

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

██████████ 2017
Signature Confirmation

Client ID # ██████████
Application # ██████████
Hearing Request # 811911

NOTICE OF DECISION

PARTY

██████████
C/O ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Health Insurance Exchange Access Health CT (“AHCT”) sent ██████████ (the “Appellant”) a notice denying his application for HUSKY D Medicaid because his income was over the limit.

On ██████████ 2016, ██████████ executrix of the Appellant’s estate, requested a hearing to contest AHCT’s denial of Medicaid benefits. OLCRAH granted good cause for the timeliness of the request.

On ██████████ 2017, the Office of legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2017.

On ██████████ 2017, at the Appellant’s request, OLCRAH issued a notice rescheduling the hearing for ██████████ 2017.

On ██████████ 2017, at the Appellant’s request, OLCRAH issued a notice rescheduling the hearing for ██████████ 2017.

On ██████████ 2017, at the Appellant’s request, OLCRAH issued a notice rescheduling the hearing for ██████████ 2017.

On April 24, 2017, in accordance with sections 17b-60, 17b-264 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, Title 45 Code of Federal Regulations (“CFR”) §§ 155.505(b) and 155.510 and/or 42 CFR § 457.113, OLCRAH held an administrative hearing by telephone. The following individuals were present at the hearing:

██████████ executrix of the Appellant’s estate
Yomayra Soto, MedData, Authorized Representative for ██████████
Judy Boucher, AHCT Representative
James Hinckley, Hearing Officer

The record was held open until ██████████ 2017 for AHCT to provide additional information, and until ██████████ 2017 for time for the Appellant to comment on the information. On ██████████ 2017, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether AHCT was correct when it denied the Appellant’s application for HUSKY D Medicaid.

FINDINGS OF FACT

1. The Appellant was born ██████████ 1952. (hearing Record)
2. The Appellant began receiving Social Security early retirement at age 62. (██████████ testimony)
3. The Appellant and ██████████ were married for 35 years, but separated and lived apart during the last 2 years of their marriage during which time ██████████ was a resident of Pennsylvania. (██████████ testimony, Hearing Record)
4. Federal tax rules allow married individuals living in different states to use the filing status married, filing jointly if both individuals agree to file using that status; for tax year 2015 the Appellant and ██████████ filed their taxes jointly. (██████████ testimony, Hearing Record)
5. In ██████████ 2015, the Appellant required institutionalization in Kimberly Hall South, a nursing facility. (██████████ testimony, Hearing Record)
6. The Appellant remained in a nursing facility from ██████████ 2015 until ██████████ 2016, and during that time he had medical coverage through the Department’s program, Medicaid for Low Income Adults who are residents of a nursing facility,

which paid for his care at the facility. ([REDACTED] testimony, Hearing Record)

7. On [REDACTED] 2016, the Appellant was discharged from the facility to his home address in the community, where he was expected to continue to reside indefinitely. ([REDACTED] testimony)
8. After the Appellant's [REDACTED] 2016 discharge from the nursing facility, his Medicaid benefits were discontinued effective [REDACTED] 2016, and after that date he had no other medical coverage. ([REDACTED] testimony, Hearing Record)
9. On [REDACTED] 2016, the Appellant became gravely ill, and was incapacitated, and was admitted to the intensive care unit at Hartford Hospital. ([REDACTED] testimony)
10. On [REDACTED] 2016, [REDACTED] applied to AHCT for medical coverage for the Appellant; [REDACTED] was acting as a representative for the Appellant, as his spouse, his conservator, and as a concerned party. [REDACTED] did not apply for medical coverage for herself, since she was a resident of Pennsylvania. ([REDACTED] testimony, Hearing Record)
11. AHCT records indicate that the [REDACTED] 2016 application was filed by telephone. (AHCT Representative's testimony)
12. On [REDACTED] 2016, while [REDACTED] was attempting to file the Appellant's application online, she experienced system issues and called AHCT and was on the telephone with a representative during the application process; [REDACTED] had the understanding that she had filed the application online, but it is possible that the representative took over the process from her and filed the application as a telephone application. ([REDACTED] testimony, AHCT Representative's testimony, Ex. 5: Date and Call Notes)
13. The Information memorialized on the [REDACTED] 2016 application reflects that the Appellant and [REDACTED] were married, that the Appellant was applying for medical coverage but [REDACTED] was not applying for coverage, that the Appellant was a resident of Connecticut and [REDACTED] was a resident of Pennsylvania, and that the Appellant's tax filing status for 2016 was married filing taxes together; the application also reflected that the Appellant had \$0 income and that [REDACTED] had \$55,000.00 in yearly income. (Ex. 1: Application Information)
14. Not all of the information reflected on the application is correct; while [REDACTED] reported to the representative that the Appellant was receiving \$1,024.00 monthly in Social Security early retirement benefits, the application reflects that the Appellant had \$0 income. (Ex.1, [REDACTED] testimony, Hearing Record)

