

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

██████████, 2023
Signature Confirmation

Case # ██████████
Client ID # ██████████
Request # ██████████

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On December 18, 2022, the Department of Social Services (the “Department”) sent ██████████, (the “Appellant”) a Notice of Action (“NOA”) granting Long Term Care Medicaid benefits effective ██████████, 2022.

On ██████████, 2023, the Appellant’s Power of Attorney, ██████████, requested an Administrative Hearing to contest the effective date of Long Term Care Medicaid benefits as determined by the Department.

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 4-184, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The following individuals participated in the hearing:

██████████, Appellant’s Power of Attorney
██████████, Facility’s Representative, ██████████

Attorney [REDACTED], Legal Counsel, [REDACTED]
Allan Meza, Eligibility Services Specialist, Department's Representative
Joseph Davey, Administrative Hearing Officer

The Appellant did not attend the hearing; he was represented by his Power of Attorney.

The hearing record was held open for the submission of additional information from the Department and Attorney [REDACTED]. Information from both parties was received and the hearing record closed on [REDACTED], 2023.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined the effective start date of coverage under the Husky C Long Term Care ("L01") Medicaid program.

FINDINGS OF FACT

1. On [REDACTED], 2022, the Appellant was admitted to [REDACTED] [REDACTED] (the "Facility") in [REDACTED]. (Hearing Record)
2. On [REDACTED], 2022, the Appellant's daughter [REDACTED], was appointed as the Appellant's Power of Attorney. (Appellant's Exhibit C: Statutory Power of Attorney-Short Form dated [REDACTED])
3. On [REDACTED], 2022, the Facility petitioned the [REDACTED] Probate Court to appoint an involuntary Conservator of Estate. (Appellant's Exhibit D: Petition/Involuntary Appointment of Conservator form dated [REDACTED])
4. On [REDACTED], 2022, the [REDACTED] Probate Court terminated [REDACTED] as the Appellant's Power of Attorney. (Appellant's Exhibit B: Decree/Appointment of Conservator dated [REDACTED])
5. On [REDACTED], 2022, the [REDACTED] Probate Court appointed [REDACTED] (hereinafter "the POA" or "[REDACTED]") as the Appellant's Power of Attorney. (Appellant's Exhibit B)
6. On [REDACTED], 2022, the Department received a W-1LTC application form requesting Long Term Care ("LTC") Medicaid assistance for the Appellant. (Department's Exhibit 5: W-1LTC Long Term Care/Waiver Application Form dated [REDACTED], Hearing Record)
7. The Appellant was [REDACTED] ([REDACTED]) years old (D.O.B [REDACTED]) at the time of application. (Appellant's Exhibit D)

8. The Appellant is legally married but has been separated from his spouse, [REDACTED] [REDACTED] for 20 years. (Department's Exhibit 11: Case Notes dated [REDACTED] - [REDACTED])
9. The Appellant has a diagnosis of end-stage renal disease, chronic obstructive pulmonary disease, congestive heart failure, and neurocognitive disorder. (Appellant's Exhibit B, Appellant's Exhibit D)
10. The Appellant received \$1,437.00 per month from a Social Security Retirement benefit at the time of application. This amount increased on [REDACTED], 2023, to \$1562.00 per month. (Department's Exhibit 11, Department's Exhibit 13: Screenshot of Unearned Income screened dated [REDACTED])
11. The Appellant receives \$270.25 per month from a [REDACTED] pension. (Department's Exhibit 11)
12. The Appellant owned the following assets on the date of application, [REDACTED], 2022:

Institution Name	Type of Account	Last 4 digits of account number
[REDACTED]	Checking	[REDACTED]
[REDACTED]	Savings	[REDACTED]
[REDACTED]	Whole Life Policy	[REDACTED]
[REDACTED]	Whole Life Policy	[REDACTED]

(Department's Exhibit 3: [REDACTED] Heritage life insurance policy statements dated [REDACTED] for policies ending in [REDACTED] and [REDACTED], Department's Exhibit 25: Combined statements for [REDACTED] accounts ending in [REDACTED] and [REDACTED] dated [REDACTED] - [REDACTED])

