

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

██████████ 2024
Signature confirmation

Case: ██████████
Client: ██████████
Request: 233050

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2024, the Department of Social Services (the “Department”) issued a *Notice of Action* to ██████████ (the “Appellant”) denying his ██████████ 2023 HUSKY-C Medicaid application (the “Application”) for long-term care.

On ██████████ 2024, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received the Appellant’s online hearing request.

On ██████████ 2024, the OLCRAH scheduled the Appellant’s administrative hearing for ██████████ 2024. The OLCRAH granted the postponement request of ██████████ (the “Conservator”), the Appellant’s conservator of estate.

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

██████████, ██████████, Conservator
██████████, Counsel for ██████████
██████████, Appellant Witness
Jadene Ricketts, Department Representative
Eva Tar, Hearing Officer

The hearing record closed ██████████ 2024.

STATEMENT OF ISSUE

The issue is whether the Department's denial of the Application is supported by State statute and regulation.

FINDINGS OF FACT

1. On [REDACTED] 2023, the [REDACTED] (the "Facility"), a skilled nursing facility, admitted the Appellant as a patient. (Department Representative Testimony)
2. The Appellant has the following diagnoses: [REDACTED]
[REDACTED]. (Appellant Exhibits 2 and 7)
3. The Appellant has no living family; his wife passed away in 2021 at a different nursing home. (Appellant Witness Testimony)
4. The Appellant doesn't remember things; he is unable to remember his wife's name, when she died, and where she died. The Appellant cannot provide information as to bank accounts. (Appellant Witness Testimony)
5. The Appellant is cognitively impaired. (Appellant Exhibits 2 and 7)
6. On [REDACTED] 2023, the Department received the Application. (Dept. Exhibit 1)
7. On the Application, the Appellant requested assistance obtaining paperwork and banking due to his disability. (Dept. Exhibit 1)
8. From [REDACTED], 2023 through [REDACTED] 2023, the Department issued W-1348LTC: *Verification We Need* forms to the Facility, requesting submission of specific bank statements from multiple financial accounts and proof of other assets by specific deadlines. (Dept. Exhibits 2 through 5, inclusive)
9. On [REDACTED] 2023, the Facility filed a *Petition for Involuntary Appointment of Conservator* with the [REDACTED] Probate Court (the "Probate Court") for the Appellant. (Appellant Exhibit 3)
10. On [REDACTED] 2023, [REDACTED] filed a *Petition for Voluntary Representation by Conservator* with the Probate Court; the petition was signed by the Appellant. (Appellant Exhibit 9)
11. [REDACTED] is not an employee of the Facility; Ms. [REDACTED] described herself to Facility employees as a "family friend." (Appellant Witness Testimony)
12. On [REDACTED] 2023, the Probate Court scheduled a hearing to address Ms. [REDACTED] *Petition for Voluntary Appointment of Conservator* for [REDACTED] 2023. The scheduling order misspelled the Appellant's last name, and the Facility was not identified as an interested party. (Appellant Exhibit 10)

13. On [REDACTED] 2023, the Facility notified the Department by email that the Appellant was mentally incapacitated and did not have a guardian or legal agent to manage his finances or assist with the Application.
14. On [REDACTED] 2023, the Facility requested extensions of the Department's deadlines and asked the Department to leave the Application pending the appointment of a legal representative. (Dept. Exhibit 12)
15. At the time of the Facility's [REDACTED] 2023 communication to the Department, the Facility's [REDACTED] 2023 petition for the involuntary appointment of a conservator and Ms. [REDACTED] [REDACTED] 2023 petition for the voluntary appointment of a conservator were pending with the Probate Court. (Appellant Exhibits 3 and 5)
16. On [REDACTED] 2023, the Department Representative confirmed receipt of the Facility's [REDACTED] 2023 email. (Dept. Exhibit 6)
17. On [REDACTED] 2023, the Probate Court scheduled a hearing to address the Facility's *Petition for Involuntary Appointment of Conservator* for [REDACTED], 2023. (Appellant Exhibit 5)
18. On [REDACTED] 2024, the Department declined the Facility's [REDACTED] 2023 request to leave the Application pending the appointment of a legal representative. (Dept. Exhibit 16)
19. On [REDACTED] 2024, the Department issued a final W-1348LTC: *Verification We Need* forms to the Facility, requesting submission of bank statements from multiple [REDACTED] accounts, statements from a [REDACTED] account, and proof of other assets by [REDACTED] 2024. (Dept. Exhibit 7)
20. On [REDACTED] 2024, the Probate Court scheduled a hearing to address the Facility's *Petition for Involuntary Appointment of Conservator* for [REDACTED] 2024. (Appellant Exhibit 6)
21. On [REDACTED] 2024, the Department issued a *Notice of Action* to the Appellant denying the Application. (Dept. Exhibit 8)
22. On [REDACTED], 2024, the Probate Court appointed [REDACTED] as the Appellant's conservator of estate and Ms. [REDACTED] as the Appellant's conservator of person. (Appellant Exhibit 8)
23. Connecticut General Statutes § 17b-61 (a) provides: "The Commissioner of Social Services or the commissioner's designated hearing officer shall ordinarily render a final decision not later than ninety days after the date the commissioner receives a request for a fair hearing pursuant to section 17b-60, ... , provided the time for rendering a final decision shall be extended whenever the aggrieved person requests or agrees to an extension, or when the commissioner documents an administrative or other extenuating circumstance beyond the commissioner's control...."

