

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 # 155223

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████, 2020, Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) denying her application for Husky C Long Term Care Assistance Services and Support (LTSS) benefits.

On ██████████ 2020, ██████████ on behalf of the deceased Appellant requested an administrative hearing to contest the Department’s decision to deny such benefits.

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

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

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

On [REDACTED], 2020, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing via telephone conference.

The following individuals participated at the hearing:

[REDACTED], Appellant's son, Appellant's Representative
 [REDACTED], Appellant's Representative
 [REDACTED], Paralegal
 Christine Morin, Eligibility Services Supervisor, Department's Representative
 John Dileonardo, Eligibility Worker, Department's Representative
 Miklos Mencseli, Hearing Officer

The hearing officer held the record open for the Department to review the Appellant's Representative packet, allow both parties to comment and submit additional documents.

The hearing record closed on [REDACTED], 2020.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly denied the Appellant's LTSS application because of failure to submit information needed to establish eligibility.

FINDINGS OF FACT

1. On [REDACTED], 2019, the Appellant entered [REDACTED] Facility. (Exhibit 1: page 4 of W-1 LTC application)
2. On [REDACTED] 2019, the Department received the Appellant's application for LTSS benefits. (Summary, Exhibit 1)
3. The Appellant's son, [REDACTED] is the Authorized Representative ("AREP") and [REDACTED] law office is authorized for DSS to share information regarding status of application. (Exhibit 1)
4. On [REDACTED] 2019, the Department sent the [REDACTED] a W-1348LTC verification form requesting information needed to process the Appellant's application. The information was due by [REDACTED], 2019. The form states no responses will be accepted if returned via email. Please mail or fax all responses. (Summary, Exhibit 1: W-1348LTC dated [REDACTED])
5. The Department sent subsequent W-1348LTC forms to the Attorney Splan as provided requested verifications received:
 W-1348LTC Request #2 (Exhibit 3), W-1348LTC Request #3 (Exhibit 4)
 W-1348LTC Request #4 (Exhibit 5), W-1348LTC Request #5 (Exhibit 6)

W-1348LTC Request #6 (Exhibit 7), W-1348LTC Request #7 (Exhibit 8).

6. On [REDACTED], 2020, the Department received a letter from [REDACTED] paralegal with no verifications. (Summary, Exhibit 9: letter dated [REDACTED]-2020)
7. The letter states the Appellant's representative is unclear to the verifications request from W-1348LTC request#7. (Exhibit 9)
8. The Department re-sent [REDACTED] a W-1348LTC dated [REDACTED]-2020 verification form requesting information needed to process the Appellant's application. The Department requested verification of the \$48,760.00 received from the trust and what happened to the \$105,500.00 received from the trust.. Verify the Fair Market Value received from property at [REDACTED], [REDACTED] on [REDACTED]-17. The information was due by [REDACTED], 2020. (Exhibit 10: W-1348LTC dated [REDACTED]-2020, Exhibits 11, 12, 13: Department's Case Notes)
9. The Department did not receive any of the requested asset verifications by the due date of [REDACTED], 2020. (Exhibits 11, 12, 13, Department's Case Notes, Department's Testimony)
10. On [REDACTED], 2020, the Department, denied the Appellant's application for medical assistance for failure to provide information necessary to establish eligibility. (Exhibit 13: Department's Case Notes, Exhibit 14: Department's Response to Appellant's Attorney 96 page brief, NOA dated [REDACTED]-2020, Department's Testimony)
11. The Departments W-1348LTC requested non-factor verifications are unclear and inconsistent as to what verifications it is requesting for the Appellant's representatives. (Appellant's Attorney 96 page brief, Appellant Representative Testimony)
12. On W1348 request #2 and #3 the Department request bank statements from Webster Bank. No account number is listed. (Exhibit 2, 3)
13. On W-1348 request #4 the Department request bank statements from [REDACTED] and trust verification for the [REDACTED] Trust. (Exhibit 4)
14. On W-1348 request #5 the Department request bank statements from [REDACTED]. No request is made for trust verification as the box is not checked on the W-1348LTC. (Exhibit 5)
15. On W-1348 request #6 the Department only request verification for the trust. (Exhibit 6)

