

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

Case ID # ██████████
Client ID # ██████████
Request # 143929

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2019, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") discontinuing her benefits from HUSKY C Medicaid for Individuals Receiving Home and Community Based Services for failure to complete a redetermination form.

On ██████████ 2019, the Appellant requested an administrative hearing to contest the Department's action.

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

On ██████████, 2019, at the Appellant's request, OLCRAH issued a notice rescheduling the administrative hearing for ██████████, 2019.

On ██████████, 2019, 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 were present at the hearing:

██████████ Appellant
██████████, Appellant's Personal Care Assistant

Barbara Brunner, Department's Representative, via telephone
Melissa Lora, Department's Representative, observing
Swati Sehgal, Hearing Officer

The Hearing record remained open for the Appellant to submit additional information. The Hearing Record closed on [REDACTED] 2019.

STATEMENT OF THE ISSUE

The issue is whether the Department was correct when it discontinued the Appellant's Medicaid because her income exceeded the limit for the program.

FINDINGS OF FACT

1. The Appellant has been an ongoing recipient of Medicaid for Home and Community Based Services. (Hearing Record)
2. The Department closed the Appellant's Husky C for Home and Community Based Service effective [REDACTED], 2019, for failure to complete a redetermination. (Hearing Summary)
3. On [REDACTED] 2019, the Department received a completed redetermination form from the Appellant. (Hearing Summary, Exhibit: Case Notes, [REDACTED])
4. On [REDACTED] 2019, the Department reinstated the Appellant's Husky C for Home and Community Based Services and issued Proofs We Need Form requesting additional information, including verification of the Appellant's contributions to the Pooled Trust. (Exhibit 2: Proof We Need Form, [REDACTED])
5. On [REDACTED] 2019, the Department received documents from the Appellant including a letter from the pooled trust stating it was never funded. (Exhibit 5: Case Notes, [REDACTED])
6. The Appellant's monthly gross Social Security benefit amount is \$2,516.50. (Hearing Record and Appellant's Testimony)
7. The Appellant's monthly gross insurance benefit from [REDACTED] is \$1,675.00. (Testimony)
8. On [REDACTED] 2019, the Department completed a review of the Appellant's eligibility and determined the Appellant's monthly gross income of \$4,191.50 (\$2,516.50 Social Security, + \$1,675.00 Long Term Disability) is above the income limit of \$2,313.00 for Husky C for Home and Community Based Services. (Exhibit 5: Case Notes, [REDACTED], Appellant's Testimony)

9. On [REDACTED] 2019, the Department sent the Appellant an NOA that her benefits from the HUSKY C – Individual Receiving Home and Community Based Services program were being discontinued effective [REDACTED] 2019, because her income exceeded the limit for the program. (Exhibit 6: NOA dated [REDACTED])

10. 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. This decision is not due until [REDACTED], 2019. However, the hearing, which was originally scheduled for [REDACTED] 2019, was rescheduled for [REDACTED], 2019, at the request of the Appellant, which caused a 23-day delay. Because this 23-day delay resulted from the Appellant's request, this decision is not due until [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 this 24-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.

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. Section 435.217 of Title 42 of the Code of Federal Regulations ("CFR") authorizes State Medicaid agencies to provide Medicaid to certain individuals receiving home and community-based services. The group or groups of individuals who qualify for the coverage must meet certain requirements including that "[t]he group would be eligible for Medicaid if institutionalized".

3. 42 CFR § 435.236 authorizes State Medicaid agencies to provide Medicaid to certain aged, blind and disabled individuals in institutions who are eligible under a special income level. The individuals must: (a)(2) "Have income below a level specified in the plan under § 435.722. (See § 435.1005 for limitations on FFP in Medicaid for individuals specified in this section.)"

4. 42 CFR § 435.1005 provides as follows:
 For beneficiaries in institutions whose Medicaid eligibility is based on a special income standard established under § 435.236, FFP is available in expenditures for services provided to those individuals only if their income before deductions, as determined by SSI budget methodology, does not

exceed 300 percent of the SSI benefit amount payable under section 1611(b)(1) of the Act to an individual in his own home who has no income or resources

5. In order to qualify for Medicaid for Individuals receiving Home and Community Based Services, an individual must meet the requirement that they would qualify for Medicaid if institutionalized. The special income level of 300 percent of the maximum SSI benefit that is an income cap for institutionalized individuals, also applies to individuals receiving home and community-based services.
6. "The maximum Federal Supplemental Security Income (SSI) monthly payment amounts for 2019 under title XVI of the Act will be \$771 for an eligible individual." Federal Register / Vol 83, No. 206 / Wednesday, October 24, 2018 / p. 53702
7. Three times the maximum SSI monthly payment of \$771.00 for 2019 is \$2,313.00
8. "The Department's Uniform Policy Manual ("UPM") is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v Rowe*, 43 Conn Supp. 175 178 (194) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d712(1990)).
9. UPM § 2540.92(A) provides that the coverage group for Individuals Receiving Home and Community Based Services (W01) 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.
10. UPM § 2540.92(C) provides for the income and asset criteria for the W01 coverage group as follows:
 1. Except as described in subparagraph 3 below, the Department determines income eligibility under this coverage group by comparing the individual's gross income to the Special Categorically Needy Income Limit (CNIL), set at 300% of the maximum SSI amount for one person. To qualify as categorically needy, the individual's gross income must be less than the special CNIL.
 2. Except as described in subparagraph 3 below, the Department uses the AABD asset limit to determine eligibility.
 3. Individuals who are eligible for Medicaid under the "Working Individuals with Disabilities" coverage group, the "Severely Impaired" coverage group or the "Severely Impaired Non-SSI Recipients" coverage

group, and who also meet the non-financial eligibility criteria described in paragraph A to receive home and community-based services under the Personal Care Assistance waiver, the Acquired Brain Injury waiver, the Department of Developmental Services Comprehensive waiver or the Department of Developmental Services Individual and Family Support waiver are considered to meet the income and asset criteria of this coverage group (Cross Reference: 2540.85, 2540.76, 2540.77).

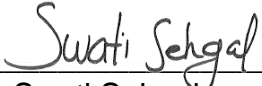
11. The Appellant's total monthly gross income of \$ 4191.50 exceeded the special CNIL of \$2,313.00.
12. The Department was correct when it discontinued the Appellant's HUSKY C Individuals Receiving Home and Community Based Services medical benefits because her gross monthly income exceeded the limit for the program.

DISCUSSION

The Appellant is aware that creating the pooled trust and funding it with excess income is a method by which she may regain eligibility for the HUSKY C – Individual Receiving Home and Community Based Services program, but she failed to submit evidence of any contribution to such trust. The Department sent a W1348 requesting the Appellant to provide verification that she has funded the pooled trust. The Department advised the Appellant on her notice of action and at the time of hearing to fund the pooled trust with excess income in order to become income eligible for HUSKY C for Individual Receiving Home and Community Based Services Program and to submit the proof that she has contributed to the pooled trust. The Appellant failed to submit such evidence.

DECISION

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



Swati Sehgal
Hearing Officer

cc: Peter Bucknall, Social Services Operations Manager, Waterbury
Jamel Hilliard, Social Services Operations Manager, Waterbury
Barbara Brunner, Fair Hearing Liaison, Danbury

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, law, and 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, if 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.