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

[REDACTED], 2019
Signature Confirmation

Case ID # [REDACTED]
Client ID # [REDACTED]
Request # [REDACTED]

NOTICE OF DECISION

PARTY

[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED], 2018, the Department of Social Services (the "Department") sent [REDACTED] (the "Appellant") a notice of action discontinuing his assistance for the State-funded Connecticut Home Care Program for Elders ("CHCPE") Medicaid Waiver effective [REDACTED], 2018 due to assets in excess of the program limit.

On [REDACTED], 2018, the Appellant's spouse requested an administrative hearing to contest the Department's decision to discontinue such benefits.

On [REDACTED], 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [REDACTED], 2018 at the Appellant's home address.

On [REDACTED], 2018, OLCRAH, at the Appellant's request, issued a notice rescheduling the hearing for [REDACTED] 2018.

On [REDACTED], 2018, in accordance with sections 17b-60, 17-61 and 4-176e to 4-184 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing at the Appellant's home.

The following individuals were present at the hearing:

, Appellant's Spouse
, Appellant's Daughter by telephone
Pamela Adams, Department's Representative
Christopher Turner, Hearing Officer

The Appellant was not present at the hearing.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department was correct when it discontinued the Appellant's CHCPE assistance effective , 2018 due to assets in excess of the program limit.

FINDINGS OF FACT

1. The Appellant was a recipient of state funded category 4 home care services since /14. (Hearing Record)

2. The Appellant is married and lives with his spouse. (Record)

3. In 2018, the Appellant turned years of age. (Record)

4. On , 2018, the Department received the Appellant's application for State-funded Home Care Waiver services (or "M03" or "CHCPE Cat 2" services). Indicated on the application were two annuities with . (Exhibit 6: W-1 LTC; Hearing summary)

5. On , 2018, the Department received copies of the spouses' annuities. The annuities hold a combined value of documented as and . (Exhibit 3A: Account statement ending ; Exhibit 3B: Account statement ending ; Hearing summary)

6. On , 2018, copies of the annuities were sent to the Department's principal attorney for review. (Exhibit 4: Case notes; Hearing summary)

7. On , 2018, the Department's principal attorney determined the annuities were available assets. (Exhibit 5: E-Mail correspondence)

8. On , 2018, the Department issued a notice to the Appellant discontinuing his Medicaid benefits effective , 2018 because his assets are more than the program limit. (Exhibit 5: Notice dated /18, Hearing summary)

9. Effective January 1, 2018, the CSPA equaled $24,720.00. (Record; Hearing summary)

10. Two hundred percent of $24,720.00 equals $49,440.00 ($24,720.00 x 2.0 = $49,440.00. (Record; Hearing summary)

11. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires a decision be issued within 90 days of the request for an administrative hearing. The Appellant's spouse requested an administrative hearing on [redacted], 2018. Therefore, this decision was due no later than [redacted], 2018. However, the hearing, which was originally scheduled for [redacted], 2018, was rescheduled due to the request of the Appellant's spouse that caused a [redacted] delay. Because of this [redacted] delay, this decision is due no later than [redacted], 2019.

CONCLUSIONS OF LAW

1. Connecticut General Statutes § 17b-2 (6) provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

2. Connecticut General Statutes § 17b-342 provides for the Connecticut home-care program for the elderly. (a) The Commissioner of Social Services shall administer the Connecticut home-care program for the elderly state-wide in order to prevent the institutionalization of elderly persons (1) who are recipients of medical assistance, (2) who are eligible for such assistance, (3) who would be eligible for medical assistance if residing in a nursing facility, or (4) who meet the criteria for the state-funded portion of the program under subsection (i) of this section. For purposes of this section, a long-term care facility is a facility which has been federally certified as a skilled nursing facility or intermediate care facility. The commissioner shall make any revisions in the state Medicaid plan required by Title XIX of the Social Security Act prior to implementing the program. The annualized cost of the community-based services provided to such persons under the program shall not exceed sixty per cent of the weighted average cost of care in skilled nursing facilities and intermediate care facilities. The program shall be structured so that the net cost to the state for long-term facility care in combination with the community-based services under the program shall not exceed the net cost the state would have incurred without the program. The commissioner shall investigate the possibility of receiving federal funds for the program and shall apply for any necessary federal waivers. A recipient of services under the program, and the estate and legally liable relatives of the recipient, shall be responsible for reimbursement to the state for such services to the same extent required of a recipient of assistance under the state supplement program, medical assistance program, temporary family assistance program or supplemental nutrition assistance program. Only a United States citizen or a noncitizen who meets the citizenship requirements for eligibility under the Medicaid program shall be eligible for home-care services under this section, except a qualified alien, as defined in Section 431 of Public Law 104-193, admitted into the United States on or after August 22, 1996, or other lawfully residing immigrant alien determined eligible for services under this section prior to July 1, 1997, shall remain eligible for such services. Qualified aliens or other lawfully

