

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

████████████████████
Request # 151875

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a notice granting the Appellant’s Medicaid application for Long Term Care (“LTC”) benefits effective ██████████ 2019.

On ██████████ 2020, the Appellant’s representative, Attorney ██████████ requested an administrative hearing to contest the effective date of the LTC Medicaid benefits as determined by the Department.

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

On ██████████ 2020, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-184, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

████████████████████ for the Appellant
Marilyn Phillips, Department’s Representative
Christopher Turner, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined [REDACTED] 2019 as the effective date of the Appellant's LTC assistance.

FINDINGS OF FACT

1. On [REDACTED] 2019, Attorney [REDACTED] was appointed the Appellant's conservator of person and estate. (Exhibit 1: Certificate of Conservatorship)
2. On [REDACTED] 2019, the Appellant was admitted to [REDACTED] [REDACTED] (Exhibit 1: W-1 LTC; Record; Testimony)
3. On [REDACTED] 2019, the Department received an application for Medicaid LTC benefits from [REDACTED]. The Application was completed by Attorney [REDACTED]. The asset page of the application listed a [REDACTED] checking account balance of \$8,296.00 and a [REDACTED] savings account balance of \$14,932.24. (Exhibit 3: W-1 LTC application; Hearing summary)
4. On [REDACTED] 2019, the Department received an application for Medicaid LTC benefits from [REDACTED] completed by Attorney [REDACTED]. The asset page of the application listed a [REDACTED] checking account balance of \$8,296.00 and a [REDACTED] savings account balance of \$14,932.24. (Exhibit 3: W-1 LTC application; Hearing summary)
5. On [REDACTED] 2019, the Department sent Attorney [REDACTED] a Verification We Need form ("W-1348LTC") requesting a copy of the Appellant's [REDACTED] Care insurance card, copy of funeral contract, divorce decree or spouses death certificate, verification of gross pension [REDACTED] statements for month ending [REDACTED] [REDACTED] 2014, [REDACTED] 2015, [REDACTED] 2016 and [REDACTED] 2017 to [REDACTED] 2019 to the present. An [REDACTED] 2019 due date was given. The 1348 noted total assets must not exceed \$1,600. (Exhibit 6A: W1348LTC; Hearing summary)
6. On [REDACTED] 2019, the Appellant's [REDACTED] Saving's account was closed. The ending balance of \$14,932.35 was transferred to the Appellant's Checking account. (Exhibit 4: [REDACTED] statements)
7. On [REDACTED] 2019, Attorney [REDACTED] made a payment of \$14,890 to [REDACTED] [REDACTED] (Exhibit 7: Diversion bill; Testimony)

8. The Appellant's [REDACTED] account balances for [REDACTED] 2019, through [REDACTED] 2019 were the following:

Month	[REDACTED] *	[REDACTED] *	Total
[REDACTED] 2019	\$7,117.29	\$14,931.76	\$22,049.05
[REDACTED] 2019	\$6,172.92	\$14,932.00	\$21,104.92
[REDACTED] 2019	\$7,343.96	\$14,932.24	\$22,276.20
[REDACTED] 2019	\$0.00	\$25,068.10	\$25,068.10

(Exhibit 4; * Balance as of the 26'th of the month.

