

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-9902

██████████ 2022
Signature Confirmation

Case # ██████████
Client # ██████████
Request # 184915

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2021, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA) denying Husky C, Medically Needy Aged, Blind and disabled benefits under the Medicaid program effective ██████████ 2021.

On ██████████ 2021, the Appellant requested an administrative hearing to contest the Department’s decision to deny such benefits.

On ██████████ 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a Notice scheduling the administrative hearing for ██████████ 2021.

On ██████████ 2021, the Appellant requested a continuance of the hearing and requested the administrative hearings be held by telephone, which was granted.

On ██████████ 2021, OLCRAH re-scheduled the administrative hearing for ██████████ 2021.

On ██████████ 2021, 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. The following individuals were present at the hearing:

██████████, Esq. Appellant's attorney and son
 ██████████ POA and daughter
 Jose Velasquez, Department Representative
 Almelinda McLeod, Hearing Officer

The Appellant was not present as she is currently institutionalized.

The hearing record was held open for the submission of additional evidence. On ██████████ 2022, the hearing record was closed.

A separate decision will be issued regarding the denial of Husky C Long Term Care Medicaid.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to determine eligibility and deny Husky C MAABD program when the Appellant's Husky C LTC Medicaid was discontinued was correct.

FINDINGS OF FACT

1. The Appellant owns a condominium located at ██████████
 ██████████ (Hearing record)
2. On ██████████ 2019, the Appellant was admitted short term into the ██████████
 ██████████, short term a skilled nursing facility ("SNF").
3. On ██████████ 2020, ASCEND, the Department's contractor that determines nursing facility level of care ("LOC"), determined the Appellant was eligible for long term care due to uncontrolled, unstable and/or chronic conditions requiring continuous skilled nursing services and/or nursing supervision on a daily basis or has a chronic condition requiring substantial assistance with personal care on a daily basis. (Exhibit 7, Long term approval of Nursing facility LOC)
4. On ██████████ ██████████ 2021, the Department placed a phone call to the Appellant's POA to confirm the Appellant's home, ██████████
 ██████████ was not currently listed for sale, and no one lived in the home while she resided in the facility. The value of the home was \$200,700. The Department determined the Appellant was over the asset limit for the Husky C LTC L01 Medicaid. (Hearing record)
5. On ██████████ 2021, the Department issued a NOA indicating that the Appellant's Husky C LTC L01 Medicaid would close effective ██████████

- 2021, because the value of assets was more than was allowed for this program. (Exhibit 2, NOA)
6. There is no indication that the Department provided appropriate notification (W-1348) advising the Appellant what must be done to maintain HC LTC Medicaid eligibility. (Hearing record)
 7. When this coverage closed, the Department's procedure is to automatically determine eligibility for another Medicaid program. In this case, the Department's system evaluated eligibility for Husky C Medicaid for the Aged, Blind and Disabled ("MAABD") and automatically denied it due to excess assets. (Hearing record)
 8. The asset limit under the MAABD program is \$1600.00. (Hearing record)
 9. On ██████████ 2021, the Department issued a NOA denying the MAABD program effective ██████████ 2021, because the value of assets was more than was allowed for this program. (Exhibit 2, NOA)
 10. The issuance of this decision is timely under section 17b-61(a) of Connecticut General Statutes, which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on ██████████ 2021. This decision, therefore, was due no later than ██████████ 2022. However, the hearing record, which had been anticipated to close on ██████████ 2022, did not close due to a re-schedule request by the Appellant. The closing of the hearing record was further delayed for the admission of additional evidence until ██████████ 2022. Because this █-day delay in the close of the hearing record arose from the Appellant's request, this final decision was not due until ██████████ 2022, and is therefore timely. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-2 (6) 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. The department's Uniform Policy Manual ("UPM") is the equivalent of 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 § 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.
4. UPM § 1570.25 (C) (2) (c) provides the Fair Hearing official determines the issue of the hearing.

5. UPM § 1570.25 (F) (1) (c) pertains to matters considered at the Fair Hearing and considers an action by the Department or failure by the Department to act, within the appropriate time limits describes in this section, on the application for benefits, including discontinuance, termination or reduction of benefits.

6. UPM § 1570.25 (F) (2) (a) pertains to matters considered at the Fair Hearing regarding decisions by the Department on eligibility for benefits in both initial and subsequent determinations.

7. I find, based on the hearing record, the issue of this hearing is regarding the discontinuance of the HC LTC Medicaid due to over assets. The Department neglected notifying the Appellant and advising what it had to do to maintain HC LTC eligibility. Therefore, this procedural action of determining eligibility for another medical program (MAABD) is moot.

DISCUSSION

The Department has an ongoing practice that when a recipient's Medicaid is discontinued, the Department is to search eligibility in another Medicaid program. This was such the case. This decision is a 2- part hearing where the Appellant was in a skilled nursing facility since [REDACTED] 2019 and determined long-term care eligible in [REDACTED] 2020. In [REDACTED] 2021, the Department discovered that the Appellant had a home in the community. It was at this time the Department discontinued the Appellant's HC LTC Medicaid due to over assets because the Appellant's non-home property was not listed for sale in the real estate market.

The Department has certain procedures and responsibilities that must be followed when determining eligibility. One of those responsibilities is to inform the Appellant what it must do to maintain Medicaid eligibility. I found the Department neglected to follow the procedures established by policy to inform the Appellant what it had to do to maintain eligibility. No proper notification requesting an action by the Appellant (W-1348) was issued to the Appellant requesting that the home be listed for sale.

Since the action to discontinue the Husky C LTC was improper, I find that the procedural action to determine eligibility for another Medicaid program such as Husky C MAABD is moot. (See decision for HC LTC)

DECISION

The Appellant's appeal is Moot.

Almelinda McLeod
Almelinda McLeod
Hearing Officer

CC: Patricia Ostroski, SSOM, New Britain
Jose Velasquez, Fair Hearing Liaison, New Britain

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, 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 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.