

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

■■■■ 2023
Signature Confirmation

Client ID ■■■■
Case ID ■■■■
Request # 210939

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ■■■■ ■■ 2022, the Department of Social Services (the “Department”) sent ■■■■ ■■■■ (the “Appellant”) a Notice of Action (“NOA”) denying her application for benefits under the Husky C – Long Term Care Facility Residents – Spend-down (“Husky C”) effective ■■■■ ■■ 2022.

On ■■■■ ■■ 2023, ■■■■ ■■■■ the Appellant’s daughter and Power of Attorney requested an administrative hearing on behalf of the Appellant to contest the Department’s decision to deny the Appellant’s application for Husky C.

On ■■■■ ■■ 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ■■■■ ■■ 2023.

On ■■■■ ■■ 2023, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189 inclusive of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals appeared for the administrative hearing:

■■■■ ■■■■ Power of Attorney for the Appellant
■■■■ ■■■■ Witness for the Appellant

Stefania Smith, Department Representative
 Matt Bartolotta, Department Host
 Lisa Nyren, Fair Hearing Officer

The Appellant did not attend the administrative hearing on [REDACTED] 2023 because she is hospitalized after a fall at the nursing facility. [REDACTED] the Appellant's spouse, did not attend the administrative hearing because he is at the hospital with his wife.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's [REDACTED] 2022 decision to deny the Appellant's application for medical benefits under the Husky C program effective [REDACTED] 2022 was correct.

FINDINGS OF FACT

1. The Appellant is married to [REDACTED] [REDACTED] ("Spouse"). In [REDACTED] 2016, the Appellant and Spouse moved in with [REDACTED] [REDACTED] ("POA"), their daughter after they could not afford to live on their own. [REDACTED] [REDACTED] is the Appellant's Power of Attorney ("POA"). The Spouse continues to reside with the POA. (Exhibit 1: Application and POA Testimony)
2. The Appellant is a resident of [REDACTED] (the "facility"), a skilled nursing facility. (Department Representative Testimony and POA Testimony)
3. On [REDACTED] 2022, the Department received an application requesting Medicaid benefits under the Husky C program from the POA on behalf of the Appellant. The (Exhibit 1: Application and Department Representative Testimony)
4. On [REDACTED] 2022, the Department issued the POA a W-1348LTC Verification We Need ("W-1348LTC") Request # 1 form. The Department requested the following items listed below and listed the due date for the requested items as [REDACTED] 2022.
 - Name of nursing home and date entered
 - Verification of gross monthly income for Appellant and Spouse
 - [REDACTED] statements [REDACTED] 2017
 - [REDACTED] statements [REDACTED] 2018
 - [REDACTED] statements [REDACTED] 2019
 - [REDACTED] statements [REDACTED] 2020 to present

- [REDACTED] Insurance Policy cash value and face value

(Exhibit 2: W-1348LTC Verification We Need)

5. The Department received some of the information listed on W-1348LTC Request #1 form. (Department Representative's Testimony)
6. On [REDACTED] [REDACTED] 2022, the Department issued the POA a W-1348LTC Request #2 form. The Department requested the following information listed below and listed the due date for the requested information as [REDACTED] [REDACTED] 2022.

- [REDACTED] statement for [REDACTED] 2017
- [REDACTED] statement for [REDACTED] 2018
- [REDACTED] statement for [REDACTED] 2019
- [REDACTED] statement for [REDACTED] 2020 to present
- [REDACTED] [REDACTED] 2019 bank statement
- [REDACTED] [REDACTED] 2020 bank statement
- Proof of the following withdrawals
 - [REDACTED]/[REDACTED]/21 \$5,000
 - [REDACTED]/[REDACTED]/21 \$6,000
 - [REDACTED]/[REDACTED]/21 \$6,000
 - [REDACTED]/[REDACTED] 21 \$6,000
 - [REDACTED]/[REDACTED]/22 \$6,000
 - [REDACTED]/[REDACTED]/22 \$2,000
 - [REDACTED]/[REDACTED]/22 \$5,000
 - [REDACTED]/[REDACTED]/22 \$5,000
 - [REDACTED]/[REDACTED]/22 \$2,000
- Copy of [REDACTED] check # [REDACTED] for \$5,400.00

