

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 # 154589

NOTICE OF DECISION
PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2020, the Department of Social Services (the "Department") sent ██████████ (the "Applicant") a notice of action denying his Medicaid application for Long Term Care ("LTC") benefits.

On ██████████ 2020, ██████████, ("the Applicant's representative,") requested an administrative hearing to contest the Department's decision to deny the Applicant'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, the Applicant's representative requested to reschedule the hearing.

On ██████████ 2020, OLCRAH 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 participated in the telephone hearing:

[REDACTED], Applicant's Representative, [REDACTED]
 [REDACTED], Applicant's Representative, [REDACTED]
 [REDACTED], Trustee, Estate Administrator
 [REDACTED], Facility Attorney
 Shelley Starr, Hearing Officer

The Applicant was not present for the hearing due to his institutionalization.

The hearing record was held open one day to allow the submission of additional evidence from the Appellant. On [REDACTED] 2020, the hearing record closed.

STATEMENT OF THE ISSUE

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

FINDINGS OF FACT

1. In [REDACTED], the Applicant was admitted to the [REDACTED] [REDACTED] located in [REDACTED] where he currently resides. (Hearing Summary; Attorney Testimony)
2. On [REDACTED], 2019, the Department received an application for Medicaid Long Term Care ("LTC") Assistance from the Applicant's representative. (Hearing Summary; Hearing Record)
3. Between the period of [REDACTED], 2019, to [REDACTED] 2020, the Department and the Applicant's representative conducted a written back and forth communication primarily via U.S. mail. (Hearing Record; Representative's Testimony)
4. Between the period of [REDACTED], 2019, through [REDACTED], 2020, the Department sent the Applicant's representative a total of six (6) W-1348 LTC Verification We Need requests for information needed to determine eligibility. The representative responded timely to the Department's W-1348 requests 1 through 5 with the submission of requested verification by the designated due date. (Hearing Summary; Exhibit 2-7; W-1348 Verification We Need 1-6)
5. On [REDACTED] 2019, the Department sent the Applicant's representative a W-1348 LTC Verification We Need request # 4. The request stated, "please provide current bank statement to verify house proceeds were deposited" "Please provide copy of trust document, Schedule A and all statements from 2014 to present. Please provide The [REDACTED]. We have the amendments already." The information was due by [REDACTED], 2020. (Hearing Summary; Exhibit 5: W-1348LTC dated [REDACTED], 2019.)

6. On [REDACTED], 2020, the Department reviewed the submitted verifications. The trust document was provided and was forwarded to the DSS Legal Department for further review. (Exhibit 1: Case Notes entry [REDACTED]/20)
7. On [REDACTED], 2020, the Department sent the Applicant's representative a W-1348 LTC request # 5. The request stated "for all accounts (including those listed below) provide statements as indicated. For all transactions of \$5,000 or more, provide copies of bills, receipts or canceled checks to show what the transactions were for. For deposits of \$5,000.00 or more, prove the origin of funds, i.e. other accounts, sale of property or liquidation of other asset(s). Please provide current bank statement to verify house proceeds were deposited." The information was due by [REDACTED], 2020. (Exhibit 6: W-1348 LTC dated [REDACTED], 2020; Hearing Summary)
8. On [REDACTED], 2020, the Department reviewed the provided bank statements verifying where the house proceeds were deposited. The Department determined that additional information was needed. (Exhibit 1: Case Notes; entry [REDACTED], 2020; Hearing Record)
9. On [REDACTED] 2020, the Department sent the Applicant's representative W-1348 LTC Verification We Need request # 6. The request stated " Pertaining to trusts (held by or for the benefit of you and/or your spouse) provide copy of trust document, Schedule A and all statements from 2014 to present. Provide all pages for the [REDACTED]." The information was due by [REDACTED] 2020. (Hearing Summary; Exhibit 7: W-1348LTC # 6 dated [REDACTED] 2020)
10. On [REDACTED] 2020, the Applicant's representative emailed the Department regarding the pending application, advising that they are working on the application and would like to discuss specific details and requested a telephone call from the Department to discuss. (Appellant's Post Hearing Exhibit C: E-mail correspondence sent to the Dept. from Applicant's Representative on [REDACTED] 2020; Hearing Record)
11. On [REDACTED], 2020, the Applicant's representative emailed the Department advising they were hoping to speak with the Department regarding the case as the deadline is [REDACTED] 2020. The e-mail further stated, "if they could let [REDACTED] know when is a good time to talk?" (Appellant's Post Hearing Exhibit C: E-mail correspondence sent to the Department from Applicant's Representative on [REDACTED] 2020; Hearing record)
12. On [REDACTED] 2020, the Applicant's representative emailed the Department advising that she has been trying to reach the Department unsuccessfully to discuss the pending application and atypical circumstances, as outstanding information is needed for the pending application, in regard to a trust. The email further advised that the information DSS legal is asking for is not simple to come by. The [REDACTED] [REDACTED] 2020, due date was noted with a request to hear back. (Appellant's Post Hearing

Exhibit C: E-mail correspondence sent to the Department from Applicant's representative on [REDACTED], 2020.

