

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

██████████ 2023  
SIGNATURE CONFIRMATION

████████████████████  
████████████████████  
Request # 211745

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”) informing her that she was denied Medicaid under the HUSKY C-Long Term Care Facility (“HUSKY C”) program.

On ██████████ 2023, ██████████ the “Conservator”) the Conservator, requested an administrative hearing to contest the denial of the HUSKY C.

On ██████████ 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) scheduled a telephonic 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 participated in the hearing:

██████████, Conservator  
██████████, Business Office Manager, ██████████  
██████████  
Adessa Williams, Department’s Representative  
Carla Hardy, Hearing Officer

The Appellant did not participate in the hearing due to her institutionalization.

The hearing record remained open for the Department to submit additional documentation which was not received. The hearing record closed on [REDACTED] 2023.

### **STATEMENT OF THE ISSUE**

The issue is whether the Department correctly denied the Appellant's HUSKY C application.

### **FINDINGS OF FACT**

1. [REDACTED] (the "Conservator") of [REDACTED] is the Appellant's Conservator of the Person and the Estate. (Exhibit 6: Fiduciary's Probate Certificate/Conservatorship)
2. The Appellant has a Key Bank checking account xxx [REDACTED] that had a balance of \$147,648.88 on [REDACTED] 2022. (Exhibit 7A: [REDACTED] Account # xxx [REDACTED])
3. On [REDACTED] 2022, \$100,000.00 was transferred from the Appellant's account number [REDACTED] to [REDACTED] account # xxx [REDACTED]. (Exhibit 7A)
4. The Department provided one bank statement for [REDACTED] #xxx [REDACTED] dated [REDACTED] 2022, to [REDACTED] 2022. (Exhibit 7A)
5. The [REDACTED] account xxx [REDACTED] is the [REDACTED] Conservator account. (Conservator's Testimony)
6. On [REDACTED] 2022, the Department received the Appellant's application for HUSKY C. (Exhibit 5: Application, [REDACTED]/22)
7. The Appellant resides at [REDACTED] ("the nursing facility"), a skilled nursing facility. (Exhibit 5)
8. The Appellant is not married. She is 79 years old (DOB [REDACTED] 43). (Exhibit 5)
9. The Appellant's monthly income includes a \$2,320.11 pension and a \$1,539.00 Social Security ("SSA") benefit that increased to \$1,673.00 in [REDACTED] 2023. (Department's Testimony)
10. The Conservator provided an invoice showing she charges \$250.00 per hour for services provided and that 32.40 hours of services were performed between [REDACTED] 2021, through [REDACTED] 2022. (Exhibit 9: [REDACTED] Invoice # 12693)

11. The invoice incorrectly shows internal information that should not have been included on the invoice. The invoice should have listed a flat fee for the services that were provided. (Conservator's Testimony)
12. The [REDACTED] invoice # 12693 is dated [REDACTED], 2022. The date that the Department received the invoice was not provided at the hearing. (Exhibit 9; Hearing Record)
13. On [REDACTED], 2022, the Department requested the Conservator provide the Probate Court decrees approving or denying fees related to the Appellant's case. The information was due [REDACTED] 2022. (Exhibit 1: Worker Generated Request for Proofs, [REDACTED]/22)
14. On [REDACTED] 2022, the Department issued a Transfer of Assets Preliminary Decision Notice notifying the Conservator that their initial decision is that the Conservator made a cash transfer of \$100,000.00 to be eligible for HUSKY C. (Exhibit 8: Transfer of Assets Preliminary Decision Notice, [REDACTED]/22)
15. The Department determined that the \$100,000.00 transaction was not a transfer because the Appellant still had access to the funds. (Department's Testimony)
16. The asset limit for the HUSKY C program is \$1,600.00. (Department's Testimony)
17. On [REDACTED] 22, the Department denied the HUSKY C program effective [REDACTED] 2022, because the value of her assets exceeded the amount allowed for the program. (Exhibit 3: NOA, [REDACTED]/22)
18. The issuance 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's Conservator requested the hearing on [REDACTED] 2023; therefore, this hearing is due on [REDACTED] 2023. However, the hearing remained open until [REDACTED], 2023, which caused a two-day delay. Because of this 2-day delay in the close of the hearing record, this final decision is not due until [REDACTED] 2023. (Hearing Record)

### **CONCLUSIONS OF LAW**

1. Section 17b-260 of the Connecticut General Statutes ("Conn. Gen. Stat.") authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.

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

2. Conn. Gen. Stat. §17b-1(b) provides the Department of Social Services shall constitute a successor department to the Department of Income Maintenance and

the Department of Human Resources in accordance with the provisions of sections 4-38d and 4-39.