(Exhibit 3: W-1348LTC Verification We Need)

7. On [REDACTED] [REDACTED] 2022, the Department received some of the information requested, a [REDACTED] receipt confirming withdrawal on [REDACTED] [REDACTED] 2022, and a written statement from the POA stating her father gifted monies to his kids and grandchildren and went on day trips. No further proof is available. (Department Representative Testimony and POA Testimony)
8. On [REDACTED] [REDACTED] 2022, the Department issued the POA a corrected W1348LTC Request #3 form. The Department requested the following information listed below and listed the due date to submit proof as [REDACTED] [REDACTED] 2022. The Department writes, "If hard proof isn't provided on how these funds were used, A penalty may be applied."
 - [REDACTED] statement for [REDACTED] 2017
 - [REDACTED] statement for [REDACTED] 2018

- [REDACTED] statement for [REDACTED] 2019
- [REDACTED] statement for [REDACTED] 2020 to present
- [REDACTED] [REDACTED] 2019 bank statement
- [REDACTED] [REDACTED] 2020 bank statement
- Proof of the following withdrawals
 - [REDACTED]/[REDACTED]/21 \$5,000
 - [REDACTED]/[REDACTED]/21 \$6,000
 - [REDACTED]/[REDACTED]/21 \$6,000
 - [REDACTED]/[REDACTED] 21 \$6,000
 - [REDACTED]/[REDACTED]/22 \$6,000
 - [REDACTED]/[REDACTED]/22 \$2,000
 - [REDACTED]/[REDACTED]/22 \$5,000
 - [REDACTED]/[REDACTED]/22 \$5,000
 - [REDACTED]/[REDACTED]/22 \$2,000
- Copy of [REDACTED] account [REDACTED] copy of cash withdrawal for \$5,400.00 (*corrected from check # [REDACTED] to account [REDACTED]*)
- [REDACTED]/[REDACTED]/22 [REDACTED] cash withdrawal for \$4,894.78.

(Exhibit 4: W-1348LTC Verification We Need)

9. The Department did not receive proof of the withdrawals listed on the W1348LTC Request #3 from the POA. The Department received proof of the requested [REDACTED] [REDACTED] statements and [REDACTED] [REDACTED] [REDACTED] bank statements listed on W1348LTC Request #3 during the application process period. (Department Representative's Testimony)
10. The POA did not send additional information regarding the listed withdrawals by the [REDACTED] [REDACTED] 2022 due date because she did not have any additional documentation to provide to the Department. (POA's Testimony)
11. On [REDACTED] [REDACTED] 2022, the Department denied the Appellant's application for Husky C effective [REDACTED] [REDACTED] 2022 because the POA on behalf of the Appellant failed to send in proof of the withdrawals listed on W1348LTC Request #3 by the [REDACTED] [REDACTED] 2022 due date. (Exhibit 4: W-1348LTC Proofs We Need, Exhibit 5: Notice of Action, and Department Representative's Testimony)
12. On [REDACTED] [REDACTED] 2022, the Department mailed the Appellant a Notice of Action. The notice stated the Department determined the Appellant not eligible for Husky C effective [REDACTED] [REDACTED] 2022. (Exhibit 5: Notice of Action)
13. The POA seeks Medicaid eligibility for the Appellant under the Husky C program. The Spouse is age [REDACTED] and maintains his own finances. The Spouse spends money at [REDACTED] and has

given money as gifts to children and grandchildren. The POA does not have documentary evidence of gifts or gambling. (POA Testimony)

14. The issue of this decision is timely under Connecticut General Statutes § 17b-61(a) 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] [REDACTED] 2023. Therefore, this decision is not due until [REDACTED] [REDACTED] 2023, and therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statute ("Conn. Gen. Stat.") provides as follows:

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 of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department." Conn. Gen. Stat. § 17b-261b(a)

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. Section 1500.01 of the Uniform Policy Manual ("UPM") defines "the application process as all activity related to the exploration, investigation and disposition of an application beginning with the filing of an assistance request and ending with the disposition of the application."

