

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

Client ID#: ██████████  
Case ID #: ██████████  
Hearing ID#: 174449

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████, 2021, the Department of Social Services (the "Department") granted ██████████ ("the Appellant") Husky C, Home and Community Based Services ("HCBS") Medicaid benefits effective ██████████ 2020.

On ██████████, 2021, the Appellant requested an administrative hearing to contest the Department's decision to deny certain months of benefits and requested that the Department grant benefits back to ██████████ 2020.

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

On ██████████, 2021, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-184 of the Connecticut General Statutes, inclusive, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

██████████, the Appellant's Conservator, and sister  
██████████, Esq., Attorney for the Conservator  
Jeanette Burney, Department's Representative  
Scott Zuckerman, Hearing Officer

The Appellant was not present at the administrative hearing.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department correctly granted the Appellant's Husky C, HCBS Medicaid benefits effective [REDACTED], 2020.

### **FINDINGS OF FACT**

1. On [REDACTED], 2016, the Appellant closed his [REDACTED] IRA acct # [REDACTED] and received proceeds of \$36,018.02. (Exhibit D: Case notes, [REDACTED]020)
2. On [REDACTED] 2016, the Appellant opened the [REDACTED] – Contract # [REDACTED] with the \$36,018.02 in proceeds from the [REDACTED] IRA. (Exhibit D: Case notes, [REDACTED]/2020)
3. On [REDACTED] 2020, the Appellant's cash surrender value of the [REDACTED] Annuity was \$41,050.63. (Ex. D: Case notes)
4. The asset limit for Medicaid for working individuals with disabilities is \$10,000. (Hearing Record)
5. On [REDACTED] [REDACTED], 2020, the Appellant requested Husky C Medicaid for HCBS. (Department's Testimony, Exhibit A: M2T email)
6. On [REDACTED] 2020, the Department's attorney reviewed the Appellant's annuity contract. The Department determined the annuity is a deferred annuity and can be surrendered. The Appellant can receive the surrender value. It was determined the annuity is an available asset. (Exhibit B: Email dated [REDACTED]2021)
7. On [REDACTED], 2020, the Department sent the Appellant a W-1348LTC requesting information to determine eligibility. Among the items requested was verification of how the [REDACTED] Annuity funds have been spent below the \$10,000 asset limit. (Exhibit D: Case note [REDACTED]/2021)
8. On [REDACTED] 2020, the Department sent the Appellant a W-1348LTC, requesting information to determine eligibility. Among the items requested was verification of how the [REDACTED] Annuity funds have been spent below the \$10,000 asset limit. (Exhibit D: Case notes)
9. On [REDACTED] 2020, the Department sent the Appellant a W-1348LTC, requesting information to determine eligibility. Among the items requested was verification of how the [REDACTED] Annuity funds have been spent below the \$10,000 asset limit. (Exhibit D: Case notes)
10. On [REDACTED] 2020, the Appellant's sister completed a Petition/Guardianship of Person with Intellectual Disability (Appellant's Exhibit 1)

11. On [REDACTED] 2020, the Department received a letter from the [REDACTED] indicating they are assisting the Appellant with the establishment of a Special Needs Trust. (Exhibit D: Case notes)
12. On [REDACTED] 2020, the Department sent the Appellant a W-1348LTC, requesting information needed to establish eligibility. Among the items requested was verification of how the [REDACTED] Annuity funds have been spent below the \$10,000 asset limit, a copy of the trust agreement / contract and copies of all payments made to the trust. (Exhibit D: Case notes)
13. On [REDACTED] 2020, the [REDACTED] filed conservatorship documents with the [REDACTED] Probate Court. (Appellant's Exhibit 4 and Exhibit D: Case Notes)
14. On [REDACTED] 2020, the Department received a copy of the Special Needs Trust draft. (Exhibit D)
15. On [REDACTED] 2020, the Department sent the Appellant a W-1348LTC, requesting information needed to establish eligibility. Among the items requested was verification of how the [REDACTED] Annuity funds have been spent below the \$10,000 asset limit, a copy of the trust agreement / contract and copies of all payments made to the trust. (Exhibit D: Case notes)
16. On [REDACTED] 2020, the [REDACTED] Probate Court issued a decree appointing the Appellant's sister Conservator of the estate. (Appellant's representative's testimony)
17. On [REDACTED] 2020, the [REDACTED] Probate Court issued a decree authorizing the Conservator to establish and fund the [REDACTED] Trust from the net proceeds of the IRA annuity of the Appellant. (Exhibit 11: Decree [REDACTED]/2020)
18. On [REDACTED] 2020, the [REDACTED] Probate Court issued a decree authorizing the conservatrix of the estate to obtain bank records from [REDACTED] Bank. (Exhibit 12: Decree issued [REDACTED]/2020)
19. On [REDACTED], 2020, the [REDACTED] sent [REDACTED] a Withdrawal Request for Annuity contract # [REDACTED] request full Surrender of the IRA Annuity. (Exhibit 14: Letter to [REDACTED] and withdrawal form)
20. On [REDACTED] 2020, the [REDACTED] Annuity contract # [REDACTED] was closed and the surrender amount of \$34,879.22 was sent to the Appellant's conservator. (Exhibit 15: Letter and copy of check from [REDACTED], [REDACTED]/2020)

