

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

██████████ 2023  
Signature confirmation

Case: ██████████  
Client: ██████████  
Request: 197902

**NOTICE OF DECISION**

**PARTY**

████████████████████  
██  
████████████████  
████████████████████

**PROCEDURAL BACKGROUND**

On ██████████ 2022, the Department of Social Services (the “Department”) issued a *Notice of Action* denying ██████████ (the “Appellant”) ██████████, 2021 HUSKY-C Medicaid application.

On ██████████, 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received the faxed administrative hearing request of Attorney ██████████ (the “Conservator”), the Appellant’s conservator of person and estate.

On ██████████, 2022, the OLCRAH scheduled an administrative hearing for ██████████ 2022.

On ██████████, 2022, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The following individuals participated by video- and telephone-conferencing:

████████████████████, Conservator  
██ Counsel, Appellant Witness  
Tamara Davis, Department Representative (by telephone)  
Michele Bellemare, Department Facilitator/Observer  
Eva Tar, Hearing Officer  
Joseph Davey, Hearing Officer, Observer

The hearing was continued to ██████████, 2022, a date agreed upon by the participants. On ██████████ 2022, the following individuals participated by video- and telephone-conferencing:

████████████████████, Conservator



annuity to be owned by the Trust for which the Appellant was the annuitant and the lifetime beneficiary. (Appellant Exhibit 22)

6. In [REDACTED], the Appellant turned [REDACTED] years old.
7. In [REDACTED] 2018, the Trust purchased a [REDACTED] [REDACTED] (the "Annuity") fixed annuity for \$279,588.13 with the Appellant as annuitant and payee. (Dept. Exhibits 6a/6b) (Appellant Exhibit 7)
8. On [REDACTED] 2018, the Annuity made its first monthly payment of \$1,450.80 to the Appellant. (Dept. Exhibits 6a/6b) (Appellant Exhibit 6)
9. On [REDACTED] 2021, [REDACTED], a skilled nursing facility, admitted the Appellant as a resident. (Dept. Exhibit 6a)
10. On [REDACTED] 2021, the [REDACTED] Probate Court appointed Attorney [REDACTED] [REDACTED] (the "Conservator") the Appellant's conservator of person and estate. (Appellant Exhibit 1)
11. The Conservator is an attorney regularly appointed by Probate Court to act as conservator for incapacitated individuals. (Conservator Testimony)
12. On [REDACTED] 2021, the Department received the Appellant's HUSKY-C Medicaid application, electronically signed by the Conservator on [REDACTED], 2021. (Dept. Exhibits 1 and 2)
13. On [REDACTED] 2022, the Department issued a W-1348: *Worker Generated Request for Proofs* asking for the submission of copies of the current year Annuity income payment and the Trust by [REDACTED] 2022. (Dept. Exhibit 4)
14. On [REDACTED] 2022, the Department received an incomplete copy of the Annuity contract from the Conservator by email. (Dept. Exhibit 2)
15. On [REDACTED], 2022, the Conservator emailed the Department Representative a petition for additional time to secure the requested documentation. (Dept. Exhibit 3)
16. On [REDACTED] 2022, the Conservator emailed the Department Representative a request for an updated W-1348: *Worker Generated Request for Proofs* to identify the Trust by name "and for the specifics, so they know the request is from the State of Connecticut." (Dept. Exhibit 3)
17. On [REDACTED] [REDACTED] 2022, the Department Representative acknowledged receipt of the Conservator's email and responded that the updated W-1348: *Worker Generated Request for Proofs* would be sent. (Dept. Exhibit 3)
18. On [REDACTED] 2022, the Department Representative issued an updated W-1348: *Worker Generated Request for Proofs*, asking for a copy of the Trust by name to be submitted by [REDACTED] 2022. (Dept. Exhibit 4)

