

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-9902

██████████ 2022
Signature Confirmation

Case # ██████████
Client # ██████████
Request # 184914

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2021, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) discontinuing her Husky C, Long Term Care facility residents eligible under Special Income level benefits under the Medicaid program effective ██████████ 2021.

On ██████████ 2021, the Appellant requested an administrative hearing to contest the Department’s decision to discontinue such benefits.

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

On ██████████ 2021, the Appellant requested a continuance of the hearing and requested the administrative hearings be held by telephone, which was granted.

On ██████████ 2021m OLCRAH re-scheduled the administrative hearing for ██████████ 2021.

On ██████████ 2021, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals were present at the hearing:

██████████, Esq. Appellant's attorney and son
██████████, Appellant's durable POA and daughter
Jose Velasquez, Department Representative
Almelinda McLeod, Hearing Officer

The Appellant was not present as she is currently institutionalized.

The hearing record was held open for the submission of additional evidence. On ██████████ 2022, the hearing record was closed.

A separate decision will be issued regarding to the denial of Husky C Medically Needy Aged, Blind, Disabled.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to discontinue the Appellant's Husky C LTC Medicaid was correct.

FINDINGS OF FACT

1. On ██████████ 2019, the Appellant was admitted short term into the ██████████ ██████████ skilled nursing facility ("SNF") where the Appellant continues to reside. (Hearing record)
2. The Appellant owns a condominium located at ██████████ ██████████. (Hearing record)
3. On ██████████ 2020, ASCEND, the Department's contractor that determines nursing facility level of care ("LOC"), determined the Appellant was eligible for long term care due to uncontrolled, unstable and/or chronic conditions requiring continuous skilled nursing services and/or nursing supervision on a daily basis or has a chronic condition requiring substantial assistance with personal care on a daily basis. (Exhibit 7, Long term approval of Nursing facility LOC)
4. The Appellant's medical diagnosis is the following: Fatigue, HTN, Muscle weakness, Failure to thrive, Abnormalities to gait and mobility, Anxiety disorder, mood disorder, chronic Duodenal ulcer, Macular Degeneration. (Exhibit 7)
5. The Appellant required assistance with activities of daily living (ADL's). She requires supervision with eating/feeding, hands on assistance with bathing, dressing and toileting. The Appellant requires total assistance with mobility, transferring and continence. (Exhibit 7)

6. On [REDACTED] 2021, the Department determined the Appellant had been residing in SNF since [REDACTED] 2019; and was determined to be long term care in [REDACTED] 2020, however, the Appellant's real property located at [REDACTED] was not currently listed for sale. A phone call to the Appellant's POA confirmed that the real property had not been listed, although, a sign was placed in the window at one time. (Hearing record, Exhibit 2, Case notes, Exhibit 4, Living arrangement details, Exhibit 5, Facility Details and Exhibit 6, Real property details)
7. The Department determined that no one lived or is currently residing in the Appellant's home. Not disputed. (Department and Appellant testimony)
8. The value of the real property was listed at \$200,700. (Exhibit 6, Real property details)
9. On [REDACTED] 2021, the Department determined the Appellant was ineligible for the LTC Medicaid because the Appellant's non-home property was not listed on the market and was determined to be over the asset limit. (Hearing record)
10. The asset limit to the Husky C LTC L01 Medicaid is \$1600.00. (Hearing record)
11. On [REDACTED] 2021, the Department issued a NOA indicating that the Appellant's Husky C LTC L01 Medicaid would close effective [REDACTED] 2021, because the value of assets was more than was allowed for this program. (Exhibit 2, NOA)
12. There is no indication that the Department issued a notice requiring an action from the Appellant to list the real property. (Hearing record)
13. On [REDACTED] 2021, the Department's staff attorney clarified that the Department must make a determination about the likelihood of the Appellant returning to her home in accordance with UPM policy 4030.20 D. If the Department determined that there is no reasonable expectation the Appellant can return to her home, the property becomes non-home property. At which time, the Appellant can either list it and while a bona fide effort is made to sell it, the property remains in an exempt status or if the Appellant refuses to list the non-home property, the equity value of the property is subject to the asset limit in accordance with UPM 4030.65 D. (Appellant hearing summary Attachment 3)
14. The Appellant disagrees that the property should be included in the asset evaluation for this Medicaid program. He argues the value of the property must be excluded, unless the Department has made the determination that the Appellant can not be reasonably expected to return to her home by following

the procedures in UPM 4030.20 D 4 a through e. The Appellant disagrees that such determination was made by the Department, therefore, the Appellant's home must remain an excluded asset. (Appellant hearing summary & Attachment 2)