21. On [REDACTED] 2020, the proceeds of \$34,879.22 from the [REDACTED] Annuity was deposited into the [REDACTED]. (Exhibit 15: [REDACTED] Consumer account application and Transaction Receipt for account [REDACTED])
22. On [REDACTED] 2021, the Department received a copy of the [REDACTED] Trust. (Hearing Summary and Exhibit D: Case notes)
23. On [REDACTED], 2021, the Department determined the Trust qualifies as a special needs trust and the assets are not available. (Exhibit C: Email from the Department's Principal Attorney)
24. The Appellant reduced his assets to below the \$10,000 limit with the funding of the trust and became eligible effective [REDACTED] 2020. (Department's testimony)
25. On [REDACTED] 2021, the Department sent the Appellant a Notice of Action denying Husky C, Home and Community Based Services Medicaid for the period of [REDACTED] 2020 through [REDACTED], 2020 for the reason, "the value of your assets is more than the amount we allow you to have." The notice further stated the Appellant was Approved for Husky C - Home and Community Based Services, Individual and Family Support Medicaid Waiver effective [REDACTED] 2020. (Exhibit E: Notice of Action, [REDACTED]/2021)
26. 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], 2021. Therefore, this decision is due not later than [REDACTED] 2021 and is therefore timely. (Hearing Record)

### **CONCLUSIONS OF LAW**

1. Connecticut General Statutes §17b-2 provides in part that the Commissioner is authorized to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. 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)).
3. "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 unit." Uniform Policy Manual § 4005.05 (B)(1)
4. "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)

5. “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.” UPM § 4005.05 (D)
6. UPM § 4030.47 provides for Annuities and states that Annuities are evaluated as both an asset representing an investment and as income that the beneficiary may receive on a regular basis (cross reference 5050, Treatment of Specific Types). The assistance unit’s equity in an annuity is a counted asset to the extent that the assistance unit can sell or otherwise obtain the entire amount of equity in the investment. Any payments received from an annuity are considered income. Additionally, the right to receive income from an annuity is regarded as an available asset, whether or not the annuity is assignable.
7. UPM § 4000.01 defines a trust as an oral or written agreement in which someone (the trustee) holds the legal title to an asset for the benefit of another person (the beneficiary).
8. UPM § 4030.80 (D) (1) provides that The Department considers an individual to have established a trust if the individual’s assets were used to form all or part of the corpus of the trust and if any of the following individuals established the trust by means other than a will:
  - a. the individual; or
  - b. the individual’s spouse; or
  - c. a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual’s spouse; or
  - d. a person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual’s spouse.
9. Section 17b-261(C) of the Connecticut General Statutes 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. 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, 42 USC 1396p. The provisions of this subsection shall not apply to a special needs trust, as defined in 42 USC 1396p(d)(4)(A), as amended from time to time.

**The Department’s Attorney determined that the Appellant’s Trust qualified as a special needs trust** [REDACTED]

10. 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.
11. UPM § 4026.05 pertains to the calculation method for counted assets and states:

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.**

12. Conn. Gen. Stat. § 17b-597 provides for a working persons with disabilities program.  
(a) The Department of Social Services shall establish and implement a working persons with disabilities program to provide medical assistance as authorized under 42 USC 1396a(a)(10)(A)(ii), as amended from time to time, to persons who are disabled and regularly employed. (b) The Commissioner of Social Services shall amend the Medicaid state plan to allow persons specified in subsection (a) of this section to qualify for medical assistance. The amendment shall include the following requirements: (1) That the person be engaged in a substantial and reasonable work effort as determined by the commissioner and as permitted by federal law and have an annual adjusted gross income, as defined in Section 62 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, of no more than seventy-five thousand dollars per year; (2) a disregard of all countable income up to two hundred per cent of the federal poverty level; (3) for an unmarried person, an asset limit of ten thousand dollars, and for a married couple, an asset limit of fifteen thousand dollars; (4) a disregard of any retirement and medical savings accounts established pursuant to 26 USC 220 and held by either the person or the person's spouse; (5) a disregard of any moneys in accounts designated by the person or the person's spouse for the purpose of purchasing goods or services that will increase the employability of such person, subject to approval by the commissioner; (6) a disregard of spousal income solely for purposes of determination of eligibility; and (7) a contribution of any countable income of the person or the person's spouse which exceeds two hundred per cent of the federal poverty level, as adjusted for the appropriate family size, equal to ten per cent of the excess minus any premiums paid from income for health insurance by any family member, but which does not exceed the maximum contribution allowable under Section 201(a)(3) of Public Law 106-170, as amended from time to time.
13. "In the Medicaid program for Working Individuals with Disabilities, the asset limit is \$10,000 for a single individual." UPM 4005.10(A)(5)(a)
14. "In the Medicaid program 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." UPM § 4005.15 (A)(2)
15. "The burden is on the assistance to demonstrate that an asset is inaccessible. For all programs except Food Stamps, in order for an asset to be considered inaccessible, the assistance unit must cooperate with the Department as directed, in attempting to gain access to the asset." UPM § 4015.05 (B)

**The Department correctly determined that the [REDACTED] Annuity assets were accessible and available to the Appellant during the months of [REDACTED] 2020 through [REDACTED] 2020.**


The Appellant had assets that exceeded the Medicaid asset limit for working individuals with disabilities of \$10,000.00 for the months of [REDACTED] 2020 through [REDACTED] 2020.

The Department correctly determined that the Appellant's assets were reduced to under the \$10,000.00 asset limit when his conservatrix funded the [REDACTED] Trust on [REDACTED], 2020 with the [REDACTED] annuity proceeds.

On [REDACTED] 2021, the Department correctly granted the Appellant's application for HCBS Medicaid effective [REDACTED] 2020, the month after the assets were reduced to under the allowable limit.

### DECISION

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

  
\_\_\_\_\_  
Scott Zuckerman  
Hearing Officer

Cc: Rachel Anderson, Operations Manager, DSS, New Haven Regional Office  
Cheryl Stuart, Operations Manager, DSS, New Haven Regional Office  
Lisa Wells, Operations Manager, DSS, New Haven Regional Office  
Jeanette Burney, Fair Hearing Liaison, DSS, Hartford Regional 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.

### **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.