

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 #: ██████████
Hearing ID#: 230482

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████, the Department of Social Services (the “Department”) sent ██████████
██████████ (“the Appellant”), a Notice of Action (“NOA”) granting his ██████████,
application Long Term Care (“LTC”) Medicaid benefits effective ██████████

On ██████████, the Appellant’s Power of Attorney (POA) requested an
administrative hearing to contest the effective date of such benefits.

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 of
the Connecticut General Statutes, inclusive, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

██████████ the Appellant’s Power of Attorney
██████████ the Appellant’s sister
Rutha Jenkins, Department’s Witness
Melissa Magalhaes, Department’s Representative
Shawn P. Hardy, Hearing Officer

The hearing record remained open through for the Department to submit additional information. The Department submitted the additional information. On [REDACTED], the hearing record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly granted the Appellant LTC Medicaid benefits effective [REDACTED].

FINDINGS OF FACT

1. On [REDACTED], the Appellant entered [REDACTED] skilled nursing facility (the "facility"). The Appellant was discharged to the community/home on [REDACTED] [REDACTED] (Hearing Record)
2. On [REDACTED] the Appellant applied for LTC Medicaid benefits. (Hearing Record, Exhibit 5: W-1LTSS Application for Long-Term Services & Supports [REDACTED])
3. The Appellant is [REDACTED] years old. [DOB: [REDACTED]] (Hearing Record, POA Testimony, Exhibit 5)
4. The "Facility" submitted A "Diversion Request" to the Department for the months of [REDACTED], and [REDACTED], in the amount of \$36,934.00. (Exhibit 9: [REDACTED] Diversion Request [REDACTED])
5. The Appellant is seeking retroactive Medicaid coverage effective [REDACTED]. (Stipulated)
6. The asset limit for Long Term Care Medicaid eligibility is \$1600.00. (Department's Testimony)
7. The Appellant's [REDACTED] statement covering [REDACTED], to [REDACTED], for account acct ending in # [REDACTED] had a balance of \$1,000.07. (Exhibit 7: [REDACTED] account Bank statement dated [REDACTED])
8. The Appellant's [REDACTED] statement covering [REDACTED], to [REDACTED], for account acct ending in # [REDACTED] had a balance of \$1,433.16. (\$1900.52 (beginning balance as of [REDACTED]) - \$380.35 (cleared checks) - \$87.01 (withdrawals) = \$1433.16) (Exhibit 8 [REDACTED] account Bank statement dated [REDACTED])
9. The Department calculated the Appellant's total assets for [REDACTED] was \$2433.23. (Department's Testimony)

10. The Appellant's [REDACTED] statement covering [REDACTED], to [REDACTED], for account acct ending in # [REDACTED] had a balance of \$1,000.10. (Exhibit 7: [REDACTED] account Bank statement dated [REDACTED])
11. The Appellant's [REDACTED] statement covering [REDACTED], to [REDACTED], for account acct ending in # [REDACTED] had a balance of \$1,729.97. (\$2710.16 (beginning balance as of [REDACTED]) - \$846.53 (cleared checks) - \$133.66 (withdrawals) = \$1,729.97) (Exhibit 8: [REDACTED] account Bank statement dated [REDACTED])
12. The Department calculated the Appellant's total assets for [REDACTED] was \$2730.04. (Department's Testimony)
13. The Department calculated the Appellant's total assets for [REDACTED] was \$1000.07 (Department's Testimony)
14. On [REDACTED], the Department sent the Appellant a Notice of Action approving the Appellant's [REDACTED], application for Long Term Care Facility Medicaid effective [REDACTED]. (Exhibit 11: Notice of Action, [REDACTED])
15. The POA believes the Appellant is asset eligible for Medicaid effective [REDACTED] and ongoing because the funds in [REDACTED] acct # [REDACTED] were inaccessible during the eligibility determination period. (POA's Testimony)
16. On [REDACTED], during the Administrative Hearing, the POA provided a letter from [REDACTED] to the Department, and this Hearing Officer that the funds in account # [REDACTED] were used as collateral to open a secured credit card. The funds were released from hold on [REDACTED], when they [REDACTED] Credit Card was closed. (Exhibit C: [REDACTED])
17. On [REDACTED], the POA emailed this Hearing Officer and the Department's Representative a copy of a notarized letter from [REDACTED] reaffirming that the funds in account [REDACTED] were inaccessible because they were used as collateral to open a secured credit card. (Exhibit F: Email from POA / Notarized letter from [REDACTED])
18. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that the Department issue 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]. However, the Appellant requested the hearing record remain opened through [REDACTED], for the submission of additional evidence which caused a 10 – day delay. Because this 10-day delay resulted from the Appellant's request, this decision is not due until [REDACTED], and is therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes provides in part that the Commissioner is authorized 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(1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990)).
3. "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 (B)(1)
4. "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)
5. Purpose. The purpose of the Fair Hearing process is to allow the requester of the Fair Hearing to present his or her case to an impartial hearing officer if the requester claims that the Department has either acted erroneously or has failed to take a necessary action within a reasonable period of time." UPM § 1570.05(A)
6. "Administrative Duties of Fair Hearing Official. The Fair Hearing official renders a Fair Hearing decision in the name of the Department, in accordance with the criteria in this chapter, to resolve the dispute." UPM § 1570.25(C)(2)(k)

The Appellant / POA requested the Administrative Hearing to appeal the denial of Medicaid coverage for the months of [REDACTED] and [REDACTED] due to excess assets, effective [REDACTED].

On [REDACTED], the Department reviewed documents provided by the POA during the hearing regarding the possible inaccessibility of funds in [REDACTED] # [REDACTED] that belonged to the Appellant.

The Department determined those assets were in fact inaccessible and made a revision in the eligibility system to reflect the Appellant was Medicaid eligible as of [REDACTED].

7. "When the actions of the parties themselves cause a settling of their differences, a case becomes moot." *McDonnell v. Maher*, 3 Conn. App. 336 (Conn. App. 1985),

citing, Heitmuller v. Stokes, 256 U.S. 359, 362-3, 41 S.Ct. 522, 523-24, 65 L.Ed. 990 (1921).

Subsequent to the Department's approval of the Appellant's LTC Medicaid benefits, effective [REDACTED], there is no practical relief that can be afforded through an administrative hearing.

DECISION

The Appellant's appeal is **Dismissed as MOOT.**

Shawn P. Hardy
Shawn P. Hardy
Hearing Officer

Cc: Brian Sexton, Operations Manager, DSS, New Britain, CT, Resource Center
Melissa Magalhaes, Fair Hearing Liaison, DSS, Waterbury, CT, Resource Center

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.