

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

[REDACTED], 2021  
Signature Confirmation

Case# [REDACTED]  
Client ID # [REDACTED]  
Request # 169722

NOTICE OF DECISION

PARTY

[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2020, Department of Social Services (the "Department") sent [REDACTED] (the "Appellant") a Notice of Action ("NOA) denying her application for Husky C Long Term Care Assistance (LTSS) benefits.

On [REDACTED], 2020, the Appellant requested an administrative hearing to contest the Department's decision to deny such benefits.

On [REDACTED], 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [REDACTED], 2021.

On [REDACTED], 2021, OLCRAH issued a notice rescheduling the administrative hearing for [REDACTED] 2021.

On [REDACTED], 2021, 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], Administratrix of Estate of [REDACTED]  
[REDACTED], Regional Medicaid Eligibility Specialist, [REDACTED]

Anna-Kaye Allen, Department's Representative  
 Michael Briggs, Department's Representative  
 Miklos Mencseli, Hearing Officer

The hearing officer held the record open for an additional [REDACTED] days.

The Appellant's Representatives submitted documents for the hearing record.

The hearing record closed on [REDACTED], 2021.

### **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]. (Exhibit 10: W-1 LTC application)
2. On [REDACTED] 2020, the Department received the Appellant's application for LTSS benefits. (Summary, Exhibit 10)
3. The Appellant's Power of Attorney ("POA"), [REDACTED], was the Authorized Representative ("AREP") on the application. (Exhibit 10)
4. [REDACTED] signed her name under "Helper's Signature" on the application. (Exhibit 10)
5. The facility, [REDACTED], submitted a W-298 Authorization for Disclosure Information form allowing the Department to share information with the facility regarding the Appellant's application. (Exhibit 10, Exhibit 17: Department's Case Notes)
6. On [REDACTED] 2020, the Department received some verifications for the Appellant. (Exhibit 17)
7. On [REDACTED], 2020, the Appellant expired. (Exhibit 17, Appellant's Exhibit A: copy of death certificate)
8. The Appellant and [REDACTED] [REDACTED] are joint owners on [REDACTED] account [REDACTED]. (Hearing Summary, Exhibit 10, Exhibit 14: Asset Verification System ("AVS") verification)

9. In [REDACTED] 2016, the account [REDACTED] closed with \$81,323.92 withdrawn from the account. (Hearing Summary, Exhibit 14)
10. On [REDACTED], 2020, the Department sent a W-1348LTC Verification We Need form to the POA and [REDACTED] to provide requested verifications in order to determine eligibility. The requested information was due by [REDACTED] 2020. (Exhibit 11: W-1348LTC dated [REDACTED] 2020, Request #1)
11. On [REDACTED], 2020, the Department informed that the Appellant expired. (Exhibit 17)
12. On [REDACTED] 2020, the Department received verifications via email for the Appellant. (Exhibit 17)
13. On [REDACTED], 2020, the Department sent a W-1348LTC Verification We Need form to the POA and [REDACTED] to provide requested verifications in order to determine eligibility. The requested information was due by [REDACTED], 2020. (Exhibit 12: W-1348LTC dated [REDACTED] 2020, Request #2)
14. On [REDACTED], 2020, the Department received verifications via email for the Appellant. (Exhibit 17)
15. On [REDACTED], 2020, the Department sent the POA and [REDACTED] a 3<sup>rd</sup> W-1348LTC verification form requesting information needed to process the Appellant's application. The Department requested proof of where the \$81,323.92 went after the account closed. The information was due by [REDACTED], 2020. (Summary, Exhibit 13: W-1348LTC dated [REDACTED] 2020, Request #3)
16. On [REDACTED] 2020, [REDACTED] emailed the Department regarding the \$80,000.00 bank account. (Exhibit 15: email correspondences)
17. On [REDACTED], 2020, the Department responded to [REDACTED] stating bank statements for all accounts that have the Appellant's name on it for the last 5 years asset look back period require verification. (Exhibit 15)
18. On [REDACTED], 2020, [REDACTED] sent the Department an email requesting a copy of the 3<sup>rd</sup> W-1348LTC. (Exhibit 15)
19. On [REDACTED], 2020, the Department emailed [REDACTED] a copy of the 3<sup>rd</sup> W-1348LTC and granted an extension until [REDACTED], 2020. (Exhibit 15)
20. On [REDACTED], 2020, [REDACTED] from [REDACTED] emailed the Department inquiring whether the Department had heard from [REDACTED] [REDACTED] (Exhibit 15)
21. On [REDACTED], 2020, the Department emailed [REDACTED] stating the last

contact was the email dated [REDACTED], 2020. The Department attached a copy of the 3<sup>rd</sup> W-1348LTC. The Department granted an extension until [REDACTED] 2020. (Exhibit 15)

