

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

██████████
SIGNATURE CONFIRMATION

CASE ID #: ██████████
CLIENT ID #: ██████████
REQUEST #: ██████████

NOTICE OF DECISION
PARTY

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

██████████
██████████
██████████

COPY:

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying her HUSKY C Medicaid application for Long Term Services and Supports ("LTSS").

On ██████████, the Appellant requested an administrative hearing to contest the Department's decision to deny her HUSKY C LTSS Medicaid application.

On ██████████, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████

On ██████████, 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 by telephone.

The following individuals participated in the hearing:

██████████, the Appellant
██████████, the Appellant's daughter and Authorized Representative
Michelina Zogby, Department's Representative
Sara Hart, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department correctly denied the Appellant's HUSKY C LTSS Medicaid application due to failure to provide information needed to establish eligibility.

FINDINGS OF FACT

1. On [REDACTED], the Department received an online application ("ONAP") for HUSKY C LTSS coverage. The ONAP listed [REDACTED] as an Authorized Representative ("AREP # 1") and Responsible Person. (*Exhibit 1: ONAP*)
2. On [REDACTED], the Appellant was admitted to [REDACTED] (the "Facility"), from [REDACTED]. (*Exhibit 7a: Admissions Record*)
3. Prior to her admission to the Facility, the Appellant resided in a subsidized apartment managed by the [REDACTED] Housing Authority. (*Appellant's Testimony*)
4. The Appellant's listed assets on the ONAP included a [REDACTED] checking account and a burial contract valued at \$3,000.00. (*Exhibit 1*)
5. The Appellant owns checking account X [REDACTED]. The account was opened approximately 15 years ago through [REDACTED] and has been transferred from several banks, most recently from [REDACTED] to [REDACTED]. (*Appellant's Testimony*)
6. In [REDACTED], the Appellant was informed that [REDACTED] would be merged with [REDACTED]. The Appellant's access to online banking was deactivated during the merger process. (*Appellant's Testimony*)
7. The Appellant subsequently encountered difficulty reaching a representative at her bank. Calls to the bank's customer service line reached recorded messages that advised callers of limited options for live person assistance. (*Appellant's Testimony*)
8. The Appellant owns a \$5,000.00 [REDACTED] Whole Life insurance policy intended to cover the cost of her funeral arrangements. This policy was mistakenly referred to as a "burial contract" or "funeral policy" on the Appellant's ONAP and in some of her subsequent communications with the Department. She does not own a prepaid burial or funeral contract or policy. (*Appellant's Testimony*)
9. On [REDACTED], the Department screened the Appellant's ONAP and issued a Verification We Need form ("W1348LTC") to AREP # 1 requesting documentation required to determine HUSKY C LTSS eligibility. The request gave a due date of [REDACTED]. (*Exhibit 3a: Request #1*)

