

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

██████████ 2019  
Signature Confirmation

CLIENT No # ██████████  
Request # 171766

NOTICE OF DECISION

PARTY

██████████  
██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████ 2019 the Department of Social Services - (“the Department”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) discontinuing the Appellant from the state supplement cash assistance under the Aid to the Aged, Blind and Disabled (“AABD”) Medicaid program.

On ██████████ 2019, the Appellant requested an administrative hearing to contest the Department’s determination.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2019.

On ██████████ 2019, the Appellant requested to re-schedule his administrative hearing and it was granted.

On ██████████ 2019, OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2019.

On ██████████ 2019, 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 was not present  
██████████, Appellant’s Authorized Representative (“AREP”)  
Fred Jenkins, Department’s Representative  
Almelinda McLeod, Hearing Officer

## **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department correctly discontinued the Appellants' State Supplement benefits under the AABD program as a result of assets that exceeded the \$1600.00 asset limit for this program.

## **FINDINGS OF FACT**

1. The Appellant was a resident of a licensed boarding home at the [REDACTED] [REDACTED] [REDACTED] in Enfield, Connecticut on the 4<sup>th</sup> floor, until [REDACTED], 2018. (A-REP testimony)
2. On [REDACTED] 2018, the Appellant had been transferred to a hospital which then led to the admission into the 2<sup>nd</sup> floor skilled nursing facility ("SNF") at the [REDACTED]. (A-Rep testimony)
3. The Appellants' stay at the SNF at [REDACTED] was from [REDACTED] 2018 to [REDACTED] 2018. (Hearing summary)
4. During the period from [REDACTED], 2018 to [REDACTED] 2018, the Appellant was covered under Medicare Part A. For this period of time, the Appellant did not have a liability. (A-Rep testimony)
5. On [REDACTED] 2018, the Appellant returned to her residence in the boarding home which is located on the 4<sup>th</sup> floor of [REDACTED]. (Hearing record)
6. On [REDACTED] 2019, the Appellant received a Notice of Refund from Health Management Systems ("HMS") indicating a refund of \$5,197.47 directly from the medical facility because her applied income was paid by either Medicare, QMB or other insurance for the period of [REDACTED] 2018 to [REDACTED] 2018. (Exhibit 1, Notice of refund)
7. The HMS Notice indicated that the \$5,197.47 in addition with other assets could place her over the asset limit of \$1600.00. The excess funds must be disposed of by [REDACTED] 2019. Three options were given for the disposition of such funds;
  1. Return the excess funds to the Department as a voluntary reimbursement of a portion of the medical assistance received.
  2. Open or increase an existing burial reserve fund; or
  3. Spend the funds on something you need. (Exhibit 1)

8. On [REDACTED] 2019, the Department issued a W-1348M Worker generated Request for Proofs requesting verification of the reduction of assets indicated in the HMS letter. The due date for this request was [REDACTED] 2019. (Exhibit 2)
9. On [REDACTED] 2019, [REDACTED] sent in receipts of purchases and payments from family members on behalf of the Appellant; except for receipts from Shoprite for \$97.61 made on [REDACTED] 2019 and a Kohls purchase of \$115.91 made on [REDACTED] 2019, all the other receipts were prior to the [REDACTED] 2019 distribution date. (Hearing record & Exhibit 4, receipts)
10. The Department notified the facility that the receipts submitted were not accepted because they were prior to the distribution date of [REDACTED] 2019. (Hearing summary and Department's testimony)
11. On [REDACTED] 2019, the Department issued a notice of action discontinuing the cash assistance under the AABD program because the value of the assets was more than the amount the Appellant was allowed to have. (Exhibit C, NOA)
12. The Department clarified that since the applied income had been paid already, the facility needed to verify how the lump sum of \$5,197.47 was spent after the distribution date of [REDACTED] 2019. (Department testimony)
13. The Department clarified that when a HMS letter of refund is not a valid refund, HMS would send a correction letter to the Department. (Department testimony)
14. As of the date of this hearing, the Department did not receive a correction letter from HMS indicating that the refund check of \$5197.47 was not a true refund nor that this check was not issued to the Appellant. (Department testimony)
15. The issuance of this decision is timely under section 17b-61(a) of Connecticut General Statutes, 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. This decision, therefore, was due no later than [REDACTED] 2019. However, the hearing record, which had been anticipated to close on [REDACTED] 2019, did not close due to a re-schedule request and one additional day for the admission of evidence. The record did not close until [REDACTED] 2019. Because this 22 day delay in the close of the hearing record arose from the Appellant's request, this final decision was not due until [REDACTED] 2019, and is therefore timely. (Hearing Record)