15. On [REDACTED] 2016, AHCT denied the Appellant's application for HUSKY D adult Medicaid for the reason that he was in a household with monthly income of \$4,583.00, which exceeded the Medicaid monthly income limit for HUSKY D of \$1,366.00. (AHCT Representative's testimony, Hearing Record)
16. On [REDACTED] 2016, AHCT issued a notice to the Appellant informing him that he did not qualify for HUSKY D because he was in a household with \$4,583.00 in income, which exceeded the limit based on a household size of 2, but informing Susan Venerable that she qualified to receive up to \$295.00 in premium tax credits per month. (Ex. 2: *Here are the Results of your Health Care Application* notice dated [REDACTED] 2016)
17. The [REDACTED] 2016 application denial was based on the assumption that the couple intended to file their taxes as married filing jointly for tax year 2016; all of the income counted for the Appellant's eligibility determination was income that belonged to the Appellant's spouse, [REDACTED] (AHCT Representative's testimony, Hearing Record)
18. [REDACTED] actual federal tax filing status for 2016 will be married, filing separately. (stipulated)
19. On [REDACTED] 2016, the Appellant died. (Hearing Record)
20. After the Appellant's death, [REDACTED] became executrix of the Appellant's estate. (Hearing Record)
21. The case notes of the Department and of AHCT both contain numerous errors of fact, such as multiple instances of the wrong date of death listed for the Appellant, as well as incorrect information regarding the Appellant's disability status with Social Security and his Medicare eligibility status. (Ex. 5:, Ex. 6: Case Notes and Narratives)
22. Following the Appellant's HUSKY D denial, [REDACTED] was notified that the Appellant's case was being referred to the Department to be processed for HUSKY C, which is Medicaid for the Aged, Blind or Disabled. (testimony, Ex. A: MedData Notes)
23. [REDACTED] was led to believe that the Appellant's case was being worked on, and would eventually be granted. ([REDACTED] testimony)
24. Both AHCT and the Department worked on, or notated, or otherwise "touched" the Appellant's case on multiple occasions during [REDACTED] 2016, [REDACTED] 2016 and [REDACTED] 2016. (Ex. 5, Ex. 6)

25. The Department ultimately determined that the Appellant was not eligible for HUSKY C because he was incorrectly identified as being eligible for Medicare when he was not, and the case was referred back to AHCT which determined that it still was unable to grant HUSKY D for the Appellant. (Ex. 5, Ex. 6)
26. The Department never issued a denial notice of HUSKY C, because no formal application was ever processed, because HUSKY C was the inappropriate program for the Appellant. (Hearing Record)
27. On [REDACTED] 2016, [REDACTED] requested a hearing for the Appellant, 67 days after the [REDACTED] 2016 notice of denial of HUSKY D was issued. (Hearing Record)
28. OLCRAH granted good cause for timeliness from the 60 day time limit because no NOA was ever issued for the HUSKY C denial, and because the reason [REDACTED] [REDACTED] did not initially request a hearing on the HUSKY D denial was that she was of the belief that a Medicaid grant from HUSKY C would be forthcoming. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes ("Conn. Gen. Stat.") provides for acceptance of federal grants for medical assistance. The Commissioner of Social Services is authorized to take advantage of the medical assistance programs provided in Title XIX, entitled "Grants to States for Medical Assistance Programs", contained in the Social Security Amendments of 1965 and may administer the same in accordance with the requirements provided therein, including the waiving, with respect to the amount paid for medical care, of provisions concerning recovery from beneficiaries or their estates, charges and recoveries against legally liable relatives, and liens against property of beneficiaries.
2. Conn. Gen. Stat. Sec. 17b-264 provides for the extension of other public assistance provisions. All of the provisions of sections 17b-22, 17b-75 to 17b-77, inclusive, 17b-79 to 17b-83, inclusive, 17b-85 to 17b-103, inclusive, and 17b-600 to 17b-604, inclusive, are extended to the medical assistance program except such provisions as are inconsistent with federal law and regulations governing Title XIX of the Social Security Amendments of 1965 and sections 17b-260 to 17b-262, inclusive, 17b-264 to 17b-285, inclusive, and 17b-357 to 17b-361, inclusive.
3. Title 45 of the Code of Federal Regulations ("CFR") § 155.505(c)(1) provides that Exchange eligibility appeals may be conducted by a State Exchange appeals entity or an eligible entity described in paragraph (d) of this section that is