"The application process outlines the general methods and requirements used in obtaining assistance and in determining an assistance unit's initial eligibility. The application process is essentially the same for all programs. It is designed to provide aid in a prompt and efficient manner to those who request assistance." UPM § 1505

4. "An assistance unit may be represented in various aspects of the eligibility by a responsible individual who has been given prior authorization to act as the assistance unit's representative." UPM § 1525.05(A)

Department policy provides as follows:

In order to be an authorized representative a person must be a responsible individual who is:

- a. eighteen years of age or older; and
- b. sufficiently familiar with circumstances of the assistance unit.

UPM § 1525.10(A)(1)

“An authorized representative must be designated in writing by one the following individuals: in the AABD and MA programs, by the applicant, or if the applicant is a child, incompetent or incapacitated, by the parent, custodian, or court appointed fiduciary.” UPM § 1525.05(C)(2)

“The following individuals are qualified to request cash or medical assistance, be interviewed and, complete the application process on the behalf of others who they represent: a conservator, guardian or other court appointed fiduciary.” UPM § 1505.15(C)(3)

The Department correctly determined the POA as the Appellant’s authorized representative during the Husky C application process.

5. “Individuals who desire to obtain aid must file a formal request for assistance.” UPM § 1505.10(B)(1)

“All applicants are required to complete an application form, except as noted below in § 1505.10(A)(3).” UPM § 1505.10(A)

The Department correctly determined the POA completed an application form requesting medical benefits under the Husky C program on behalf of the Appellant.

6. “The date of application is the date a formal written request for assistance is filed with the Department in accordance with the rules established for the program for which application is made.” UPM § 1500.01

“For AFDC, AABD, and MA applications, except for the Medicaid coverage groups noted below in § 1510.10(D)(2), the date of application is considered to be the date that a signed application form is received by any office of the Department.” UPM § 1505.10(D)(1)

The Department correctly determined the date of application as [REDACTED] 2022.

7. “The Department uses the policy contained in this chapter to evaluate asset transfers, including the establishment of certain trusts and annuities,

if the transfer occurred, or the trust or annuity was established, on or after February 8, 2006.” UPM § 3029.03

Department policy provides as follows:

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:

1. The individual is institutionalized; and
2. The individual is either applying for or receiving Medicaid.

UPM § 3029.05(C)

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.” UPM § 1015.10(A)

The Department must tell the assistance unit what the unit has to do to establish eligibility when the Department does not have sufficient information to make an eligibility determination.” UPM § 1015.05(C)

On [REDACTED] 2022, the Department correctly issued the POA a W-1348LTC Request #2 form informing the POA proof of withdrawals made from the Appellant’s bank accounts during the look-back period were needed to evaluate possible asset transfers required to in order to make a determination of the Appellant’s eligibility under the Husky C program.

On [REDACTED] 2022, the Department correctly issued the POA a corrected W-1348LTC Request #3 form informing the POA proof of withdrawals made from the Appellant’s bank accounts during the look-back period were needed to evaluate possible asset transfers required in order to make a determination of the Appellant’s eligibility under the Husky C program.

