STATE OF CONNECTICUT DEPARTMENT OF SOCIAL SERVICES OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS 55 FARMINGTON AVENUE HARTFORD, CT 06105-3725

2021 Signature Confirmation

Case ID # Client ID # Request # 158435

NOTICE OF DECISION PARTY



PROCEDURAL BACKGROUND

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

On 2020, the Applicant's Conservator and appointed Executor of Estate requested an administrative hearing to contest the Department's decision to deny the Applicant's LTC application.

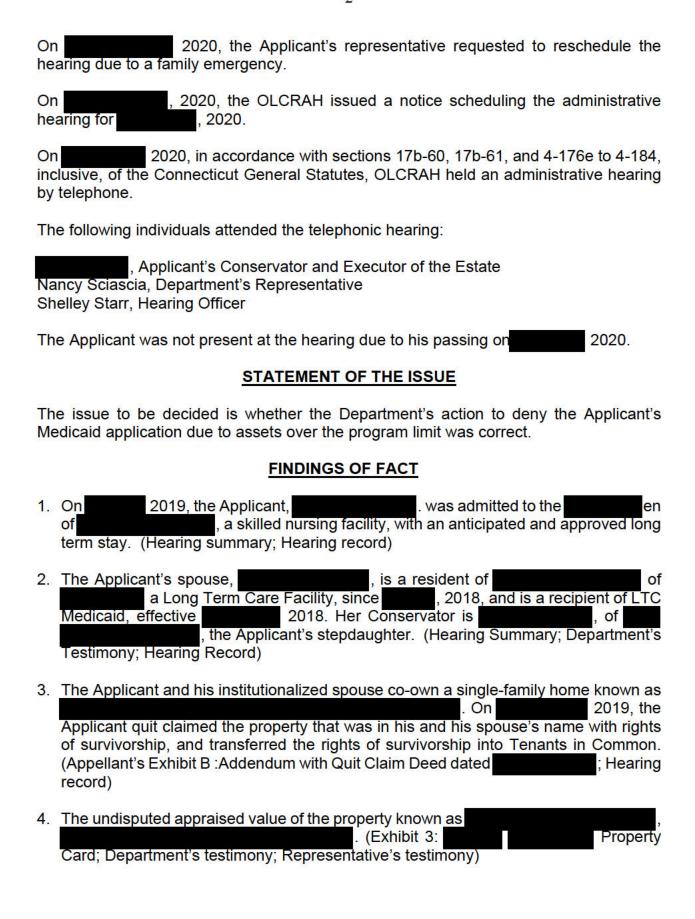
On 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for 2020.

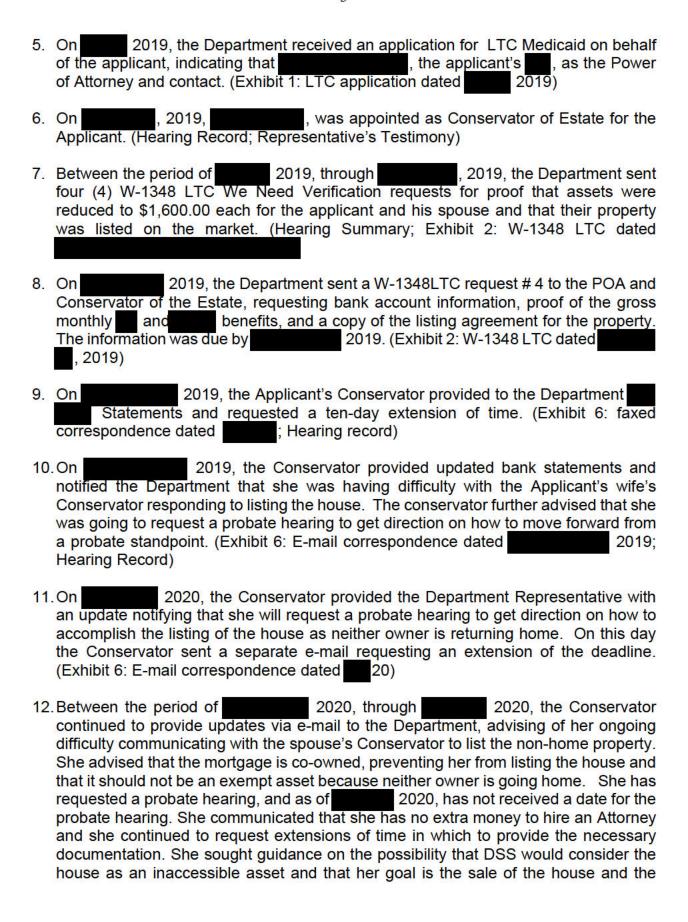
On 2020, the Applicant's representative requested to reschedule the hearing due to a power outage.