13. On [REDACTED], 2022, the Department sent the Appellant a W-1348 "Proofs We Need" form requesting proof of the Appellant's checking account balance. (Department's Exhibit 14: W-1348 Proofs We Need form dated [REDACTED])
14. On [REDACTED], 2022, the Department sent the POA and the Facility a W-1348LTC Verification We Need form ("W-1348LTC") requesting the following: The full name, telephone number, and last known address of your separated spouse, legal separation documents (if applicable), community spouse shelter expenses/income verification, verification of all transactions over \$5,000.00, bank statements for [REDACTED] [REDACTED] account ending [REDACTED] from [REDACTED], 2022, to present, page 4 of all statements for of [REDACTED] account ending [REDACTED] from [REDACTED] 2020 to present, all bank statements for [REDACTED] account ending [REDACTED] from [REDACTED], 2022, to present, all bank statements held by the community spouse dated 2017, 2018, 2019 and [REDACTED] 2020 to present and proof of gross amount for [REDACTED] pension. (Department's Exhibit 15: W-1348LTC form dated [REDACTED])
15. On [REDACTED], 2022, the Department sent the POA and Facility a W-1348LTC requesting the following: verification of all transactions over \$5,000.00, bank

statements for [REDACTED] account ending [REDACTED] from [REDACTED], 2022, to present, page 4 of all statements for of [REDACTED] account ending [REDACTED] from [REDACTED] 2020 to present, all bank statements for [REDACTED] account ending [REDACTED] from [REDACTED], 2022, to present, and proof of gross amount for [REDACTED] pension. (Department's Exhibit 16: W-1348LTC form dated [REDACTED])

16. On [REDACTED], 2022, the POA sent a request to [REDACTED] requesting that the Appellant's whole life insurance policies ending in [REDACTED] and [REDACTED] be canceled. The POA sent an email to the Department informing them of the request for cancellation. (Department's Exhibit 2: Email dated [REDACTED] between the Department and the POA including [REDACTED] intent to cancel letter)
17. On or about [REDACTED], 2022, the Department received verification of the policy information for the Appellant's [REDACTED] life insurance policies ending in [REDACTED] and [REDACTED]. Policy ending in [REDACTED] was issued on [REDACTED], 2017, and had a face value of \$3,000.00 and a cash surrender value of \$434.11. Policy ending [REDACTED] was issued on [REDACTED], 2015, and had a face value of 12,000.00 and a cash surrender value of \$2,104.20. (Department's Exhibit 2, Department's Exhibit 3, Department's Exhibit 11)
18. On [REDACTED], 2022, the Department sent the POA and the Facility a W-1348LTC requesting the following: verification of all transactions over \$5,000.00, bank statements for [REDACTED] account ending [REDACTED] from [REDACTED], 2022, to present, all bank statements for [REDACTED] account ending [REDACTED] from [REDACTED], 2022, to present, verification of when [REDACTED] Whole Life insurance policies ending in [REDACTED] and [REDACTED] have been surrendered, verification of where the closing funds were deposited to and proof of gross amount for [REDACTED] pension. (Department's Exhibit 17: W-1348LTC form dated [REDACTED])
19. On [REDACTED], 2022, the Department granted an extension on the case until [REDACTED], 2022. (Department's Exhibit 11)
20. On [REDACTED], 2022, the Department received verification that the Appellant's [REDACTED] whole life insurance policies had been surrendered effective [REDACTED], 2022. Included with the proof of surrender was a copy of the check displaying the full surrender value of \$2,538.31. (Hearing Record, Department's Exhibit 11)
21. On [REDACTED], 2022, the Department sent the POA and the Facility a W-1348LTC requesting the following: verification of all transactions over \$5,000.00, bank statements for [REDACTED] account ending [REDACTED] from [REDACTED], 2022, to present, all bank statements for [REDACTED] account ending [REDACTED] from [REDACTED], 2022, to present, resident trust account statement from [REDACTED], 2022, to present, and proof of gross amount for [REDACTED] pension. (Department's Exhibit 18: W-1348LTC form dated [REDACTED])

22. On [REDACTED], 2022, the Department received verification that the POA had used the \$2,538.31 surrender check from the Appellant's [REDACTED] life insurance policies to establish a Resident Trust Account and an irrevocable funeral contract. (Department's Exhibit 11)
23. On [REDACTED], 2022, the Department sent the POA and the Facility a W-1348LTC requesting the following: verification of all transactions over \$5,000.00, bank statements for [REDACTED] account ending [REDACTED] from [REDACTED], 2022, to present, all bank statements for [REDACTED] account ending [REDACTED] from [REDACTED], 2022, to present, and proof of gross amount for [REDACTED] pension. (Department's Exhibit 19: W-1348LTC form dated [REDACTED])
24. On [REDACTED], 2022, the Department received verification that [REDACTED] checking account ending [REDACTED] and [REDACTED] savings account ending [REDACTED] were closed effective [REDACTED], 2022. (Department's Exhibit 11, Department's Exhibit 23: Confirmation of account closure for [REDACTED] checking account ending in [REDACTED] dated [REDACTED], Department's Exhibit 24: Confirmation of account closure for [REDACTED] savings account ending in [REDACTED] dated [REDACTED])
25. On [REDACTED], 2022, the Department sent the POA and the Facility a W-1348LTC requesting the following: proof of gross amount for [REDACTED] pension. (Department's Exhibit 20: W-1348LTC form dated [REDACTED])
26. On [REDACTED], 2022, the Department granted an extension on the case until [REDACTED], 2022. (Department's Exhibit 11)
27. On [REDACTED], 2022, the Department sent the POA and the Facility a W-1348LTC requesting the following: proof of gross amount for [REDACTED] pension. (Department's Exhibit 21: W-1348LTC form dated [REDACTED])
28. On [REDACTED], 2022, the Department received all requested information. (Department's Exhibit 11)
29. The Appellant's combined total asset value as of [REDACTED], 2022, was as follows:

Account:	Balance:
[REDACTED] checking ending [REDACTED]	\$2,676.42
[REDACTED] savings ending [REDACTED]	\$635.01
[REDACTED] life insurance ending [REDACTED]	\$434.11
[REDACTED] life insurance ending [REDACTED]	\$2,104.20
Total:	\$5,849.74

(Department's Exhibit 3, Department's Exhibit 25)

30. The Appellant's combined total asset value as of [REDACTED], 2022, was as follows:

Account:	Balance:
[REDACTED] checking ending [REDACTED]	\$2,044.47
[REDACTED] savings ending [REDACTED]	\$660.02
[REDACTED] life insurance ending [REDACTED]	\$434.11
[REDACTED] life insurance ending [REDACTED]	\$2,104.20
Total:	\$5,242.80

(Department's Exhibit 3, Department's Exhibit 25)

31. The Appellant's combined total asset value as of [REDACTED], 2022, was as follows:

Account:	Balance:
[REDACTED] checking ending [REDACTED]	\$123.40
[REDACTED] savings ending [REDACTED]	\$685.03
[REDACTED] life insurance ending [REDACTED]	\$434.11
[REDACTED] life insurance ending [REDACTED]	\$2,104.20
Total:	\$3,346.74

(Department's Exhibit 3, Department's Exhibit 25)

32. On [REDACTED], 2022, the Department issued a NOA to the POA and the Facility informing them that L01 Medicaid coverage for the Appellant was granted with an effective date of [REDACTED]. (Department's Exhibit 8: W-0001N NOA dated [REDACTED])

33. On [REDACTED], 2022, the OLCRAH received a request for an administrative hearing. (Hearing Record)

34. On [REDACTED], 2023, after the POA requested an administrative hearing, the Department re-reviewed the Appellant's case. The Department re-granted the L01 Medicaid coverage with an effective date of [REDACTED], 2022. (Exhibit 11, Department's testimony)

35. On [REDACTED], 2023, the Department issued a NOA to the POA and the Facility informing them that L01 Medicaid coverage for the Appellant was granted with an effective date of [REDACTED]. (Department's Exhibit 9: W-0001N NOA dated [REDACTED])

36. The issuance of this decision is timely under Connecticut General Statutes ("Conn. Gen. Stat.") §17b-61(a), which requires that a decision be issued within (90) days of the request for an administrative hearing. The Appellant's POA requested an administrative hearing on [REDACTED], 2023. Therefore, this decision is due no later than [REDACTED], 2023.

However, the hearing record was held open [REDACTED] ([REDACTED]) days, until [REDACTED], 2023, for the Department and the Facility's legal counsel to provide further information. The decision is therefore due no later than [REDACTED], 2023. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-2 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.

The Department has the authority to administer Medicaid.

2. Uniform Policy Manual ("UPM") Section § 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.
3. UPM § 4030.30 (A) provides for Life Insurance Policies for All Programs. 1. The owner of a life insurance policy is the insured unless otherwise noted on the policy, or if the insurance company confirms that someone else, and not the insured, can cash in the policy. 2. Policies such as term insurance policies having no cash surrender value are excluded assets.

UPM § 4030.30 (C) provides for Life Insurance Policies for AABD and MAABD. 1. If the total face value of all life insurance policies owned by the individual does not exceed \$1,500, the cash surrender value of such policies is excluded. In computing the face value of life insurance, the Department does not count insurance such as term insurance which has no cash surrender value. 2. Except as provided above, the cash surrender value of life insurance policies owned by the individual is counted towards the asset limit.

The Department correctly determined that the cash surrender value of the Appellant's [REDACTED] whole life insurance policies ending in [REDACTED] and [REDACTED] were countable toward the asset limit.

