

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 ID #750066

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department"), issued a Notice of Denial to ██████████ (the "Appellant") denying the Appellant's application for the Medicare Savings Program benefits.

On ██████████ 2016, the Appellant requested an administrative hearing to contest the Department's action.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2016.

On ██████████ 2016, 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:

██████████, the Appellant
██████████ the Appellant's daughter and translator
██████████, the Appellant's oldest daughter and translator
Guerline Dominique, Department's Representative

Maureen Foley-Roy, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's denial of the Appellant's application for benefits through the Medicare Savings Program was correct.

FINDING OF FACTS

1. The Appellant is 86 years old and is a recipient of both Medicare A and Medicare B. (Exhibit 1: Application and Appellant's testimony)
2. The Appellant must pay a \$300 a month for her Medicare B premium, which includes a penalty assessed by Medicare administration. (Appellant's testimony)
3. The Appellant is not a U.S. citizen. (Testimony)
4. The Appellant was a permanent resident of the United States for many years. She was employed in the United States and receives a Social Security benefit. (Appellant's testimony)
5. In 1990, the Appellant returned to Portugal to live and care for her elderly parents. (Appellant's testimony)
6. The Appellant lost her permanent resident status and came to the United States on a visa several times to visit. (Appellant's testimony)
7. In 2013, the Appellant returned to the United States to live.
8. On ██████████ 2013, the Appellant was granted status of a lawful permanent resident. (Exhibit 4: Homeland Security Document)
9. On ██████████ 2015, the Department received the Appellant's application for the Medicare Savings Program. (Exhibit 1)
10. On ██████████ 2015, the Department denied the Appellant's application for benefits through the Medicare Savings Program because she was not a U.S. citizen or eligible alien. (Exhibit 2: Notice of Denial)

CONCLUSION OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Medicaid program.
2. Uniform Policy Manual (“UPM”) § 2540.94 A 1 a and b provides for coverage group description of the Qualified Medicare Beneficiaries and states that this group includes individuals who are entitled to hospital insurance benefits under part A of the Title XVIII of the Social Security Act and have income and assets equal to or less than the limits.
3. UPM § 2540.01 D provides for the technical and procedural requirements for medical assistance and states that unless otherwise stated in particular coverage group requirements, all individuals must meet the MA technical and procedural requirements to be eligible for Medicaid.
4. UPM § 3005.05 provides that in order to receive benefits from any assistance program an individual must be either a citizen or an eligible non-citizen.
5. UPM § 3005.08 (A) provides for eligible non- citizens who arrived in the United States prior to August 22, 1996.
6. 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.

4. 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.
5. The Department correctly determined that the Appellant was residing in the U.S. as a non-citizen and did not meet any of the categories of eligible non-citizens found in UPM § 3005.08.
6. The Department correctly denied the Appellant's application for the Medicare Savings Program as she is not either a citizen of the United States or an eligible non-citizen.

DECISION

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

Maureen Foley-Roy
Maureen Foley-Roy
Hearing Officer

C: Musa Mohamud, Judy Williams, Operation Managers, DSS R.O. # 10 Hartford
Tricia Morelli, Program Manager, Hartford
Guerline Dominique, Fair Hearing Liaison, Hartford

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.