13. On [REDACTED], 2020, the DSS Supervisor e-mailed the Applicant's representative advising in part that "a complete review of the trust by legal is needed to determine eligibility for the long term care program. Our Attorney, [REDACTED] has requested a complete copy of all the trust documents in this case. Only partial have been received. We cannot override our legal department's instructions. (Appellant's Post Hearing Exhibit C: E-mail correspondence sent to the Applicant's Representative from the DSS Department Supervisor on [REDACTED], 2020)
14. On [REDACTED], 2020, the Applicant's representative emailed the DSS Supervisor, and the Department's assigned worker to the application asking for a couple days extension so she could contact [REDACTED] directly. (Appellant's Post Hearing Exhibit C: E-mail correspondence sent to the Department from the Applicant's representative on [REDACTED], 2020; Hearing Record)
15. On [REDACTED], 2020, the Department e-mailed the Applicant's representative advising "the trust has been on the verification form since [REDACTED] 2019, and I spoke to [REDACTED] multiple times about this issue. I have to deny the case but when you get the trust issue resolved reapply and we will send it to legal for him to review." (Appellant's Post Hearing Exhibit C: E-mail correspondence from the Department on [REDACTED] 2020 Hearing Record)
16. On [REDACTED] 2020, the Department sent the Applicant a Notice of Action ("NOA") denying the long term care application because "you did not return all of the required proofs by the date we asked for. " "Does not meet program requirements." (Hearing Summary; Exhibit 8: Notice of Action dated [REDACTED] 2020)
17. The Applicant's representative relayed to the Department her concern regarding the pending application and the designated due date in which information was due. She requested assistance from the Department and an opportunity to discuss the difficulties she was having in complying with the Department's request. She clearly demonstrated that she wanted guidance and an extension of time in which to provide the requested information. (Exhibit C: Appellant's Post Hearing Exhibit C: E-mail correspondence; Hearing Record; Appellant's Testimony)
18. There is no indication in the hearing record that the Department assisted the Applicant's representative or communicated with her to discuss the difficulties she was having obtaining the requested verification or allowing her an extension of time to discuss and resolve the issues with the Department's Legal Representative. (Hearing Record)
19. There is no indication in the case record that the Applicant's representative was able to communicate her reasons for the delay and difficulty obtaining the requested trust documentation. (Hearing record)

20. The Department representative assigned to the application acknowledged that the Applicant's representative had asked for an extension but "this has been going on way too long." (Exhibit 1: Case Notes entry [REDACTED] 2020; Hearing Record)
21. At the hearing, the reasons for the difficulty in obtaining the complete trust document was disclosed, as the trustee, who has access to the trust document and was providing the trust information, was unable to obtain the information from his home in [REDACTED] because he was detained in [REDACTED] and was unable to travel due to his age and health risks of flying due to Covid-19. (Trustee's Testimony; Representatives Testimony; Attorney Testimony)
22. The Trustee attempted to obtain the trust document directly from the bank while he was detained in [REDACTED], however, he was unsuccessful. (Trustee's Testimony; Representative's Testimony; Hearing Record)
23. The Applicant's representatives have established good cause reason for not providing the requested information timely to the Department due to the usual Covid-19 circumstances beyond their control. (Hearing Record; Representative's Testimony; Trustee Testimony; Attorney Testimony)
24. 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 [REDACTED] 2020; this time frame has been extended to 120 days, pursuant to Governor Lamont's Executive Order 7M issued [REDACTED], 2020. The Applicant's representative requested an administrative hearing on [REDACTED] 2020, with the decision due by [REDACTED] 2020. However, due to a 28-day extension due to the rescheduling of the hearing, in addition to a one-day extension to allow the submission of additional evidence, this decision is due no later than [REDACTED], 2020, and is therefore timely. (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.

Connecticut General Statutes § 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 Department correctly determined that the Applicant 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 Applicant's representative six (6) W-1348 LTC Verification We Need requests for 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 incorrectly did not allow an extension of time due to the Applicant's good cause reason for not providing the requesting information.

The Department incorrectly did not continue to process the application until the application is complete or good cause no longer existed.

5. 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.

The Department did not properly consider the difficulty the Applicant's representatives experienced in obtaining the required trust information due to the unusual circumstances beyond their control presented due to Covid-19.

The Department failed to consider the Applicant's good cause reason for not providing the requested verification.

The Department failed to assist or refer the Applicant's case to the Department's resource or legal unit after the demonstration of the representative's cooperation with the application process and requests for assistance and direction.

The Department improperly denied the Applicant's application for failure to submit information needed to establish eligibility.

DISCUSSION

The Department's action to deny the long term care application based on the failure to provide information is overturned. Regulation provides that an application can remain pending as long as good cause for not providing the requested verification by the designated due date exists. Since the Applicant's representatives have established good cause for not submitting the requested information by the designated due date; the Department must reopen the long term care application and continue to determine eligibility. This decision does not confer eligibility to the Applicant but allows the application process to restart from the application date.

DECISION

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

ORDER

1. The Department shall reopen the Applicant's Long Term Care Medicaid application as of [REDACTED] 2019, and continue to determine eligibility.
2. The Department shall submit to the undersigned verification of compliance with this order by providing a copy of the Applicant's Impact status screen no later than [REDACTED] 2020.


Shelley Starr
Hearing Officer

Pc: Cheryl Stuart, Department of Social Services, Norwich
Nedra Pierce, Department of Social Services, 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.