9. On [REDACTED], 2019, the Department sent Attorney [REDACTED] a W-1348LTC requesting a copy of the Appellant's of funeral contract, divorce decree or spouses death certificate, verification of face value and cash surrender value for [REDACTED] Life Insurance policy, [REDACTED] statements for the months ending [REDACTED] 2014, [REDACTED] 2015, [REDACTED] 2016 and [REDACTED] 2017 through [REDACTED] 2019 to the present. A [REDACTED] 2019 due date was given. The 1348 noted total assets must not exceed \$1,600 for eligibility to be present. (Exhibit 6B)
10. On [REDACTED] 2019, the Department sent Attorney [REDACTED] a W-1348LTC requesting a copy of the Appellant's divorce decree or spouses death certificate, a copy of the Appellant's funeral contract, [REDACTED] statements for the months ending [REDACTED] 2014, [REDACTED] 2015, [REDACTED] 2016 and [REDACTED] 2017 to [REDACTED] 2019 to the present. A [REDACTED] 2019 due date was given. The 1348 noted total assets must not exceed \$1,600 for eligibility to exist. (Exhibit 6C)
11. On [REDACTED] 2019, the Department sent Attorney [REDACTED] a W-1348LTC requesting a copy of the Appellant's funeral contract, and divorce decree or spouse's death certificate, [REDACTED] statements for the months ending [REDACTED] 2014, [REDACTED] 2015, [REDACTED] 2016 and [REDACTED] 2017 to [REDACTED] 2019 to the present. An [REDACTED] 2019 due date was given. The 1348 noted total assets must not exceed \$1,600 in order for eligibility to exist. (Exhibit 6D)
12. On [REDACTED] 2019, the Department sent Attorney [REDACTED] a W-1348LTC requesting a copy of the Appellant's divorce decree or spouse's death certificate, and [REDACTED] statements for the months ending [REDACTED] 2014, [REDACTED] 2015, [REDACTED] 2016 and [REDACTED] 2017 to [REDACTED] 2019 to the present. An [REDACTED] 2019 due date was given. The 1348 noted total assets must not exceed \$1,600 in order to establish eligibility. (Exhibit 6E)
13. On [REDACTED] 2019, the Department sent Attorney [REDACTED] a W-1348LTC requesting a copy of the Appellant's [REDACTED] Bank statements for the months ending [REDACTED], 2014, [REDACTED] 2015, [REDACTED] 2016 and [REDACTED] 2017 to [REDACTED] 2019 to the present as well as verification of all transactions of

\$5,000.00 or more. A [REDACTED] 2019 due date was given. The 1348 noted total assets must not exceed \$1,600 in any month for eligibility to exist. (Exhibit 6F)

14. On [REDACTED] 2019, the Department granted the Appellant's LTC application with an effective date of [REDACTED] 2019 and a diversion amount of \$50,562.00 as requested by the facility. (Exhibit 7; Exhibit 8: Notice; Hearing summary)
15. Attorney [REDACTED] request that the Department consider a LTC effective date of [REDACTED] 2019 as the Appellant's liabilities exceeded her assets at that time is not supported by regulation. (Record; Appellant's Exhibit A: Appeal letter; Attorney [REDACTED] testimony)
16. 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] 2020, with the decision due by [REDACTED] 2020. (Hearing Record)

CONCLUSIONS OF LAW

1. Connecticut General Statutes ("Conn. Gen. Stat.") § 17b-2 provides that the Department of Social Services is designated as the state agency for the administration of (6) the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Conn. Gen. Stat. § 17b-261a (d) (1) provides for purposes of this subsection, an "institutionalized individual" means an individual who has applied for or is receiving (A) services from a long-term care facility, (B) services from a medical institution that are equivalent to those services provided in a long-term care facility, or (C) home and community-based services under a Medicaid waiver.
3. "The department's Uniform Policy Manual ("UPM") is the equivalent of 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)).
4. 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 that the Department requires to determine eligibility and calculate the amount of benefits.

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.

The Department correctly sent the Appellant's representative more than one Application Verification Requirements lists requesting information needed to establish eligibility.

5. UPM § 1505.35 (C) provides the following promptness standards be established as maximum times for processing applications: forty-five calendar days for AABD or MA applicants applying based on age or blindness.

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: 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.

UPM § 1505.35 (D) (3) provides processing standards are not used as a waiting period for granting assistance. Applications are processed with reasonable promptness as soon as the Department is able to make an eligibility determination.

UPM § 1505.35 (D) (4) provides processing standards are not used as the basis for denying assistance. Denial results from the failure to meet or establish eligibility within the applicable time limit.

The Department correctly extended the processing standard for the Appellant's application beyond forty-five calendar days.

6. UPM § 1505.40 (B) (4) (a) provides that the eligibility determination is delayed beyond the AFDC, AABD or MA 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) provides that the eligibility determination is delayed beyond the AFDC, AABD or MA 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) (b) provides that 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) (5) (a) provides 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) (b) provides 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 § 1540.10 provides that the verification of information pertinent to an eligibility determination or a calculation of benefits is provided by the assistance unit or obtained through the direct efforts of the Department. (A) The assistance unit bears the primary responsibility for providing evidence to corroborate its declarations. (C) 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.