10. On [REDACTED], the Department issued a second W1348LTC to AREP # 1 requesting documentation required to determine HUSKY C LTSS eligibility. The request gave a due date of [REDACTED]. (*Exhibit 3b: Request #2*)
11. On [REDACTED], the Department sent a third W1348LTC to AREP # 1. The request gave a due date of [REDACTED]. A copy of the third W1348LTC was emailed to the Facility. (*Exhibit 5a: [REDACTED] Emails, Exhibit 3c: Request #3*)
12. On [REDACTED], the Facility provided some of the requested documentation and informed the Department that the Appellant's daughter, [REDACTED] ("AREP # 2") would be assisting the Appellant with the application process. (*Exhibit 5a*)
13. On [REDACTED], the Department received the following three results from the Asset Verification System ("AVS"): (1) [REDACTED], Account Holder [REDACTED] **Individual**, [REDACTED] account number X [REDACTED] (2) [REDACTED], Account Holder [REDACTED] account number X [REDACTED] (3) [REDACTED], Account Holder [REDACTED] account number X [REDACTED]. (*Exhibits 9-11: AVS Results*)
14. On [REDACTED] the Appellant submitted sections I-N of the W1LTC. The Appellant reported she was the owner of one [REDACTED] checking account X [REDACTED] on the completed section I-N of the W1LTC. Under Section L – Life Insurance and Funeral Plans, the Appellant wrote "N/A". (*Exhibit 7: W1LTC Section I-N, Exhibit 4*)
15. On [REDACTED], the Department issued a fourth W1348LTC to AREP # 1 and AREP # 2 requesting documentation required to determine HUSKY C LTSS eligibility. The request gave a due date of [REDACTED]. (*Exhibit 3d: Request #4*)
16. On [REDACTED], the Department advised AREP # 2 that the Department granted an application extension through [REDACTED]. (*Exhibit 4, Exhibit 5b*)
17. On [REDACTED], the Department received verification of the closure of [REDACTED] [REDACTED] account X [REDACTED] and reviewed the lookback for [REDACTED] X [REDACTED]. (*Exhibit 4*)
18. On [REDACTED], the Department issued a fifth W1348LTC to AREP #1 and AREP #2 requesting the following: 1 - [REDACTED] acct [REDACTED] – full lookback is needed or verification the account is closed. [REDACTED] acct [REDACTED] – verification the account is closed. [REDACTED] acct [REDACTED] – please continue to send most recent statement. 2 - Please return a copy of the [REDACTED] Life Insurance policy showing cash and face value. 3 - Please return a copy of full funeral contract (a funeral contract was listed on the initial application). 4 - Verify total assets are below \$1600.00. The notice gave a due date of [REDACTED]. (*Exhibit 3e: Request #5*)

19. [REDACTED] acct [REDACTED] is not reflected in the Department's AVS results. [REDACTED] acct [REDACTED] is listed as [REDACTED] in the Department's AVS results. (*Exhibits 9-11*)
20. On [REDACTED], the Department emailed AREP # 2 stating "I reviewed the bank statements submitted. I noticed there are recurring payments to [REDACTED] Life Insurance. Please confirm what type of policy this is. If this is a life insurance policy the department will need to see a copy that shows the cash value and face value. The original application that was filed indicated that [REDACTED] had a funeral contract. It did not list the name of the funeral home. The department will need to see a copy of the full contract. There are still a couple of bank accounts that are showing for [REDACTED] that we will either need a full lookback on or verification the account is closed. Please review the attached checklist and let me know if you have any questions." (*Exhibit 4, Exhibit 3e*)
21. On [REDACTED], AREP # 2 emailed the Department stating "we are working on getting the burial contract information from the insurance, as it has no cash value. But my mom is confused about any other bank account listed. She has had the same bank account for many years and doesn't know of any others. She thinks there may be a mistake, and she wouldn't even know how to go about getting any information about them. The one account that the statements were provided for, is her only account. I will let you know when we have anything from the insurance company though." (*Exhibit 5b*)
22. On [REDACTED] AREP # 2 emailed the Department stating "This is what we received from the insurance company. Hope this is sufficient. And [REDACTED] has no other bank accounts, so anything listed otherwise is invalid. If anything else is needed please let me know." The email included verification of the current face and cash value of the Appellant's [REDACTED] policy. (*Exhibit 5b*)
23. On [REDACTED], the Department issued a sixth and final W1348LTC to AREP # 1 and AREP # 2 requesting the following: 1 - [REDACTED] acct [REDACTED] – full lookback is needed or verification the account is closed. [REDACTED] acct [REDACTED] – verification the account is closed. [REDACTED] acct [REDACTED] – please continue to send most recent statement. 2 - Please return a copy of full funeral contract (a funeral contract was listed on the initial application). 3 - Verify total assets are below \$1600.00. The notice gave a due date of [REDACTED]. (*Exhibit 3f: Request #6*)
24. On [REDACTED], at 1:29 PM, the Department emailed AREP # 2 stating "thank you for sending the life insurance information. Unfortunately the Department is not able to take a written statement regarding any other bank accounts questioned. We would need documentation from the bank. I have sent out requests but have not gotten anything back yet and I previously saw a balance listed and would need either statements or verifications the accounts are closed. [REDACTED] was also listed as having a funeral contract on a previous application so a copy of the full contract will be needed." Included in the email was a copy of the 6th W1348. (*Exhibit 5b*)

