

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

██████████, 2020
Signature Confirmation

Case # ██████████
CL ID # ██████████
REQUEST ID #157542

NOTICE OF DECISION

PARTY

██████████
██████████

██████████
██████████

REASON FOR HEARING

On ██████████ 2020, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") discontinuing the Q03 Specified Low Income Medicare Beneficiaries ("SLMB") under the Medicare Savings Program ("MSP").

On ██████████ 2020, the Appellant requested an administrative hearing to contest the Department's decision to discontinue such benefits.

On ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2020.

On ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice rescheduling the administrative hearing for ██████████, 2020.

On ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice rescheduling the administrative hearing for

██████████ 2020.

On ██████████, 2020, 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 via telephone conference.

The following individuals participated at the hearing:

██, the Appellant
 Xiomara Natal, Department's representative
 Miklos Mencseli, Hearing Officer

The hearing record closed on ██████████ 2020.

STATEMENT OF ISSUE

The issue to be decided is whether the Department's decision to discontinue benefits under the Medicare Savings Program was correct.

FINDING OF FACTS

1. The Appellant was actively receiving MSP benefits as a Connecticut resident. (Summary, Appellant Testimony)
2. The Appellant's Q03 Specified Low Income Medicare Beneficiaries ("SLMB") benefits renewal end date is ██████████ 2021. (Exhibit 4: ImpaCT Case Notes)
3. On ██████████, 2020, the Department reviewed the Appellant's returned mail ("Returned by Post Office" / "RPO") received on ██████████, 2020. (Summary, Exhibit 4: ImpaCT Case Notes)
4. The RPO was marked with a ██████████ address of ██████████ (the "██████████ address"). (Summary, Exhibit 4: RPO dated ██████████ 2020)
5. The Department previously received RPO on ██████████, 2020 with the ██████████ address. (Summary, Exhibit 4: RPO dated ██████████ 2020)
6. On ██████████, 2020, the Department reviewed RPO received on ██████████, 2020 for the Appellant. The mail was marked; "Returned to Sender Not Deliverable as Addressed Unable to Forward". (Summary, Exhibit 4: returned mail dated ██████████-2020)
7. On ██████████, 2020, the Social Security Administration ("SSA") has the Appellant's address in ██████████ for payment information. (Exhibit 4: ImpaCT Case Notes)

8. The Department updated the Appellant's mailing address to the [REDACTED] address. (Exhibit 4: ImpaCT Case Notes)
9. On [REDACTED], 2020, the Department sent a NOA to the Appellant at the [REDACTED] address advising her that her Medical Assistance will be discontinued effective [REDACTED], 2020. (Exhibit 4: NOA dated [REDACTED]-2020)
10. On [REDACTED], 2020, the Appellant called the Department regarding the NOA she received discontinuing her MSP benefits. (Exhibit 3: Department's Case Note)
11. The Appellant went to [REDACTED] to have a medical procedure done. (Appellant's Testimony)
12. The Appellant has Medicare Part A & B and private insurance through [REDACTED] for her medical coverage. (Appellant's Testimony)
13. The Appellant did inquire about MSP program in the state of [REDACTED] and determined Connecticut provides more benefits under the MSP program. (Appellant's Testimony)
14. The Appellant is not currently paying a mortgage or rent for a Connecticut residence. (Appellant's Testimony)
15. The Appellant is awaiting a medical determination as she was in an auto accident and may require additional medical procedures. (Appellant's Testimony)
16. The Appellant does not have a return date to Connecticut. (Appellant's Testimony)
17. The Appellant resides in [REDACTED]. (Appellant's Testimony)
18. On [REDACTED], 2020, the Department emailed the Appellant what it determined to be relevant policy regarding the discontinuance of the Appellant's MSP benefits. (Exhibit 5: Department's email dated [REDACTED]-2020)
19. On [REDACTED], 2020, the Appellant provided an email brief in response to the Department's email of policy to the Appellant. (Appellant's Exhibit 1: email brief dated [REDACTED] 2020)
20. The Appellant contends that the Policy of UPM 8540.45 (B) is not determined by a rigid rule, whether the recipient was residing out of state for 30 days or more but whether the recipient retained a fixed address in Connecticut and the recipient intends to return within thirty days. (Appellant's Exhibit 1: email brief dated [REDACTED] 2020)

21. The Policy cited by the Department at 8540.25 does not apply to the MSP program. The policy applies to the TFA (“Temporary Family Assistance”) program and is not relevant.
22. The Appellant requested her MSP benefits be reinstated and continue pending a fair hearing decision. (Appellant’s Exhibit 1: email brief dated [REDACTED]-2020)
23. “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], 2020. Therefore, this decision is due no later than [REDACTED], 2020.”

However, the hearing, which was originally scheduled for [REDACTED], 2020, was rescheduled for [REDACTED] 2020, rescheduled for [REDACTED]1, 2020, at the request of the Appellant, which caused a 33-day delay. Because this 33-day delay resulted from the Appellant’s request, this decision is not due until [REDACTED], 2020, and is therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes (“C.G.S.”) authorizes the Commissioner to administer the Medicaid program pursuant to Title XIX of the Social Security Act.

“The department’s uniform policy manual is the equivalent of a 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 Maintenance*, 214 Conn. 601, 573 A.2d (1990)).
2. Uniform Policy Manual (“UPM”) § 1555.05(A) pertains to Timely Reporting.
 1. Assistance units, with the exception of FS monthly reporting assistance units, are required to report changes to the Department within ten calendar days of the date of the change.
3. Uniform Policy Manual (“UPM”) § 1555.05(C) pertains to Failure to Take Timely Action.

