the assistance unit's control;
 2. failure of a representative to act in the best interests of an incompetent or disabled assistance unit.
17. UPM 1540.10(A) provides; The assistance unit bears the primary responsibility for providing evidence to corroborate its declarations.
18. UPM 1540(C) provides: the Department obtains verification on behalf of the assistance unit when the following conditions exist:
 1. The Department has the internal capability of obtaining the verification needed through such means as case files, microfiche records, or direct access to other official records; or
 2. The Department has the capability to obtain the verification needed, and the assistance unit has done the following:
 - a. made a reasonable effort to obtain the verification on its own; and
 - b. been unable to obtain the verification needed; and
 - c. requested the Department's help in obtaining the verification; and

d. continued to cooperate in obtaining the verification.

19. The Department failed to assist the Appellant in obtaining the verification of the [REDACTED] statements after she made a reasonable effort to obtain them, was unable to obtain any information on the account, and requested the Department's assistance.
20. The Department incorrectly denied the Appellant's application for failure to submit information needed to establish eligibility.

DISCUSSION

Departmental regulations are clear that the Applicant bears the primary responsibility to provide the Department with the verifications necessary to determine eligibility. Regulations, however, also provide that the Department is responsible to assist the Applicant in certain circumstances when the verifications are unobtainable. These circumstances are present in this case.

I do not agree with the Appellant's position that the Department was requesting her to provide verification of the non-existence of a factor of eligibility when it requested the [REDACTED] statements. The Department had information that the Applicant had an account with a specific bank; it was not unreasonable for them to request verification from that bank. The Department erred, however, when it failed to respond to her [REDACTED], 2019, written request for assistance with locating the bank. The Appellant provided the Department with a detailed explanation of her efforts to locate the bank and her inability to find the bank or any accounts under the Applicant's name. At that point, the Department had a responsibility to assist in obtaining the verifications.

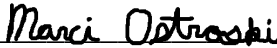
The Department is also required to inform the assistance unit what it has to do to establish eligibility which it accomplishes by sending Proofs We Need forms. The Department sent the requests to the incorrect address. While the Appellant was able to access the requests through a third party it still placed an undue burden on the assistance unit.

DECISION

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

ORDER

1. The Department will rescreen the Applicant's [REDACTED] 2019, application for Medicaid Long Term Care Assistance.
2. The Department will assist the Appellant in obtaining the information they require from [REDACTED].
3. Compliance with this order is due ten (10) days from the date of this decision, [REDACTED] 2020.



Marci Ostroski
Hearing Officer

CC: Peter Bucknall, Jamel Hilliard, Social Services Operations Managers,
Waterbury, RO
Michelina Zogby, Fair Hearing Liaison, Waterbury RO

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.