

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.

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

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

On [REDACTED] 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 attended the telephonic hearing:

[REDACTED], Applicant's Conservator and Executor of the Estate  
 Nancy Sciascia, Department's Representative  
 Shelley Starr, Hearing Officer

The Applicant was not present at the hearing due to his passing on [REDACTED] 2020.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department's action to deny the Applicant's Medicaid application due to assets over the program limit was correct.

### **FINDINGS OF FACT**

1. On [REDACTED] 2019, the Applicant, [REDACTED], was admitted to the [REDACTED] en of [REDACTED], a skilled nursing facility, with an anticipated and approved long term stay. (Hearing summary; Hearing record)
2. The Applicant's spouse, [REDACTED], is a resident of [REDACTED] of [REDACTED] a Long Term Care Facility, since [REDACTED], 2018, and is a recipient of LTC Medicaid, effective [REDACTED] 2018. Her Conservator is [REDACTED], of [REDACTED], the Applicant's stepdaughter. (Hearing Summary; Department's Testimony; Hearing Record)
3. The Applicant and his institutionalized spouse co-own a single-family home known as [REDACTED]. On [REDACTED] 2019, the Applicant quit claimed the property that was in his and his spouse's name with rights of survivorship, and transferred the rights of survivorship into Tenants in Common. (Appellant's Exhibit B :Addendum with Quit Claim Deed dated [REDACTED]; Hearing record)
4. The undisputed appraised value of the property known as [REDACTED], [REDACTED]. (Exhibit 3: [REDACTED] Property Card; Department's testimony; Representative's testimony)

5. On [REDACTED] 2019, the Department received an application for LTC Medicaid on behalf of the applicant, indicating that [REDACTED], the applicant's [REDACTED], as the Power of Attorney and contact. (Exhibit 1: LTC application dated [REDACTED] 2019)
6. On [REDACTED], 2019, [REDACTED], was appointed as Conservator of Estate for the Applicant. (Hearing Record; Representative's Testimony)
7. Between the period of [REDACTED] 2019, through [REDACTED], 2019, the Department sent four (4) W-1348 LTC We Need Verification requests for proof that assets were reduced to \$1,600.00 each for the applicant and his spouse and that their property was listed on the market. (Hearing Summary; Exhibit 2: W-1348 LTC dated [REDACTED])
8. On [REDACTED] 2019, the Department sent a W-1348LTC request # 4 to the POA and Conservator of the Estate, requesting bank account information, proof of the gross monthly [REDACTED] and [REDACTED] benefits, and a copy of the listing agreement for the property. The information was due by [REDACTED] 2019. (Exhibit 2: W-1348 LTC dated [REDACTED], 2019)
9. On [REDACTED] 2019, the Applicant's Conservator provided to the Department [REDACTED] Statements and requested a ten-day extension of time. (Exhibit 6: faxed correspondence dated [REDACTED]; Hearing record)
10. On [REDACTED] 2019, the Conservator provided updated bank statements and notified the Department that she was having difficulty with the Applicant's wife's Conservator responding to listing the house. The conservator further advised that she was going to request a probate hearing to get direction on how to move forward from a probate standpoint. (Exhibit 6: E-mail correspondence dated [REDACTED] 2019; Hearing Record)
11. On [REDACTED] 2020, the Conservator provided the Department Representative with an update notifying that she will request a probate hearing to get direction on how to accomplish the listing of the house as neither owner is returning home. On this day the Conservator sent a separate e-mail requesting an extension of the deadline. (Exhibit 6: E-mail correspondence dated [REDACTED] 20)
12. Between the period of [REDACTED] 2020, through [REDACTED] 2020, the Conservator continued to provide updates via e-mail to the Department, advising of her ongoing difficulty communicating with the spouse's Conservator to list the non-home property. She advised that the mortgage is co-owned, preventing her from listing the house and that it should not be an exempt asset because neither owner is going home. She has requested a probate hearing, and as of [REDACTED] 2020, has not received a date for the probate hearing. She communicated that she has no extra money to hire an Attorney and she continued to request extensions of time in which to provide the necessary documentation. She sought guidance on the possibility that DSS would consider the house as an inaccessible asset and that her goal is the sale of the house and the

turning over of all proceeds to the nursing home/State of Connecticut upon the sale. (Exhibit 6: E-mail correspondence [REDACTED]; Hearing record)

13. On [REDACTED] 2020, the Applicant passed. (Hearing record; Conservator's testimony)
14. On [REDACTED], 2020, the Department determined that the Applicant was ineligible for Medicaid because he has non-home property that was not listed on the market and he was determined over the asset limit. (Hearing summary; Department's testimony; Hearing record)
15. The Department determined the Applicant's ineligibility based solely on his one-half interest in the co-owned non-home property. (Department's testimony; Hearing record)
16. On [REDACTED] 2020, the Department denied the LTC Medicaid application and issued a Notice of Action advising that the value of your assets is more than the amount we allow and that you do not meet program requirements. (Exhibit 4: Notice of Action dated [REDACTED] 2020; Hearing Summary; Hearing record)
17. On [REDACTED] 2020, the Applicant's spouse passed. (Hearing record, Conservator's Exhibit B: Addendum received [REDACTED], 2020)
18. On [REDACTED], 2020, the Department scanned the [REDACTED] 2020, Notice of Action denial letter to the Conservator, as the notice did not correctly issue. (Exhibit 6: Email correspondence dated [REDACTED] 2020; Conservator's testimony; Hearing record)
19. 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 a decision due [REDACTED], 2020. However, due to a 78-day delay due to the rescheduling of the hearing and a 3- day extension of the closing of the record for the Department to provide additional verification, because of the 81-day delay, the decision is due no later than [REDACTED] 2021, 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.

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 Treatment of Assets definitions and defines:

Available Asset 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.

Fair Market Value 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.

Legal owner of an Asset 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 2018, and the applicant became institutionalized as of [REDACTED] 2019, with a long term anticipated stay.



It is unclear why the Applicant, on [REDACTED], 2019, within the five- year lookback, transferred the property located as [REDACTED] from 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 [REDACTED] 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 [REDACTED], 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 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, 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.