Failure to report or verify changes in a timely manner may cause:

 1. ineligibility if eligibility is contingent upon verification of the circumstance;
 2. non-consideration of the circumstance in determining eligibility or benefit level either for a current or retroactive period.

4. The Appellant failed to report her change of address to [REDACTED] to the Department within 10 days of the change.
5. Uniform Policy Manual (“UPM”) § 1570.05 (I) provides for Request for a Hearing.
 1. The request for a Fair Hearing must be in writing for all programs except the Food Stamp program. In the Food Stamp program, the request for a Fair Hearing may be written or oral.
6. Uniform Policy Manual (“UPM”) § 1570.20(A) provides the criteria for Maintaining Benefits Pending a Hearing Decision
 1. Except in situations described below, the Department does not terminate or reduce the assistance unit's benefits until the Fair Hearing decision is reached if the unit requests a Fair Hearing within the 10-day notice period, as described in this chapter.
 2. Unless the assistance unit specifically waives its right to a continuation of benefits, the Department assumes that the unit's request for a Fair Hearing within the 10-day period includes a request that the unit's benefits remain the same pending the Fair Hearing decision.
7. Uniform Policy Manual (“UPM”) § 1570.20(D) provides the criteria for Reinstatement of Benefits.
 1. Under the conditions described below, the Department reinstates the assistance unit's benefits if such benefits have been reduced or terminated pending a Fair Hearing decision.
 - a. In the AFDC and Medicaid programs, the Department reinstates the assistance unit's benefits if:
 - (1) the Department takes an action without sending timely notice; and
 - (2) **the assistance unit requests a Fair Hearing within 10 days of the mailing date of the notice; and**
 - (3) the Department determines that federal or state law or departmental policy is not the sole issue involved in the Fair Hearing.
8. The Department's Notice of Action is dated [REDACTED] 2020 with discontinuance date of [REDACTED] 2020. The Appellant's request is signed and dated [REDACTED], 2020 and was received by the OLCRAH on [REDACTED], 2020.
9. The Department correctly did not continue the Appellant's MSP benefits as her request is not timely, within 10 days of the notice dated [REDACTED], 2020.

10. Uniform Policy Manual (“UPM”) § 2540.94 provides the criteria to qualify for Medical Assistance under the Qualified Medicare Beneficiaries Medicaid Coverage Group.
11. UPM § 1545.05(A)(1) provides that eligibility for Medical Assistance is redetermined regularly on a scheduled basis.
12. UPM § 1545.05(B)(1) provides that the purpose of the redetermination is to review all circumstances relating to need, eligibility, and benefit level.
13. UPM § 1545.05(B)(4) provides that assistance is discontinued if eligibility is not re-established.
14. UPM § 3099.10 provides for Verification Requirements – Residency.
 - A. Fixed Address - AFDC, AABD, MA, FS
 1. Residency in the state must be verified in every case in which the assistance unit has a fixed address.
 2. Failure to verify as required will result in ineligibility of the assistance unit
15. UPM § 3010.25 provides for Disputed Residence.

An applicant who meets the residency requirement for Medicaid in more than one state is entitled to prompt assistance from one state or the other. To resolve disputes the following considerations should be taken into account:

 - A. No durational residence requirement can be applied.
 - B. Residence in the state prior to entering an institution is not a requirement.
 - C. Any action by a state constitutes state placement except:
 1. providing basic information about another state's Medical Assistance; or
 2. providing basic information about the availability of health care services in another state.
 - D. **If one state cannot agree to accept responsibility, the dispute must be resolved by granting assistance in the state in which the individual is physically present.**
16. The Department correctly discontinued the Appellant’s MSP benefits as she does not have residency in the State of Connecticut and she is physically living in [REDACTED].

DISCUSSION

From the Connecticut Department of Social Services portal.ct.gov:

Frequently Asked Questions about Medicare Savings Programs (MSP)

Do I qualify for MSP?

Q. Who is eligible to receive help through MSP?

A. To be eligible for MSP, individuals must be **(1) residents of Connecticut**, (2) be eligible for Medicare Part A or 65 years of age, and (3) have income below the MSP limits. Income eligibility is based on your gross income (before taxes) or your combined gross income with your spouse, even if your spouse is not yet eligible to receive Medicare benefits. The current monthly income limits for the different levels of MSP are as follows:

1. QMB - \$2,196.51 for a single person and \$2,972.99 for a couple
2. SLMB - \$2,404.71 for a single person and \$3,254.79 for a couple
3. ALMB - \$2,560.86 for a single person and \$3,466.14 for a couple

Q. What factors can change my eligibility?

A. Changes to your personal situation can affect your eligibility. If your income or marital status changes your eligibility for MSP may change. **If you move out of Connecticut, you are no longer eligible for MSP in Connecticut.** You must notify DSS of these changes when they occur. Other types of changes that can affect your eligibility for MSP are changes to the program rules, such as a change in income limit or a program rule. If the MSP eligibility program rules change, your eligibility may change. If your eligibility for MSP changes, we will notify you in writing and provide you with at least 10 calendar days' notice prior to the change.

The Appellant failed to notify the Department of her change of address within 10 days. The Department received RPO on [REDACTED], 2020 with the [REDACTED] address of [REDACTED]. The Appellant did not contact the Department until [REDACTED] 2020 after she received the NOA discontinuing her MSP benefits. The Appellant has not had a fixed address (residency) in Connecticut for several months.

DECISION

The Appellant's appeal is DENIED.

Miklos Mencseli
Miklos Mencseli
Hearing Officer

C: Xiomara Natal, Bridgeport R.O. # 30
Fred Presnick, Operations Manager, Bridgeport R.O. # 30
Yecenia Acosta, Operations Manager, Bridgeport R.O. # 30
Tim Latifi, Operations Manager, Bridgeport R.O. # 30

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.

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.