4. UPM § 4030.05 A. provides for Types of Bank Account: Bank accounts include the following. This list is not all inclusive. 1. Savings account; 2. Checking account.

UPM § 4030.05 (B) provides for treatment of assets in that part of a checking account to be considered as a counted asset during a given month is calculated by subtracting the actual amount of income the assistance unit deposits into the account that month from the highest balance in the account for that month.

The Department correctly determined that the Appellant's [REDACTED] checking account ending in [REDACTED] and [REDACTED] savings account ending in [REDACTED] were countable assets.

5. UPM § 4005.05 (A)(1) provides that 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 (a) available to the unit, or (b) deemed available to the unit.

UPM § 4005.05 (B)(2) provides that 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 § 4015.05 (B)(1)(2) provides that 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.

The Department correctly determined the [REDACTED] whole life insurance policies ending in [REDACTED] and [REDACTED] were available and accessible to the Appellant through his Power of Attorney as she had the legal right and authority to obtain them.

The Department correctly determined the [REDACTED] checking account ending in [REDACTED] and [REDACTED] savings account ending in [REDACTED] were available and accessible to the Appellant through his Power of Attorney as she had the legal right and authority to obtain them.

6. UPM § 4005.05 (D)(2) provides that 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 § 4099.05 (A)(B) provides that the assistance unit must verify its equity in counted assets and must verify that it has properly reduced its equity in counted assets to within the program's limit.

UPM § 4005.10 (A)(2)(a) provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.

UPM § 4005.15 (A) (2) provides that 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.

The Appellant's assets of \$5,849.74 in the contested month of [REDACTED] 2022 exceeded the \$1600.00 asset limit.

The Appellant's assets of \$5,242.80 in the contested month of [REDACTED] 2022 exceeded the \$1600.00 asset limit.

The Appellant's assets of \$3,346.74 in the contested month of [REDACTED] 2022 exceeded the \$1600.00 asset limit.

DISCUSSION

During the administrative hearing, the Facility's attorney, [REDACTED] (hereinafter "the Attorney"), contended that the Appellant's previous Power of Attorney, [REDACTED], was both unwilling and unable to handle the Appellant's financial affairs during her time of appointment between [REDACTED], 2022, and [REDACTED], 2022, when the [REDACTED] Probate Court appointed [REDACTED] as the POA.

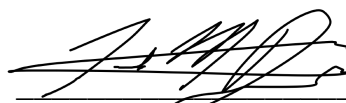
The Attorney asserted that due to delays by the [REDACTED] Probate Court, Ms. Baker was unable to gain access to the Appellant's assets until [REDACTED] 2022, when she was appointed as the POA. The Attorney argued that [REDACTED] could not have known about the Appellant's [REDACTED] life insurance policies prior to her appointment as POA, and that due to the delay in [REDACTED] appointment, good cause exists to find an effective date of [REDACTED], 2022, due to circumstances beyond the control of [REDACTED]. Further, the Attorney argued that due to the delay in appointment of [REDACTED] as the POA and the "refusal of the Power of Attorney ([REDACTED]) to act on behalf of [REDACTED] best interests..." the Appellant's assets should be considered inaccessible prior to the appointment of [REDACTED] as the POA.

The undersigned acknowledges the difficulty [REDACTED] had in obtaining appointment as the Appellant's POA. However, the previous Power of Attorney, [REDACTED], had the legal right and ability to access the Appellant's assets regardless of whether or not she actually acted on that ability. Further, regardless of whether [REDACTED] was aware of the existence of the Appellant's [REDACTED] policies, they were still legally owned by the Appellant and therefore countable toward Medicaid eligibility.

Eligibility for the Medicaid program begins the first day of the month in which the assistance unit reduces its equity in counted assets to within the asset limit. Evidence provided by the Department reflects that the Applicant's assets were above the Medicaid limit for the months of [REDACTED] 2022, [REDACTED] 2022, and [REDACTED] 2022. I find that the funds in the bank accounts and whole life policies owned by the Appellant for the months in question were accessible to both [REDACTED] and [REDACTED], and, by extension, the Appellant, and exceeded the Medicaid asset limit of \$1600.00.

DECISION

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

A handwritten signature in black ink, appearing to read 'J. Davey', written over a horizontal line.

Joseph Davey
Administrative Hearing Officer

CC: Allan Meza – Eligibility Services Specialist, DSS, Waterbury Regional Office
Katarzyna Olechowska, SSOM, DSS, Waterbury Regional Office
Randalynn Muzzio, SSOM, DSS, 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 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 060105-3725.

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, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105-3725. 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.