25. On [REDACTED], at 2:44 PM, the Department emailed AREP # 2 stating “The banks should be able to provide a letter that indicates she does not have any open accounts with them.” (*Exhibit 5b*)
26. On [REDACTED], at 3:21 PM, AREP # 2 emailed the Department stating “I think there may be some confusion because of the wording of the life insurance. [REDACTED] only has one policy, which is described on the letter I sent from the insurance company. That is the only policy. I’m not sure if it’s called a burial contract, or funeral, but that is the only Life insurance policy. They pay \$5000 towards a funeral or burial. Cash value of \$102. That is the \$21 being taken from her account every month. I will see if I can get something from the bank saying she has no other accounts.” (*Exhibit 5b, Appellant’s Testimony, AREP # 2 Testimony*)
27. The hearing record lacks evidence of a Departmental response to AREP #2’s [REDACTED], 3:21 PM email. (*Hearing Record*)
28. On [REDACTED], the Department mailed a NOA to the Appellant and to AREP # 2 denying the Appellant’s HUSKY C LTSS application because she failed to provide all the required verifications by the due date. (*Exhibit 8: NOA [REDACTED], Exhibit 13: Historical Correspondence Detail*)
29. On [REDACTED] AREP # 2 emailed the Department stating; “I’m sorry about any miscommunication, I was actually waiting for a response to my last email. I sent the request about [REDACTED] burial agreement, which I believed was keeping the case open. There is no funeral contract which was wrongfully included in her original application by whoever submitted it. It simply doesn’t exist. We are still working on the bank letter stating she has no other accounts, however they have been extremely hard to reach and are in the process of switching to a new bank. It is no longer called [REDACTED]. Please let me know what we need to do at this point.” (*Exhibit 5c: [REDACTED] Emails*)
30. In [REDACTED], the Appellant spoke to a representative at [REDACTED] Bank and was informed that her name was attached to an escrow account owned by the [REDACTED] Housing Authority. (*Appellant’s Testimony*)
31. On [REDACTED], the Appellant submitted a new W1LTC application. (*Exhibit 6: W1LTC, Exhibit 4*)
32. The issuance of this decision is timely under Connecticut General Statutes §17b-61(a), which requires that the Department render a decision within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED]; therefore, this decision is due no later than [REDACTED].

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes provides that 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.

“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*, 214 Conn. 601, 573 A.2d 712 (1990)).

The Department has the authority to administer and determine eligibility for the HUSKY C Medicaid program.

2. Section 17b-261a(d)(1) of the Connecticut General Statutes 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 is equivalent to those services provided in a long-term care facility, or (C) home and community-based services under a Medicaid waiver.

UPM § 1005.05(A) provides that the assistance unit has the right to apply for assistance under any of the programs administered by the Department.

The Appellant is an institutionalized individual of a long-term care facility who applied for HUSKY C LTSS coverage on [REDACTED].

3. UPM § 3029.05(A) provides that there is a period established, subject to the conditions described in this chapter, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back date specified in 3029.05(C). This period is called the penalty period, or period of ineligibility.

UPM § 3029.05(C) provides that the look-back date for transfers of assets is a date that is 60 months before the first date on which both the following conditions exist: the individual is institutionalized; and the individual is either applying for or receiving Medicaid.

The Department correctly determined that it must review assets for the Appellant for the 60-month period immediately preceding her application for Medicaid.

4. 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.

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.

