

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

██████████ 2024
Signature Confirmation

Case ID # ██████████
Client ID # ██████████
Request # 228505

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2023, the Department of Social Services (the “Department”) sent ██████████ ██████████ (the “Appellant”), a Notice of Action (“NOA”) denying his application for Medicaid benefits.

On ██████████ 2023, the Appellant’s son and Power of Attorney, ██████████ (the “POA”), via his attorney ██████████, requested an administrative hearing to contest the denial of 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 ██████████ ██████████ 2024.

On ██████████ 2024, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing by telephone. The following individuals participated in the hearing:

██████████, Appellant’s son, POA, Trustee for Trusts
██████████, POA’s Attorney
██████████, ██████████, Business Office
Nicole Schwerts, Departments Representative

Scott Zuckerman, Hearing Officer

The Appellant was not present at the administrative hearing.

The hearing record remained open at the request of the Appellant's attorney for the submission of additional information, specifically the Attorney's argument. The argument was received from the Appellant. The Department provided additional exhibit(s) and the record closed on [REDACTED], 2024.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny Medicaid benefits for exceeding the asset limit was correct.

FINDINGS OF FACT

1. On [REDACTED], 1997, the Appellant and his spouse, [REDACTED], established the [REDACTED] Family Living Trust (the "Trust"). Section 3 of the trust provides it is a revocable living trust. The trustees included [REDACTED] and his spouse [REDACTED]. (Ex. 3: [REDACTED] Family Living Trust, [REDACTED]/97)
2. In 2012, [REDACTED] passed away. (POA testimony)
3. Following the death of [REDACTED], the trust was broken into two parts. The Survivor's Trust is revocable. The second part is the [REDACTED] Family Trust, which is the irrevocable trust. (POA testimony)
4. Article 3 Section 4 e of the trust provides that upon the death of [REDACTED] pa, she will be replaced by [REDACTED] a as the trustee. (Ex. 3)
5. Article 9 Section 1 of the Rights of Surviving Trustor in the Family Trust provides for:
 - (a) **Discretionary Payment of Income.** Our Trustee shall pay to or apply for the benefit of the surviving Trustor, so long as the surviving Trustor lives, in monthly or other convenient installments agreed upon by the surviving Trustor and our Trustee, but no less often than annually, so much of the net income of the Family trust as our Trustee in its discretion deems proper for the surviving Trustor's health, maintenance, support and education. Any net income not so distributed shall be accumulated and added to the principal.
 - (b) **Discretionary Payment of Principal.** *At any time or times during the trust term, our Trustee shall pay to or apply for the benefit of the surviving Trustor so much of the principal of the Family Trust as our Trustee in its discretion deems proper for the surviving Trustor's health, maintenance, support and education.*
 - (c) **Guidelines for Trustees Discretion.** No amount paid or applied need thereafter be repaid to our Trustee or restored to our trust. In exercising discretion, our Trustee shall give the consideration that our Trustee deems proper to all other income and resources that are known to our Trustee and that are readily available to the surviving Trustor for

use for these purposes. All decisions of our Trustee regarding payments under this subsection, if any are within our Trustee's discretion.

(d) **Limitation on Discretionary Payment of Principal by Trustee.** We recommend, but it is not mandatory, that our Trustee shall first exhaust the principal from the Survivor's Trust before making discretionary payments of principal to the surviving trustor from the Family Trust.

(e) **Restriction of Surviving Trustor's right to Receive Income or Principal.** Notwithstanding any other provision in this agreement, if the surviving Trustor is a Trustee of the Family Trust or has the power to remove a Trustee of the Family Trust, our Trustee shall not distribute any of the income or principal of the Family Trust that would, in any manner, discharge the surviving Trustor's legal obligation of support to a beneficiary of the Family Trust. In the event the surviving Trustor is mentally disabled and without the power to remove a Trustee of the Family Trust, our Trustee shall disregard this restriction during such period of mental disability.

(f) **Surviving Trustor's Right to Withdraw Principal.** Notwithstanding any other provision in this agreement, each calendar year the surviving Trustor shall have the power to withdraw principal from the Family Trust not to exceed the greater of five thousand dollars (\$5000) or (5) percent of the assets, valued as of the end of the preceding calendar year. The surviving Trustor shall exercise this power by a written instrument signed by him or her and delivered to our Trustee. This power is non-cumulative and to the extent it is not exercised by the end of January of each calendar year, it shall lapse. This power shall exist each year until the death of the surviving Trustor. (Exhibit 3: ██████████ Family Living Trust)

6. On ██████████ 2014, the Appellant appointed his son, ██████████ as his Power of Attorney. (Exhibit 2: No. 3 Statutory Short Form Power of Attorney (With Durable Power Clause), ██████████/14)
7. On ██████████ 2018, the Appellant entered ██████████ (the "facility"). (POA testimony)
8. The daily rate at the facility is \$430.00 per day or \$12,900 monthly in a 30-day month. (POA and POA attorney testimony)
9. The Appellant receives a monthly income of \$4,603.00 consisting of Social Security, VA, and a Pension. (POA testimony)
10. On ██████████ 2019, the POA became trustee of the ██████████ Family Living Trust. (POA testimony, POA attorney)
11. The value of the corpus of the ██████████ Family Trust is \$ 242,208.31 as of the date of the hearing. (POA testimony and Department testimony)
12. The Trust consists of a money market account earning 5 percent interest. (POA testimony)
13. The Trust was funded by the Appellant and his spouse with their assets. (POA testimony)

