

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES OFFICE OF LEGAL COUNSEL,  
REGULATION AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CONNECTICUT 06105-3730

██████████ 2016  
Signature Confirmation

CL ID # ██████████  
Request # 729567

**NOTICE OF DECISION**

**PARTY**

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

**PROCEDURAL BACKGROUND**

On ██████████ 2015, the Department of Social Services (the "Department"), ██████████  
██████████ (the "Appellant") a Notice of Action ("NOA") denying his application for  
emergency medical assistance for non-citizens under the Medicaid program.

On ██████████ 2015, the Appellant's Authorized Representative at Cardon Outreach  
requested an administrative hearing to contest the Department's action.

On ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative  
Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for  
██████████ 2015.

On ██████████ 2015, 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 were present at the hearing:

██████████ Appellant  
██████████ Appellant's Witness and son  
Blair Baumel, Cardon Outreach, Appellant's Authorized Representative ("AREP")  
Al Grande, Department's Representative  
Sybil Hardy, Hearing Officer

## **STATEMENT OF THE ISSUE**

The issue is whether the Department's denial of the Appellant's application for emergency medical assistance for non-citizens under the Medicaid program was correct.

## **FINDING OF FACTS**

1. The Appellant is a lawful, permanent resident of the United States since 2012. (Appellant's Witness' Testimony)
2. The Appellant is 66 years old (DOB [REDACTED]/49). (Appellant's Witness' Testimony)
3. The Appellant is married and lives with his 59 year old (DOB [REDACTED]/56) spouse. (Appellant's Witness' Testimony)
4. The Appellant is unemployed and receives no unearned income. (Appellant's Witness' Testimony)
5. During [REDACTED] 2015, the Appellant was admitted to [REDACTED] Hospital for evaluation of jaundice and was found to have a biliary stricture and underwent endoscopic retrograde cholangiopancreatography ("ERCP") with cytology, biopsy and placement of a stent. (Exhibit B: [REDACTED] Hospital Medical Records)
6. The following are possible risks of the ERCP procedure: perforation, infection, bleeding and pancreatitis were explained to the Appellant. (Exhibit B)
7. On [REDACTED] 2015, the Appellant was asymptomatic at the time he went to [REDACTED] Hospital for a routine stent change. (Exhibit B)
8. Only [REDACTED] 2015, the Appellant developed a temperature of 101.2 after his stent change procedure and proceeded to have shaking chills over the next two days associated with an elevation in white blood count to 15,400. (Exhibit B, Exhibit G: Patient Results)
9. On [REDACTED] 2015 the Appellant was admitted to [REDACTED] Hospital with a diagnosis of post-ERCP fever, Bacteremia with Liver Abscess. He has obstructive jaundice from common bile duct stricture and pancreatic mass of questionable malignancy; hypertension. (Exhibit 2: Review from Colonial Cooperative Care, Inc. Medical Review Team, Exhibit 3)
10. On [REDACTED] 2015, the Department received from the Appellant a request for emergency medical assistance for Non-Citizen. (Hearing Record)

11. On [REDACTED] 2015, the Appellant was discharged from [REDACTED] Hospital after a stay of 9 days. (Exhibit 3)

12. On [REDACTED] 2015, the Appellant was discharged from [REDACTED] Hospital with the following medications:

Name	Dosage	Frequency	Treats
Acetaminophen	650mg		Fever
Flagyl	500mg	daily	Infections
Levaquin	500mg	daily for month	Infections
Lisinopril	20mg	daily	Hypertension
Magnesium oxide	400mg	2 times Daily	Indigestion
Norvasc	5mg	daily	Hypertension
Pantoprazole	40mg	daily	Acid reflux
Zolpidem	5mg	daily	Sleep aid

(Exhibit F: [REDACTED] Hospital Stat Transfer Summary)

13. On [REDACTED] 2015, the Appellant was discharged home from [REDACTED] Hospital. (Exhibit F)

14. From the period of [REDACTED] 2015 through [REDACTED] 2015, the Appellant has had multiple admissions to area hospitals to treat his medical condition. (Appellant's Authorized Representative)

15. The Appellant has had several medical complications since his procedure to put in the stent. (Appellant's Witness' Testimony)

16. The Appellant has no other private medical insurance. (Appellant's Witness' Testimony)

17. On [REDACTED] 2015, the Department sent the Appellant a Notice of Action denying his application for emergency medical assistance for Non-Citizens for the months of [REDACTED] 2015 through [REDACTED] 2015 because the medical information submitted does not meet the criteria for emergency medical services.

### **CONCLUSION OF LAW**

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Medicaid program.
2. Title 42 of the Code of Federal Regulation ("CFR") Section 440.255(b) provides that Legalized aliens eligible only for emergency services and services for pregnant women. Aliens granted lawful temporary resident status, or lawful permanent resident status under sections 245A, 210 or 210A of the Immigration one of the exempt groups described in §§ 435.406(a)(3) and 436.406(a)(3) and who meet all