residing immigrant aliens not determined eligible prior to July 1, 1997, shall be eligible for services under this section subsequent to six months from establishing residency. Notwithstanding the provisions of this subsection, any qualified alien or other lawfully residing immigrant alien or alien who formerly held the status of permanently residing under color of law who is a victim of domestic violence or who has mental retardation shall be eligible for assistance pursuant to this section. Qualified aliens, as defined in Section 431 of Public Law 104-193, or other lawfully residing immigrant aliens or aliens who formerly held the status of permanently residing under color of law shall be eligible for services under this section provided other conditions of eligibility are met.

3. Connecticut General Statutes § 17b-342 (c) provides the community-based services covered under the program shall include, but not be limited to, the following services to the extent that they are not available under the state Medicaid plan, occupational therapy, homemaker services, companion services, meals on wheels, adult day care, transportation, mental health counseling, care management, elderly foster care, minor home modifications and assisted living services provided in state-funded congregate housing and in other assisted living pilot or demonstration projects established under state law. Personal care assistance services shall be covered under the program to the extent that (1) such services are not available under the Medicaid state plan and are more cost effective on an individual client basis than existing services covered under such plan, and (2) the provision of such services is approved by the federal government. Recipients of state-funded services and persons who are determined to be functionally eligible for community-based services that have an application for medical assistance pending shall have the cost of home health and community-based services covered by the program, provided they comply with all medical assistance application requirements. Access agencies shall not use department funds to purchase community-based services or home health services from themselves or any related parties

   Uniform Policy Manual ("UPM") § 8040 provides for Connecticut Home Care Program for Elders program. This program provides home health and community based services either under a waiver to the Medicaid program or under an appropriation by the General Assembly. The financial eligibility requirements for these two parts of the program differ. The Medicaid waiver requirements are specified under UPM 2500 "Medical Coverage Groups" and other areas of the UPM. This section of the manual applies to the state-funded portion of the program. The state-funded portion is not an entitlement program and services and access to services may be limited based on available funding. The Department may place new applicants on a waiting list in order of their date of application within the program region. The Connecticut Home Care Program for Elders provides an alternative to the elderly individual who is inappropriately institutionalized or at risk of institutionalization as long as the individual is not taking an unacceptable risk by putting his or her life and health and that of others in immediate jeopardy.

UPM § 8040.10 (A) provides the Department screens individuals for possible participation in the Connecticut Home Care program. An individual is first screened for the Medicaid Waiver portion of this program. If the individual does not meet the eligibility criteria for participation in the Medicaid Waiver portion of this program, he or she is screened for participation in the state-funded portion of the program. Individuals in the following circumstances are screened for participation in the Connecticut Home Care program: 1. those individuals identified by a nursing facility, who are expected to be admitted into a nursing home directly from their home in the community within 60 days; or 2. those individuals expected to be admitted into a nursing home upon hospital discharge, when they had been admitted to the hospital directly from their home in the community; or 3. those individuals who are currently institutionalized but would be able to remain at home without risk to their or others safety if home care services were provided; or 4. those individuals who contact the Department and want to be considered for participation in the program.

The Department properly screened the Appellant for the state-funded portion of the Connecticut Home Care program.