19. On [REDACTED], 2022, the Conservator emailed the Department Representative a petition for additional time, stating “I don’t even know who to send the request to yet, much less submit the results by the [REDACTED]<sup>th</sup>.” The Conservator acknowledged that he would be unavailable from [REDACTED], 2022 through [REDACTED] 2022, would work on the matter after that time, and would update the Department “next week.” (Dept. Exhibits 3 and 4)
20. On [REDACTED] [REDACTED], 2022, the Department Representative acknowledged receipt of the Conservator’s request for an extension and responded that she would issue another W-1348: *Worker Generated Request for Proofs* with a due date of 11 days from the issuance date. (Appellant Exhibit 10)
21. On [REDACTED], 2022, the Department Representative granted the Conservator a 10-day extension—from [REDACTED], 2022 through [REDACTED] 2022—to provide a copy of the Trust and issued a W-1348: *Worker Generated Request for Proofs*. (Dept. Exhibit 3) (Appellant Exhibits 3 and 5)
22. On [REDACTED], 2022, the Department denied the Appellant’s HUSKY-C Medicaid application. (Dept. Ex. 5)
23. From [REDACTED], 2022 through [REDACTED], 2022, the Department Representative received no communication from the Conservator; in that period, the Conservator did not request another extension and did not provide a copy of the Trust. (Department Representative Testimony)
24. On [REDACTED] 2022, the Conservator filed a written inquiry by certified mail to [REDACTED] [REDACTED], a [REDACTED] advisor associated with the Annuity, and [REDACTED] requesting a copy of the Trust. (Appellant Exhibit 3)
25. On [REDACTED] 2022, the Trustee contacted the Conservator by telephone; the Trustee declined to provide the Conservator a copy of the Trust. (Conservator Testimony)
26. On [REDACTED] 2022, the Conservator in writing requested from the Trustee a written description of the Trust and asked for confirmation that the Appellant had no other claim but for the Annuity and did not have a claim to any of the Trust resources or holdings. (Appellant Exhibit 3)
27. On or around [REDACTED], 2022, the Trustee provided a complete copy of the Annuity contract to the Conservator. (Appellant Exhibit 20a)
28. On [REDACTED] 2022, the Department received a new HUSKY-C Medicaid application from the Conservator. (Department Representative Testimony)
29. On [REDACTED] 2022, [REDACTED], [REDACTED], issued a subpoena to [REDACTED] [REDACTED] for copies of the Annuity application package; copies of the Trust; copies of any documents that reflect the interest of the Appellant; copies of the Annuity including all amendments, modifications, and endorsements; and a complete history of Annuity payments made to the Appellant. (Appellant Exhibit 15)

30. [REDACTED] did not have a copy of the Trust. (Appellant Exhibit 16)
31. The scheduled deposition did not go forward. (Appellant Witness Testimony)
32. Prior to the Department's [REDACTED] 2022 denial of the Appellant's HUSKY-C Medicaid application, the Conservator did not inform the Probate Court of the Trustee's refusal to provide a copy of the Trust and did not approach the Probate Court to intervene in the matter. (Conservator Testimony) (Appellant Exhibit 17)
33. The incomplete copy of the Annuity contract submitted by the Conservator to the Department prior to the Department's [REDACTED], 2022 denial of the Appellant's [REDACTED] 2021 HUSKY-C Medicaid application depict the Appellant as a beneficiary of the Trust whose interest as a beneficiary or remainder beneficiary may or may not have been fully released with the Trust's purchase and ownership of the Annuity. (Dept. Exhibit 2)
34. Following the Department's [REDACTED] 2022 denial of the Appellant's [REDACTED] 2021 HUSKY-C Medicaid application, the Conservator approached the Probate Court to intervene with the Trustee. The hearing record is silent as to the date of the petition to Probate Court. (Hearing record)
35. After the involvement by the Probate Court, the Trustee provided the Trust documents to the Conservator. ([REDACTED] Counsel Testimony)
36. On [REDACTED] 2022, the Conservator sent the Trust documents to the Department by certified mail. (Appellant Exhibit 22)
37. On [REDACTED], 2022, the Department received the Trust documents. (Appellant Exhibit 22)

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes designates the Department as the state agency for the administration of the identified state and federal programs.

"The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program...." Conn. Gen. Stat. § 17b-262.

"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)).

**The Department has the authority to administer the Medicaid program in Connecticut and to make necessary regulation.**

2. "The commissioner, subject to the provisions of subsection (b) of this section, shall in determining need, take into consideration any available income and resources of the individual claiming assistance...." Conn. Gen. Stat. § 17b-80 (a).

Section 1505.40 A.1. of the Department's Uniform Policy Manual ("UPM") provides: "Prior to making an eligibility determination the Department conducts a thorough investigation of all circumstances relating to eligibility and the amount of benefits."

With respect to the Medicaid program for the Categorically and Medically Needy, the asset limit is \$1,600.00 for a needs group of one. UPM § 4005.10 A.2.a.

**The Department acted within its authority when it reviewed the Appellant's [REDACTED] 2021 HUSKY-C Medicaid application to determine whether the Appellant's resources were within the Medicaid program's asset limit.**

3. Section 4030.47 of the Uniform Policy Manual provides in part:  
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, regardless of whether the annuity is assignable. UPM § 4030.47.

"Payments received by the assistance unit from annuity plans, pensions and trusts are considered unearned income." UPM § 5050.09 A.

