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 ID # [redacted]
Client ID # [redacted]
Request # 174485

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted], 2020, the Department of Social Services (the "Department") sent [redacted] (the "Applicant") a notice of action denying her application for Husky C-Long Term Care Medicaid because she did not return all of the required verification.

On [redacted] 2021, [redacted], the appointed administrator of the estate, requested an administrative hearing to contest the Department's decision to deny the Applicant's Long Term Care Medicaid assistance.

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, the administrator of the estate requested to reschedule the hearing due to his recent appointment as administrator and not receiving notification in advance of the scheduled administrative hearing.

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, it was agreed by both parties to reschedule the hearing.

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 4-184, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals participated in the hearing:

[redacted], Administrator of the Estate for the Applicant
[redacted], Facility Attorney
Carrie Eichman, Department's Representative
Shelley Starr, Hearing Officer

The Applicant was not present at the telephonic hearing due to her passing on [redacted] 2020.

STATEMENT OF THE ISSUE

The issue is whether the Department was correct to deny the Applicant's application for long-term care Medicaid for failing to provide verification to establish eligibility.

FINDINGS OF FACT

1. The Applicant is [redacted] years old [redacted] divorced and resided in a skilled nursing facility. (Exhibit 8: W-1 LTC Application; Hearing Record)

2. On [redacted], 2019, the Applicant was admitted to the [redacted], a skilled nursing facility and approved by Ascend for an anticipated long-term stay. (Hearing Record; Department's Testimony; Exhibit 5: Case Notes; entry [redacted]19)

3. On [redacted] 2018, the applicant's sister, [redacted], was appointed as Power of Attorney, ("POA"). (Hearing Record; Representative's Testimony)

4. On [redacted] 2019, the Department received an application on behalf of the Applicant requesting Long Term Care Medicaid, completed by the Applicant's POA. (Hearing Summary)

5. The Department sent the Power of Attorney a total of eleven (11) W-1348 LTC Verification We Need forms (request # 8 thru #18) requesting proof of certain information needed to determine eligibility. (Exhibit 1: W-1348LTC request # 8 thru dated 18; Hearing Summary)

6. On [redacted] 2020, the Applicant passed. (Hearing record, Representative's Testimony)

7. On [redacted] 2020, the facility sent an email to the Department Representative informing her that the POA has been sick and not able to get out of the house. She also followed up to see of DSS was able to request the information directly because the Applicant expired and the POA was no longer able to obtain the information. (Exhibit 5: Email dated [redacted] 20; Hearing Record)

8. On [redacted] 2020, the Department sent to the POA and nursing facility business office a W-1348LTC request # 18, requesting verification regarding account # [redacted] requesting verification if the funds in the account were used for the client's nursing home care. Proof of the current face value and cash surrender value of [redacted]. Regarding [redacted] statements, it was noted that applicant makes regular payments as recent as [redacted] /19 of $82.70 to [redacted] Please provide a copy of this policy. The notice advised that written on a returned W-1348 was a statement that this policy has been surrendered to [redacted]. If [redacted] has been surrendered to the funeral home, provide verification. Regarding [redacted], you reported this policy lapsed and closed [redacted] /17 but the client made payments on [redacted] /19. You verified that [redacted] was closed [redacted] 2017 and that [redacted] was closed [redacted] 2019. What happened to [redacted]? The notice further advised that you applied on [redacted] 19. We will take action on your application no later than [redacted] /20. If you do not give us any required proof or if you do not ask us for more time by [redacted] /20, then we may deny your application. The information was due by [redacted] /20. (Exhibit 1: W-1348 LTC request # 18; Hearing Summary)

9. On [redacted] 2020, the Department reviewed the file and determined that no requested verification based on the W-1348LTC issued on [redacted] 2020, was provided by the Power of Attorney, and no communication was made by the POA requesting an extension. (Hearing Summary; Exhibit 5: Case Notes; entry [redacted] 2020)

10. [redacted] 2020, the Department issued a Notice of Action denying the Long Term Care Medicaid application for failing to return the required proofs by the due date and not meeting the program requirements. (Exhibit 7: Notice of Action dated [redacted] 2020, Hearing Summary; Department's Testimony)

11. The Facility is owed $148,302.32 for the Applicant's cost of care. ([redacted] Testimony; Hearing Record)

12. The POA is aged, suffering from Covid-19, and was admitted to a Nursing Facility. (Department's Testimony; Representative's Testimony; Hearing Record)

13. On [redacted] 2021, the Facility Attorney contacted the Department regarding the denied Medicaid application. The Department explained what was outstanding supporting the denial. The Attorney emailed the Department with verification of the

terminated [redacted] with the [redacted] outstanding. (Hearing Summary; Exhibit 5: Case Notes; entry [redacted] 2021)

14. On [redacted] 2021, the Connecticut Probate Court appointed [redacted] as Administrator of the Estate. (Appellant's Exhibit A: Court of Probate Certificate of Fiduciary's Position of Trust/Administrator [redacted] 2021)

15. At the hearing, good cause was established for failing to comply with the time limits in the eligibility process, due to circumstances of the designated Power of Attorney's declining health due to her Covid -19 diagnosis and her apparent inability to perform her duties as Power of Attorney. In addition, her authority as Power of Attorney terminated with the Applicant's passing on [redacted] 2020. An administrator has since been appointed. (Hearing Record; Department's Testimony; Representative's Testimony)

16. 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 administrative hearing was requested on [redacted] 2021, with a decision due [redacted] 2021. However, due to a 70-day delay due to the rescheduling and closing of the hearing record, this decision is due no later than [redacted] 2021, and is therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes ("Conn. Gen. Stat.") provides 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. § 17-261b(a).

