

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#: 177246

NOTICE OF DECISION AFTER RECONSIDERATION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2021, the Department of Social Services (the "Department") granted ██████████, ("the Appellant") Husky C, Medicaid for the Working disabled effective ██████████ 2020 and 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.

On [REDACTED] 2021, the hearing officer issued a decision that denied the Appellant's appeal of the Department's effective date of Medicaid benefits of [REDACTED] 2020.

On [REDACTED] 2021, the Appellant submitted his request for reconsideration of the decision.

On [REDACTED], 2021, in accordance with Connecticut General Statutes § 4-181a (A) (2), OLCRAH granted the Appellant's request for reconsideration of the decision dated [REDACTED] [REDACTED] 2021 to address the accessibility of the asset and correcting a finding of fact regarding the Medicaid effective date.

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 Prudential IRA acct # [REDACTED] and received proceeds of \$36,018.02. (Exhibit D: Case notes, 6/30 [REDACTED])
2. On [REDACTED] 2016, the Appellant opened the Allianz Annuity – Contract # [REDACTED] with the \$36,018.02 in proceeds from the Prudential IRA. (Exhibit D: Case notes, [REDACTED] 2020)
3. On [REDACTED], 2020, the Appellant's cash surrender value of the Allianz Annuity was \$41,050.63. (Ex. D: Case notes)
4. Sometime in [REDACTED] 2020, the Appellant's sister was informed by the Appellant's Department of Developmental Services ("DDS") case manager, that the Appellant was the owner of the Allianz Annuity. (Appellant's Representative's testimony)
5. The Appellant's mother has been his legal guardian for forty years. (Appellant's representative's testimony)
6. The Appellant's mother's health has been declining with dementia, is ninety years old, and she has not been following through on completion of his renewals for Medicaid. (Representative's testimony)
7. On [REDACTED] [REDACTED] 2020, the Appellant requested Husky C Medicaid for HCBS. (Department's Testimony, Exhibit A: M2T email)
8. 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. The Department determined the annuity is an available asset. (Exhibit B: Email dated [REDACTED]/2021)

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 Allianz Annuity funds have been spent below the \$10,000 asset limit. (Exhibit D: Case note [REDACTED]/2020)
10. 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 Allianz Annuity funds have been spent below the \$10,000 asset limit. (Exhibit D: Case notes)
11. 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 Allianz Annuity funds have been spent below the \$10,000 asset limit. (Exhibit D: Case notes)
12. On [REDACTED], 2020, the Appellant's sister completed a Petition/Guardianship of Person with Intellectual Disability (Appellant's Exhibit 1)
13. On [REDACTED] 2020, the East Haven-North Haven Probate court issued a Notice of Hearing for the appointment of guardian of person with intellectual disability. (Exhibit 5: Notice of Hearing, [REDACTED]/20)
14. 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)
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 Allianz 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] filed with the East Haven-North Haven Probate an application for Conservator of Estate, Application for Authority to Create and Fund the [REDACTED] OBRA '93 Trust, Draft of the trust, and appearance in both matters. The attorney asked that the applications be heard together due to the urgency of the Appellant losing his Medicaid benefits. (Appellant's Exhibit 4 and Exhibit D: Case Notes)
17. On [REDACTED] 2020, the Department received a copy of the Special Needs Trust draft. (Exhibit D)
18. On [REDACTED] 2020, the East Haven-North Haven probate court issued a Notice of Hearing for the appointment of conservator of estate. (Exhibit 5: Notice of Hearing, [REDACTED]/20)

19. 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 Allianz 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)
20. On [REDACTED], 2020, the East Haven – North Haven Probate Court held the hearing for conservator of estate. Medical evidence presented at the hearing determined, *“Clear and Convincing evidence has been presented that the respondent being unable to receive and evaluate information and make or communicate financial decisions to such an extent that the respondent is unable, even with appropriate assistance, to perform the functions inherent in managing his or her finances. Specifically, the respondent is incapable of managing the respondent’s financial affairs due to: The respondent has cognitive disabilities with impaired decision-making abilities. He is unable to complete applications and necessary paperwork to qualify or continue benefits to which he might be entitled.”* The Appellant’s sister was appointed Conservator Estate. (Appellant’s representative’s testimony and Exhibit 9: Decree/Appointment of Conservator, [REDACTED]/2020)
21. On [REDACTED], 2020, the East Haven – North Haven Probate Court issued a decree appointing the Appellant’s sister Conservator of the estate. (Appellant’s representative’s testimony)
22. On [REDACTED], 2020, the East Haven – North Haven Probate Court issued a notice of hearing for [REDACTED] 2020 on the Application for Authority to create and fund the [REDACTED] Obra '93 Trust as of Record Appears. (Exhibit 10: Notice of Hearing, [REDACTED]/2020)
23. On [REDACTED] 2020, the East Haven – North Haven Probate Court issued a decree authorizing the Conservator to establish and fund the [REDACTED] OBRA '93 Trust from the net proceeds of the IRA annuity of the Appellant. (Exhibit 11: Decree [REDACTED]2020)
24. On [REDACTED] 2020, the East Haven – North Haven Probate Court issued a decree authorizing the conservatrix of the estate to obtain bank records from Wells Fargo Bank. (Exhibit 12: Decree issued [REDACTED]2020)
25. On [REDACTED] 2020, the East Haven – North Haven issued a Fiduciary’s Probate Certificate/Conservatorship to the Appellant’s sister indicating she has accepted appointment as conservator and giving her the duties of intervention to meet the Appellant’s needs such as estates, trusts, benefits from governmental programs, to maintain benefits and seek authority to establish and fund an OBRA '93 trust. (Exhibit 13: Fiduciary’s Probate Certificate, [REDACTED]/2020)