8. “The assistance unit, by the act of applying for or receiving benefits, assumes certain responsibilities in its relationship with the Department. This chapter describes those responsibilities which an assistance unit assumes when it applies for or receives benefits from the Department.” UPM § 1010

“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 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

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

“Documents are the primary sources of verification whenever such evidence can be acquired.” UPM § 1540.15(B)(1)

“The Department accepts any document which it feels clearly establishes the veracity of the unit’s declarations without restricting the evidence to any one particular type of document.” UPM § 1540.15(B)(2)

“In the absence of available documentary evidence, the Department verifies information through contacts with persons who are not members of the assistance unit.” UPM § 1540.15(C)(1)

“Verification through collateral contacts consists of obtaining oral or written affirmations of the unit’s statements from persons who are capable of providing first-hand testimony.” UPM § 1540.15(C)(2)

“The assistance unit may submit any evidence which it feels will support the information provided by the unit.” UPM § 1540.10(B)

“The Department considers all evidence submitted by the assistance unit or received from other sources.” UPM § 1540.10(D)

The Department failed to consider the ██████████ ██████████ 2022 written explanation made by the POA informing the Department that her father gifted monies to his children and grandchildren and went on day trips as the reasons for the withdrawal of funds from his bank accounts. Although documentary evidence is preferred by the Department, the Department must not restrict the evidence to any one particular type of document.

9. “The following promptness standards are established as maximum time period for processing applications: forty-five calendar days for: AABD or MA applicants applying on the basis of age or blindness.” UPM § 1505.35(C)(1)(2)

“The first day of the processing period begins on the day following the date of application.” UPM § 1505.35(C)(2)

“Processing standards are not used as the basis for denying assistance. Denial results from the failure to meet or establish eligibility within the applicable time limit.” UPM § 1505.35(D)(4)

Department policy provides as follows:

The penalty for failure to provide required verification depends upon the nature of the factor or circumstance for which verification is required:

If the eligibility of the assistance unit does not depend directly on a factor or circumstance for which verification is required, but the benefit level could be affected by it, failure to provide verification results in non-consideration of the factor or circumstance. Factors like this include, but are not limited to:

- a. Income deduction amounts;
- b. Self-support plan deduction amounts;
- c. Special need items;
- d. Medical costs used in spend-down cases.

UPM § 1540.05(D)(3)

“Prior to denial or discontinuance of LTC Medicaid benefits, the Department notifies the individual and his or her spouse of its preliminary decision that a transfer of an asset is determined to have been improper.” UPM § 3029.35(A)(1)

Department policy provides as follows:

The notification includes a clear explanation of both:

- a. The reason for the decision; and
- b. The right of the individual or his or her spouse to rebut the issue within ten days.

UPM § 3029.35(A)(2)

On [REDACTED] [REDACTED] 2022, the Department incorrectly denied the Appellant’s application for medical benefits under the Husky C program. The Department failed to evaluate the withdrawals as possible transfer of assets under the Husky C program and issue proper notification. Instead, the Department issued a third W-1348LTC requesting documentary evidence the POA did not have and noted on the W1348LTC Request # 3, “If hard proof isn’t provided on how these funds were used, A penalty may be applied.” Such notification does not meet the standards under department regulation to include a clear explanation of the reason for a

preliminary decision regarding a possible transfer of assets and the right to rebut the issue.

The Department failed to comply with Department regulations to evaluate Husky C eligibility based on a possible transfer of assets prior to the denial, rather the Department denied the application for failure to return required proofs. The POA, acting on behalf of the Appellant, testified she does not have the documentary evidence the Department is seeking.

DECISION

The Appellant's appeal is granted.

ORDER

1. The Department must reopen the Appellant's application for Husky C effective [REDACTED] 2022 and continue to process eligibility.
2. The Department must review the banking transactions and make a preliminary decision regarding whether a transfer of an asset is determined to be improper and issue the appropriate notification to the Appellant for rebuttal.
3. Compliance is due 14 days from the date of this decision.

Lisa A. Nyren

Lisa A. Nyren
Fair Hearing Officer

CC: Sarah Chmielecki, SSOM RO #20
Tim Latifi, SSOM RO #20
Ralph Filek, RO #20
Stefania Smith, RO #20

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.