designated by the Exchange, if the Exchange establishes an appeals process in accordance with the requirements of this subpart.

4. 45 CFR § 155.505(d) provides that an appeals process established under this subpart must comply with § 155.110(a).
5. 45 CFR § 155.110(a) provides that the State may elect to authorize an Exchange established by the State to enter into an agreement with an eligible entity to carry out one or more responsibilities of the Exchange. Eligible entities are: (1) An entity: (i) incorporated under, and subject to the laws of, one or more States; (ii) That has demonstrated experience on a State or regional basis in the individual and small health insurance markets and in benefit coverage; and (iii) Is not a health insurance issuer or treated as a health insurance issuer under subsection (a) or (b) of section 52 of the Code of 1986 as a member of the same controlled group of corporations (or under common control with) as a health insurance issuer; or (2) The State Medicaid agency, or any other State agency that meets the qualifications of paragraph (a)(1) of this section.
6. 45 CFR § 155.300(b) *Medicaid and CHIP* In general, references to Medicaid and CHIP regulations in this subpart refer to those regulations as implemented in accordance with rules and procedures which are the same as those applied by the State Medicaid or State CHIP agency or approved by such agency in the agreement described in § 155.345(a).
7. 45 CFR § 155.305(c) *Eligibility for Medicaid* The Exchange must determine an applicant eligible for Medicaid if he or she meets the non-financial eligibility criteria for Medicaid for populations whose eligibility is based on MAGI-based income, as certified by the Medicaid agency in accordance with 42 CFR 435.1200(b)(2), has a household income, as defined in 42 CFR 435.603(d), that is at or below the applicable Medicaid MAGI-based income standard as defined in 42 CFR 435.911(b)(1) and –
 - (1) Is a pregnant woman, as defined in the Medicaid State Plan in accordance with 42 CFR 435.4;
 - (2) Is under age 19;
 - (3) Is a parent or caretaker relative of a dependent child, as defined in the Medicaid State plan in accordance with 42 CFR 435.4; or
 - (4) Is not described in paragraph (c)(1), (2), or (3) of this section, is under age 65 and is not entitled to or enrolled for benefits under Part A of title XVIII of the Social Security Act, or enrolled for benefits under Part B of title XVIII of the Social Security Act.
8. AHCT must determine Medicaid eligibility for the Appellant because he is part of the population of individuals described in 45 CFR 155.305(c)(4)
9. 42 CFR § 435.119(b) provides that the agency must provide Medicaid to individuals who:

- (1) Are age 19 or older and under age 65;
- (2) Are not pregnant;
- (3) Are not entitled to or enrolled for Medicare benefits under part A or B of title XVIII of the Act;
- (4) Are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part; and
- (5) Have household income that is at or below 133 percent FPL for the applicable family size.

10. 45 CFR § 155.320(c)(2) *Verification process for Medicaid and CHIP – (i) Household size.* (A) The Exchange must verify household size in accordance with 42 CFR 435.945(a) or through other reasonable verification procedures consistent with the requirements in 42 CFR 435.952.

