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

[redacted] 2021
Signature Confirmation

Client ID [redacted]
Case ID [redacted]
Request # 172576

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2021, the Department of Social Services (the "Department") sent [redacted] (the "Appellant") a Notice of Action ("NOA) denying his application for Medicaid benefits under the Husky C – Home and Community Based Services ("Husky C-HCBS") program effective [redacted] 2020.

On [redacted] 2021, [redacted] ("AREP), authorized representative for the Appellant, requested an administrative hearing on behalf of the Appellant 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, 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 called in for the hearing:

[redacted] Mother of the Appellant and Authorized Representative
[redacted] Father of the Appellant and Witness for the Appellant
Jeannette Burney, Department Representative
Lisa Nyren, Fair Hearing Officer

The hearing record remained open for the submission of additional evidence. On [redacted] 2021, the record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's [redacted] 2021 action to deny the Appellant's [redacted] 2020 application for Medicaid under the Husky C-HCBS program effective [redacted] 2020 was correct.

FINDINGS OF FACT

1. On [redacted] 2020, the Department received an application from the Appellant for Medicaid under the Husky C–HCBS program. (Exhibit 1: Application)

2. [redacted] ("AREP") is the mother of the Appellant and the Appellant's authorized representative. (Hearing Record)

3. [redacted] ("father") is the father of the Appellant. (Hearing Record)

4. The Appellant is age [redacted] born on [redacted] and disabled. (Exhibit 1: Application)

5. The Appellant receives waiver services through the Department of Developmental Services under the Employment and Day Supports Medicaid Waiver. (Exhibit E: Notice of Action and Department Representative's Testimony)

6. The Appellant owns a joint checking account number [redacted] ("DDA-1") with the AREP at [redacted] valued at $454.09 as of [redacted] 2020 and $148.15 as of [redacted] 2020. (Exhibit 1: Application, AREP's Testimony, and Department Representative's Testimony)

7. The Appellant owns a joint checking account number [redacted] ("DDA-2") with his father valued at $396.58 as of [redacted] 2020 and $169.92 as of [redacted] 2020. The Department calculated the balance after subtracting direct deposited wages from DDA-2. (Exhibit 1: Application, AREP's Testimony, and Department Representative's Testimony)

8. The Appellant owns life insurance policy number [redacted] with [redacted] ("life insurance policy") face value $50,000.00, death benefit $59,308.07, cash value $9,308.07, with an outstanding loan of

$3,566.52 as of [redacted] 2020. (Exhibit 1: AREP Brief and Supporting Documents)

9. The asset limit under the Husky C-HCBS program is $1,600.00. (Department Representative's Testimony)

10. The Department determined DDA-1, DDA-2, and the life insurance policy are countable assets under the Husky C-HCBS program. (Hearing Record)

11. The Department determined the total value of the Appellant's countable assets exceed the $1,600.00 asset limit under Husky C-HCBS program. (Hearing Record)

    Total Counted Assets as of [redacted] 2020
    $454.09 DDA-1 + $396.58 DDA-2 + $9,308.07 life insurance = $10,158.74

    Total Counted Assets as of [redacted] 2020
    $148.15 DDA-1 + $169.92 DDA-2 + $9,308.07 life insurance = $9,626.14

12. On [redacted] 2021, the Department determined the Appellant ineligible for Husky C-HCBS program because his total countable assets of $9,626.14 exceed the Husky C-HCBS asset limit of $1,600.00 and issued a notice of action. The notice listed the reasons for ineligibility as: "The value of your assets is more than the amount we allow you to have [and] does not meet program requirements." The notice listed the Appellant's assets and values as: "checking account $169.92, checking account $148.15, [and] whole life insurance $50,000.00" (Exhibit E: Notice of Action and Department Representative's Testimony)

13. On [redacted] 2021, the hearing record closed without the receipt of any additional evidence from the Department or the AREP.

14. 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 AREP on behalf of the Appellant requested an administrative hearing on [redacted] 2021. However, the close of the hearing record, which had been anticipated to close on [redacted] 2021 did not close for the admission of evidence until [redacted] 2021. Because of this [redacted]-day delay in the close of the hearing record, this final decision was not due until [redacted] 2021, and is therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes provides as follows: The Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

2. "The Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department." Conn. Gen. Stat. § 17b-261b(a)

3. 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 Income Maintenance,* 214 Conn. 601, 573 A.2d 712(1990))

4. Section 2540.92(A) of the Uniform Policy Manual ("UPM") provides for Individuals Receiving Home and Community Based Services as follows:

   Coverage Group Description. This group includes individuals who:

   1. would be eligible for MAABD if residing in a long term care facility (LTCF); and
   2. qualify to receive home and community-based services under a waiver approved by the Centers for Medicare and Medicaid Services; and
   3. would, without such services, require care in an LTCF.

   Department policy provides as follows under The Glossary of Abbreviations:

   MAABD - Medical Assistance for Aged, Blind and Disabled.
   AABD – State Supplement to the Aged, Blind or Disabled
   LTCF – Long Term Care Facility

   UPM § 400

5. Department policy provides as follows:

   For every program administered by the Department, there is a definite asset limit. This chapter outlines which assets are counted toward the asset limit and which assets are not counted. The chapter also specifies the asset limits for the four major programs which the Department administers, and describes how assets exceeding the program limit affect eligibility.

