

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

██████████ 2020
SIGNATURE CONFIRMATION

CLIENT ID #: ██████████
CASE ID #: ██████████
HEARING ID #: 148126

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2019, the Department of Social Services (the “Department”) sent ██████████ (the “Applicant”) a notice of its decision to discontinue her HUSKY C Medicaid for the Medically Needy, Aged Blind or Disabled for exceeding the asset limit effective ██████████ 2019.

On ██████████, 2019, ██████████, (the “Appellant”), the Applicant’s attorney, requested an administrative hearing to contest the Department’s decision to impose a penalty period.

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 a reschedule.

On ██████████, 2019, OLCRAH issued a notice rescheduling the hearing for

██████████, 2019.

On ██████████, 2019, the Appellant requested a reschedule.

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

On ██████████, 2019, the Appellant requested a reschedule.

On ██████████ 2019, OLCRAH issued a notice rescheduling the 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, Counsel for the Applicant
Jorge Alvarado, Department's Hearing Liaison
Daniel Butler, Counsel for the Department
Marci Ostroski, Hearing Officer

The Applicant was not present at the administrative hearing due to physical disability and ailments as reported by her attorney, the Appellant.

The Hearing Record remained open for the submission of additional evidence. The Department submitted a brief and exhibits on ██████████, 2020. The Appellant submitted a brief and exhibits on ██████████, 2020. On ██████████ 2020, the record closed.

STATEMENT OF THE ISSUE

The issue to be determined is whether the Department was correct to discontinue the Applicant's HUSKY C Medicaid for the Medically Needy, Aged, Blind, or Disabled for exceeding the asset limit effective ██████████ 2019.

FINDINGS OF FACT

1. The Applicant has been a recipient of the HUSKY C Medicaid for the Medically Needy, Aged, Blind, or Disabled under the spenddown program. (Hearing record)
2. The Applicant was determined disabled by the Social Security Administration

with an onset date of [REDACTED] 1981. (Ex. 1: Case Notes)

3. On [REDACTED] 2018, the Appellant established the [REDACTED] [REDACTED] (the "Trust") with funds acquired from the sale of the Applicant's home property. (Ex. 4: Trust, Hearing Summary, Appellant's testimony)
4. Section 4.01 of the Trust provides in part "During the Beneficiary's lifetime, the Trustee shall pay or apply, for the sole benefit of the Beneficiary, such amounts from the Trust principal or income, or both, as the Trustee, in the Trustee's sole and absolute discretion, may deem reasonable or necessary for the satisfaction of the Beneficiary's supplemental needs...". (Ex. 4: Trust)
5. Section 4.02 of the Trust provides "This is a Discretionary Non-Support Spendthrift Trust. As such, no interest in the principal or income of this trust shall be anticipated, assigned, or encumbered or shall be subject to any creditor claims or to any legal process prior to the actual receipt by the Beneficiary. Furthermore, because this trust is to be conserved and maintained for the special non-support needs of the Beneficiary throughout the Beneficiary's life, no part of the corpus hereof, neither principal nor undistributed income, shall be construed as part of the Beneficiary's estate or be subject to the claims of voluntary or involuntary creditors of the Beneficiary, during the Beneficiary's lifetime or after the Beneficiary's death." (Ex. 4: Trust)
6. Section 5.03(a) of the Trust provides in part "Upon the death of the Beneficiary, or termination of the Trust for any other reason, the remaining trust estate including principal and undistributed income, shall be paid to the Connecticut Department of Social Services, as reimbursement to the Connecticut Medicaid Program, up to the amount of benefits paid under the Medicaid program..."(Ex. 4: Trust)
7. On [REDACTED] 2018, the Appellant deposited \$109,300.81 into a [REDACTED] account under the Trust naming the Appellant as Trustee. (Ex. 5: [REDACTED] statement)
8. On [REDACTED] 2018, the Department received the Applicant's online renewal for her Medicaid benefits. In the renewal the Applicant reported the sale of her home and the establishment of the Trust. (Hearing Summary)
9. On [REDACTED], 2018, the Department sent the Applicant a W-1348 Proofs We Need form requesting the Trust document and proof of the current value of all assets included in the Trust and the most recent bank statement stating current value. (Hearing Summary, Ex. 2: Proofs We Need)
10. On [REDACTED] 2019, the Department reviewed the Trust document and bank statements provided by the Appellant on [REDACTED] [REDACTED] and [REDACTED] 2018, and

determined that there was objectionable language in the Trust. The Department viewed the provisions giving the trustee sole and absolute discretion, contrary to public policy on self settled trusts as that provision would insulate the trustee's decisions from review for abuse of discretion by a court. (Ex. 1: Case Notes, Department's Reply to Appellant's Fair Hearing Summary)

