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

[redacted], 2019
Signature Confirmation

[redacted]
Request # 136161

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2019, the Health Insurance Exchange Access Health CT ("AHCT") issued a Notice of Action ("NOA") to [redacted] (the "Appellant"), discontinuing her Medicaid benefits under the HUSKY A program because she did not meet the eligible non-citizen requirements.

On [redacted] 2019, the Appellant requested an administrative hearing to contest the Department's decision to deny Medicaid benefits.

On [redacted] 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2019.

On [redacted] 2019, 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 § 457.1130, OLCRAH held an administrative hearing by telephone. The following individuals participated in the hearing:

[redacted], Appellant
Cathy Davis, AHCT Representative
Carla Hardy, Hearing Officer

The Hearing remained open in order for the Appellant to submit additional documentation. The Appellant submitted additional evidence. The hearing record closed on [redacted] 2019.

STATEMENT OF THE ISSUE

The issue to be decided is whether AHCT correctly discontinued the Medicaid/HUSKY A benefits when it determined the Appellant ineligible because she did not meet the eligible non-citizen requirements for the program.

FINDINGS OF FACT

1. The Appellant is a [redacted]year old woman (DOB [redacted]), originally from [redacted] (Exhibit 4: Application, [redacted]/19; Appellant's Testimony)

2. The Appellant originally came to the United States ("US") in 2003 as a visitor. It was her intension to return to [redacted]. (Appellant's Testimony)

3. The Appellant was granted a B1 Visa which allowed her to remain in the US as the spouse of a US citizen. (Appellant's Testimony)

4. On [redacted] 2005, the Appellant filed an application to extend/change her nonimmigrant status. Her B1 status was valid from [redacted] 2005 to [redacted] 2006. (Appellant's Exhibit C: US Citizenship and Immigration Services Application to Extend/change Nonimmigrant Status, [redacted]/07)

5. On [redacted] 2007, the Appellant received notification that her application to extend or change her immigration status was approved for [redacted] 2005 to [redacted] 2006. (Exhibit C)

6. In 2011, the Appellant sought services from [redacted] The [redacted] is an organization that is dedicated to strengthening women and families and to eliminating violence and abuse through education, intervention, advocacy and community collaboration. The Appellant reported that her spouse was verbally, emotionally and physically abusive throughout their marriage. (Appellant's Exhibit A: Letter from [redacted] [redacted]/15)

7. In [redacted] 2012, the Appellant again sought the services o [redacted] due to her spouse's abusive behaviors. (Exhibit A)

8. The Appellant sought the services of [redacted] on [redacted] 2014. (Exhibit A)

9. The Appellant reported to [redacted] that she was physically abused by her spouse on [redacted] 2013, [redacted], 2014 and [redacted], 2014. (Exhibit A)

10. On [redacted] 2014, the Appellant was accepted into [redacted] domestic violence safe home to get away from her spouse's violence. (Exhibit A)

11. On [redacted] 2014, the Appellant contacted [redacted]. She was physically attacked by her spouse and required emergency medical attention. Her spouse was arrested and a Protective Order was placed. (Exhibit A)

12. The Appellant's spouse was abusive. Because of this, she moved out of their home five years ago. (Appellant's Testimony)

13. On [redacted] 2015, the Appellant received a notice from the Department of Homeland Security U.S. Citizenship and Immigration Services ("USCIS") regarding the establishment of prima facie case regarding her Petition for Amerasian, Widow (er) or Special Immigrant (Form I-360) case. (Appellant's Exhibit D: USCIS Notices dated [redacted]/15 and [redacted]/16)

14. On [redacted] 2016, the USCIS approved the Appellant's petition for an I-360 Petition for Amerasian, Widower, or Special Immigrant. The Appellant was determined not to be eligible to file an adjustment of status application at that time. (Exhibit D)

15. On [redacted] 2016, the USCIS placed the Appellant's case under deferred action. Her case was given a lower priority for removal. (Appellant's Exhibit E: USCIS Supplemental Notice of Deferred Action, [redacted]/16)

16. On [redacted], 2017, the Appellant received an appointment letter from the Department of Homeland Security U.S. Citizenship and Immigration Services ("USCIS") for her petition for alien relative and/or her adjustment of status application. (Appellant's Exhibit B: USCIS Appointment letter, [redacted]/17)

17. On [redacted] 2019, AHCT notified the Appellant that her Medicaid/HUSKY A healthcare coverage was ending on [redacted] 2019 because she has not been a lawful permanent resident of the United States for five years or more. (Exhibit 1: NOA, [redacted]/19)

18. The Appellant reported she became a Lawful Permanent Resident ("LPR") sometime in 2018. (Appellant's Testimony)

19. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [redacted] 2019. Therefore, this decision is due not later than [redacted] 2019. However, the close of the hearing record, which had been anticipated to close on [redacted] 2019, did not close for the admission of evidence until [redacted], 2019, at the Appellant's request. Because of this 8 day delay in the close of the hearing

record arose from the Appellant's request, this final decision was not due until [redacted] 2019

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes ("CGS") 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. Section 17b-264 of the CGS 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. Title 45 CFR § 155.505(d) provides that an appeals process established under this subpart must comply with § 155.110(a).

5. Title 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 group health insurance markets and in benefits 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. Title 42 CFR § 435.406(a)(2)(i) provides that States may provide Medicaid to certain qualified non-citizens as described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641)(including qualified non-citizens subject to the 5-year bar) who have provided satisfactory documentary evidence of Qualified Non-Citizen status , which status has been verified with the Department of Homeland Security (DHS) under a declaration required by section 1137(d) of the Act that the applicant of beneficiary is an non-citizen in a satisfactory immigration status.

7. Title 8 of the USC § 1461(b) provides for the definition of a qualified alien.

8. The Appellant is a Lawful Permanent Resident and meets the definition of a qualified alien.

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

10. Title 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".

11. 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

12. The Appellant has been lawfully been residing in the U.S. as a Lawful Permanent Resident ("LPR") since 2018.

13. As of [redacted] 2019, the Appellant had not been lawfully residing in the United States as a qualified alien for at least five years.

14. The Appellant has been battered or subjected to extreme cruelty in the U.S. by her spouse.

15. The Appellant does not reside with her spouse.

16. The Appellant did not provide any evidence showing she met any conditions described in UPM § 3005.08(B) but specifically UPM § 3005.08(B)(10)(d)(2)

17. As of [redacted] 2019, the Appellant was ineligible for Medicaid because she did not meet non-citizen eligibility requirements for the program.

18. The Department was correct when it denied HUSKY A Medicaid for parents and caretakers 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. Although the Appellant had been subjected to extreme cruelty and battery and no longer resides with the person responsible for such acts, she does not meet the criteria specified in UPM § 3005.08(B)(10)(d)(2) because her case is no longer pending. The Appellant is an LPR who may become eligible for Medicaid once she has resided in the United States as an LPR for five years. AHCT was correct to discontinue Medicaid/HUSKY A benefits.

DECISION

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

Carla Hardy
Hearing Officer

Pc: Becky Brown, AHCT
Mike Towers, AHCT
Cathy Davis, AHCT

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.