

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

Case ID # ██████████
Client ID # ██████████
Request # 152753

NOTICE OF DECISION
PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2020, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a notice of action denying the Appellant’s Medicaid application for Long Term Care (“LTC”) benefits.

On ██████████ 2020, the Appellant’s representative requested an administrative hearing to contest the Department’s decision to deny the Appellant’s LTC application.

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

On ██████████ 2020, OLCRAH, at the request of the Appellant’s representative, issued a notice rescheduling 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 by telephone.

The following individuals called into the hearing:

██████████ Appellant’s Authorized Representative
Glenda Gonzalez, Department’s Representative
Christopher Turner, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's action to deny the Appellant's Medicaid application due to assets over the program limit and failure to submit information needed to establish eligibility was correct.

FINDINGS OF FACT

1. On [REDACTED] 2019, the Department received an application for Medicaid LTC Assistance from the Appellant's representative. The Appellant has been a resident of the [REDACTED] Connecticut since [REDACTED] 2018. (Exhibit 1: LTC application; Exhibit 3: Ascend data application)
2. On [REDACTED] 2019, the Appellant's [REDACTED] Checking account had a balance of \$8,742.97, and the Appellant's [REDACTED] Savings account had a balance of \$0.04. (Exhibit 8: Key Bank statement)
3. The Appellant has two [REDACTED] annuities which he inherited from his spouse [REDACTED] who died on [REDACTED] 2018, with the beneficiary claim processed on [REDACTED] 2018. The Department determined that the annuities are accessible to the Appellant and their value must count in the Department's eligibility determination. (Department's testimony; Hearing Record)
4. On [REDACTED] 2020, the Appellant's representative indicated in his e-mail to the Department's representative that the Appellant's [REDACTED] checking account contained \$2,900.00. Also, the Appellant's representative noted that once a payment option has been selected for the [REDACTED] annuities, the payment option cannot be changed or the balance liquidated. (Exhibit 5A: E-mail)
5. On [REDACTED] 2020, the Appellant's representative e-mailed Daniel Butler, the Department's principal attorney, his correspondence with the Department's representative on [REDACTED] 2020, explaining the history of the [REDACTED] annuities and his difficulty trying to satisfy departmental requests to provide requested information. (Exhibit 5A; Testimony)
6. On [REDACTED] 2020, Attorney Butler determined, since the [REDACTED] annuities do not have a non-assignability rider, the annuity streams from both annuities are available and countable assets. (Exhibit 5A)
7. On [REDACTED] 2020, the Department issued a sixth W-1348LTC (the last one before denial) requesting verification of the surrender of the [REDACTED] annuities and verification of [REDACTED] account balances. The information was due by [REDACTED] 2020. (Exhibit 2: W-1348LTC)

8. On ██████████ 2020, the Department issued the Appellant a notice of action denying the Appellant's application for failure to provide the information needed to establish eligibility and having assets above the program limit. (Exhibit 4: Notice of Action)
9. The verification from Athene regarding the annuities is still needed before a determination of eligibility can be made. (Department's testimony)
10. The Appellant's representative expression, verbal and written, of his difficulty with ██████████ to allow him, on behalf of the Appellant, to sell the annuity income stream to a third party is credible. (Record)
11. There is no indication in the case record that the Department made a referral to resources or an offer to assist the Appellant's representative with obtaining the requested verification or with help surrendering of the annuities after becoming aware of the Appellant's representatives difficulty with obtaining the requested verification and the surrendering of the annuities. (Record)
12. The Department's representative considers that the Appellant's representative has established good cause for not providing requested information from ██████████ due to his difficulty with the surrender of the Athene annuities. (Department's testimony)
13. 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. Per Commissioner Gifford of the Department of Social Services order dated April 13, 2020; this time frame has been extended to 120 days, pursuant to Governor Lamont's Executive Order 7M issued ██████████ 2020. The Appellant's representative requested an administrative hearing on ██████████ 2020, with the decision due by ██████████ 2020. However, due to a 24-day extension granted to the Appellant's representative, this decision was due no later than ██████████ 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.

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.

The Appellant is an institutionalized individual of a long term care facility who has applied for Medicaid coverage with the Department.

2. "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)).
3. 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 several Application Verification Requirements lists requesting information needed to establish eligibility.

4. UPM § 1505.35 (C) (1) provides the following promptness standards are established as maximum times for processing applications: (c) (2) 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 § 1505.40 (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 for delays due to good cause. 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.

The Department correctly determined the standard of promptness for the Appellant's LTC application was 45 days.

The Appellant has established good cause for obtaining and submitting requested verifications.

5. 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 the Appellant's representative had the legal right and authority to access the Appellant's [REDACTED] annuities.

6. 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 § 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.

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 the Appellant's checking account balance in [REDACTED] 2020 exceeded the asset limit of \$1,600.00.

7. UPM § 1540.10 provides for unit and agency responsibilities. 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. The assistance unit bears the primary responsibility for providing evidence to corroborate its declarations.

UPM § 1540.10 (A) provides the assistance unit bears the primary responsibility for providing evidence to corroborate its declarations.

UPM § 1540.10 (B) provides the assistance unit may submit any evidence which it feels will support the information provided by the unit.

UPM § 1540.10 (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.

UPM § 3525.05 (B) provides for penalties related to the eligibility process. 1. Noncompliance with the application process. a. An application is denied when an applicant refuses to cooperate with the Department. b. It must be clearly shown that the applicant failed to take the necessary steps to complete the application process without good cause before the application is denied for this reason.

UPM § 3525.05 (C) provides for good cause for noncompliance with the eligibility process. 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.

UPM P-3525.15 (C) provides for cooperation in pursuing assets. 1. In discussing the pursuit of a particular inaccessible or potential asset with an applicant or recipient, consider the following factors before deciding to require action on the part of the individual: is the asset worth the amount of time and money that needs to be expended to gain access to it? 3. Refer to the Resource Unit any situations that present difficulties.

The Department did not properly consider the difficulty the Appellant's representative had in obtaining the required information from [REDACTED].

The Department neglected to refer the Appellant's case to the Department's resource unit to assist in obtaining the required information from [REDACTED].

The Department improperly denied the Appellant's application for failure to submit information needed to establish eligibility since good cause for obtaining requested verifications exists. However, the Department's denial based on being over assets, if utilizing only the Appellant's [REDACTED] checking account balance as of [REDACTED] 2020, is correct.

DISCUSSION

The Department's action to deny the Appellant's LTC application based on the failure to provide information is overturned. Regulation requires that an application must remain pending as long as the Appellant shows good cause for not providing at least one requested item before the designated due date given. Since the Appellant's representative has established good cause for not submitting the requested information by the due date and the fact the Department did not refer the case to resources as per policy, the Department must reopen the Appellant's application. This decision does not confer eligibility to the Appellant but allows the application process to restart.

DECISION

The Appellant's appeal is granted.

ORDER

The Department will reopen the Appellant's LTC application as of [REDACTED] 2019 and request any outstanding verification by means of a W-1348LTC. The Department will assist the Appellant if necessary in obtaining the requested information from Athene utilizing the procedures outline in policy.

The Department will submit to the undersigned verification of compliance with this order by providing a copy of the Appellant's Impact status screen no later than [REDACTED] 2020.


Christopher Turner
Hearing Officer

Cc: Tricia Morelli, Operations Manager Manchester
Glenda Gonzalez, DSS New Haven

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: 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 her 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.