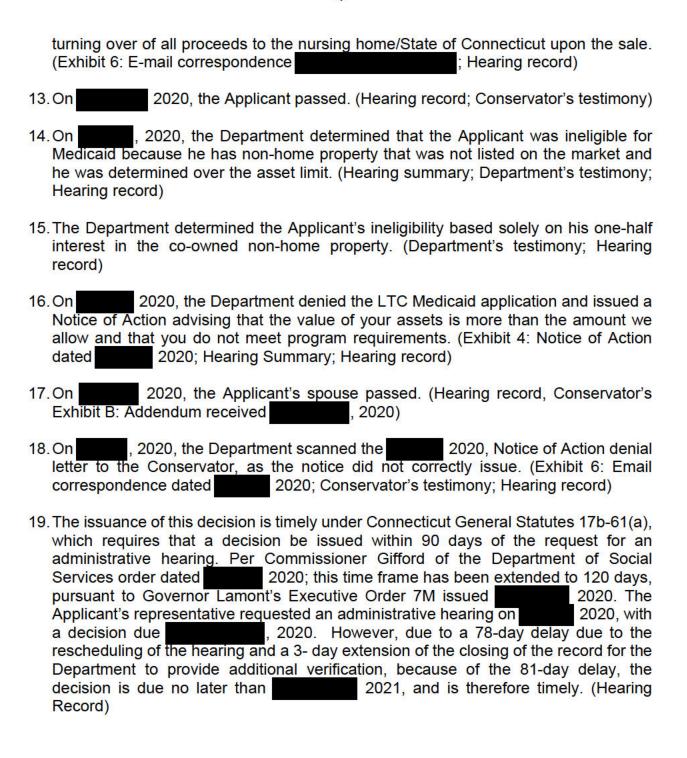
On 2020, the OLCRAH issued a notice scheduling the administrative hearing for 2020.

On 2020, the Applicant's representative requested to reschedule the hearing due to a family emergency.

On 2020, the OLCRAH issued a notice scheduling the administrative hearing for 2020.







CONCLUSIONS OF LAW

 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 Department correctly determined that the Applicant and his spouse, are institutionalized individuals residing in long-term care facilities.

- 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 provided multiple W-1348 LTC Application Verification Requirement lists requesting information needed to establish eligibility.

The W-1348 informed the Representative that a listing agreement for the property is needed if institutionalization is long term and Title 19 cannot be granted for any month in which assets exceed \$1,600.00.

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 Applicant's representative communicated her unusual circumstances in obtaining cooperation from the spouse's conservator with regards to the listing of the co-owned property, and requested extensions of time to allow her to proceed with a probate hearing.

Good cause was established by the Applicant's representative for not timely submitting the requested listing contract needed to establish eligibility.

- 5. Connecticut General Statutes 17b-261(c) provides in part that for the purposes of determining eligibility for the Medicaid program, an available asset is one that is actually available to the applicant or one that the applicant has the legal right, authority or power to obtain or to have applied for the applicant's general or medical support.
- 6. UPM § 4001.01 provides for the <u>Treatment of Assets</u> definitions and defines:

<u>Available Asset</u> is cash or any item of value which is actually available to the individual or which the individual has the legal right, authority or power to obtain, or to have applied for, his or her general or medical support.