11. 42 CFR § 435.945(a) provides that except where the law requires other procedures (such as for citizenship and immigration status information), the agency may accept attestation of information needed to determine the eligibility of an individual for Medicaid (either self-attestation by the individual or attestation by an adult who is in the applicant's household, as defined in § 435.603(f) of this part, or family, as defined in section 36B(d)(1) of the Internal Revenue Code, an authorized representative, or, if the individual is a minor or incapacitated, someone acting responsibly for the individual) without requiring further information (including documentation) from the individual.

12. Attestation from ██████████ acting on the Appellant's behalf, is acceptable proof of the Appellant's household size without requiring further information. When the application was filed, she was acting responsibly as the Appellant's representative while he was incapacitated, and was also his conservator. She is acting now on behalf of the Appellant's estate as executrix of the estate.

13. Tax Filing Status. You can choose married filing jointly as your filing status if you are considered married and both you and your spouse agree to file a joint return.

You can choose married filing separately as your filing status if you are married. If you and your spouse don't agree to file a joint return, you must use this filing status unless you qualify for head of household status. [IRS Publication 501, 2016]

14. The Appellant's tax filing status for 2016 cannot be married, filing jointly, because ██████████ did not agree to file a joint return with her spouse for that year. ██████████ filing status for 2016 is married, filing separately, so the Appellant's filing status for 2016 must also be married, filing separately.

15. In 2016, the Appellant's income of \$1,024.00 monthly from Social Security was the equivalent of \$12,288.00 in annual income.

16. Who Must File. For 2016, taxpayers with gross income of at least \$4,050 are required to file a return if their filing status is married, filing separately. Gross income means all income that isn't exempt from tax. [IRS Publication 501, 2016]
17. Income Exempt from Tax. If one-half of a taxpayer's Social Security benefits plus all other income exceeds a base amount, some portion of the benefits may be taxable. For an individual who is married, filing separately and lived apart from his/her spouse for all of 2016, the base amount is \$25,000. [IRS Publication 915, 2016]
18. The Appellant was not required to file a return for 2016 because he had no taxable income. His income did not exceed the base amount of \$25,000 that would result in any portion of his Social Security being taxable.
19. 42 CFR § 435.603(f) *Household—(3) Rules for individuals who neither file a tax return nor are claimed as a tax dependent.* In the case of individuals who do not expect to file a Federal tax return and do not expect to be claimed as a tax dependent for the taxable year in which an initial determination of eligibility is being made, or who are described in paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this section, the household consists of the individual and, if living with the individual—(i) The individual's spouse; (ii) The individual's natural, adopted and step children under the age specified in paragraph (f)(3)(iv) of this section; and (iii) In the case of individuals under the age specified in paragraph (f)(3)(iv) of this section, the individual's natural, adopted and step siblings under the age specified in paragraph (f)(3)(iv) of this section. (iv) The age specified in this paragraph is either of the following, as elected by the agency in the State plan—(A) Age 19; or (B) Age 19 or, in the case of full-time students, age 21.
20. The Appellant's household included only himself as a member. He did not live with his spouse and was not required to file a tax return for 2016.
21. 42 CFR § 435.603(d) *Household income—(1) General rule.* Except as provided in paragraphs (d)(2) and (d)(3) of this section, household income is the sum of the MAGI-based income, as defined in paragraph (e) of this section, of every individual included in the individual's household, minus an amount equivalent to 5 percentage points of the Federal poverty level for the applicable family size.
22. The Appellant's household's income includes the income of the Appellant only.
23. The income standards used by AHCT pre-incorporate the 5 percentage point reduction provided for in 42 CFR 435.603(d).
24. For ██████ 2016, the Appellant's monthly income of \$1,024.00 did not exceed the income standard of \$1,366.00 for a household of 1 person for HUSKY D.
25. The Appellant qualified for HUSKY D for ██████ 2016.

26. AHCT was incorrect when it denied the Appellant's application for HUSKY D for [REDACTED] 2016.

DISCUSSION

The information from the [REDACTED] 2016 application filed on behalf of the Appellant is documented in the record only by a computer generated document; no record was kept of [REDACTED] verbatim answers to the application questions that she gave over the telephone. While it can be assumed that the information recorded on the document is substantially correct, if there was a misspoken, or misheard, or misrecorded answer, the document would be of no help in revealing what the error was or how it occurred. The AHCT representative who took the application was not present at the hearing, so the only other evidence available to help reconstruct the process is [REDACTED] testimony.