16. On W-1348 request #7 the Department request asset verification under the **Income** section of the W-1348. (Exhibit 7)
17. On request #7 the Department request verification of \$48,760.00 and submit bank statements for look back period ■/2017 through current or closing and ■ 2014, 2015 and 2016. No bank name or account number is listed.
18. On request #7 the Department request verification of \$105,500.00 and submit bank statements for look back period ■/2017 through current or closing and ■r 2014, 2015 and 2016. No bank name or account number is listed.
19. On request #7 the Department request verification of the assets owned by the client's son.
20. The Appellant's representatives letter dated ■ 2020 request the Department identify the bank referenced in request #7, where the Department got the \$105,000.00 amount and states all of ■ assets have been accounted for in the ■ Probate Court inventory. (Exhibit 9)
21. In response the Department issued reissued the ■-2020 W-1348LTC as request #8. Again the Department requested asset verification under the **Income** section, request verification of \$48,760.00 and submit bank statements for look back period ■/2017 through current or closing and ■ 2014, 2015 and 2016 with no bank name or account number is listed and request verification of \$105,500.00. (Exhibit 10)
22. In addition the Department requested the Fair Market Value ("FMV") for the transfer of property at ■. (Exhibit 10)
23. The property at ■ has always been owned by the Appellant's son, ■ and never owned by the Appellant. (Appellant's Attorney 96 page brief, Appellant Representative Testimony)
24. The Department acknowledges the request for the FMV of the property is an error. (Department's Testimony)
25. The Department noted that the request for asset verification is listed incorrectly on the W-1348's. (Department's Testimony)
26. The Department's position is regardless of the emails and phone calls between the parties the Department did not receive the requested verifications by the last due date. (Exhibit 14: Department's response dated ■-2020)

27. On [REDACTED] 2020, the Department, having not received the requested verifications, denied the Appellant's application for medical assistance for failure to provide information necessary to determine eligibility. (Exhibit 14: NOA dated [REDACTED]-2020)
28. 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. Therefore, this decision is due no later than [REDACTED] 2020.

However, the hearing, which was originally scheduled for [REDACTED], 2020, was rescheduled for [REDACTED], 2020, and again rescheduled for [REDACTED], 2020, at the request of the Appellant, causing a 37-day delay. Because this 37-day delay resulted from the Appellant's request for postponements of the [REDACTED] 2020 hearing, this decision is not due until [REDACTED], 2020, and is therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.

"The department's uniform policy manual is the equivalent of a 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 Maintenance*, 214 Conn. 601, 573 A.2d (1990)).

2. Uniform Policy Manual ("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.
3. 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 eight (8) W-1348 LTC Verification We Need requests for information needed to establish eligibility.

4. Uniform Policy Manual ("UPM") § 1015.05(C) provides 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.

5. UPM § 1540.05 (C)(2) provides for when verification is required. The Department does not require applicants or recipients to provide documentary evidence to verify the nonexistence of any factor, including the following:
- a. lack of income; or
 - b. lack of bank accounts or other assets; or
 - c. absence of one parent from the home.
6. UPM § P-1505.40 (3), which is from the Procedures section of the UPM, gives the Department guidelines for avoiding unnecessary processing delays and undue client hardship:
- at the time the interview is conducted, identify all the actions that the applicant must take to establish eligibility, including verification and procedural requirements;
 - make certain that the applicant understands his or her responsibilities;
 - assist the applicant as necessary, as long as he or she cooperates;
 - follow procedures specified in P-1540 in verifying eligibility factors;
 - prioritize the caseload and regularly review the priorities, considering such factors as processing deadlines, applicant hardship, and estimated time frames for obtaining all required documentation;
 - utilize internal sources of information (such as DMV and labor access), and other resources as much as possible in order to avoid excessive requests for verification or processing delays.

The Department's W-1348LTC (request # 7 & 8) failed to clearly and in detail tell the Appellant's Representatives what verifications are needed in order to establish eligibility.

The Department requested asset verification under the income section of the W-1348LTC (request # 7 & 8)

The Department request verification of a nonexistent factor, the FMV of a home that is not owned by the Appellant.

7. UPM §1505.35(A)(2) provides that reasonable processing standards are established to assure prompt action on applications.

8. 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; or
 - c. the Department has assumed responsibility for obtaining verification and has had less than 10 days; or
 - d. the Department has assumed responsibility for obtaining verification and is waiting for material from a third party.
9. 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.
10. 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.
11. UPM § 1505.40(B)(2)(b) provides that if the eligibility determination is delayed, the Department continues to process the application until a decision can be made.

The Department failed to continue to process the Appellant's application after the Appellant's request for clarification of what the Department required was not properly answered by the Department with the W-1348LTC (request # 7 & 8)

12. The Department incorrectly denied the Appellant's [REDACTED], 2019 medical assistance application on [REDACTED], 2020 for failure to provide information necessary to establish eligibility.

DISCUSSION

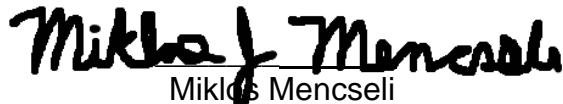
The Department's action to deny the long term care application based on the failure to provide information is overturned.

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.
2. The Department shall send the Appellant's representatives a W-1348LTC that is detailed and clearly states what verifications are needed to determine eligibility. The Department will not list verifications that are not needed to determine eligibility on this form.
3. 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.


Miklos Mencseli
Hearing Officer

- C: Christine Morin, DSS-New Haven
John Dileonardo, DSS-New Haven
Rachel Anderson, DSS-New Haven
Cheryl Stuart, DSS-New Haven
Lisa Wells, 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 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.

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.