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

[redacted] **2021**
SIGNATURE CONFIRMATION

[redacted]
Request # 166073

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2020, the Department of Social Services (the "Department") sent [redacted], (the "Appellant"), a Notice of Action ("NOA") informing her that she was denied for Medicaid for Long Term Care Services ("LTC") effective [redacted] 2020.

On [redacted], 2020, [redacted], the Appellant's son, Conservator and Power of Attorney ("POA"), requested an administrative hearing to contest the denial of the LTC.

On [redacted] 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") scheduled an administrative hearing for [redacted] 2020.

On [redacted] 2020, [redacted] ("the attorney"), the Appellant's attorney requested the hearing to be rescheduled.

On [redacted] 2020, OLCRAH rescheduled the administrative hearing for [redacted] 2021.

On [redacted] 2021, 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 following individuals participated in the hearing:

[redacted] Appellant's son and POA #1
[redacted], Appellant's attorney

Megan Finlayson, Department's Representative
Carla Hardy, Hearing Officer

The Appellant did not participate in the hearing.

Due to the COVID-19 Pandemic, the hearing was held as a telephonic hearing.

The hearing record remained open in order for the attorney to provide additional evidence which was received. The hearing record closed on [redacted] 2021.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly denied the Appellant's LTC application.

FINDINGS OF FACT

1. On [redacted] 2020, the Department received an application for LTC on behalf of the Appellant, a resident at [redacted] in [redacted] CT. (Exhibit 1: W-1 LTC Application; Hearing Summary)

2. The Appellant is a widow. She was born on [redacted] 1931. (Exhibit 1)

3. The Appellant's son, [redacted] was the Appellant's POA # 1 on [redacted] 2020. (Exhibit 1; Hearing Record)

4. The Appellant's daughter, [redacted] was the Appellant's POA # 2 on [redacted] 2020. (Exhibit 1)

5. [redacted] is the Appellant's attorney. (Hearing Record)

6. On [redacted] 2020, the Department reviewed the Appellant's application. The Department requested that the POA complete the highlighted sections of the application; and provide the POA document; spouse's death certificate; Medicare card; medical insurance card; proof of medical insurance premiums and to complete form W-1685; proof of the Appellant's gross pension amount; proof of her gross monthly VA benefit and Prudential annuity payments. The Department also requested the bank statements from several [redacted] accounts; copy of all funeral contracts; and copies of her tax returns from 2015 to the present; and proof of the face cash surrender values from each life insurance policy and that a letter from the insurance company would be required. The requested information was due by [redacted] 2020. The Appellant's POAs were notified that the Appellant's current assets exceeded the $1,600.00 asset limit and that there is no eligibility for Medicaid until the Appellant's assets were below the $1,600.00 limit. (Exhibit 3: Verification We Need, [redacted] 20)

7. On [redacted] 2020, the Department received some of the requested information from the Appellant's POAs. They issued another request for additional information which included proof of the face and cash surrender values of the [redacted] policy #[redacted]. The Department notified the POAs that a letter from the insurance company would be required. The requested information was due by [redacted] 2020. (Exhibit 4: Verification We Need, [redacted]20; Hearing Summary)

8. The Appellant's family was having difficulty securing the requested information. The Department granted an extension through [redacted] 2020. (Hearing Summary)

9. On [redacted] 2020, [redacted] 2020, and [redacted] 2020, the Department requested additional information from the POAs which included proof of the face and cash surrender values of the [redacted] insurance policy. The POAs were notified that a letter from the insurance company would be required. (Exhibit 5: Proofs We Need, [redacted]/21; Exhibit 6: Proofs We Need, [redacted]/20; Exhibit 7: Proofs We Need, [redacted]/20)

10. The Department received a copy of the original contract #[redacted] from [redacted] that was issued on [redacted] 1999. The face value of the policy is $10,000.00. The table of guaranteed policy values is listed in the contract up to the [redacted] 2019, anniversary date and lists a cash value of $5,890.00. (Exhibit 2: [redacted] Department's Testimony)