11. The Department further objected to section 5.03 of the Trust under the grounds that while the Trust provides for reimbursement of Medicaid expenditures, in order to be a valid trust it must comply with the laws of the State of Connecticut governing the validity of self settled trusts. The Department found that the Trust's failure to include a provision for repayment of all other public assistance the Applicant may have received and any other debts owed to the State, violated the State's common law prohibition against the establishment of self settled spendthrift trusts. (Department's Reply to Appellant's Fair Hearing Summary)
12. On [REDACTED] 2019, the Department forwarded the Trust to the Attorney General's office for review. (Ex. 1: Case Notes, Ex. 6: Email Correspondence)
13. In [REDACTED] 2019, the Appellant submitted an unsigned draft "First Amendment to the [REDACTED]" to the Attorney General's Office for review. The draft stated in part "This Amendment is made and entered into this ___ day of [REDACTED] 2019, by the Trustee. The [REDACTED] [REDACTED] ("Trust Agreement") dated [REDACTED] 2018, is hereby amended, and all prior terms of the Trust Agreement are hereby amended in accordance with Section 7.07 of the original Trust Agreement." (Ex. D: First Amendment to the [REDACTED])
14. On [REDACTED], 2019, Judith Brown, Assistant Attorney General, notified the Appellant via email that the drafted amendment was not acceptable as it did not cure the defects found in the Trust. Attorney Brown found that the Trust did not qualify as a Special Needs Trust therefore an amendment could not salvage the document. Attorney Brown communicated that the original trust, in many areas, gives the Trustee "sole and absolute discretion" but that "and absolute" cannot be part of the Trust. She also found that Article 3A says that the Trust shall terminate upon the Applicant's death but that sets up an ambiguity with the previous provision for other termination and the previous Section 5 termination language contains unacceptable provisions. Attorney Brown provided the Appellant with a form trust that could be used to meet the Department's requirements. (Ex. C: Judith Brown email)
15. The Appellant did not use the form trust or finalize any amendments to the original Trust. (Hearing Record, Appellant's testimony)
16. On [REDACTED], 2019, the Department discontinued the Applicant's HUSKY C Medicaid spenddown program for exceeding the asset limit. At the time of the

denial the Appellant stipulated that the value of the trust account with [REDACTED] was approximately the \$109,300.81, from inception. (Ex. 1: Case Notes)

17. At the administrative hearing on [REDACTED], 2019, the Applicant's attorney signed the Waiver of Right to a Timely Hearing Decision under Section 17b-61(a) of the Connecticut General Statutes waiving the requirement that a final decision be issued by the Hearing Officer within 90 days of the date the hearing was requested. (Hearing Record)
18. On January 1, 2020, the Connecticut Uniform Trust Code ("CUTC") was adopted. The Appellant submitted the CUTC as an exhibit with her Supplemental Brief. (Hearing Record, Appellant's Supplemental Ex. A: CUTC)

CONCLUSIONS OF LAW

1. Section § 17b-260 of the Connecticut General Statutes ("Conn Gen Stats") provides that the Department will administer Title XIX of the Social Security Act ("Medicaid") in the State of Connecticut.
2. Conn Gen Stats § 17b-261b(a) provides that the Department "shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department."
3. Title 42 of the Code of Federal Regulations ("CFR") § 431.10(b)(3) provides that the "single State agency is responsible for determining eligibility for all individuals applying for or receiving benefits" in the Medicaid program.
4. Conn. Gen. Stats. § 17b-261(c) provides: 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, 42 USC 1396p. The provisions of this subsection shall not apply to a special needs trust, as defined in 42 USC 1396p(d)(4)(A), as amended from time to time. For purposes of determining whether a beneficiary under a special needs trust, who has not received a disability determination from the Social Security Administration, is disabled, as defined in 42 USC 1382c(a)(3), the Commissioner of Social Services, or the commissioner's designee, shall independently make such determination. The commissioner shall not require such beneficiary to apply for Social Security disability benefits or obtain a

disability determination from the Social Security Administration for purposes of determining whether the beneficiary is disabled.