On [REDACTED] 2024, the OLCRAH received the Appellant's hearing request. The OLCRAH granted the Conservator's request for a postponement of the [REDACTED] 2024 hearing date,

resulting in a 56-day delay. This hearing decision would have become due by no later than [REDACTED] 2024. This final decision is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes in part designates the Department of Social Services as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

“The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program....” Conn. Gen. Stat. § 17b-262.

“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)).

The Department has the statutory authority to administer the Medicaid program in Connecticut and make such regulations as necessary for the same.

2. Section 17b-80 (a) of the Connecticut General Statutes provides in part that “[t]he commissioner shall grant aid only if he finds the applicant eligible therefor, in which case he shall grant aid in such amount, determined in accordance with levels of payments established by the commissioner,” and “[t]he commissioner, ... , shall in determining need, take into consideration any available income and resources of the individual claiming assistance....”

Section 1505.40 A.1. of the Department’s Uniform Policy Manual (“UPM”) provides: “Prior to making an eligibility determination, the Department conducts a thorough investigation of all circumstances relating to eligibility and the amount of benefits.”

The Department has the authority under Conn. Gen. Stat. § 17b-80 (a) and UPM § 1505.40 A.1. to review the Appellant’s circumstances to determine whether his income and resources were within the HUSKY-C Medicaid program’s limits.

3. “For every program administered by the Department, there is a definite asset limit.” UPM § 4005.05 A.

With respect to the Medicaid program associated with the Aid to the Aged, Blind, and Disabled, Categorically and Medically Needy, “[e]xcept Qualified Medicare Beneficiaries, Specified Low Income Medicare Beneficiaries, Additional Low Income Medicare Beneficiaries, Qualified Disabled and Working Individuals, Working Individuals with Disabilities and Women Diagnosed with Breast or Cervical Cancer), a. The asset limit is \$1,600 for a needs group of one.” UPM § 4005.10 A.2.

As a condition of HUSKY-C Medicaid eligibility, the Appellant was subject to the Medicaid program’s \$1,600.00 asset limit for an individual.

4. "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 Appellant was required to submit requested documentation of his assets to the Department by the Department's deadlines.

5. Title 42, Code of Federal Regulations ("C.F.R.") 435.908 (a) provides: "The agency must provide assistance to any individual seeking help with the application or renewal process in person, over the telephone, and online, and in a manner that is accessible to individuals with disabilities and those who are limited English proficient, consistent with § 435.905 (b) of this subpart."

Section 1005.10 B.1. of the Uniform Policy Manual addresses the right to reasonable accommodation for assistance units.

6. Section 1505.35 C. of the Uniform Policy Manual address the standard of promptness for processing applications.

Section 1505.40 B. 4. of the Uniform Policy Manual provides:

Delays Due to Good Cause (AFDC, AABD, MA Only)

- a. The eligibility determination is delayed beyond the AFDC, AABD or MA processing standard if because of unusual circumstances beyond the applicant's control, the application process is incomplete and one of the following conditions exists:
 - (1) eligibility cannot be determined; or
 - (2) determining eligibility without the necessary information would cause the application to be denied.

UPM § 1505.40 B.4.a.

Due to his cognitive impairment, the Appellant lacked the capacity to attain the requested financial documents during the pendency of the Application.

The Appellant's situation of having two directly opposed, contested petitions pending in the Probate Court for the appointment of a conservator of estate was an unusual circumstance beyond his control.

7. "If the eligibility determination is delayed, the Department continues to process the application until: (1) the application is complete; or (2) good cause no longer exists." UPM § 1505.40 B.4.b.

"PA [public assistance] assistance units may establish good cause for: a. failing to report timely; or b. failing to provide required verification timely." UPM § 1555.10 B.1.

"Good cause may include, but is not limited to: a. illness; b. severe weather; c. death in the immediate family; d. other circumstances beyond the unit's control." UPM § 1555.10 B.2.

The Probate Court's process and timetable for scheduling two hearings to address the Appellant's mental capacity and two concurrently filed petitions for the appointment of a conservator was a circumstance beyond the Appellant's control.

The Appellant had good cause to fail to submit requested financial documents to the Department by its [REDACTED] 2024 deadline.

The Appellant's good cause expired on [REDACTED], 2024 upon the Probate Court's appointment of the Appellant's conservator of estate.

8. "Incomplete Applications. 1. Applicant Failure (All Programs). The following provisions apply if the applicant failed to complete the application *without good cause*: a. ...; b. ...; c. The applicant's failure to provide required verification by the processing date causes: (1) one or more members of the assistance unit to be ineligible if the unverified circumstance is a condition of eligibility;...." UPM § 1505.40 B.1.c. (emphasis added)

The Department's [REDACTED] 2024 denial of the Application was precipitous, as the denial occurred prior to the [REDACTED] 2024 expiration of the Appellant's good cause.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. If it has not already done so, the Department will reopen the Application effective [REDACTED] 2023.
2. The Department will issue an updated W-1348LTC: *Verification We Need* to the Appellant's conservator of estate with a new deadline for the submission of required documentation.
3. Within 14 calendar days of the date of this Decision, or [REDACTED] 2024, documentation of compliance with this Order is due to the undersigned.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

Cc: Jadene Ricketts, DSS-Bridgeport
Annjerry Garcia, DSS-Bridgeport
Robert Stewart, DSS-Bridgeport
Jamel Hilliard, DSS-Bridgeport
Jill Sweeney, DSS-Danbury

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.