The denial was based entirely on the response to a single question. Because the AHCT representative recorded that the Appellant intended to file his 2016 taxes as married filing jointly, his application was immediately denied because half of his spouse's income then had to be counted toward his eligibility, even though his spouse resided in another state.

[REDACTED] testified that she plans to file individually for tax year 2016 (she has not filed yet), and AHCT testified that it has already accepted the information as correct. It is not entirely clear then, why AHCT has been unwilling to retroactively reflect this corrected information, which would have made the Appellant eligible. Two questions raised by AHCT were whether [REDACTED] still has the authority to act on behalf of the Appellant now that the Appellant is deceased, and also whether the adjustment to the filing status should only be reflected going forward because it is merely a change in status.

As to the first question, [REDACTED] had the authority to act on the Appellant's behalf both when the application was initially filed, and now, as executrix of his estate, after his death.

As to the second question, it is not as if the Appellant can have more than one filing status during the same year. He cannot be considered to be filing jointly for two months, and then as filing individually for the remaining ten months; a single filing status must apply to the entire year. Moreover, in order for the couple to file jointly, both individuals would have to agree. If either of them decided that they wished to file individually, the other would be required to file individually as well. When [REDACTED] applied for medical assistance on behalf of the Appellant on [REDACTED] 2016, it is a fair assumption that the Appellant would have chosen the filing status that would have made him eligible for the program that he was applying for. Now that [REDACTED]

has affirmed, to AHCT's satisfaction, that she will in fact file individually for 2016, there should no longer be any question that the Appellant's filing status *will not be* married filing jointly for 2016.

There is no prohibition from retroactively correcting an error after the fact. The application information that was originally recorded contains a second error, that the Appellant's income was \$0 when it was actually \$1,024.00 from Social Security early retirement. Certainly no duty is imposed on AHCT that it must treat all application information as somehow "locked in" and unchangeable, even if incorrect. The Appellant's income, tax filing status and household size were all incorrect when the application was initially processed. Now that the accurate information is known, corrections can be made.

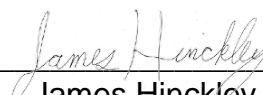
The Appellant's correct federal tax filing status for 2016 is married filing individually. Based on that filing status, the Appellant's household should have included himself only, and he should have qualified for HUSKY D. His application information from [REDACTED] 2016 must be corrected to reflect the accurate information, and his case must be granted.

DECISION

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

ORDER

1. AHCT must grant HUSKY D for the Appellant for the month of [REDACTED] 2016.
2. Proof of compliance with the above order must be forwarded to the undersigned hearing officer no later than [REDACTED] 2017.



James Hinckley
Hearing Officer

cc: Judy Boucher, Access Health CT
Yomayra Soto, MedData

Advanced Premium Tax Credits (APTC) or Cost Sharing Reduction (CSR)
Right to Appeal

For APTC or CSR eligibility determinations, the Appellant has the right to appeal to the United States Department of Health and Human Services (HHS) within 30 days of the date of this decision. To obtain an Appeal Request Form, go to <https://www.healthcare.gov/can-i-appeal-a-marketplace-decision/> or call 1-800-318-2596 (TTY: 1-855-889-4325). HHS will let the Appellant know what it decides within 90 days of the appeal request. There is no right to judicial review of the decision by HHS.

There is no right to request reconsideration for denials or reductions APTC or CSR.

Modified Adjusted Gross Income (MAGI) Medicaid and
Children's Health Insurance Program (CHIP)
Right to Request Reconsideration

For denials or reductions of MAGI Medicaid and CHIP, 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 Legal Counsel, Regulations, and Administrative Hearings, 55 Farmington Avenue, Hartford, CT 06105-3725.

There is no right to request reconsideration for denials or reductions of APTC or CSR.

Right to Appeal

For denials, terminations or reductions of MAGI Medicaid and CHIP eligibility, 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 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.