The Department correctly granted the Appellant's representative an extension of time to submit requested verification in order to determine eligibility.

The Appellant's representative did not request the Department's help in obtaining any of the requested verification needed to establish eligibility.

7. UPM § 4005.05 (B) (1) provides 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) (2) provides that under all programs except Food Stamps, the Department considers as asset available when actually available to the individual or when the individual has the legal right, authority or power to obtain the asset, or have it applied for his or her general or medical support.

UPM § 4005.05 (D) (2) provides in relevant part, that 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.

The Department correctly determined that Attorney [REDACTED] had the legal right and authority to access the Appellant's [REDACTED] checking and savings accounts.

8. UPM § 4030.05 (A) provides for the treatment of specific types of Bank Accounts. Bank accounts include the following: 1. Savings account 2. Checking account. 3. Credit union account; 4. Certificate of deposit 6. Patient account at long-term care facility. 8. Trustee account; 9. Custodial account.

UPM § 4030.05 (B) provides that part of a checking account to be considered as a counted asset during a given month is calculated by subtracting the actual amount of income the assistance unit deposits into the account that month from the highest balance in the account for that month.

The Department correctly determined the balance of the Appellant's checking and savings account balances from [REDACTED] 2019 through [REDACTED] 2019 exceeded the asset limit of \$1,600.00.

9. UPM § 4099.15 (A) provides for factors relating to inaccessibility of assets. (1) The assistance unit must verify that an otherwise counted asset is inaccessible to the unit if the unit claims it cannot convert the asset to cash. (2) If the unit is unable to verify that the asset is inaccessible, the asset is considered a counted asset.

UPM § 4099.20 (A) provides for verification of excluded assets. 1. The assistance unit must verify the reason for the exclusion of an asset if there is a question regarding the validity of the exclusion. 2. If the unit is unable to verify that an asset should be excluded, the Department considers the asset a counted asset.

UPM § 4099.20 (B) provides the reasons for an exclusion of an asset include, but are not limited to: (1) source from which the assistance unit obtains the asset; (2) purpose for which the assistance unit uses the asset; (3) fair market value of the asset; (4) income generated by the asset; (5) expectations of an institutionalized individual to return to the home.

The Department correctly determined the Appellant's [REDACTED] accounts are/were an accessible asset during the application process and not otherwise excluded from consideration.

10. UPM § 1560.10 provides for beginning dates of Medicaid Assistance. The beginning date of assistance for Medicaid may be one of the following: A. the first day of the first, second or third month immediately preceding the month in which the Department receives a signed application when all non-procedural eligibility requirements are met and covered medical services are received at any time during that particular month.

UPM § 4005.10 (A) provides the asset limits for the Department's programs are as follows: (2) AABD and MAABD (a) the asset limit is \$1,600 for a needs group of one.

UPM § 4005.15 (A) (2) provides that at the time of application, the assistance unit is ineligible until the first day of the month in which it reduces its equity in counted assets to within the asset limit.

UPM § 4099.05 (B) provides for the reduction of excess assets. 1. The assistance unit must verify that it has properly reduced its equity in counted assets to within the program's limit. 2. If the unit does not verify that it has properly reduced its equity in counted assets, the unit is ineligible for assistance.

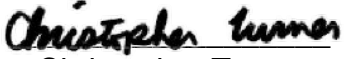
The Department correctly determined [REDACTED] 2019 as the first month of eligibility based on the Appellant's assets not exceeding \$1,600.00.

DISCUSSION

The Department correctly determined [REDACTED] 2019 as the effective date of the Appellant's LTC coverage, the month in which the Appellant's assets were reduced below the asset limit.

DECISION

The Appellant's appeal is denied.


Christopher Turner
Hearing Officer

Cc: Fred Presnick, Operations Manager Bridgeport
Yecenia Acosta, Operations Manager Bridgeport
Tim Latifi, Operations Manager Bridgeport
Marilyn Phillips, DSS Bridgeport

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, law, and 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 the 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, if 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.