   UPM § 4005

"Limits Specific to each Program. For every program administered by the Department, there is a definite asset limit." UPM § 4005.05(A)

6. "Income and Asset Criteria. Except as described in subparagraph 3 below, the Department uses the AABD asset limit to determine eligibility." UPM § 2540.92(C)(2)

   Department policy provides as follows:

   The asset limits for the Department's programs are as follows except as noted under B:

   AABD and MAABD – Categorically and Medically Needy

   (Except Qualified Medicare Beneficiaries, Specified Low Income Medicare Beneficiaries, Additional Low Income Medicare Beneficiaries, Qualified Disabled and Working Individuals, Working Individuals with Disabilities and Women Diagnosed with Breast or Cervical Cancer)

   The asset limit is $1,600 for a needs group of one.

   UPM § 4005.10(A)(2)

7. Department policy provides as follows:

   Assets Counted Toward the Asset Limit.

   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)(1)

   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.

   UPM § 4005.05(B)(2)

8. "This chapter describes the Department's policies and procedures concerning how the Department determines ownership of an asset. It also describes the Department's policies concerning the treatment of assets

held jointly by two or more individuals, when at least one is applying for or receiving assistance from the Department." UPM § 4010

"Subject to the limitations described below, personal property such as a bank account held jointly by the assistance unit and by another person is counted in full toward the asset limit." UPM § 4010.10(A)(1)

"Types of Bank Accounts. Bank accounts include the following. This list is not all inclusive. Checking account." UPM § 4030.05(A)(2)

"Checking Account. That part of a checking account to be considered as a counted asset during a given month is calculated by subtracting the actual amount of income the assistance unit deposits into the account that month from the highest balance in the account for that month." UPM § 4030.05(B)

"All Programs. 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." UPM § 4030.30(A)(1)

Department policy provides as follows:

AABD and MAABD.

1. If the total face value of all life insurance policies owned by the individual does not exceed $1,500, 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.
2. Except as provided above, the cash surrender value of life insurance policies owned by the individual is counted towards the asset limit.

UPM § 4030.30(C)

9. Department policy provides as follows:

Asset Limit an Eligibility Factor

1. The Department compares the assistance unit's equity in counted assets with the program asset limit when determining whether the unit is eligible for benefits.
2. An assistance unit is not eligible for benefits under a particular program unless the assistance unit is categorically eligible for the program and the asset limit requirement does not apply (cross reference: 2500 Categorical Eligibility Requirements)

UPM 4005.05(D)

10. The Department correctly determined DDA-1, DDA-2 and life insurance as counted assets under the Husky C-HCBS program.

11. The Department correctly calculated the total value of the Appellant's counted assets for [redacted] 2020 as $10,158.74 and [redacted] 2020 as $9,626.14.

12. The Department correctly determined the asset limit under the Husky C-HCBS program as $1,600.00.

13. The Department correctly determined the Appellant's total countable assets of $9,696.14 exceed the Husky C-HCBS program asset limit of $1,600.00.

14. On [redacted] 2021, the Department correctly denied the Appellant's application for Medicaid under the Husky C-HCBS program effective [redacted] 2020 and issued a notice of action to the Appellant.

DISCUSSION

The Department administers numerous Medicaid programs pursuant to Title XIX of the Social Security Act. The Department identifies each program by specific names, which may not be known to the public, with each program having their own set of eligibility criteria as established by federal regulations, state law, and Department policy. This can certainly cause confusion and foster miscommunication to applicants and recipients of programs administered by the Department.

The AREP identified information on the [redacted] 2021 NOA which caused concern regarding the eligibility of the Appellant's medical benefits. The NOA failed to list the Husky C – Home and Community Based Services program asset limit of $1,600 which caused the denial of a specific medical coverage/program. The NOA listed the face value of the life insurance policy under the asset section rather than the cash value of this policy as counted by the Department. The NOA failed to identify the value of assets the Department applied to the asset limit causing the denial of the Appellant's application under the Husky C – Home and Community Based Services program.

Although the Department approved medical benefits under the Husky C – Working Disabled with a $00.00 premium beginning December 1, 2020, which allows the Appellant to receive services under the DDS waiver, the notice is vague as to the services provided under such program only noting the Appellant was approved for Medicaid for the Employed Disabled (MED) program and on

the Employment and Day Supports Medicaid Waiver. No further explanation is listed on the NOA. It is also noted the NOA lists the Appellant's medical benefits as Husky C- Working Disabled and Medicaid for Employed Disabled (MED) program using two separate names under two separate sections for the same program. In addition, Department policy refers to this same coverage as Medicaid under the "Working Individuals with Disabilities" coverage group.

It is no wonder the AREP was confused regarding the eligibility of the Appellant's application for medical benefits. However, the Department correctly denied the Appellant's application for Husky C – Home and Community Based Services because the Appellant's assets exceeded the $1,600.00 asset limit. However, the Department approved medical benefits under the Husky C – Working Disabled program with an asset limit of $10,000, which allows the Appellant to continue his home and community based services as provided under the DDS Employment and Day Supports Medicaid Waiver.

DECISION

The Appellant's appeal is denied.

Lisa A. Nyren
Fair Hearing Officer

CC:Tricia Morelli, DSS RO #11
Jeannette Burney, DSS RO #10

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.