“The department’s Uniform Policy Manual (“UPM”) is the equivalent of state regulation and, as such, carries the force of law.” *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990)).

3. Conn. Gen. Stat. § 17b-261(c) provides that for the purposes of determining eligibility for the Medicaid program, an available asset is one that is actually available to the applicant or one that the applicant has the legal right, authority or power to obtain or to have applied for the applicant’s general or medical support. If the terms of a trust provide for the support of an applicant, the refusal of a trustee to make a distribution from the trust does not render the trust an unavailable asset. Notwithstanding the provisions of this subsection, the availability of funds in a trust or similar instrument funded in whole or in part by the applicant or the applicant’s spouse shall be determined pursuant to the Omnibus Budget Reconciliation Act of 1993, 42USC 1396p.

UPM § 4005.05(B)(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: available to the unit; or deemed available to the assistance 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 § 4030.50(A) provides that bank accounts include the following. This list is not all inclusive.

1. Savings account;
2. Checking account;
3. Credit union account;
4. Certificate of deposit;
6. Patient account at long-term care facility;
7. Children's school account;
8. Trustee account;
9. Custodial account.

**The Department correctly determined that the Appellant’s [REDACTED] checking account is a counted asset that is available to the Appellant.**

4. UPM § 1560.10 discusses Medicaid beginning dates of assistance and provides that the beginning date of assistance for Medicaid may be one of the following:

- A. The first day of the first, second or third month immediately preceding the month in which the Department receives a signed application when all non-procedural eligibility requirements are met and covered medical services are received at any time during that particular month; or
  - B. The first day of the month of application when all non-procedural eligibility requirements are met during that month; or
  - C. The actual date in a spenddown period when all non-procedural eligibility requirements are met. For the determination of income eligibility in spend-down, refer to Income Eligibility Section 5520; or
  - D. The first of the calendar month following the month in which an individual is determined eligible when granted assistance as a Qualified Medicare Beneficiary (Cross Reference: 2540.94). The month of eligibility determination is considered to be the month that the Department receives all information and verification necessary to reach a decision regarding eligibility.
5. UPM §4026.05 provides that the amount of assets counted in determining the assistance unit's eligibility is calculated in the following manner:
- A. The Department determines the amount of the assistance unit's available non-excluded assets by subtracting the value of the following assets owned by the assistance unit:
    - 1. those assets considered to be inaccessible to the assistance unit at the time of determining eligibility; and
    - 2. assets which are excluded from consideration.
  - B. The Department adjusts the amount of the assistance unit's available non-excluded assets by:
    - 1. subtracting a Community Spouse Disregard (CSD), when appropriate, for those individuals applying for assistance under the MAABD program (Cross Reference: 4022.05); and
    - 2. adding any amount of assets deemed to be available to the assistance unit (Cross Reference: 4025); and
    - 3. subtracting a Long-Term Care Insurance Disregard (LTCID), when appropriate, for those individuals applying for or receiving assistance under the MAABD program (Cross Reference: 4022.10).
  - C. The amount remaining after the above adjustments is counted.
- The Department did not provide evidence of the value of the Appellant's assets from [REDACTED] 2022 through [REDACTED] 2022.**

6. UPM § 4005.15(A)(2) provides that 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.
7. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.

**The Department did not provide evidence of the Appellant's total assets in each month from [REDACTED] 2022 through [REDACTED] 2022.**

**The Department did not provide evidence that the Appellant's assets exceeded the Medicaid asset limit of \$1,600.00 for [REDACTED] 2022 through [REDACTED] 2022.**

**Based on the evidence provided, it cannot be determined if the Department correctly denied the Appellant's application for being over the \$1,600.00 asset limit for HUSKY C on [REDACTED] 2022.**

### **DISCUSSION**

The Department did not provide evidence of which assets and the value of those assets that placed the Appellant over the \$1,600.00 asset limit. The Department was given two days to supply additional evidence but did not submit anything. The Department also stated at the hearing that they no longer believed the Appellant to be over the asset limit.

### **DECISION**

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

### **ORDER**

1. The Department shall rescreen the Appellant's application back to the original application date.
2. The Department shall re-evaluate the Appellant's assets.
3. Compliance with this order shall be submitted to the undersigned no later than [REDACTED] 2023.

\_\_\_\_Carla Hardy\_\_\_\_  
Carla Hardy  
Hearing Officer

Pc: Sarah Chmielecki, Tim Latifi, Ralph Filek, Operation Managers, DSS, New Haven Office  
Adessa Williams, Fair Hearing Liaison, DSS, New Haven 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 06105-3725.

### **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, 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.