**The Annuity's monthly payments to the Appellant is income in accordance with UPM § 4030.47.**

**The Appellant's right to receive income from the Annuity is an available asset, regardless of whether the Annuity is assignable, in accordance with UPM § 4030.47.**

4. Section 4030.80 A. of the Uniform Policy Manual address the General Principles Pertaining to Trusts.

"The term 'trust' includes any legal instrument or device like a trust, such as an annuity." UPM § 4030.80 A.5.

"The Department evaluates an individual's interest in a trust as: a. a potentially counted asset in determining whether the individual's assets are within the program limits (Cross Reference: 4005); and b. a potential source of income in determining whether the individual's income is within the program limits, and in computing the amount of benefits for which the individual may be eligible (Cross Reference: 5000); ...." UPM § 4030.80 A.1.

Section 4030.80 B. of the Uniform Policy Manual addresses Testamentary Trusts and Certain Inter Vivos Trusts that are not Established or Funded by the Individual or by his or her Spouse during their Lifetime. This section provides:

1. The Department determines whether the corpus, or principal of such a trust is an available asset by referring to the terms of the trust and the applicable case law construing similar instruments.

2. The principal of such a trust is an available asset to the extent that the terms of the trust entitle the individual to receive trust principal or to have trust principal applied for his or her general or medical support.
3. Under circumstances described in subparagraph 2 above, the trust principal is considered an available asset if the trustee's failure to distribute the principal for the benefit of the individual in accordance with the terms of the trust would constitute an abuse of discretion by the trustee.
4. The Department considers the following factors in determining whether the trustee would be abusing his or her discretion by refusing to distribute trust principal to the individual:
  - a. the clarity of the settlor's intention to provide for the general or medical support of the individual; and
  - b. the degree of discretion afforded to the trustee; and
  - c. the value of the trust created, with a high dollar value tending to indicate an intent to provide for general or medical support; and
  - d. the history of trust expenditures prior to the filing of an application for assistance for or on behalf of the individual.

UPM § 4030.80 B.

**The Department correctly determined that it needed to evaluate the Trust in accordance with UPM §§ 4030.80 A.1. and 4030.80 B., as the Trust was an inter vivos trust that had not been created or funded by the Appellant.**

**The Department's requests to the Conservator for a copy of the Trust were reasonable, as the Department could not affirmatively determine from the incomplete Annuity document submitted by the Conservator prior to the [REDACTED] 2022 denial whether the Appellant continued to have an interest in the Trust as a beneficiary or remainder beneficiary.**

5. "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 (cross reference: 1555)." UPM § 1010.05 A.1.

**The Conservator had the responsibility under UPM § 1010.05 A.1. to provide a copy of the Trust to the Department by its deadline(s).**

6. Section 1505.40 B.5. of the Uniform Policy Manual provides:

Delays Due to Insufficient Verification (AFDC, AABD, MA Only)

  - a. 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.
  - b. 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.*

UPM § 1505.40 B.5.

**The Department's W-1348: Worker Generated Requests for Proofs correctly gave the Conservator 10 days to submit requested documentation.**

**The Department correctly determined that the Conservator failed to provide the remaining item requested on the [REDACTED] 2022 W-1348: Worker Generated Request for Proofs by the Department's deadline of [REDACTED], 2022.**

**The Department would have been arbitrary and not in compliance with UPM § 1505.40 B.5. had it extended its [REDACTED] 2022 deadline in the absence of further communication from the Conservator.**

7. With respect to incomplete applications, "[t]he following provisions apply if the applicant failed to complete the application without good cause: a. ....; b. ....; c. The applicant's failure to provide required verification by the processing date causes: (1) one or more members of the assistance unit to be ineligible if the unverified circumstance is a condition of eligibility; or (2) the circumstance to be disregarded in the eligibility determination if consideration of the circumstance is contingent upon the applicant providing verification." UPM § 1505.40 B.1.c.

"The following provisions apply if subsequent to an administrative delay the applicant becomes responsible for not completing the application process: a. for AFDC, AABD and MA applications, the Department: (1) determines eligibility without further delay; or (2) continues to pend the application if good cause can be established or if a 10-day extension is granted." UPM § 1505.40 B.3.a.

"Delays Due to Good Cause (AFDC, AABD, MA Only). a. The eligibility determination is delayed beyond the AFDC, AABD or MA processing standard if because of unusual circumstances beyond the applicant's control, the application process is incomplete and one of the following conditions exists: (1) eligibility cannot be determined; or (2) determining eligibility without the necessary information would cause the application to be denied." UPM § 1505.40 B.4.a.