26. On [REDACTED], 2020, the [REDACTED] sent Allianz Life Insurance a Withdrawal Request for Annuity contract # [REDACTED] request full Surrender of the IRA Annuity. (Exhibit 14: Letter to Allianz and withdrawal form)
27. On [REDACTED], 2020, the Allianz 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 Allianz, [REDACTED]/2020)
28. On [REDACTED], 2020, the proceeds of \$34,879.22 from the Allianz Annuity was deposited into the [REDACTED] OBRA 93 Trust. (Exhibit 15: Wells Fargo Consumer account application and Transaction Receipt for account [REDACTED])
29. On [REDACTED], 2021, the Department received a copy of the [REDACTED] OBRA 93 Trust. (Hearing Summary and Exhibit D: Case notes)
30. 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)
31. The Department determined that the Appellant reduced his assets to below the \$10,000 limit with the funding of the trust and became eligible for Medicaid for the Working Disabled effective [REDACTED] 2020 and Home and Community Based Waiver effective [REDACTED] 2020. (Department's testimony)
32. 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 stated the Appellant was approved for Husky C – Medicaid for Working Disabled effective [REDACTED] 2020. 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)
33. The issuance of this decision is timely under the provisions of Connecticut General Statutes § 4-181a (a) (3) that provides if the agency decides to reconsider a final decision, pursuant to subdivision (1) or (2) of this subsection, the agency shall proceed in a reasonable time to conduct such additional proceedings as may be necessary to render a decision modifying, affirming or reversing the final decision, provided such decision made after reconsideration shall be rendered not later than ninety days following the date on which the agency decides to reconsider the final decision. In the present case, the Appellant was granted reconsideration on [REDACTED] [REDACTED], 2020, with this decision due no later than [REDACTED] 2021. (Hearing record)
34. Connecticut General Statutes § 4-181a (a) (4) provides except as otherwise provided in subdivision (3) of this subsection, an agency decision made after

reconsideration pursuant to this subsection shall become the final decision in the contested case in lieu of the original final decision for purposes of any appeal under the provisions of section 4-183, including, but not limited to, an appeal of (A) any issue decided by the agency in its original final decision that was not the subject of any petition for reconsideration or the agency's decision made after reconsideration, (B) any issue as to which reconsideration was requested but not granted, and (C) any issue that was reconsidered but not modified by the agency from the determination of such issue in the original final decision. (Hearing record)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes 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)

"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)

"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)

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.

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).

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.

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 correctly determined that the Appellant's Trust qualified as a special needs trust, which is an excluded asset.

4. 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 spenddown, 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.

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.

State statute 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. Conn. Gen. Stat. § 17b-597

"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)

UPM § 2540.92(C) (3) provides for Individuals receiving Home and Community Based Services and states that Individuals who are eligible for Medicaid under the "Working Individuals with Disabilities" coverage group, the "Severely Impaired coverage group or the "Severely Impaired Non-SSI Recipients" coverage group, and who also meet the non-financial eligibility criteria described in paragraph A to receive home and community-based services under the Personal Care Assistance waiver, the Acquired Brain Injury waiver, the Department of Developmental Services Comprehensive waiver or the Department of Developmental Services Individual and Family Support waiver are considered to meet the income and asset criteria of this coverage group.

"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)

"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 incorrectly determined that the Allianz Annuity assets were accessible and available to the Appellant during the period of [REDACTED] 2020 through [REDACTED], 2020. The Appellant being a disabled individual with intellectual and cognitive disabilities could not access the Allianz Annuity funds due to his inability to make financial decisions. The Appellant's mother, his guardian, was unaware of the annuity, suffered from a decline in her health; therefore, the Appellant's mother did not have the legal right or authority to access the asset.

The Appellant's sister was unable to access the annuity until she was appointed conservator of his estate, and in a separate hearing authorized to establish and fund the trust.


The Appellant met his burden demonstrating the Allianz annuity was inaccessible from the months of [REDACTED] 2020 through [REDACTED] 2020. The evidence shows the Appellant's sister, once discovering the asset, worked as expeditious as possible in becoming his conservator of estate to gain control of the annuity, receive the funds, and establish the special needs trust, which is an excluded asset.

DECISION

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

ORDER

1. The Department will reopen the Appellant's application for Medicaid effective [REDACTED] 2020, remove the Allianz Annuity as a countable asset effective [REDACTED] 2020 and grant benefits effective [REDACTED] 2020, provided all other eligibility requirements have been established.
2. Compliance with this order is due to the undersigned by [REDACTED], 2021.


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.