

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

[REDACTED]
[REDACTED]
Request # 176037

NOTICE OF DECISION
PARTY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

[REDACTED] 2021, the Department of Social Services (the “Department”) sent [REDACTED] [REDACTED] (the “Applicant”) a Notice of Action (“NOA”) granting his application for Long Term Care Services under the Husky C Medicaid program effective [REDACTED] 2021.

[REDACTED] 2021, [REDACTED], the Applicant’s Power of Attorney (“POA”), requested an administrative hearing to contest the Department’s action. [REDACTED] (the “Attorney”), is the POA’s Attorney and signed the request on her behalf.

[REDACTED], 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for [REDACTED] 2021. The hearing was scheduled to be held telephonically due to the COVID-19 pandemic.

[REDACTED] 2021, the Attorney requested a re-schedule of the hearing as he did not receive the hearing summary timely.

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

[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 hearing was held telephonically with no objection from any of the parties. The following individuals participated in the hearing:

[REDACTED] Appellant, Applicant's POA and daughter
[REDACTED] Appellant's Attorney
Connie Estanislau, Department's Representative
Veronica King, Hearing Officer

The Applicant, ██████████, was not present at the hearing due to his institutionalization at a long term care facility.

A separate decision will be issued to address the Department's denial of the Applicant's application for Aid to Aged, Blind, and Disable cash benefit Program.

The hearing record remained open for the submission of additional information. Exhibits were received from the Appellant and the record closed [REDACTED], 2021.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to grant Long Term Care benefits effective [REDACTED] 2021 was correct.

FINDINGS OF FACT

1. [REDACTED], the Applicant and his wife, [REDACTED] moved to an assisted living residence, boarding home, at [REDACTED] (Exhibit 7: W-265 reporting of admission or discharge, and Hearing Record)
2. The Applicant and his wife lived in an apartment setting where they shared the accommodations. (Department's Representative's Testimony)
3. [REDACTED] 2020, the Applicant and his wife sold their house. The proceeds of the sale were placed in an escrow account under both of their names. (Hearing Record, Appellant's Attorney Testimony and Exhibit 5: Asset's spreadsheet)
4. The Applicant receives \$1,850.00 per month in Supplemental Security Benefits ("SSA") and his wife receives \$800.00 per month in SSA benefits. (Appellant's Exhibit E: Response to DSS dated [REDACTED]/21 and Hearing Record)
5. [REDACTED] 2020, the Department received a W-1E Application for Benefits form. The application is for the Applicant's wife and himself, "Myself and spouse". They applied for cash and Medical programs. (Exhibit 1: W1E Application for Benefits)

6. The Applicant and his wife had several bank accounts and other countable assets. [REDACTED] 2020, the Applicant's, and his wife's assets totaled \$129, 888.59. (Exhibit 5)
7. Their assets were used solely to pay for their care. There was no improper transfer of assets. (Hearing Record)
8. [REDACTED] 2021, the Applicant and his wife's assets totaled \$37, 202.76. (Exhibit 5)
9. [REDACTED] 2021, the Appellant signed burial contracts for the Applicant (\$1,620.00) and his wife (\$1,495.00). (Appellant's Exhibit F: Cremation Contracts)
10. [REDACTED] 2021, the Applicant wrote checks to the "Forethought Life Insurance" (the "vendor") for payments of both burial contracts. The checks totaled \$3,115.00. (Appellant's Exhibit G: Checks to Forethought Life Insurance, dated [REDACTED]/21)
11. [REDACTED] 2021, the Applicant's countable assets totaled \$17, 935.10. (Appellant's Exhibit K: Fax dated [REDACTED] 21 summary of information from the Appellant's Attorney)
12. While residing at the [REDACTED] boarding home, the Applicant and his wife had several temporary discharges and admissions to and from the hospital. The Applicant's wife was permanently admitted at [REDACTED] Skilled Nurse Facility ("SNF") on [REDACTED] 2021. (Exhibit 7: W-265 Report of admission or discharge rated housing facility/residential care home and Hearing Record)
13. [REDACTED] 2021, the Appellant was made aware that the vendor had not cashed the [REDACTED] 21 checks. The Appellant hand delivered re-issued payments (\$3,115.00) to the vendor. (Appellant's Exhibit H: Checks to Forethought Life Insurance, dated [REDACTED]/21, and Hearing Record)
14. [REDACTED] 2021, the Applicant's countable assets totaled \$17, 803.48 (Free Checking [REDACTED] . (Appellant's Exhibit K)
15. [REDACTED] 2021, the Applicant was admitted permanently at the SNF. (Hearing Record)
16. After the Applicant was admitted to the SNF on [REDACTED]/21, the Appellant learned that monies were stolen out of one of her accounts. A police investigation was conducted and subsequently the funds was replaced at the applicant's account. The Appellant testified that the total amount of the monies stolen and then replaced was around \$1,300.00. (Appellant's Testimony and Hearing Record)