22. [REDACTED] did not respond to the 3<sup>rd</sup> W-1348LTC. (Hearing Summary, Department's Testimony)
23. On [REDACTED] 2020, [REDACTED] requested a copy of the Appellant's death certificate from the town of [REDACTED] (Appellant's Exhibit A: Letter dated [REDACTED]-2020, Copy of Appellant's death certificate)
24. On [REDACTED], 2020, [REDACTED] emailed the Department. The Department was informed that [REDACTED] attorney was working on the file and filing for decedent's estate and requested an extension. (Exhibit 15)
25. On [REDACTED], 2020, the Department emailed [REDACTED] granting an extension until [REDACTED], 2020. (Exhibit 15)
26. The Department was informed that [REDACTED] was seeking an administrator or executor for the Appellant's estate prior to the last extension date of [REDACTED], 2020. (Hearing Record, Attorney's Testimony)
27. The Department did not issue a new W-1348LTC even though it received verification regarding the Appellant's application for the administrator or executor for the Appellant's estate prior to the due date of [REDACTED] 2020. (Hearing Record)
28. On [REDACTED] 2020, the facility petitioned Probate Court to appoint Attorney [REDACTED] as proposed fiduciary. (Appellant's Exhibit A: Connecticut Probate Courts document)
29. On [REDACTED], 2020, the Department reviewed the file. (Exhibit 17)
30. On [REDACTED], 2020, the Department denied the Appellant's application for medical assistance for failure to provide information necessary to determine eligibility. (Exhibit 16: NOA dated [REDACTED]-2020)
31. The Probate Court process was made difficult as the State of Connecticut is in a Public Health Emergency ("PHE") due to the Covid-19 pandemic. (Attorney's Testimony)
32. On [REDACTED], 2020, Probate Court appointed Attorney [REDACTED] as administrator of estate for the Appellant. (Appellant's Exhibit A: Court of Probate document date [REDACTED]-2020)

33. 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 was due no later than [REDACTED], 2021.

However, the hearing, which was originally scheduled for [REDACTED], 2021, was rescheduled for [REDACTED], 2021 at the request of the Appellant, which caused a [REDACTED]-day delay. In addition, the hearing officer left the hearing record open for an additional [REDACTED] days. Because the total delays arose from the Appellant's request for a postponement and additional time to submit documents for the hearing record, this decision would not have become due until [REDACTED] 2021 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.
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, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Maintenance*, 214 Conn. 601, 573 A.2d (1990)).
3. UPM § 3029.05 (C) (1)(2) provides that the look-back date for transfers of assets is a date that is 60 months before the first date on which both the following conditions exist: the individual is institutionalized and the individual is either applying for or receiving Medicaid.
4. UPM § 4010.10 (A) (1) provides that personal property such as a bank account held jointly by the assistance unit and another person is counted in full toward the asset limit.
5. UPM § 4010.10 (A) (3) (a) (b) provides an individual other than the spouse of an assistance unit member is considered merely the record owner of an account or similar asset held jointly with the unit member. This is true regardless of the time period the individual has been joint holder of the asset. The assistance unit may rebut the Department's finding by providing clear and convincing evidence that the individual is legal owner of the asset.
6. UPM 4030.05 provides for treatment of assets and specific types of assets.

#### A. Types of Bank Accounts

Bank accounts include the following. This list is not all inclusive.

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 the [REDACTED] account is subject to the look back period and is an asset for the Appellant.**

7. 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 which 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 sent W-1348LTC verification request form requesting information needed to establish eligibility.**

8. UPM § 1500.01 provides the following definitions:

**Verification**

Verification is the act of confirming a fact, circumstance or condition through direct evidence or other reliable documentation or collateral contact.

UPM § 1505.40 (B)(5)(a) provides that for delays due to insufficient verification, 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 verification; 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.

**The Department received at least one item of verification that [REDACTED] was seeking an administrator or executor for the Appellant.**

9. UPM § 1505.40(B)(5)(b) provides that 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.

**The Department incorrectly did not provide an additional 10-day extension to the Appellant to provide the requested documentation as it had received at least one item of verification prior to the Department's [REDACTED], 2020 due date.**

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

### **DISCUSSION**

The undersigned reviewed Attorney [REDACTED] request pursuant to Connecticut General Statutes Section 4-178a and determined that the Department of Social Services ("DSS") has no regulation that provides for in a declaratory ruling proceeding. The request to subpoena the Department for the records of [REDACTED] is denied on the grounds that her information is safe guarded under the Department's policy, privacy laws, PHI and HIPPA. The evidence is not relevant to this case. The information is not needed to make a decision in this case. The decision is in favor of the Appellant.

### **DECISION**

The Appellant's appeal is Granted.

### **ORDER**

1. The Department shall reinstate the Appellant's [REDACTED], 2020 application.
2. The Department shall issue a new W-1348LTC to the Appellant's Administratrix of Estate for any additional verification needed to determine eligibility.
3. No later than [REDACTED] 2020, the Department will provide to the OLCRAH proof of compliance with this order.

*Miklos J. Mencseli*

Miklos Mencseli  
Hearing Officer

C: Yecenia Acosta, Operations Manager, Bridgeport DSS R.O. #30  
Tim Latifi, Operations Manager, Bridgeport DSS R.O. #30  
[REDACTED]

### **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, 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.