11. On [redacted] 2020, the Department received the [redacted] insurance letter verifying that the face value of policy # [redacted] is $10,000.00 and that the cash surrender value is $6,160.80. (Exhibit 9: Letter from [redacted] [redacted]/20; Exhibit 11: Emails between the POA # 1 and the Department's Representative)

12. On [redacted] 2020, the Department notified the POAs that the cash surrender value for the [redacted] policy # [redacted] is over the allowable limit and that the Appellant is over asset for Medicaid until the policy is surrendered or spent gown. (Exhibit 8: Proofs We Need, [redacted]/20)

13. On [redacted], 2020, POA # 1 asked the Department how to surrender the insurance policy and could he use the money to cover medical expenses. The Department informed POA # 1 that he should contact the life insurance company to initiate the surrender. He could give the funds to the nursing facility, buy a funeral contract, or cover outstanding medical expenses. (Exhibit 11)

14. In order to surrender the [redacted] insurance policy, the POA required the signatures of his sister who resides in [redacted] and his brother who resides in [redacted]. The POA resides in [redacted] (Appellant's Testimony)

15. The asset limit for the LTC program is $1,600.00. (Department's Testimony)

16. The Appellant had $500.00 in her savings account and $90.00 in her checking account. (Department's Testimony)

17. On [redacted] 2020, the Department determined through its examination of the Appellant's documentation that her assets exceeded the asset limit. The Appellant's application was denied [redacted] 2020 through [redacted] 2020. (Exhibit 10: NOA, [redacted] 20)

18. On [redacted] 2020, the Appellant expired at the nursing facility. (Hearing Summary)

19. POA # 1 was not able to surrender the [redacted] insurance policy while his mother was alive. (POA's Testimony)

20. On [redacted] 2021, the Appellant's attorney emailed this Hearing Officer a copy of the Annuity Full Surrender Request dated and signed by the POA # 1 on [redacted] 2020. (Exhibit A: [redacted] Annuity Full Surrender Request)

21. On [redacted] 2021, the Appellant's attorney emailed this Hearing Officer a copy of the Request To Surrender For Net Cash Value document that is dated [redacted] 2020. There is no other identifying information on this form. The form is not signed. (Exhibit B: [redacted] Request to Surrender for Net Cash Value)

22. On [redacted] 2021, the Appellant's attorney emailed this Hearing Officer a copy of the [redacted] Annity Death Benefit Claim Form which is signed by the POA and dated [redacted], 2020. (Exhibit C: [redacted] Annuity Death Benefit Claim Form)

23. POA # 1 gave the $10,000.00 from the claim on the Appellant's [redacted] insurance policy to the nursing facility. (POA's 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. The Appellant requested the hearing on [redacted] 2020; therefore, this hearing was due on [redacted] 2021. However, the hearing, which was originally scheduled for [redacted] 2020, was rescheduled for [redacted] 2021, at the request of the attorney, which caused a 34-day delay. In addition, the close of the hearing record, which had been anticipated to close on [redacted] 2021, did not closed for the admission of evidence until [redacted] 2021, at the attorney's request causing an additional 14-day delay. Because of this 48-day delay in the close of the hearing record, this final decision is not due until [redacted] 2021, and is therefore timely. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.

2. Connecticut General Statutes 17b-261(c) provides 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. If the terms of a trust provide for the support of an applicant, the refusal of a trustee to make a distribution from the trust does not render the trust an unavailable asset. Notwithstanding the provisions of this subsection, the availability of funds in a trust or similar instrument funded in whole or in part by the applicant or the applicant's spouse shall be determined pursuant to the Omnibus Budget Reconciliation Act of 1993, 42USC 1396p.

3. "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)).

4. Uniform Policy Manual ("UPM") § 4005.05(B)(1) provides that 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: available to the unit; or deemed available to the assistance unit.

5. UPM § 4005.05(B)(2) provides that under all programs except Food Stamps, the Department considers an asset available when actually available to the individual or when the individual has the legal right, authority or power to obtain the asset, or to have it applied for, his or her general or medical support.

