

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

Case ID # ██████████
Client ID # ██████████
Request # ██████████

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2017, the Department of Social Services (the "Department") issued a Notice of Action ("NOA") to ██████████ (the "Appellant") denying her medical services under the Medicaid Home and Community Based Services program because she did not meet the eligible non-citizen program requirements.

On ██████████ 2017, the Appellant requested an administrative hearing to contest the Department's decision to deny Medicaid benefits.

On ██████████ 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2018.

On ██████████ 2018, in accordance with sections 17b-60, 17-61 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's granddaughter and representative
Rachelle Mighty-Brown, Department's Representative via telephone
Carla Hardy, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department was correct when it determined the Appellant ineligible for Medicaid Home and Community Based Services because she did not meet the eligible non-citizen requirements for the program.

FINDINGS OF FACT

1. The Appellant is an [REDACTED] year old woman (DOB [REDACTED]), originally from [REDACTED]. (Hearing Record)
2. [REDACTED] is the Appellant's Authorized Representative. (Exhibit A: Long-term Care Application dated 10/27/17)
3. [REDACTED] authorized his daughter, [REDACTED] ("Representative") to attend the administrative hearing on his behalf. (Exhibit 1: Letter from [REDACTED] 18 and Hearing Record)
4. On [REDACTED] 2015, the Appellant entered the United States of America ("United States") as a Lawful Permanent Resident ("LPR"). (Exhibit B: Systematic Alien Verification for Entitlements ("SAVE"))
5. The Appellant is not a veteran, or the spouse of a veteran. (Exhibit A)
6. On [REDACTED] 2017, the Department sent the Appellant a NOA advising her that she was ineligible for benefits from Medicaid Home Care Waiver Services because she did not meet the eligible non-citizen requirements for the program. (Exhibit C: NOA, [REDACTED]/17)

CONCLUSIONS OF LAW

1. Section 17b-2 and § 17B-260 of the Connecticut General Statutes authorizes the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual ("UPM") Section 2540.92 provides for individuals receiving Home and Community Based Services (W01).
 - A. Coverage Group Description

This group includes individuals who:

 1. Would be eligible for MAABD if residing in a long term care facility (LTCF); and
 2. qualify to receive home and community-based services under a waiver approved by the Centers for Medicare and Medicaid Services; and
 3. would, without such services, require care in an LTCF.

3. Title 8 of the United States Code (“USC”) section 1613 discusses: five-year limited eligibility of qualified aliens for Federal means-tested public benefit.

8 USC § 1613(a) provides that: In general Notwithstanding any other provision of law and except as provided in subsections (b), (c), and (d) of this section, an alien who is a qualified alien (as defined in section 1641 of this title) and who enters the United States on or after August 22, 1996, is not eligible for any Federal means-tested public benefit for a period of 5 years beginning on the date of the alien’s entry into the United States within the meaning of the term “qualified alien”.

4. Uniform Policy Manual (“UPM”) § 3005.08(B) discusses non-citizen eligibility in the medical assistance program and provides that an eligible non-citizen is one who arrives in the U.S. on or after August 22, 1996 and:
 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
 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's family living with the parent and the spouse allowed such battery and 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.
5. The date of the Appellant's entry into the United States as a qualified alien was the date she was admitted as an LPR, [REDACTED] 2015.

6. As of [REDACTED], 2017, the Appellant had not been lawfully residing in the United States as a qualified alien for at least five years.
7. The Appellant did not provide any evidence showing she met any conditions described in UPM § 3005.08(B)
8. As of [REDACTED] 2017, the Appellant was ineligible for Medicaid because she did not meet non-citizen eligibility requirements for the program.
9. The Department was correct when it denied HUSKY C Medicaid for the aged, blind and disabled because she did not meet the eligible non-citizen requirements for the program.

DISCUSSION

The evidence shows that the Appellant is a qualified alien who has not yet resided in the United States for 5 years in qualified status. The Appellant is a Lawful Permanent Resident who may become eligible for Medicaid Home and Community Based Services once she has resided in the United States as an LPR for five years.

DECISION

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


Carla Hardy
Hearing Officer

Pc: Kathy Bruni, Community Options Unit, DSS-CO
Laurie Filippini, Community Options Unit, DSS-CO
Paul Chase, Community Options Unit, DSS-CO
Pam J. Adams, Community Options Unit, DSS-CO
Maria Dexter, Community Options Unit, DSS-CO
Amy Dumont, Community Options Unit, DSS-CO
Rachelle Mighty-Brown, Community Options Unit, DSS-CO

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 06105-3725.

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.