<u>Fair Market Value</u> is the amount at which an asset can be sold on the open market in the geographic area involved at the time of the sale as a result of reasonable, bona fide efforts to gain the highest price in an arm's length transition.

<u>Legal owner of an Asset</u> is the person who is legally entitled to enjoy the benefit and use of the asset.

Non Home Property is real property which a person owns but is not using as principal residence.

7. UPM § 4030.65(D)(1)(a) provides for Property Previously Used as the Primary Residence and provides that property previously used as a primary residence becomes non-home property when the individual enters a long-term care facility and: (1) no relative of acceptable relationship is lawfully residing in the home; and (2) the individual cannot reasonably be expected to return to the home. (Cross Reference: 7510)

UPM § 4030.65 (D)(1)(b) provides Non-home property that was the recipient's primary residence prior to entering the nursing home is excluded for as long as the individual is making a bona fide effort to sell it.

UPM § 4030.65 (D)(1)(c) provides the exclusion period begins with the first month of eligibility during which the person owns the property, and is cumulative for all months in which the person receives assistance.

The Department was correct when it counted the value of the

because both the Applicant and his spouse were residents of long term care facilities with no expectation to return to their primary residence.

The Applicant passed before he provided a listing contract or a form of documentation to sell the property for purposes of exclusion.

8. 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 Applicant has the legal right, authority, and power to access his non-home property.

The Department correctly determined that his one-half interest in the non -home property is an available and a countable asset.

9. 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.

The Department correctly determined the Applicant's one-half interest in his non-home property was not an excluded asset and exceeded the asset limit of \$1,600.00.

10.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.

The Department properly considered the difficulty that the Applicant's Conservator was having in obtaining the required listing contract and allowed numerous extensions based on good cause to afford time for the representative to continue her effort to obtain the verification and properly proceed through Probate.

The Department correctly denied the Long Term Care Medicaid application due to the Applicant not listing his property and having a countable asset over the \$1600.00 asset limit.

DISCUSSION

The Department was correct and acted appropriately when it determined that the Applicant was over the \$1,600.00 asset limit. The Department correctly advised the Conservator of the \$1,600.00 asset limit and communicated the need to have a listing agreement beginning with the first W-1348 LTC issued 2019, as both owners of the non-home property were anticipated to be a long term stay in an institution.

The regulations govern which assets count toward the asset limit and it is the Department's responsibility to determine eligibility for public assistance based upon regulations. Non- home property is excluded for as long as a bona fide effort is being made to sell it. While the conservator communicated to the Department her difficulty in obtaining a listing contract due to the non-cooperation of the spouse's conservator, the Department correctly considered the difficulty and allowed numerous extensions of time in which to provide the contract. There was no dispute between the Department and the Conservator with regards to the ownership, value, and the need to provide a listing agreement of the non-exempt asset, as the applicant's spouse had been institutionalized since 2018, and the applicant became institutionalized as of 2019, with a long term anticipated stay.

It is unclear why the Applicant, on transferred the property located as ownership with his spouse with rights of survivorship, to Tenants in Common, knowing that his spouse was admitted to a long term care facility since 2018, and was a recipient of LTC Medicaid assistance.

The conservator provided the Department with monthly updates and a plan of action was communicated that the conservator was taking appropriate measures by requesting a Probate hearing to explain the circumstances and for legal solution. Unfortunately on , 2020, the Applicant passed before a hearing date was scheduled. I did not find any provisions in the policy for excluding the property while a conservator for the property is appointed, or for any other reason.

The Conservator advised at the hearing that the property in question has no equity, however, no supportive verification has been presented and the communicated emails up until the time of the Applicant's passing demonstrate otherwise.

Based on the testimony and evidence, I find the Department acted correctly and denied the LTC Medicaid application because the value of the property exceeded the allowable asset limit.

DECISION

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

Shelley Starr Hearing Officer

Pc: Patricia Ostroski, DSS Operations Manager, New Britain Nancy Sciascia, DSS Waterbury

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 <u>specific</u> 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, 165 Capitol Avenue, 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.