15. The issuance of this decision is timely under section 17b-61(a) of Connecticut General Statutes, 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. This decision, therefore, was due no later than [REDACTED] 2022. However, the hearing record, which had been anticipated to close on [REDACTED] 2022, did not close due to a re-schedule request by the Appellant. The closing of the hearing record was further delayed for the admission of additional evidence until [REDACTED] 2022. Because this [REDACTED]-day delay in the close of the hearing record arose from the Appellant's request, this final decision was not due until [REDACTED] 2022, and is therefore timely. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-2 (6) 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. Section § 17b-261 a (d) (1) provides for purposes of this subsection, an "institutionalized individual" means an individual who has applied for or is receiving (A) services from a long-term care facility, (B) services from a medical institution that are equivalent to those services provided in a long-term care facility, or (C) home and community-based services under a Medicaid waiver.

The Department correctly determined the Appellant is an institutionalized individual residing in a long-term care facility.

3. The department's Uniform Policy Manual ("UPM") 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. UPM 4030.20 (D) (1) (a) (b) (c) (1) (2) provides that if an individual enters into a long-term care facility, the home retains its status as an excluded asset for as long as the individual's spouse, child under age 21 or blind or disabled; the individual's sibling if the sibling is a joint owner of the home and who resided in the home for at least one year immediately before the individual entered into a long-term facility.

The hearing record shows the Appellant did not have a family member or relative lawfully residing in her home while residing in the facility.

5. UPM 4030.20 (D) (2) (a) provides if the individual enters a long-term care facility and none of the persons listed above is lawfully residing in the individual home, the home's status as an excluded asset depends upon the expectation of the individual to return to the home, if the individual can reasonably be expected to return to the home, the home continues to be excluded as home property.
6. UPM 4030.20 (D) (2) (b) provides if the individual cannot reasonably be expected to return to the home, the home is considered non-home property, and is subject to the policies and procedures described in this chapter.
7. UPM 4030.20 (D) (4) (a) (b) (c) (d) (e) provides the Department determines whether the individual can be expected to be discharged from the long term care facility to return home based on a diagnosis of the individual's medical condition as documented by the long-term care facility's authorizing physician, the physician's prognosis for the individual recovery, the availability of private care which the individual could receive at home as an alternative to institutionalization, statement from the individual, if he or she is competent, regarding the intent to return home and the individual's financial ability to maintain the home.

The hearing record shows that on ██████████ 2020, ASCEND conducted a level of care ("LOC") assessment where it was determined that nursing facility level of care was medically necessary, as defined in section 17b-259b of the Connecticut General Statutes for the Appellant.

Based on this information, the Department correctly determined the Appellant was found to eligible for Medicaid coverage of long-term care services as of ██████████ 2020.

8. UPM § 4000.01 defines Non home property as a real property which a person owns but is not using as principal residence.
9. UPM § 4030.65 (D) (1) (a) provides for Property Previously used as the Primary Residence and provides that property previously used as a primary residence become non-home property when the individual enters a long-term care facility and: (1) no relative of acceptable relationship is lawfully residing in the home; and (2) the individual cannot reasonably be expected to return to the home. (Cross Reference 7510)
10. UPM § 4030.65 (D) (1) (b) provides non-home property that was the recipient's primary residence prior to entering the nursing home is excluded for as long as the individual is making a bona fide effort to sell it.