4. Connecticut General Statutes § 17b-342 (i) (1) provides on and after July 1, 1992, the Commissioner of Social Services shall, within available appropriations, administer a state-funded portion of the program for persons (A) who are sixty-five years of age and older; (B) who are inappropriately institutionalized or at risk of inappropriate institutionalization; (C) whose income is less than or equal to the amount allowed under subdivision (3) of subsection (a) of this section; and (D) whose assets, if single, do not exceed the minimum community spouse protected amount pursuant to Section 4022.05 of the department's uniform policy manual or, if married, the couple's assets do not exceed one hundred fifty per cent of said community spouse protected amount and on and after April 1, 2007, whose assets, if single, do not exceed one hundred fifty per cent of the minimum community spouse protected amount pursuant to Section 4022.05 of the department's uniform policy manual or, if married, the couple's assets do not exceed two hundred per cent of said community spouse protected amount.

   Regulations of Connecticut State Agencies § 17b-342-1 (c) (4) provides for category types. The following three category types define the funding sources which pay for the client's community based services and home health services. The category types apply to care managed cases, self-directed cases and the assisted living service program component. (A) Category Type 1: This category applies to elders who are at risk of institutionalization but who might not immediately enter a hospital or nursing facility in the absence of the program. This category type is available to elders who meet the financial and functional eligibility criteria for the state-funded portion of the program as defined in section 17b-10-1 of the Regulations of Connecticut State Agencies and the department's Uniform Policy Manual section 8040. Some clients under Category Type 1 may be Medicaid recipients because they do not meet the functional criteria for the Medicaid waiver portion of the program. (B) Category Type 2: This category applies to elders who would otherwise

require admission to a nursing facility on a short or long term basis. This category type is available to elders who meet the financial and functional eligibility criteria for the state-funded portion of the program as defined in the department's Uniform Policy Manual section 8040. (C) Category Type 3: This category applies to elders who, but for the provision of home care services, would require nursing facility care funded by Medicaid. This category type is available to elders who meet the financial and functional eligibility criteria for Medicaid under the federal waiver as defined in the department's Uniform Policy Manual section 2540.92.

The Department properly assessed the Appellant for category 2 benefits based on his turning age [redacted], 2018.

5. Connecticut General Statutes § 17b-261. (c) provides 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, 42 USC 1396p. The provisions of this subsection shall not apply to a special needs trust, as defined in 42 USC 1396p(d)(4)(A). For purposes of determining whether a beneficiary under a special needs trust, who has not received a disability determination from the Social Security Administration, is disabled, as defined in 42 USC 1382c(a)(3), the Commissioner of Social Services, or the commissioner's designee, shall independently make such determination. The commissioner shall not require such beneficiary to apply for Social Security disability benefits or obtain a disability determination from the Social Security Administration for purposes of determining whether the beneficiary is disabled.

   UPM § 4000.01 defines an "available asset" as "cash or any item of value which is actually available to the individual or which the individual has the legal right, authority or power to obtain, or to have applied for, his or her general or medical support.

UPM § 4005.05(A) provides that for every program administered by the Department there is definite asset limit.

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: a. available to the unit; or b. deemed 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.

The Department correctly determined the Appellant's spouse has two annuities that are accessible and available for the Appellant's general support.

6. UPM § 8040.35 (A) provides that assets in the Connecticut Home Care Program for Elders are treated in the same way and to the same extent as in the Medicaid Program except for the Spousal Assessment provision covered under the Medicare Catastrophic Coverage Act (MCCA). Spousal assessments are not permitted in the state-funded component of the Connecticut Home Care Program for Elders. All other assets for married individuals are treated the same as they are for MCCA spouses, including asset disregards provided under insurance policies certified by the Connecticut Partnership for Long Term Care (Cross Reference: 4022.10).

UPM 8040.35 (B) (2) provides for a married individual, the couple's total assets may not exceed 200% of the minimum Community Spouse Protected Amount ("CSPA") (cross ref 4022.05).

The Department correctly determined the Appellant's assets of exceed the program limit of .

The Department correctly discontinued the Appellant's eligibility for the state-funded Connecticut Home Care Program for Elders as the Appellant's assets exceeded the program limit of $.

DECISION

The Appellant's appeal is denied.

Christopher Turner
Hearing Officer

Cc: Pamela J. Adams, DSS Central 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, law, and 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 Legal Counsel, Regulations, and Administrative Hearings, 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, if 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. 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 his 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.