other requirements for Medicaid will be eligible for the following services—

- (1) Emergency services required after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such as the absence of immediate medical attention could reasonably be expected to result in:
  - (i) Placing the patient's health in serious jeopardy;
  - (ii) Serious impairment to bodily functions; or
  - (iii) Serious dysfunction of any bodily organ or part
3. The Appellant is a lawful permanent resident who has resided in the state of Connecticut less than five years.
4. Title 42 of the Code of Federal Regulation ("CFR") § 440.255©(1) provides that effective January 1, 1987, aliens who are not lawfully admitted for permanent residence in the United States or permanently residing in the United States under color of law must receive the services necessary to treat the condition defined in paragraph (1) of this section (1) if the alien has, after sudden onset, a medical condition (including emergency labor and delivery manifesting itself by acute symptom of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:
  - (i) Placing the patient's health in serious jeopardy;
  - (ii) Serious impairments to bodily functions; or
  - (iii) Serious dysfunction of any bodily organ or part; and
  - (iv) The alien otherwise meets the requirements in § 435.406(c) and 436.406(c) of this subpart.
5. The Appellant had a sudden onset of a medical condition that could jeopardize his health or cause dysfunction of a bodily organ or part.
6. Uniform Policy Manual ("UPM") § 3005.08 (B) provides the eligibility requirements for non-citizen arriving in U.S. on or after 8/22/96 and provides that an eligible non-citizen is one who:
  1. is admitted to the U.S. as a refugee under section 207 of the Immigration and Nationality Act; or
  2. is granted asylum under section 208 of such act; or
  3. whose deportation is being withheld under section 243(h) of such act (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such act (as amended by section 305(a) of division C of Public Law 104-208); or
  4. is lawfully residing in the state and is:
    - a. a veteran (as defined in section 101, 1101, or 1301, or as

- described in section 107 of title 38, United States Code) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38 U.S.C.; or
- b. on active duty (other than active duty for training) in the Armed Forces of the United States; or
  - c. the spouse or unmarried dependent child of an individual described in subparagraph a or b or the unremarried surviving spouse of a deceased individual described in subparagraph a or b if the marriage fulfills the requirements of section 1304 of title 38, U.S.C.; or
5. is granted status as a Cuban and Haitian entrant under section 501 (e) of the Refugee Education Assistance Act of 1980; or
  6. is admitted to the U.S. as an Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101 (e) of Public Law 100-202 and amended by the 9th proviso under MIGRATION AND REFUGEE ASSISTANCE in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100-461, as amended); or
  7. is an American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act apply; or
  8. is a member of an Indian tribe under section 4 (e) of the Indian Self-Determination and Education Assistance Act; or
  9. is receiving SSI; or
  10. has lawfully resided in the U.S. for at least five years and:
    - a. is lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act; or
    - b. is paroled into the U.S. under section 212 (d) of such act for a period of at least one year; or
    - c. is granted conditional entry pursuant to section 203 (a) (7) of such act as in effect prior to April 1, 1980; or
    - d. has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent, or by a member of the spouse or parent's family living with the non-citizen and the spouse or parent

allowed such battery or cruelty to occur, but only if:

- (1) the Department determines that the battery or cruelty has contributed to the need for medical assistance; and
  - (2) the non-citizen has been approved or has an application pending with the INS under which he or she appears to qualify for:
    - (a) status as a spouse or child of a U.S. citizen pursuant to clause (ii), (iii) or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act; or
    - (b) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of such act; or
    - (c) suspension of deportation and adjustment of status pursuant to section 244(a)(3) of such act; or
    - (d) status as a spouse or child of a U.S. citizen pursuant to clause (i) of section 204(a)(1)(A) of such act, or classification pursuant to clause (i) of section 204(a)(1)(B) of such act; and
  - (3) the individual responsible for such battery or cruelty is not presently residing with the person subjected to such battery or cruelty; or
- e. is a non-citizen whose child has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the non-citizen (without the active participation of the non-citizen in the battery or cruelty), or by a member of the spouse or parent's family living with the non-citizen and the spouse or parent allowed such battery or cruelty to occur, but only if the criteria in subparagraph d (1), (2) and (3) above are met; or
  - f. is a non-citizen child living with a parent who has been battered or subjected to extreme cruelty in the U.S. by that parent's spouse or by a member of the spouse's family living with the parent and the spouse allowed such battery or cruelty to occur, but only if the criteria in subparagraph d (1), (2) and (3) above are met; or
11. is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian Tribe at the time that tribe rendered assistance to United States personnel during the Viet Nam era. The individual's spouse, surviving spouse and unmarried dependent

children are also eligible.

7. UPM § 3005.08(c) states that a non-citizen who does not fall into one of the categories listed in A or B is eligible for MA Only to cover an emergency medical condition and only if the non-citizen is otherwise eligible for Medicaid.
8. The Department correctly determined that the Appellant is a lawful permanent resident living in the United States less than five years.
9. The Department incorrectly determined that the Appellant's medical condition is not emergent and does not place the Appellant's health in serious jeopardy or there is not serious impairments to bodily functions or there is not serious dysfunction of any bodily organ or part.
10. The Department incorrectly denied emergency medical assistance for non-citizens under the Medicaid program because the Appellant does not meet the criteria under the federal and state requirements.

### **DISCUSSION**

After reviewing the evidence and testimony provided it is decided that the Department incorrectly denied the Appellant emergency medical services under the Medicaid program. The Appellant had a procedure to change his stent but developed complications after the procedure was done. When Appellant was admitted to [REDACTED] Hospital on [REDACTED] 2015, he had a fever, jaundice, liver abscess and a biliary stricture that was suspicious for malignancy. Treatment of the Appellant's medical conditions was not a scheduled procedure and can have life threatening consequences if left untreated.

### **DECISION**

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

### **ORDER**

1. The Department shall go back and re-open the Appellant's application effective [REDACTED] 2015 and grant emergency medical assistance if the Appellant meets all other requirements for the Medicaid program.
2. Compliance with this order shall be submitted to the undersigned no later than [REDACTED] 2016.

*Sybil Hardy*  
Sybil Hardy  
Hearing Officer

Pc: Judy Williams, Operations Manager, DSS R.O. # 60; Waterbury  
Karen Main, Operations Manager, DSS R.O. # 60; Waterbury  
Al Grande, Hearings Liaison, DSS R.O. # 60; Waterbury  
Blair Baumel, Cardon Outreach, 80 Seymour St., Hartford, CT 06106



### **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, 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 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.