6. "Bank accounts include the following. This list is not all inclusive." UPM § 4030.50(A)

    1. Savings account;
    2. Checking account;
    3. Credit union account;
    4. Certificate of deposit;
    6. Patient account at long-term care facility;
    7. Children's school account;
    8. Trustee account;
    9. Custodial account.

The Department correctly determined that the Appellant's [redacted] savings and checking accounts are counted assets that were available to the Appellant.

7. UPM § 4030.30(A) provides that for all programs: 1. The owner of a life insurance policy is the insured unless otherwise noted on the policy, or if the insurance company confirms that someone else, and not the insured, can cash in the policy; and 2. Policies such as term insurance policies having no cash surrender value are excluded assets.

8. Conn. Gen. Stats § 17b-261(h) provides that to the extent permissible under federal law, an institutionalized individual, as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3), shall not be determined ineligible for Medicaid solely on the basis of the cash value of a life insurance policy worth less than ten thousand dollars provided the individual is pursuing the surrender of the policy.

   UPM § 4030.30(C) provides that for the AABD and MAABD programs: 1. If the total face value of all life insurance policies owned by the individual does not exceed $1,500.00, the cash surrender value of such policies is excluded. In computing the face value of life insurance, the Department does not count insurance such as term insurance which has no cash surrender value; and 2. Except as provided above, the cash surrender value of life insurance policies owned by the individual is counted toward the asset limit.

   The Department correctly determined that the cash surrender value of the Appellant's [redacted] Insurance policy is not excluded as the face value of $10,000.00 is over the $1,500.00 threshold; and the Appellant 's POA # 1 did not provide conclusive evidence that the policy was in the process of being surrendered.

9. UPM § 1560.10 discusses Medicaid beginning dates of assistance and provides that the beginning date of assistance for Medicaid may be one of the following:
   A. The first day of the first, second or third month immediately preceding the month in which the Department receives a signed application when all non-procedural eligibility requirements are met and covered medical services are received at any time during that particular month; or
   B. The first day of the month of application when all non-procedural eligibility requirements are met during that month; or
   C. The actual date in a spenddown period when all non-procedural eligibility requirements are met. For the determination of income eligibility in spend-down, refer to Income Eligibility Section 5520; or
   D. The first of the calendar month following the month in which an individual is determined eligible when granted assistance as a Qualified Medicare Beneficiary (Cross Reference: 2540.94). The month of eligibility determination is considered to be the month that the Department receives all information and verification necessary to reach a decision regarding eligibility.

10. UPM §4026.05 provides that the amount of assets counted in determining the

assistance unit's eligibility is calculated in the following manner:

A. The Department determines the amount of the assistance unit's available non-excluded assets by subtracting the value of the following assets owned by the assistance unit:

    1. those assets considered to be inaccessible to the assistance unit at the time of determining eligibility; and

    2. assets which are excluded from consideration.

B. The Department adjusts the amount of the assistance unit's available non-excluded assets by:

    1. subtracting a Community Spouse Disregard (CSD), when appropriate, for those individuals applying for assistance under the MAABD program (Cross Reference: 4022.05); and

    2. adding any amount of assets deemed to be available to the assistance unit (Cross Reference: 4025); and

    3. subtracting a Long-Term Care Insurance Disregard (LTCID), when appropriate, for those individuals applying for or receiving assistance under the MAABD program (Cross Reference: 4022.10).

C. The amount remaining after the above adjustments is counted.

The Department correctly counted the Appellant's assets for the months of [redacted] 2020 through [redacted] 2020.

11. 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.

12. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is $1,600.00.

The Appellant had assets that exceeded the Medicaid asset limit of $1,600.00 for the months of [redacted] 2020 through [redacted] 2020.

On [redacted] 2020, the Department correctly denied the Appellant's application for Long Term Care Medicaid effective [redacted] 2020, as the assets exceeded the $1,600.00 limit.

DECISION

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

Carla Hardy
Hearing Officer

Pc: [redacted], POA #1
[redacted], [redacted]
Yecenia Acosta, Manager; Tim Latifi, Manager; Megan Finlayson, Hearing Liaison, Department of Social Services, Bridgeport Office

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, 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 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.