3. "The department's uniform policy manual 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") § 1500.01 provides that the application process is an activity related to the exploration, investigation, and disposition of an application beginning with the filing of an assistance request and ending with the disposition of the application.

5. UPM § 1505 provides the application process outlines the general methods and requirements used in obtaining assistance and in determining an assistance unit's

initial eligibility. The application process is essentially the same for all programs. It is designed to provide aid in a prompt and efficient manner to those who request ssistance.

6. UPM § 1525.15 (C)(1)(a)provides in pertinent part that residents of institutions may apply for assistance and be certified on their own behalf, or through the use of an authorized representative who may be an individual of the applicant's choice or an employee designated by the institution for this purpose.

The Department correctly determined that the Applicant had appointed her sister as POA and representative qualified to submit an application for Medicaid on behalf of the Applicant.

7.UPM § 1500.01 provides that the date of application is the date a formal written request for assistance is filed with the Department in accordance with the rules established for the program for which application is made.

UPM § 1505.10 (D)(1) provides for AFDC, AABD, and MA applications, except for the Medicaid coverage groups noted below in 1510 (D)(2), the date of application is considered to be the date that a signed application form is received by any office of the Department.

The Department correctly determined the date of application as [redacted] 2019.

8. 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.

UPM § 1015.05(C) provides the Department must tell the assistance unit what the unit has to do to establish eligibility when the Department does not have sufficient information to make an eligibility determination.

The Department correctly issued eleven (11) W-1348 requests for information to the Applicant's POA informing her what is needed to establish eligibility and the deadline in which to provide the information.

9. 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.

10. UPM § 1505.35(C)(1)(2) provides that a standard of promptness is established as

the maximum time period for processing applications. For applicants for Medical assistance on the basis of age; that standard is forty-five calendar days.

11. UPM § 1505.40 (B)(5)(a) provides 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.

    UPM § 1505.40 (B)(5)(b) provides 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 correctly did not grant an extension to the POA on behalf of the Applicant because she did not provide at least one item of verification listed on the W-1348LTC Verification We Need issued on [redacted] 2020, by the [redacted] 2020, designated due date.

12. UPM § 1505.40(B)(1)(b)(1) provides that if the applicant failed to complete the application without good cause, cases are denied between the thirtieth day and the last day of the appropriate standard for processing the application.

    On [redacted] 2020, the Department correctly denied the Applicant's application because none of the requested verification was received by the due date and the representative did not communicate to the Department for an extension for not providing the verification.

13. UPM § 1555.10 (A) (1) & (2) provides for Good Cause and states under certain conditions, good cause may be established if an assistance unit fails to timely report or verify changes in circumstances and the delay is found to be reasonable. If good cause is established, the unit may be given additional time to complete required actions without the loss of entitlement to benefits for a current or retroactive period.

    UPM § 1555.10 (B)(1) provides that PA assistance units may establish good cause for (b) failing to provide required verification timely.

    UPM § 1555.10 (B)(2) provides that good cause may include, but is not limited to (a.) illness; (b) severe weather; (c) death in the immediate family; (d) other circumstances beyond the unit's control.

It is reasonable to conclude that due to circumstances beyond both the Applicant's and POA's control, information was not timely provided to the Department by the Power of Attorney.

At the administrative hearing, good cause for not timely providing the requested verification was established.

DISCUSSION

The Department's action to deny the long-term care Medicaid application based on the failure to provide information is overturned. Regulation provides that an application can remain pending as long as good cause for not providing the requested verification by the designated due date exists. At the hearing, it was communicated that the Applicant entrusted the responsibility to act on her behalf and complete the application process to her sister, as Power of Attorney. The record demonstrates that the POA cooperated with the application process by providing and requesting verification to the best of her ability, needed for the application process. It was not until she became ill with Covid and under quarantine that she did not respond to the Department timely.

On [redacted] 2020, the facility sent an email to the Department Representative advising that the POA was ill and not able to leave her home and requested the Department's assistance in obtaining the remaining verification needed for the determination of eligibility. In addition, the POA was relinquished of her authority as POA at that time as the applicant had passed on [redacted] 2020. There is no evidence in the hearing record that the Department responded to the request for assistance or considered the communicated circumstances. It is unclear why the Department did not attempt to obtain the necessary verification prior to the denial of this application.

The hearing record demonstrates that due to the Applicant's passing, on [redacted] 2021, the [redacted] Probate Court appointed [redacted] as Administrator of the Estate.

Since good cause has been established at the hearing for not submitting the requested information by the designated due date; the Department shall reopen the long-term care Medicaid application and continue to determine eligibility. This decision does not confer eligibility to the Applicant but allows the application to restart from the [redacted] 2019, application date.

DECISION

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

ORDER

1. The Department shall re-open the Applicant's Long Term Care Medicaid application as of [redacted] 2019, send a W-1348 LTC request for any outstanding information, allowing an appropriate ten day response and continue to determine eligibility.

2. The Department shall submit to the undersigned proof of compliance with this order no later than [redacted] 2021.

Shelley Starr
Hearing Officer

Pc: Carol Sue Shannon, DSS, Danbury
Carrie Eichman, DSS, Hartford

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 his 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.