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

[redacted] **2020**
Signature Confirmation

Client ID # [redacted]
Request # 152484

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted], 2020, the Department of Social Services (the "Department") issued a Notice of Action ("NOA") to [redacted] (the "Appellant") discontinuing her *MSP – Qualified Medicare Beneficiaries* medical assistance effective [redacted] 2020, because her benefits were suspended for more than 24 months and she no longer met program requirements.

On [redacted] 2020, the Appellant, by her conservator of estate and person, [redacted] (her "Conservator"), requested a fair hearing to appeal the discontinuance of her Medicare Savings Program benefits.

On [redacted] 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for [redacted], 2020.

On [redacted] 2020, 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:

[redacted] Appellant's Conservator

Christopher Filek, Department's Representative
James Hinckley, Hearing Officer

The hearing record was held open for the Conservator to provide additional information on behalf of the Appellant. On [redacted], 2020, the Conservator provided the information and the hearing record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department was correct when it discontinued the Appellant's Medicare Savings Program benefits effective [redacted] 2020.

FINDINGS OF FACT

1. The Appellant is [redacted] years old. (Hearing Record)

2. The Appellant has an acquired brain injury, and has had the condition at least since prior to 2015. (Conservator's testimony)

3. In 2015, the Appellant was admitted to [redacted] as a long term resident. (Conservator's testimony)

4. In [redacted] 2018, the Appellant began displaying aggressive behavior that was atypical for her. The Appellant had a urinary tract infection at the time, which may have precipitated the change in her behavior. (Conservator's testimony)

5. In [redacted] 2018, the Appellant was discharged from [redacted] and admitted to [redacted] for treatment in its psychiatric wing. [redacted] is an acute-care general hospital. (Conservator's testimony)

6. When the Appellant was discharged to [redacted] in [redacted] 2018, the discharge was expected to be temporary, and the nursing home reserved a bed for the Appellant's return. (Conservator's testimony)

7. On [redacted] 2018, the Appellant was discharged from [redacted] Upon her discharge, rather than being readmitted to [redacted] as previously planned, the Appellant was, instead, transferred to [redacted] is a state-run inpatient psychiatric treatment facility. (Ex. A: Email between Conservator and [redacted], Hearing Record)

8. On [redacted] 2019, the Appellant was transferred from [redacted] to [redacted]. [redacted] like [redacted] is a state-run inpatient psychiatric treatment facility. (Hearing Record)

9. On [redacted] 2020, the Department issued an NOA to the Appellant discontinuing her *MSP – Qualified Medicare Beneficiaries* coverage effective [redacted] 2020, because her benefits were suspended for more than 24 months and she did not meet program requirements. ([redacted] 2020 NOA)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes ("Conn. Gen. Stat.") authorizes the Commissioner 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 a state regulation and, as such, carries the force of law." Bucchere v. Rowe, 43 Conn. Supp. 175, 177 (1994) (citing Conn. Gen. Stat. 17-3f(c) [now 17b-10]; Richard v. Commissioner of Income Maintenance, 214 Conn. 601, 573 A. 2d 712(1990)

3. Section 1396a(a)(10)(E)(i) of Title 42 of the United States Code provides that a State plan for medical assistance must provide "for making medical assistance available for medicare cost-sharing (as defined in section 1396d(p)(3) of this title) for qualified medicare beneficiaries described in section 1396d(p)(1) of this title;"

4. "*Federal financial participation* (FFP) means the Federal Government's share of a State's expenditures under the Medicaid program." Section 400.203 of Title 42 of the Code of Federal Regulations ("CFR").

5. "FFP is not available in expenditures for services provided to…(2) Individuals under age 65 who are patients in an institution for mental diseases unless they are under age 22 and are receiving inpatient psychiatric services under § 440.160 of this subchapter." 42 CFR § 435.1009(a)

6. "*Institution for mental diseases* means a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care and related services. Whether an institution is an institution for mental diseases is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such. An institution for Individuals with Intellectual Disabilities is not an institution for mental diseases." 42 CFR § 435.1010

7. "A mental disease facility is a hospital, nursing facility or other institution of more than 16 beds, primarily for the diagnosis, treatment or care of persons with mental diseases, not including mental retardation." UPM § 1000.01