5. "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)).
6. Uniform Policy Manual ("UPM") § 4000.01 defines a trust as an oral or written agreement in which someone (the trustee) holds the legal title to an asset for the benefit of another person (the beneficiary).
7. The Applicant is the beneficiary of the Trust.
8. UPM § 4000.01 defines an inter-vivos Trust as a trust established during the lifetime of the settler by means other than a will.
9. The Trust in this case is an inter-vivos trust because it was self settled by the Applicant during her lifetime by means other than a will
10. Title 42 U.S. Code § 1396p(d)(4) provides for treatment of trust amounts; A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1382c(a)(3) of this title) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter
11. UPM § 4030.80 (D)(6) provides The Department does not consider the following types of trusts in determining the individual's eligibility for Medicaid:
 - a. a trust containing the assets of an individual under age 65 who is disabled, according to criteria under the SSI program, if:
 - (1) the trust is established for the benefit of such individual by his or her parent, grandparent, or legal guardian, or by a court acting in accordance with the authority of state law; and
 - (2) under the terms of the trust, the state will receive all amounts remaining in the trust upon the death of the individual, up to an amount equal to the total amount of Medicaid benefits paid on behalf of the individual

12. CT HB 7104; P.A. 19-137 Connecticut Acts of the 2019 Regular Session (2019) HB 7104, P.A. 19-137 AN ACT CONCERNING ADOPTION OF THE CONNECTICUT UNIFORM TRUST CODE. Section 1 provides (Effective January 1, 2020) This section and sections 2 to 98 inclusive of this act may be cited as the "Connecticut Uniform Trust Code"
13. The Connecticut Uniform Trust Code ("CUTC") sec. 109 provides (Effective January 1, 2020) (a) Except as otherwise provided in sections 1 to 108, inclusive, of this act, on January 1, 2020, the following rules apply: (1) Sections 1 to 108 inclusive of this act apply to all trusts created before, on or after January 1, 2020.
14. CUTC Section 2 (d) provides: No provision of sections 1 to 109, inclusive, of this act, as such provision may be applied to a trust established pursuant to and in compliance with 42 USC 1396p(d)(4), as amended from time to time, shall be interpreted in a manner that is inconsistent with, or that contravenes, the provisions of federal law; nor shall any court having jurisdiction over any such trust issue an order, judgment, decree or ruling, that is inconsistent with, or that contravenes, the provisions of federal law.
15. The Department correctly determined that the trust was not established in accordance with federal and state law because of the spendthrift clause.
16. UPM § 4005.05 (A) provides that the Department counts the assistance unit's equity in an asset toward the asset limit if the asset is not excluded by state or federal law and is either available to the unit, or deemed available to the unit.
17. UPM § 4005.05 (D) provides that an assistance unit is not eligible for benefits under a particular program if the unit's equity in counted assets exceeds the asset limit for the particular program.
18. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
19. The Department correctly determined that the Applicant's assets of \$109,300.81 exceeded the \$1600.00 asset limit.
20. The Department was correct to discontinue the Applicant's Medicaid for the Aged Blind and Disabled for exceeding the asset limit.

DISCUSSION

The Department's action to discontinue the Medicaid is based on their finding that the establishment of the special needs Trust was invalid and therefore the assets of the Trust are accessible to the Applicant. This places the Applicant over the asset limit of \$1600 and ineligible for Medicaid coverage. While the Department had many objections to the language of the trust I found the most compelling argument surrounding the spendthrift clause of the Trust.

The Department's position is supported with Greenwich Trust Company, Trustee, v. Tyson, 129 Conn. 211, 220 (1942), The Connecticut Supreme Court in Greenwich found that a self settled discretionary trust remains subject to the claims of the grantors creditors as a matter of public policy.

In State v. Henneberry, CV-02-0098667-S, 2003 Conn. Super., 2003 WL 23149933, (Judicial District of Middlesex, December 16, 2003)(36 Conn. L. Rptr. 202) the Connecticut Superior court found that the probate court's decree authorizing the creating and funding of a self-settled spendthrift trust violated the Connecticut Supreme Court's proscription in Greenwich against a self settled spendthrift trust.

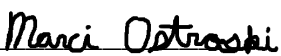
The Appellant concedes in her reply brief that the Connecticut Uniform Trust Code adopted on January 1, 2020 and applied retroactively, "Sec. 2(d) prevents any CUTC provision from diminishing the state's collection rights against a self-settled, payback type of Special Needs Trust. Therefore, this section of the Trust may now be invalid". The Appellant argued, though, that while the spendthrift section of the Trust was invalid, it does not invalidate the trust as a whole. The relevant case law, specifically Greenwich and Henneberry, support that the spendthrift provision invalidates the Trust.

The Appellant argued the trust was valid under Zeoli V Commissioner and under Pikula V Commissioner of Social Services. I found however that those cases were not comparable to the Trust in the present case as both Zeoli and Pikula address third party trusts rather than a self settled trust as reflected here.

I am in agreement with the Department that the Trust is an invalid self settled spendthrift trust under state law and as such the funds placed in the Trust place the Applicant over the asset limit for the Medicaid

DECISION

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



Marci Ostroski
Hearing Officer

CC: Daniel Butler, Principal Attorney, Department of Social Services
Jorge Alvarado, Hearing Liaison, Department of Social Services
Tonya Beckford, Social Services Operations Manager, DO #42

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.