

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 ID # ██████████
Request # 186148

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2021, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") which denied Husky C- Long Term Care facility residents eligible under special income level benefits under the Medicaid program.

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, 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:

██████████, Conservator for Appellant
██████████, Appellant's son
Anthony Grant, Department's Representative
Shawn Hardy, Hearing Officer, observer
Almelinda McLeod, Hearing Officer

██████████, Appellant was not present due to her institutionalization.

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

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny Husky C Long Term Care ("LTC") under the Medicaid program due to excess assets was correct.

FINDINGS OF FACT

1. On [REDACTED] 2020, the Appellant was admitted to [REDACTED] located at [REDACTED]. where she continues to reside. (Hearing record, Exhibit 3, W-1LTC application)
2. Prior to this, the Appellant resided at [REDACTED] which was sold on [REDACTED] 2020. (Exhibit 1, Case notes & Exhibit 3, W-1LTC)
3. The Appellant and her spouse own a property located at [REDACTED]. There are no other names on the deed associated with the property. (Hearing record and Appellant testimony)
4. On [REDACTED] 2021, the Appellant applied for Husky C LTC Medicaid and reported the property in [REDACTED] was an unavailable asset as it was impossible to evict occupants due to pandemic and the spouse was unwilling to sell. (Exhibit 3, W-1LTC Application)
5. On [REDACTED] 2021, the Department issued a W-1348 LTC, Verification We Need requesting copies of bills, receipts, or canceled checks for transactions over \$5000 and source of funds for deposits over \$5000 on all accounts, bank statements from [REDACTED] 2020 to the most recent bank statement, copy of funeral contracts, property deed(s), Annuities, shelter expenses for community spouse by [REDACTED] 2021. The W-1348 LTC stated there is no eligibility in any month where assets exceed \$1600.00. The Appellant must verify countable assets are below the \$1600 asset limit. (Exhibit 4, W-1348LTC)
6. On [REDACTED] 2021, the Department received verification that the Community spouse receives an annuity of \$9458.85 per month and the most recent bank statements on [REDACTED] [REDACTED] [REDACTED] xxxx [REDACTED]; [REDACTED] [REDACTED] [REDACTED] xxxx [REDACTED]; [REDACTED] [REDACTED] [REDACTED] xxxx [REDACTED]; [REDACTED] [REDACTED] [REDACTED] xxxx [REDACTED] and [REDACTED] [REDACTED] xxxx [REDACTED]. The Appellant and her spouse still own the property in [REDACTED]. (Hearing record)

7. On [REDACTED] 2021, the Department issued a NOA denying Husky C LTC Medicaid because the value of your asset was more than the amount allowed for this program. (Exhibit 2, NOA)
8. As of [REDACTED] 2021, the property in [REDACTED] was valued between \$240,000 to \$250,000. (Exhibit 5, E-mail correspondence)
9. 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 [REDACTED] 2021. The hearing record, which had been anticipated to close on [REDACTED] 2021, did not close for the admission of evidence until [REDACTED] 2022, therefore, this final decision was not due until [REDACTED] 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. Section § 17b-261 a (d) (1) provides for purposes of this subsection, an "institutionalized individual" means an individual who has applied for or is receiving (A) services from a long-term care facility, (B) services from a medical institution that are equivalent to those services provided in a long - term care facility, or (C) home and community-based services under a Medicaid waiver.

The Department correctly determined the Appellant is an institutionalized individual residing in a long-term care facility.

3. 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)).
4. Section 17b-261 (c) of the Connecticut General Statutes provides in part that 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 a legal right, authority, or power to obtain or have applied for the applicant's general or medical support.
5. UPM § 4000.01 defines available assets as cash or any item of value which is actually available to the individual or which the individual has the legal right, authority, or power to obtain or to have applied for, his or her general medical support.

6. UPM § 4005.05 (B) (2) provides that under all programs except Food Stamps, the Department considers as asset available when actually available to the individual or when the individual has the legal right, authority, or power to obtain the asset, or have it applied for his or her general or medical support.
7. **The Department correctly determined the property in [REDACTED] is an available asset.**
8. **The Department correctly determined the Appellant has a legal right, authority, or power to obtain the asset or have it applied for her own general medical support.**
9. UPM § 4000.01 defines home property as real property which someone owns and is using as principal residence and life use which is the right of a person to occupy and/or enjoy the income proceeds of real property during the person's lifetime in accordance with the terms of a legal agreement.
10. UPM § 4000.01 defines Non home property as a real property which a person owns but is not using as principal residence.
11. UPM § 4000.01 defines legal owner as the person who is legally entitled to enjoy the benefit and use of the asset.
12. **The Department correctly determined the [REDACTED] home was *not* the Appellant's primary address before her institutionalization.**
13. **The Department correctly determined the property in [REDACTED] is non- home property.**
14. **The hearing record shows that the legal owners of the property are the Appellant and her spouse.**
15. UPM § 4005.05 (B) (1) provides 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: (a) available to the unit or (b) deemed available to the unit.
16. UPM § 4020.10 (J) (1) (2) (3) provides non-home property which would render the assistance unit ineligible is excluded for as long as the assistance unit is making a bona-fide effort to sell the property and agrees in writing to dispose of the property, immediately lists the property for sale and does not refuse any offer which approximates fair market value.
17. **The Department correctly determined the non-home property was not an excluded asset.**

18. UPM § 4000.01 defines Asset limit as the maximum amount of equity in counted assets which an assistance unit may have and still be eligible for a particular program administered by the Department.
19. UPM § 4005.10 (A) provides the asset limit for the Department's program are as follows: (2) AABD and MAABD (a) the asset limit is \$1600 for a needs group of one.
20. UPM § 4005.05 (D) (1) provides that the Department compares the assistance unit's equity in counted assets with the program asset limit when determining whether the unit is eligible for benefits.
21. UPM § 4005.05 (D) (2) provides in relevant part, 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.
22. UPM § 4005.15 provides that in the Medicaid program, at the time of application, the assistance unit is ineligible until the first day of the month in which it reduces its equity in counted assets to within the asset limit.
23. **The Department correctly determined the non-home property value exceeded the \$1600.00 asset limit for the Husky C LTC Medicaid.**

DISCUSSION

The hearing record shows that the Appellant's adult son lives in the non-home property in [REDACTED], however his name does not appear on the deed to the property, therefore, he has no legal ownership to the property. Subsequently, the Appellant and her spouse listed the [REDACTED] property on the market on [REDACTED] 2022, showing compliance with UPM § 4020.10 (J) (1) (2) (3). The Appellant is encouraged to re-apply. The Department is upheld.

DECISION

The Appellant's appeal is DENIED.

Almelinda McLeod

Almelinda McLeod
Hearing Officer

CC: Cheryl Stuart, SSOM, Norwich
Anthony Grant, Fair Hearing Liaison, New Haven

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.