Section 1505.35 D.2. of the Uniform Policy Manual provides:

The Department determines eligibility within the standard of promptness for the AFDC, AABD, and MA programs except when verification needed to establish eligibility is delayed and one of the following is true:

- a. the client has good cause for not submitting verification by the deadline; or
- b. the client has been granted a 10-day extension to submit verification which has not elapsed; or
- c. the Department has assumed responsibility for obtaining verification and has had less than 10 days; or
- d. the Department has assumed responsibility for obtaining verification and is waiting for material from a third party.

UPM § 1505.35 D.2.

"[Public Assistance] assistance units may establish good cause for: a. failing to report timely; or b. failing to provide required verification timely." UPM § 1555.10 B.1.



“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.*” UPM § 1555.10 B.2. (emphasis added)

8. Section 45a-175 (a) of the Connecticut General Statutes provides: “Probate Courts shall have jurisdiction of the interim and final accounts of testamentary trustees, trustees appointed by the Probate Courts, conservators, guardians, executors and administrators, and, to the extent provided for in this section, shall have jurisdiction of accounts of the actions of trustees of inter vivos trusts and agents acting under powers of attorney.”

**The Trust was subject to Probate Court jurisdiction under Conn. Gen. Stat. § 45a-175 (a).**

9. “A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for the beneficiaries to protect their interests. A trustee shall promptly respond to a beneficiary's request for information reasonably related to the administration of the trust.” Conn. Gen. Stat. § 45a-499kkk (a).

“Any beneficiary of an inter vivos trust may petition a Probate Court specified in section 45a-499p for an accounting by the trustee or trustees. The court may, after hearing with notice to all interested parties, grant the petition and require an accounting for such periods of time as it determines are reasonable and necessary on finding that: (A) The beneficiary has an interest in the trust sufficient to entitle the beneficiary to an accounting, (B) cause has been shown that an accounting is necessary, and (C) the petition is not for the purpose of harassment.” Conn. Gen. Stat. § 45a-175 (c)(1).

**Prior to the Department’s ██████████ 2022 denial, it would have been reasonable for the Conservator to conclude that the Appellant had been identified in the Trust as a beneficiary, based on the Conservator’s knowledge in ██████████ 2022 of the Trust’s use of \$279,588.13 to purchase the Annuity to generate monthly income for the Appellant.**

**The Conservator’s need for a copy of the Trust was for the purposes of determining the Appellant’s HUSKY-C Medicaid eligibility as a resident in a skilled nursing facility and was not for the purpose of harassment.**

**It is reasonable to conclude that the Conservator—an attorney who regularly works with the Probate Court on behalf of incapacitated individuals for whom he is a conservator—would have sufficient knowledge and experience to request intervention by the Probate Court to acquire a copy of the Trust.**

**The Conservator’s delay in approaching the Probate Court to intervene with the Trustee until *after* the Department’s ██████████ 2022 denial of the Appellant’s ██████████ ██████████ 2021 HUSKY-C Medicaid application was not a circumstance beyond the Conservator’s control.**

**The Department correctly denied the Appellant’s incomplete ██████████ 2021 HUSKY-C Medicaid application on ██████████ 2022, as: 1) the Department had not**

received at least one document requested on its [REDACTED] 2022 W-1348: *Worker Generated Request for Proofs* by the Department's [REDACTED] 2022 deadline; and 2) the Department had not received further communication from the Conservator in the period from [REDACTED] 2022 through [REDACTED] 2022 to request additional time to provide the document for good cause.

The Department's [REDACTED] 2022 denial of the Appellant's [REDACTED] 2021 HUSKY-C Medicaid application for failure to provide requested documentation by the Department's deadline is supported by State statute and regulation.

10. "Verification received after the date that an incomplete application is processed: (1) is used only with respect to future case actions; and (2) is not used to retroactively determine a corrective payment." UPM § 1505.40 B.1.d.

Section 1505.40 B.1.d. of the Uniform Policy Manual prohibits the Department from using the Conservator's [REDACTED] 2022, [REDACTED] 2022, and [REDACTED] 2022 submissions of documentation following the Department's [REDACTED] 2022 denial to retroactively grant the Appellant's HUSKY-C Medicaid eligibility.

#### DECISION

The Appellant's appeal is DENIED.

*Eva Tar-electronic signature*  
Eva Tar  
Hearing Officer

Pc: Tamara Davis, DSS-New Haven  
Joe Smiga, DSS-Central Office  
Eileen Ibarra, DSS-New Haven  
Rachel Anderson, DSS-New Haven  
Mathew Kalarickal, DSS-New Haven  
Lisa Wells, DSS-New Haven  
Brian Sexton, DSS-Middletown

### **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.