

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

██████████
Signature Confirmation

Case ID # ██████████
Client ID # ██████████
Request # 191467

NOTICE OF DECISION
PARTY

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PROCEDURAL BACKGROUND

On ██████████, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a notice of action denying her Husky C Home and Community-Based Services ("HCBS") because her assets exceeded the program limits.

On ██████████, ██████████, the Appellant's Authorized Representative ("AREP"), requested an administrative hearing to contest the Department's decision to deny the Appellant's application for HUSKY C HCBS.

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

On ██████████, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-184, inclusive of the Connecticut General Statutes, OLCRAH held an administrative hearing by telephone.

The following individuals called into the hearing:

██████████, the Appellant and Applicant's Conservator of Estate
██████████, the Applicant's Conservator of Person and daughter
Abdaleh Mohamoud, Department's Representative
Sara Hart, Hearing Officer

The Applicant was not present at the administrative hearing.

The Hearing record remained open for an additional 7 days for the submission of additional evidence. Evidence was received and the hearing record closed on [REDACTED]

STATEMENT OF THE ISSUE

The issue is whether the Department's decision to deny the Appellant's HUSKY C HCBS application on [REDACTED], was correct.

FINDINGS OF FACT

1. The Applicant is age [REDACTED] (DOB: [REDACTED]) and widowed. (*Exhibit 1: W1LTC*)
2. On [REDACTED], the Department received a W1LTC Long-term Care/Waiver Application signed by the Appellant on behalf of the Applicant requesting Home Care services. (*Exhibit 1*)
3. On [REDACTED], the Department received Court of Probate documentation appointing Attorney [REDACTED] as the Applicant's Conservator of Estate. (*Department's Testimony, Exhibit 2: Court of Probate document*)
4. The W1LTC listed the Applicant's residential address as [REDACTED] and her mailing address as [REDACTED] (*Exhibit 1*)
5. [REDACTED] is the address of the Appellant. (*Exhibit 1, Exhibit 2, Appellant's Testimony*)
6. The W1LTC listed two separate AREPS for the Applicant, including [REDACTED] and [REDACTED]. (*Exhibit 1*)
7. [REDACTED] is the Applicant's daughter and Conservator of Person. (*Exhibit 2, [REDACTED] Testimony*)
8. On [REDACTED], the Department reviewed the Applicant's application and sent the Applicant a W1348LTC Verification We Need Form. The form requested the following asset verifications: statements from [REDACTED], [REDACTED], [REDACTED] and [REDACTED] to current for [REDACTED] Bank account #'s ending in X [REDACTED] (checking), X [REDACTED] (CD), X [REDACTED] (CD), X [REDACTED] (CD), X [REDACTED] (checking), X [REDACTED] (Money Market), and X [REDACTED] (Money Market) and [REDACTED] account ending in X [REDACTED] (savings). The form further requested proof of any life insurance policies, funeral contracts, and a copy of the HUD-1 for the sale of [REDACTED]. The due date for the requested verifications was [REDACTED], and the form stated that the Department would take action no later than [REDACTED]. The form was mailed to the Applicant at [REDACTED]. (*Exhibit 4: W1348LTC [REDACTED]*)

9. The Department must manually issue copies of the W1348LTC form when sending to more than one recipient and the Department's procedure requires a copy of the mailed W1348LTC be kept in the Applicant's document file. The document file for the Applicant does not contain copies of the [REDACTED] W1348LTC. (*Department's Testimony*)
10. A copy of the W1348LTC Verification We Need form was not sent to either of the Applicant's AREPS. (*Department's Testimony, Hearing Record*)
11. The Appellant was unaware of the Department's request and did not provide the requested information on behalf of the Applicant. (*Appellant's Testimony*)
12. The Department did not receive the requested verifications and issued a NOA indicating an incorrect reason for denial. The Department denied the Applicant's HUSKY C HCBS application because she failed to provide information needed to establish eligibility. (*Hearing Summary, Department's Testimony*)
13. On [REDACTED], the Department sent the Applicant a NOA denying her HUSKY C HCBS application because the value of her assets was more than the amount allowed and does not meet program requirements. The NOA listed the value of the Applicant's assets as [REDACTED]. The asset value amount listed on the NOA is the result of an error made by the Department. (*Exhibit 6: NOA [REDACTED], Department's Testimony*)
14. The issuance of this decision is timely under Section 17b-61(a) of the Connecticut General Statutes, which requires the agency to issue a decision within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED]. The hearing record remained open an additional 7 days; therefore, this decision is due no later than [REDACTED].