17. The stolen and subsequently return of funds, resulted in some havoc in the Applicant's and his wife's multiple accounts. (Hearing Record)
18. [REDACTED], 2021, Forethought Life Insurance cashed the checks written and hand delivered by the Appellant on [REDACTED] 2021. (Exhibit 6: Bank Statement)
19. The Department determined that the Applicant was over the asset limit for the Medicaid program until [REDACTED], 2021. (Hearing Record)
20. The Appellant is seeking Long Term Care Services under the Medicaid program for the Applicant effective [REDACTED]/21. (Hearing Record)
21. The Medicaid asset limit is \$1,600.00. (Hearing Record)
- 22 [REDACTED] 2021, the Department granted Medicaid for Long Term Care for the Applicant effective [REDACTED] 2021. (Hearing Record)
23. The record was left open for both parties to provide additional verifications. On [REDACTED] 2021, the Appellant's Attorney provided an asset's spreadsheet and bank statements. (Exhibit K and Hearing Record)
24. The Department did not submit additional evidence. (Hearing Record)
25. The Appellant's Attorney waived the right of the issuance of a timely decision under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes, authorizes the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
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 Income Maintenance*, 2017 Conn. 601, 573 A.2d 712 (1990)).
3. Uniform Policy Manual ("UPM") § 1505.15 (C)(1)(3) states in part that a conservator, guardian or other appointed fiduciary individual are qualified to request cash or medical assistance, be interviewed and, complete the application process on behalf who they represent.

4. UPM Section 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.
5. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
6. 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.
7. UPM § 4000.01 defines available assets as cash or any item of value which is actually available to the individual or which the individual has the legal right, authority or power to obtain, or to have applied for, his or her general or medical support.
8. UPM § 4005.05(B) speaks to the asset limit and states in part:
 1. The Department counts the assistance unit's equity in an asset towards 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.
 2. 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.
9. UPM § 4005.05 (D) (1) provides that 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.
10. UPM § 4030.05 (B) provides that part of a checking account to be considered as counted assets during a giving 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 or that month.

It is not clear how the Department considered the Applicant's and his wife's social security [REDACTED] s benefits when calculating the total of his assets in [REDACTED] 2021.

11. UPM § 4010.05 provides for determination of ownership of assets and states: (A) 1. If the assistance unit is the record owner of an asset, the unit is considered the legal owner unless it establishes otherwise, with clear and convincing evidence. 2. If it is established to the Department's satisfaction that the legal owner and the record owner of an asset are two different persons, the Department considers the asset the property of the legal owner.

████████ 2021, the Appellant signed a written expressed agreement on behalf of the Applicant and her husband with the "Forethought Life Insurance" subsequently on █████ 2021, she wrote two checks totaled \$3,115.00 to satisfy the agreement.

The Department incorrectly did not reduce the \$3,115.00 from the Applicant's assets when calculating her eligibility for Long Term Care Services under the Medicaid Program for █████ 2021.

12. UPM § 4005.15 provides that 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.

The Appellant's is seeking eligibility for the month of █████ 2021.

It is not clear if the Department correctly determined that the Applicant's total countable assets exceeded the allowable limit for the Medicaid program in █████ 2021.

It is not clear if the Department correctly granted Medicaid for Long Term Care effective █████ 2121.

DISCUSSION

It should be noted that while there were prior applications for benefits, this hearing solely deals with the W-1E application for AABD Cash benefits and Long Term Care Services under the Medicaid program, received by the Department on █████ 2020, and the subsequent denial.

The Appellant and the Appellant's Counsel worked diligently in spending down the Applicant's assets. There is no question that the funds were spent reasonably and to benefit the Applicant and his wife. There is no question regarding the Applicant's medical eligibility for the programs. Regulations provide that eligibility for the Medicaid program begins the first day of the month in which the assistance unit reduces its equity in counted assets to within the asset limit. The Applicant entered the SNF on █████ 21, Counsel for the Appellant agrees that the issue of this hearing it is how the Department determined the Applicant's total countable assets in █████ only.

When considering the Applicant's and his wife's social security benefits income for █████ 2021 (\$2,650), the Department failed to illustrate if the █████ 2021 income was removed from the Applicant's total countable assets.

████████, 2021, the Appellant wrote a check to fulfill the burial contract that was signed on █████/21. When you write a check to pay a vendor's invoice, you have the implicit bank contract, but you also fulfill a payment obligation under your agreement - a contract or proposal - with the vendor. Writing a check creates a legally binding contract involving three people or legal entities. A check can be circumstantial evidence of an agreement. The Department's procedures established in UPM § 4010.05 P says in part; "in considering questions of legal ownership, determined whether there was an

expressed agreement between the record owner and the alleged legal owner, whereby the record owner agreed to hold the assets for the benefit of the legal owner". The procedures also state that the Department must ask and ask; Who is using or otherwise benefiting from the asset? In this case the funds (asset) were used to purchased burial contracts for the Applicant and his wife. I found that on [REDACTED]/21, the Applicant rightful transferred \$3,115.00 to Forethought Life Insurance and therefore it should be removed from the Applicant's countable assets for [REDACTED] 2021.

The record reflects there is not enough evidence to determine if the Applicant's total countable assets was over of the program asset limit in [REDACTED] 2021.

DECISION

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

ORDER

1. The Department shall remove \$3,115.00, from the Applicant's total countable assets effective [REDACTED] 21.
2. The Department shall review how the Applicant's and his wife's social security income of \$2,650 for [REDACTED] 2021 was considered when determined eligibility for [REDACTED] 2021.
3. The Department shall analyze the Applicant's total countable assets in [REDACTED] 2021, to determine eligibility.
4. Compliance of this order is due back to the undersigned by [REDACTED] 2021.



Veronica King
Hearing Officer

Pc: Rachal Anderson, Mathew Kalarickal, Lisa Wells, DSS Operations Manager, DO# 20, New Haven.
Connie Estanislau, DSS Fair Hearing Liaison

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.