### **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. The Department's Uniform Policy Manual ("UPM") is the equivalent of state regulation and as such carries the force of law. "Bucchere v. Rowe, 43 Conn. Supp. 175,178 (1994) (citing Conn. Gen. Stat. § 17b-10; Richard v. Commissioner of Income Maintenance, 214 Conn. 601, 573 A. 2 d 712 (1990)."
3. UPM 4000.01 provides the definition to the following:
  - Asset limit is the maximum amount of equity in counted assets which an assistance unit may have and still be eligible for a particular program administered by the Department.
  - Counted asset is an asset which is not excluded and which is available or deemed available to the assistance unit.
4. UPM 4005.05(A) (B) provides that for every program administered by the Department, there is a definite asset limit. The assistance unit's equity in an asset is counted toward the asset limit if the asset is not excluded by the state or federal law which is either available to the unit or deemed available to the unit.
5. UPM 4005.05 (B) (2) provides that an asset available when it is actually available to the individual or when the individual has the legal right authority or power to obtain the asset, or to have it applied for, his or her general or medical support.
6. UPM 4030.45 (C) provides that a lump-sum is considered income in the month of receipt, and to the extent retained, an asset as of the subsequent month for the AABD program.
7. UPM 4005.05 (D) (1) (2) provides the Department compares the equity in counted assets with the program asset limit when determining the units eligibility for the benefits. If the counted assets exceeds the asset limit, the assistance unit is not eligible.
8. UPM 4005.10 (A) (2) (a) provides that the asset limit for the AABD program is \$1600.00 for a needs group of one.

9. UPM 4005.15 (B) (1) (b) provides that if the assistance unit does not reduce the excess assets to an allowable level by the end of the month, the assistance unit remains ineligible until the date it properly reduces its assets to an allowable level.
- 10. The evidence submitted shows that the Appellant was issued a refund check of \$5197.47 because Medicaid paid for her SNF stay from [REDACTED], 2018 to [REDACTED] 2018.**
- 11. There is no evidence that the \$5197.47 refund check from the medical facility was rescinded because the Department did not receive a correction letter from HMS.**
- 12. The preponderance of evidence shows that the Appellant was over the \$1600.00 asset limit established for the Medicaid program.**
- 13. The Department correctly determined the Appellant is over the asset limit.**

### DISCUSSION

The Appellant was resident of a licensed boarding home on the 4<sup>th</sup> floor at [REDACTED] until [REDACTED], 2018, at which time she was transferred to the skilled nursing facility there located on the 2<sup>nd</sup> floor with Medicare coverage.

The Appellant's counted assets were in excess of \$1,600.00 on [REDACTED] 2019, when the Appellant was refunded by the medical facility \$5,197.47 in applied income for the months of [REDACTED] 2018 to [REDACTED] 2018 while she resided in skilled nursing.

The Department requested verification to show proof that the refund in the amount of \$5197.47 from the medical facility was reduced to under the asset limit of \$1,600.00 by [REDACTED] 2019. No such verification was received from the Appellant and as a result, the State supplement under the AABD program was discontinued effective [REDACTED] 2019.

The Department clarified that it is a common practice for HMS to send a correction letter if the reimbursement is not a true reimbursement. The Department or the Appellant never received a correction letter from HMS.

The Appellant testified that a resident trust account was opened for the Appellant after she entered the SNF where her social security and pension were being deposited effective [REDACTED] 2018 through to [REDACTED] 2018. The facility started to spend down the Appellants' Social Security money deposited into her


resident trust account because they knew she would be over the \$1600.00 asset limit while residing in the SNF. Though receipts of purchases and payments were submitted to the Department, most were made prior to the distribution date of [REDACTED] 2019 and were not accepted by the Department. Only a Shoprite receipt for \$97.61 dated [REDACTED] 2019 and a Kohls purchase of \$115.91 dated [REDACTED] 2019 could potentially be used to satisfy the requirement listed in the refund letter, however not enough to reduce the assets to below the \$1600 asset limit.

The explanation of trying to spend down monies deposited into a resident trust account prior to the distribution date of [REDACTED] 2019 does not address what happened to the refund of \$5197.47 provided directly by the medical facility to the Appellant. The Appellant testified that the refund of \$5197.47 was never received. It is unclear by the evidence and testimony why the Appellant did not question the whereabouts of the refund.

The hearing record shows that a refund of \$5197.47 was sent to the Appellant on [REDACTED] 2019 and that no correction letter had been made from HMS. The Appellant has failed to provide evidence otherwise. The burden of proof was not met by the Appellant. Because the Appellant's counted assets exceeded \$1,600.00, eligibility did not exist for AABD benefits. The Department is upheld.

### **DECISION**

The Appellant's appeal is DENIED.

  
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Almelinda McLeod  
Hearing Officer

CC: Tricia Morelli, SSOM, Manchester Regional Office  
Fred Jenkins, Fair Hearing Liaisonm, Manchester Regional Office

### **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 Legal Counsel, Regulations, and Administrative Hearings, 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 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.