11. UPM 4030.65 (D) (1) (c) provides the exclusion period begins with the first month of eligibility during which the person owns the property and is cumulative for all months in which the person receives assistance.
- 12. The Department correctly determined the Appellant had not lived in her home in the community since her admittance to the SNF on [REDACTED] 2019.**
- 13. The Department correctly determined no bona fide effort was made to sell the property.**
- 14. However, the Department solely used the LOC results in its determination of the Appellant's intent to return to her home in the community. They failed to evaluate the availability of private care which the individual could receive at home as an alternative to institutionalization and failed to obtain a statement from the Appellant, if competent, regarding her intent to return to her home and her financial ability to maintain her home.**
15. 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.
- 16. Although, the Department correctly determined there was no bona fide effort made to sell the property, there is no evidence that the Department properly informed the Appellant what needed to be done to maintain HC LTC eligibility once the Department discovered her property was not listed.**
- 17. There is no evidence that the Department issued a W-1348 requiring the Appellants home be listed on the market and/ or request documentation regarding her intent to return to her home and her ability to financially maintain the property.**
- 18. The Department failed to follow its own procedures of informing the Appellant what it had to do to maintain her HC LTC Medicaid eligibility.**

DISCUSSION

The hearing record shows that ASCEND conducted a level of care assessment which addresses the diagnosis of the Appellant's medical condition as documented by the long-term facility authorizing physician. The prognosis for the Appellant's recovery documented significant assistance was needed with her ADL's and for which long term care was approved. The Appellant's attorney argued there was another short-term LOC determination after the [REDACTED] 2020 long term care approval; however, no evidence of a short-term LOC was presented. Also, he argues that due to the COVID 19 pandemic emergency, the application process for Money follows the person (that would have provided care to the Appellant at home as an alternative to institutionalization) was not available until [REDACTED] 2021. It is uncertain by this hearing record whether *other private care* was available during the COVID-19 pandemic emergency.

Although, the Appellant intended on returning to her home, the Department made the determination that based on the long-term care LOC approval in [REDACTED] 2020, the Appellant could not be reasonably expected to be discharged from the long-term facility and return to her home in the community. From this point forward, the Appellant's real property becomes non-home property per policy. So long as the Appellant is making a bona fide effort in selling the real property, the equity value remains exempt. A refusal to list the non-home property subjects the Appellant to the \$1600 asset limit requirement.

However, the Appellant was not properly notified by the Department. Policy states that the Department must tell the Appellant what it must do to meet or maintain eligibility requirements. There is no evidence in this hearing record that a w-1348 was issued requesting the listing of the property. The hearing record is void of any action taken by the Department to address the real property when the Appellant was determined long term care eligible. Thus, the Appellant was denied the opportunity to rebut the LOC determination and address the Departments' determination that her non-home property must be put on the market. A phone call to discuss the requirement to put the home for sale on the same day the Department issues a NOA to discontinue the Appellant's L01 effective [REDACTED] 2021, was not proper notification requiring an action from the Appellant.

It should be noted the Appellant's attorney also argued the Department filed a lien against the Appellants home on [REDACTED], 2021; and did not provide hearing rights to the Appellant. I agree that placing a lien without proper notification and hearing rights is incorrect. However, this issue is time barred and moot since effective [REDACTED] 2021, in accordance with Public Act 21-2, all state lien property were released. The Departments case notes indicates the Department was in the processing of releasing all property liens effective [REDACTED] 2021; and mailed the lien release form to the attorney on [REDACTED] 2021.

DECISION

The Appellant's appeal is REMANDED to the Department for further action.

ORDER

1. The Department is to re-open the L01 LTC Medicaid and proceed with an issuance of a W-1348 requiring an action from the Appellant. Specifically, the Department should request documentation of the Appellant's intent on returning to her home and her ability to financially maintain her home. Listing of the home property for sale in the event she does have the ability to return to her home.
2. The Department will allow 10 days for the submission of requested verification.
3. The Department will continue to process the LTC L01 Medicaid accordingly to determine eligibility.
4. Compliance with this order is due to the undersigned no later than [REDACTED], 2022.

Almelinda McLeod
Almelinda McLeod
Hearing Officer

CC: Patricia Ostroski, SSOM New Britain
Jose Velazquez, Hearing Liaison, Manchester

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.