14. The Appellant has the opportunity to request \$5000.00 per year or 5 percent, whichever is greater, from the Family trust. The principal balance of the fund is not used for anything else. (POA testimony)
15. The Survivor's Trust does not have a balance. (Hearing Record)
16. On [REDACTED], 2023, the Appellant applied for Long Term Care Medicaid. (Hearing Summary and Exhibit 1: Application [REDACTED]/23)
17. The Asset limit for Long Term Care Medicaid is \$1600.00. (Department's testimony)
18. On [REDACTED], 2023, the Department sent the two trust documents to the Office of Legal Counsel for review. The Department determined that based on the Trust, the Appellant established and is the beneficiary of the Trust and therefore the trust assets which consist of a money market account with a value of \$241,161.33 are available assets. The Department determined the [REDACTED] Family Living Trust was divided into two separate trusts when [REDACTED] died in 2012. The Survivor's Trust provides that the surviving spouse may revoke the Survivor's Trust in whole. The Department determined that because the Survivor's Trust is revocable, all assets held by that trust are considered available. The Department further determined that the Family Trust assets are also considered available because pursuant to the trust agreement both income and corpus can be paid for the client's benefit. (Ex.11: Email responses from Office of Legal Counsel; Department's testimony)
19. On [REDACTED] 2023, the Department denied the Appellant's [REDACTED] 2023, application for long-term care Medicaid for exceeding the asset limit allowed by the program. (Exhibit 4: Notice of Action, [REDACTED]/2023)
20. 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 requested an administrative hearing on [REDACTED] 2023. The hearing was held on [REDACTED] 2024, and the record was held open at the request of the Appellant to provide a written argument. The hearing record closed on [REDACTED] 2024, which caused a 15-day delay. Because this 15-day delay resulted from the Appellant's request, this decision is not due until [REDACTED] 2024, and is therefore timely. (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.

2. "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 (194) (citing Conn. Gen. Stat. § 17b-10; *Richard V. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d712 (1990)).
3. 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.
4. Section 17b-261(c) of the Connecticut General Statutes provides in part 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.
5. "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 unit." UPM § 4005.05 (A)
6. "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 § 4005.05 (B)(2)
7. UPM § 4000.01 defines a trust as an oral or written agreement in which someone (the trustee) holds the legal title to an asset for the benefit of another person (the beneficiary).

The Appellant is the beneficiary of the Trust.

8. Regulations of Connecticut State Agencies Section 17b-198-8 (l)(2) provides: The corpus of a trust shall be treated as a counted asset of a person and the needs group to which he or she belongs if the terms of the trust permit such person to revoke the trust and receive the corpus of the trust upon revocation.
9. UPM § 4000.01 defines an inter-vivos Trust as a trust established during the lifetime of the settler by means other than a will.

The Trust, in this case, is an inter-vivos trust because it was self-settled by the Appellant during his lifetime by means other than a will.

10. UPM 4030.80 A (1) provides in part that 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 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); and

11. UPM § 4030.80 (D)(1) provides for inter vivos trusts established on or after August 11, 1993, in the Medicaid program. The Department considers an individual to have established a trust if the individual's assets were used to form all or part of the corpus of the trust and if any of the following individuals established the trust by means other than a will:

- a. the individual; or
- b. the individual's spouse; or
- c. a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
- d. a person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

12. UPM § 4030.80 (D)(2) and (3) provides for inter vivos trusts established on or after August 11, 1993, in the Medicaid program: For a trust whose corpus includes assets of an individual described in paragraph 1 and of any other person, the Department evaluates only that portion of the trust attributable to the assets of the individual. The Department evaluates trusts described in paragraph D regardless of:

- a. why the trust was established; or
- b. whether the trustees have or exercise any discretion under the trust; or
- c. any restrictions on when or whether distributions may be made from the trust; or
- d. any restrictions on the use of distributions from the trust.

13. UPM § 4030.80 (D)(5) provides that with respect to an irrevocable trust, the following principles apply:

- a. The Department considers the portion of the corpus of an irrevocable trust, or the income generated by the corpus of such trust to be an available asset of the individual if there are any circumstances under which a payment from the trust could be made to or on behalf of the individual.

b. The Department considers payments from that portion of the corpus or income generated by the corpus of a trust described in paragraph a to be:

(1) the individual's income, if the payments are to or for the benefit of the individual; and

(2) a transfer of assets by the individual, as described in chapters 3028 and 3029, if the payments are for any other purpose.

The Department correctly determined that under the terms of the trust agreement, the trustee has the discretion to make distributions from the trust to the Appellant as established by him for the Appellant's health, safety, maintenance, and education.

The Department correctly determined that the Trust's corpus as well as the income generated from it are available assets to the Appellant.

14. UPM § 4015.05 (B) 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 Assistance unit failed to demonstrate that the Trust assets are inaccessible.

The Department correctly determined that the Trust was an available asset as the Appellant had the legal right, authority or power to obtain the asset or have it applied for the Applicant's general medical support.

The Department correctly determined that the money market account in the Trust, valued at \$242,208.31 was a countable asset and accessible.

15. "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 § 4005.05 (D)

16. "The Medicaid asset limit for a needs group of one is \$1,600.00 per month." UPM § 4005.10

The Department correctly determined that the Appellant's assets of \$242,208.31 exceeded the \$1600.00 asset limit.

The Department correctly denied the long-term care Medicaid application for exceeding the asset limit.

DECISION

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

Scott Zuckerman
Scott Zuckerman
Hearing Officer

cc: Angela Branfalt, Operations Manager, Manchester Office
Nicole Schwes, DSS, New Haven Office
Ni'ta Freeman, 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.

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.

