

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

██████████ 2020
SIGNATURE CONFIRMATION

CLIENT ID #: ██████████
HEARING ID #: 160790

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2020, the Department of Social Services (the “Department”) issued a notice of action (“NOA”) to ██████████ (the “Appellant”) denying his application for Medicaid because he did not return all of the required proofs by the date the Department asked.

On ██████████ 2020, the Appellant’s wife, ██████████ (his “Spouse”), requested an administrative hearing to appeal the Department’s denial of the Appellant’s Medicaid application.

On ██████████ ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2020. The hearing was scheduled to be held telephonically due to the COVID-19 pandemic.

On ██████████ 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 Appellant’s Spouse had no objection to the hearing being held telephonically.

The following individuals were present at the hearing:

██████████ Appellant’s Spouse

██████████ Appellant's daughter
Michelina Zogby, Department's Representative
James Hinckley, Hearing Officer

The hearing record was held open for time for the Appellant's Spouse to provide additional information. No additional information was received, and on ██████████ ██████████ the hearing record closed.

STATEMENT OF THE ISSUE

Whether the Department was correct when it denied the Appellant's application for not returning all of the required proofs by the date the Department asked.

FINDINGS OF FACT

1. The Appellant was admitted to a long term care nursing facility in ██████████ 2019. (Hearing Record)
2. The Appellant's Spouse was appointed as his conservator of estate and person on ██████████ 2020. (Probate Appointment of Conservator)
3. On ██████████ 2020, the Spouse submitted an online application to the Department for Long Term Care Medicaid for the Appellant. (Hearing Record)
4. The application form that the Appellant's Spouse used was not the correct one for long term care Medicaid because it did not ask necessary questions regarding assets and transfers of assets that the specific application form used for long term care Medicaid asked. (Ms. Zogby's testimony, Hearing Record)
5. On ██████████ 2020, the Department requested several items of information and verification from the Appellant, including the completion of several necessary pages of the application form that were not completed initially. The due date to provide the information was ██████████ 2020. (Ex. 4: W-1348LTC *We Need Verification From You* form, Ex. 1: Case Notes)
6. On ██████████ 2020, the Appellant's Spouse called the Department to inquire about the status of her husband's application and to speak with the Long Term Care worker assigned to the case. The worker that took the call notified the appropriate Long Term Services and Supports ("LTSS") unit by email that the Spouse desired a call-back. (Ex.1)
7. On ██████████,2020, the Appellant's Spouse spoke with the assigned LTSS worker's supervisor. The Spouse reported that she never received the Department's request from ██████████ 2020. Since the ██████████ 2020 communication was the only notice sent by the Department that provided the name of the assigned LTSS worker and her contact information, prior to

speaking with the supervisor the Appellant's Spouse did not know whom to contact within the Department regarding the application. (Ex. 1, Ex. 3: Emails)

8. On [REDACTED] 2020, the assigned LTSS worker sent the Appellant's Spouse an email. The email explained some aspects of the application process, requested confirmation that the Department had the correct address on file for the Appellant, explained why additional pages of the application needed to be filled out, and offered to assist the Spouse in obtaining the bank records by having the Department request the information directly from the bank. (Ex. 3)
9. On [REDACTED] 2020, the Department sent the Appellant a new request for the necessary items of information and verification. The due date to provide the information was [REDACTED] 2020. (Ex. 5: W-1348LTC *We Need Verification From You* form)
10. Although the Department set a deadline of [REDACTED] 2020 for the requested information to be provided by, it did not deny the Appellant's application when the information was not received by that date. (Hearing Record)
11. On [REDACTED] 2020, the Appellant's Spouse sent an email to the LTSS worker. It stated, in relevant part, "This email is in regards to my husband, [REDACTED] and his title 19 application. I have attached his life insurance policy to this email." The Spouse also reported in the email that her bank informed her that information was no longer available for an account that was closed in 2015. (Ex. 3)
12. On [REDACTED] 2020, the LTSS worker responded to the Spouse's email of the same day. The response stated, "Hi Ms. [REDACTED] – Have the bank provide you with a letter that indicates that information. I'll email you a new checklist in just a little bit." (Ex. 3)
13. There is no evidence that the Department sent the Appellant a new request for verification (referred to by the LTSS worker in her email as a "checklist") after the Appellant's Spouse provided the Department with a copy of his life insurance policy on [REDACTED] 2020. (Hearing Record)
14. On [REDACTED] 2020, the Appellant died. (Hearing Record)
15. On [REDACTED] 2020, the Department issued an NOA to the Appellant denying his application for HUSKY C - *Medicaid for Long Term Care Facility Residents Eligible Under Special Income Level* because he "did not return all of the required proofs by the date we asked." (Ex. 6: NOA)

CONCLUSIONS OF LAW

1. The Department is the state agency that administers the Medicaid program pursuant to Title XIX of the Social Security Act. The Department may make such regulations as are necessary to administer the medical assistance program. Conn. Gen. Stat. §§ 17b-2 and 17b-262
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, 177 (1994) (citing Conn. Gen. Stat. 17-3f(c) [now 17b-10]; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712(1990)).
3. "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." UPM § 1015.10(A)
4. "The Department must tell the assistance unit what the unit has to do to establish eligibility when the Department does not have sufficient information to make an eligibility determination". UPM § 1015.05(C)
5. "Prior to making an eligibility determination the Department conducts a thorough investigation of all circumstances relating to eligibility and the amount of benefits." UPM § 1505.40(A)(1)
6. "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 (Cross reference: 1555)." UPM § 1010.05(A)(1)
7. The maximum time period for processing an application, known as the promptness standard, is forty-five calendar days for MA applicants applying on the basis of age. UPM § 1505.35 (C)(1)(c)(2)
8. UPM § 1505.40 (B)(5) discusses incomplete applications delayed due to insufficient verification and provides that:
 - (a) 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 documentation; 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.

(b) 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.

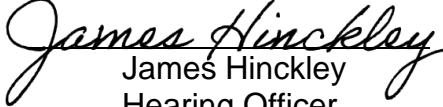
9. When the Department allowed the Appellant's application to pend past the initial [REDACTED] [REDACTED] 2020 due date it set, it extended the Department's designated time period to provide verification for as long as the Department continued to process the case. [REDACTED] 2020, then, was still within the allowable period, because the Department had not, as of that date, determined that the Appellant's case should be denied.
10. When the Appellant's Spouse submitted verification – a copy of the Appellant's life insurance policy – on [REDACTED] 2020, and provided it while the Department was still processing the application, it qualified the Appellant for an additional 10-day extension pursuant to UPM § 1505.40 (B)(5). The worker's emailed response to the Spouse on the same day acknowledged as much, indicating that the Department would continue to process the case and that the Appellant would be sent a new checklist.
11. The Department was incorrect when it denied the Appellant's application on [REDACTED] 2020, because it did so without providing the Appellant a new request for verification that included an additional 10-day extension.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department must reopen the Appellant's application effective [REDACTED] [REDACTED] 2020.
2. The Department must show proof of compliance with the above by no later than [REDACTED] 2020, by sending, directly to the undersigned hearing officer, proof that the Appellant's application has been reopened.


James Hinckley
Hearing Officer

cc: Brian Sexton
Michelina Zogby

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.