8. [redacted] **and** [redacted] **were both inpatient facilities with more than 16 beds established primarily for the treatment of individuals with mental illness. They each met the definition of "institution for mental diseases" in federal regulation, as well as its analogue definition in state regulation.**

9. [redacted] **was not established primarily for the care and treatment of persons with mental illness.** [redacted] **had a psychiatric wing but was primarily a general hospital.** [redacted] **was not an "institution for mental diseases" or "mental disease facility" pursuant to Medicaid regulations.**

10. "Residents of the following institutions are not eligible for AABD…3. Mental disease facilities, except as noted above in 3015.05 A.2….5. Residents of these institutions are also not eligible for MA, except as noted below in 3015.05C." UPM § 3015.05(B)

11. The exceptions to MA ineligibility for certain institutionalized individuals provided for in UPM § 3015.05(A)(2) are that the institutional status requirement is met, and there is not ineligibility for, those residents who are age 65 or over, or who are under age 22, or for certain residents between ages 21 and 22.

12. **The Appellant is age** [redacted]**; she did not meet any of the exceptions to ineligibility for residents of mental disease facilities provided for in UPM § 3015.05(A)(2), which are all based on age.**

13. **The term "MA" (medical assistance) referenced in Medicaid regulation encompasses the benefits provided by the *MSP – Qualified Medicare Beneficiaries* program. Federal law requires State plans for medical assistance to provide medicare cost-sharing benefits to qualified medicare beneficiaries. Medicare cost-sharing, such as the Qualified Medicare Beneficiaries program, is considered MA.**

14. UPM § 3015.05(C) provides as follows:

> For a period of twenty-four months following the month of admission, residents of institutions noted above in 3015.05 B. meet the institutional requirement for MA for the following purposes:
>
> 1. to qualify for the Medicare Part D Low Income Subsidy;

2. to the extent permitted by federal law, for administrative costs related to the resident's care.

Residents eligible under this subsection are not eligible for payment of medical services, except for inpatient or convalescent care during a period of conditional release. (Cross-reference 3015.10 B.) Eligibility for payment of services is suspended for the twenty-four month period. *Upon expiration of the twenty-four month durational eligibility period residents of these institutions are totally ineligible for MA*. (Emphasis added)

15. UPM § 3015.10(D) provides as follows:

An institutionalized individual who qualifies for MA limited durational eligibility (Cross-reference 3015.05 C.)

1. has eligibility for payment of medical services suspended beginning the month following the month of institutionalization, for a maximum period of twenty-four months, and

2. if released from the public institution within the twenty-four month period, eligibility for payment of medical services is reinstated without a reapplication beginning the month of release, or

3. if not released from the public institution by the end of the twenty-four month period, eligibility is discontinued.

16. **The Appellant was eligible for a twenty-four month durational period of MA eligibility beginning when she was considered institutionalized in a mental disease facility. The Appellant's admission to [redacted] did not affect her eligibility for MA because [redacted] was not a mental disease facility. She was initially admitted to a mental disease facility when she was admitted to [redacted] on [redacted] 2018.**

17. **The regulation plainly states that durational eligibility is "[f]or a period of twenty-four months following the month of admission…" Therefore, even though the Appellant was a resident of a mental disease facility for the entire month of [redacted] 2018, her twenty-four month period did not begin until the following month, [redacted] 2018.**

18. **The Appellant's twenty-four month period of eligibility was from [redacted] 2018 to [redacted] 2020.**

19. The Department was incorrect when it discontinued the Appellant's *MSP – Qualified Medicare Beneficiaries* medical benefits effective [redacted] 2020. The Appellant's eligibility for QMB should have extended an additional month, through the end of [redacted] 2020, meaning it should have closed effective [redacted] 2020.

DECISION

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

ORDER

1. The Department must extend the Appellant's eligibility for the *MSP – Qualified Medicare Beneficiaries* program through [redacted] 2020.

2 The Department must send, directly to the undersigned hearing officer, proof of compliance with the order in (1) above, by no later than [redacted], 2020.

James Hinckley
Hearing Officer

cc: Brian Sexton
Christopher Filek

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, 25 Sigourney Street, Hartford, CT 06106-5033.

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, 25 Sigourney Street, Hartford, CT 06106. 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.