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

The Department has the authority to administer and determine eligibility for the HUSKY C HCBS program.
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, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990)).
3. UPM § 2540.92 (A) provides for the coverage group description. This group 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 services, require care in an LTCF

Section 17b-342(a) of the Connecticut General Statutes provides for the Connecticut home-care program for the elderly. The Commissioner of Social Services shall administer the Connecticut home-care program for the elderly state-wide in order to prevent the institutionalization of elderly persons (1) who are recipients of medical assistance, (2) who are eligible for such assistance, (3) who would be eligible for medical assistance if residing in a nursing facility, or (4) who meet the criteria for the state-funded portion of the program under subsection (i) of this section. For purposes of this section, a long-term care facility is a facility that has been federally certified as a skilled nursing facility or intermediate care facility. The commissioner shall make any revisions in the state Medicaid plan required by Title XIX of the Social Security Act prior to implementing the program. The program shall be structured so that the net cost to the state for long-term facility care in combination with the services under the program shall not exceed the net cost the state would have incurred without the program. The commissioner shall investigate the possibility of receiving federal funds for the program and shall apply for any necessary federal waivers. A recipient of services under the program, and the estate and legally liable relatives of the recipient, shall be responsible for reimbursement to the state for such services to the same extent required of a recipient of assistance under the state supplement program, medical assistance program, temporary family assistance program or supplemental nutrition assistance program. Only a United States citizen or a noncitizen who meets the citizenship requirements for eligibility under the Medicaid program shall be eligible for home-care services under this section, except a qualified alien, as defined in Section 431 of Public Law 104-193, admitted into the United States on or after August 22, 1996, or other lawfully residing immigrant alien determined eligible for services under this section prior to July 1, 1997, shall remain eligible for such services. Qualified aliens or other lawfully residing immigrant aliens not determined eligible prior to July 1, 1997, shall be eligible for services under this section subsequent to six months from establishing residency. Notwithstanding the provisions of this subsection, any qualified alien or other lawfully residing immigrant alien or alien who formerly held the status of permanently residing under color of law who is a victim of domestic violence or who has intellectual disability shall be eligible for assistance pursuant to this section. Qualified aliens, as defined in Section 431 of Public Law 104-193, or other lawfully residing immigrant aliens or aliens who formerly held the status of permanently residing under color of law shall be eligible for services under this section provided other conditions of eligibility are met.

The Department correctly determined the Applicant was seeking eligibility for HUSKY C HCBS services on her [REDACTED], W1LTC application.

4. UPM § 1505.15 provides for Individuals Qualified to Make an Application

A. Provisions

1. Applicants may apply for and be granted assistance on their own behalf or, under certain conditions, be represented by other qualified individuals who act responsibly for them.

B. Individuals Representing Others

1. AFDC, AABD, MA

- a. The following individuals are qualified to request cash or medical assistance, be interviewed and, complete the application process on the behalf of others who they represent:

- (1) the caretaker relative of a child applicant;

- (3) a conservator, guardian or other court appointed fiduciary.

The Appellant and Applicant's Conservator of Estate is qualified to represent and act on the behalf of the Applicant in the HUSKY C HCBS eligibility determination process.

5. UPM § 1010.05(A)(1) provides that the assistance unit must supply the Department in an accurate and timely manner as defined by the Department, all pertinent information, and verification that the Department requires to determine eligibility and calculate the amount of benefits (cross reference: 1555).

UPM § 1015.05(C) provides that the Department must tell the assistance unit what the unit must do to establish eligibility when the Department does not have sufficient information to make an eligibility determination.

UPM § 1015.10(A) provides that the Department must inform the assistance unit regarding the eligibility requirements of the programs administered by the Department, and regarding the unit's rights and responsibilities.

The Department correctly determined that additional information was needed to determine the Applicant's eligibility for HUSKY C HCBS. The Department failed to properly inform the Applicant's AREPS of verifications required to determine eligibility for HUSKY C HCBS.

6. UPM § 1505.40(A)(1) provides for processing applications and states that prior to making an eligibility determination the Department conducts a thorough investigation of all circumstances relating to the eligibility and amount of benefits.

UPM § 1505.35(D)(2) provides that the Department determines eligibility within the standard of promptness for the AFDC, AABD, and MA programs except when verification needed to establish eligibility is delayed and one of the following is true: the client has good cause for not submitting verification by the deadline, or the client has been granted a 10-day extension to submit verification which has not elapsed.


The Applicant has good cause for failing to provide the requested documents necessary to determine eligibility. The Applicant has a court appointed conservator and appointed multiple AREPS on her W1LTC to assist her in the application process. The Department failed to properly notify either of the Applicant's AREPS of the necessary verifications required to determine the Applicant's HUSKY C HCBS eligibility and incorrectly denied the Applicant's application on [REDACTED]

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department shall reopen the Applicant's [REDACTED], application and continue processing to determining eligibility for HUSKY C HCBS.
2. The Department shall advise the Applicant's AREPS in writing of all requirements and verifications needed to determine eligibility.
3. Compliance with this order is due to the undersigned no later than [REDACTED]


Sara Hart
Hearing Officer

CC: Saraid Garcia, Department Representative Hartford Regional Office
Abdaleh Mohamoud, Department Representative Hartford Regional Office
Musa Mohamud, Operations Manager Hartford Regional Office
Josephine Savastra, Operations Manager Hartford Regional Office
Jessica Carroll, Operations Manager Hartford 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, 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 requested 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 the 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 the 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, 165 Capitol Avenue, 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 to 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 her designee following §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.