

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

██████████ 2018
Signature Confirmation

Client ID# ██████████
Case ID # ██████████
Hearing ID # 108659

NOTICE OF DECISION

PARTY

██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2017, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") discontinuing her Medical Assistance for the Aged, Blind and Disabled ("MAABD") Medicaid benefit effective ██████████ 2017 because she exceeded the program asset limit.

On ██████████, 2017, the Appellant requested an administrative hearing to contest the Department's action.

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

On ██████████ 2017, 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 participated in the hearing:

██████████ Appellant's Power of Attorney ("POA") and Son
██████████ Appellant's Attorney
Joseph Alexander, Department's Representative
Jessica Gulianello, Department's Representative
Sybil Hardy, Hearing Officer

STATEMENTS OF THE ISSUE

The first issue is whether the Department correctly discontinued the Appellant's Medical Assistance for the Aged, Blind and Disabled ("MAABD") Medical benefit.

FINDINGS OF FACT

1. The Appellant was a recipient of the MAABD medical program. (Hearing Record)
2. The Appellant is an 84 years old [REDACTED] widow. (Appellant's Testimony)
3. [REDACTED] is the Appellant's POA and son. (POA' Testimony, Exhibit A: Notice of Discontinue Benefits, [REDACTED])
4. The Appellant resides with the POA, who is 61 years old ([REDACTED]) and his 58 year old ([REDACTED]) spouse in their home. (POA' Testimony)
5. The Appellant receives a monthly gross unearned income from the Social Security Administration ("SSA") in the amount of \$695.00. (POA' Testimony, Exhibit 1: NOA, [REDACTED])
6. The POA is entitled to a period of disability beginning [REDACTED] 2005, and to disability insurance benefits under Sections 216(i) and 223, respectively, of the Social Security Act. The POA receives disability retirement payments ("SSD") from the Social Security Administration. (POA's Testimony, Exhibit B: [REDACTED] Social Security Administration Hearing Information, Exhibit C: SSD Grant Information)
7. On [REDACTED] 2017, the Law Offices of [REDACTED] of New Haven, Connecticut issued the Appellant a lawsuit settlement of \$48,839.13 in the case of [REDACTED] et al. (Exhibit 3: Settlement Statement from the Law Offices of [REDACTED] 17)
8. On [REDACTED] 2017, the Appellant's lawsuit settlement check of \$48,839.13 was signed by the Appellant and deposited into a [REDACTED] bank account in the name of the POA. (Exhibit 4: [REDACTED] Bank Deposits)
9. On [REDACTED] 2017, the Law Offices of [REDACTED], Connecticut issued the Appellant a lawsuit settlement of \$124,650.00 in [REDACTED]

case of [REDACTED].
(Exhibit 3)

10. On [REDACTED] 2017, the Appellant's lawsuit settlement check of \$124,650.00 was deposited into her bank account and then the funds were deposited into a [REDACTED] bank account under the name of the POA. (Exhibit 4)
11. The POA was not involved in the car accident. (POA's Testimony)
12. The Appellant gave the money to the POA as a gift. (POA's Testimony)
13. On [REDACTED] 2017, the POA sent the Department a letter requesting discontinuance of the Appellant's benefits effective [REDACTED] 2017. (Exhibit A: Letter from [REDACTED], for [REDACTED] 17)
14. On [REDACTED] 2017, the Department received a Periodic Report Form ("PRF") from the Appellant that listed the lawsuit settlement the Appellant received as a result of a car accident.
15. On [REDACTED], 2017, the Appellant sent a letter to the Department indicating she requested a discontinuance of her benefits close effective [REDACTED], 2017 because of money received from a lawsuit, but no action was taken by the Department. The letter also stated that the Appellant transferred all funds to her the POA. (Exhibit 2: Case Notes, Exhibit 5: Letter from [REDACTED] to the Department, [REDACTED] 17)
16. The asset limit for the MAABD program is \$1,600.00. (Department's Testimony)
17. On [REDACTED] 2017, the Department determined that the Appellant did not meet the criteria regarding transfers of assets not resulting in a penalty and that the money the Appellant received from the lawsuit settlement is a countable asset. (Hearing Record, Exhibit 2)
18. On [REDACTED] 2017, the Department sent the Appellant a NOA indicating that her MAABD benefits are discontinued effective [REDACTED], 2017 because her assets exceeded the program asset limit. (Exhibit 1: NOA, [REDACTED] 7)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Connecticut General Statutes 17b-26(c) provides that 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, 42USC 1396p.
3. 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 legit right, authority or power to obtain the asset, or to have it applied for, his or her general or medical support.
4. Uniform Policy Manual ("UPM") § 4005.10(A)(2) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.
5. The Department correctly determined that the Appellant is in a needs group of one person and an assistance unit of one.
6. UPM § 4010.05 provides that if the assistance unit is the record owner of an asset, the unit is considered the legal owner unless it establishes otherwise, with clear and convincing evidence.
7. UPM § 4030.45(A)(1) provides that Lump-sum payments include but are not limited to:
 - a. settlement of personal injury or property claim;
 - b. retroactive payment from;
 - (1) unemployment compensation;
 - (2) Social Security;
 - (3) Supplemental Security Income;
 - c. insurance claim;
 - d. lottery winnings.
8. The Department correctly determined that the Appellant received a total of \$173,489.13 (\$48,839.13, [REDACTED] + \$124,650.00, [REDACTED] in a lawsuit settlement as a result of a car accident and she is the legal owner of this asset.

9. The Department correctly determined that the lawsuit settlements were countable and accessible assets for the Appellant.
10. UPM § 3029.10(C) provides that an institutionalized individual, or his or her spouse may transfer assets of any type without penalty to:
 - a. his or her child who is consider to be blind or disabled under the criteria for SSI eligibility; or
 - b. A trust, including a trust described at 4030.80D.6, established for the sole benefit of her or her child who is considered to be blind or disabled under criteria for SSI eligibility.
11. The Department correctly determined that the Appellant's son receives SSD benefits and does not meet the criteria for SSI eligibility.
12. The Department correctly determined the asset in the amount of \$173,489.13 exceeds the \$1,600.00 asset limit for a household of one.
13. The Department correctly discontinued the Appellant's Medicaid under the MAABD program effective [REDACTED] 2017 because her countable assets exceed the asset limit.

DISCUSSION

The Department's correctly discontinued the Appellant's MAABD benefits. The Appellant transferred her assets to her son, who was approved for retirement disability payment under the SSD program and does not meet the criteria for Supplemental Security Income ("SSI"). State law indicates that the Appellant may only transfer assets to her disabled child without penalty if that child is considered disabled under the criteria for SSI eligibility.

The POA provided testimony that one of the lawsuit settlement checks was never deposited into the Appellant's bank account. The lawsuit settlement checks were issued to the Appellant and for the benefit of the Appellant; therefore the assets belong to her and are counted towards her eligibility for benefits. The Appellant did not provide clear on convincing testimony that the transfers of assets were not for the purpose of qualifying for assistance or that she is not the legal owner of this asset.

DECISION

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

Sybil Hardy
Sybil Hardy
Hearing Officer

Pc: Fred Presnick, Operations Manager, DSS R.O. # 30, Bridgeport
Yecenia Acosta, Operations Manager, DSS R.O. # 30, Bridgeport
Joseph Alexander, Fair Hearings Liaison, DSS R.O. # 30, Bridgeport
Jessica Gulianello, Fair Hearings Liaison, DSS R.O. # 30 Bridgeport
Atty. [REDACTED] CT [REDACTED]

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.