The Department issued a total of six W1348LTC Requests for Verification from [REDACTED], through [REDACTED], requesting information necessary to establish eligibility for HUSKY C LTSS eligibility.

5. UPM § 1540.10 provides for unit and agency responsibilities. The verification of information pertinent to an eligibility determination or a calculation of benefits is provided by the assistance unit or obtained through the direct efforts of the Department.

UPM § 1540.10(A) provides the assistance unit bears the primary responsibility for providing evidence to corroborate its declarations.

UPM § 1540.10(B) provides the assistance unit may submit any evidence that it feels will support the information provided by the unit.

UPM § 1540.05(A) provides for the standard of proof. A statement made by an applicant or a recipient is considered by the Department to be verified when the available evidence indicates that it is more likely to be true than not.

The Appellant's AREP correctly verified the closure of her bank account X [REDACTED] and correctly provided the required records for checking account X [REDACTED], as well as verification of her [REDACTED] life insurance policy. The Appellant's AREP appropriately provided written statements via email to the Department regarding the Appellant's lack of a funeral policy.

6. UPM § 1505.35(C) provides that the following promptness standards be established as maximum times for processing applications: forty-five calendar days for AABD or MA applicants applying based on age or blindness.

UPM § 1505.40(B)(5)(a) provides for delays due to insufficient verification. 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 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.

The Department correctly granted the Appellant numerous extensions of time to submit the requested information necessary to determine HUSKY C LTSS eligibility.

7. UPM § 1505.35(D)(2) provides that 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.

The Appellant has established good cause for failing to provide the requested verifications by the [REDACTED], due date.

8. UPM § 1505.40(B)(4)(a) provides that 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)(b) provides that if the eligibility determination is delayed, the Department continues to process the application until:

1. eligibility cannot be determined; or
2. good cause no longer exists.

UPM § 3525.05(B)(1) provides for noncompliance with the application process and penalties related to the eligibility process.

- b. An application is denied when an applicant refuses to cooperate with the Department.
- c. It must be clearly shown that the applicant failed to take the necessary steps to complete the application process without good cause before the application is denied for this reason.

UPM § 3525.05(C) Provides in relevant part for penalties for noncooperation with the application and review processes are not imposed under the following conditions, which are considered good cause for noncompliance:

1. circumstances beyond the assistance unit's control;

The Department incorrectly determined the Appellant failed to take the necessary actions to complete the application process and incorrectly denied the Appellant's [REDACTED], HUSKY C LTSS application. The Appellant has demonstrated that circumstances beyond her control exist in her efforts to obtain verification of additional bank accounts that the Department requires.

DISCUSSION

Departmental regulation requires that an application remain pending if the Appellant shows good cause for not providing at least one requested item before the designated due date.

The Appellant has established good cause for not submitting the requested information by the [REDACTED], due date. The Appellant's bank was undergoing a merger at the time she applied for HUSKY C LTSS coverage and her testimony regarding her attempts to obtain the requested bank verification and the difficulties she encountered due to the bank merger is credible.

The Appellant's AREP responded to the Department's final W1348LTC request via email, asserting that the Appellant did not own additional bank accounts and credibly explained that there was no funeral contract to verify, as well as addressed the misunderstanding regarding the Appellant's life insurance policy intended to cover her funeral expenses. The Appellant has established that she does not own a funeral or burial contract and instead possesses a life insurance policy, which she has satisfactorily verified.

DECISION

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

ORDER

1. The Department shall reopen the Appellant's [REDACTED], HUSKY C LTSS application and continue processing to determine HUSKY C LTSS eligibility.
2. The Department shall assist the Appellant in obtaining any additional required bank verifications.
3. Compliance with this order is due to the undersigned no later than [REDACTED].



Sara Hart
Hearing Officer

Cc: Michelina Zogby, DSS Liaison, Waterbury Regional Office
Jamel Hilliard, Operations Manager, Waterbury Regional Office
Randallynn Muzzio, Operations Manager, Waterbury 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, 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.