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

[redacted] 2022
Signature confirmation

Case: [redacted]
Client: [redacted]
Request: 196808

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted], 2022, the Department of Social Services (the "Department") issued a *Notice of Action* retroactively terminating [redacted] (the "Applicant") Specified Low Income Medicare Beneficiaries (SLMB) coverage effective [redacted] 2022 and granting him Qualified Medicare Beneficiaries (QMB) coverage effective [redacted] 2022. Both coverage groups are part of the Department's Medicare Savings Program.

On [redacted], 2022, the Applicant expired.

On [redacted], 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received the hearing request of [redacted] (the "Appellant,") the Applicant's adult daughter, disputing the effective date of the Medicare Savings Program grant.

On [redacted], 2022, the OLCRAH scheduled the administrative hearing for [redacted] 2022.

On [redacted] 2022, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The following individuals attended the hearing by video conferencing.

[redacted], Appellant
Shannon Shlash, Department Representative
Eva Tar, Hearing Officer
Joseph Davey, Hearing Officer (Observer)

The hearing record closed [redacted], 2022.

STATEMENT OF ISSUE

The issue is whether the Department correctly determined the date of the Applicant's application for the purposes of determining the Applicant's eligibility to participate in the Medicare Savings Program through the Qualified Medicare Beneficiaries (QMB) coverage group.

FINDINGS OF FACT

1. In [redacted] 2022, the Applicant was a [redacted]-year-old man with Medicare A and Medicare B coverage. (Department Exhibit 15)

2. On [redacted] 2022, a Connecticut hospital discharged the Applicant to [redacted] (the "Facility"). (Appellant Testimony)

3. On Friday, [redacted] 2022 at 12:07 p.m., a Facility employee faxed a signed Medicare Savings Program application (the "first application") to 860-647-5855. (Appellant Testimony) (Hearing request) (Department Exhibit 6)

4. The 860-647-5855 number is assigned to a fax machine physically located in one of the Department's offices. (Department Representative Testimony)

5. The Department advises applicants to file their applications in person, online, or by mail. (Department Exhibits 9, 10, and 12)

6. On Tuesday, [redacted] 2022, a Department employee retrieved the first application and scanned the document for processing, honoring "[redacted] 2022" as the date of receipt. (Department Representative Testimony)

7. The first application contains the Applicant's full name, address, and an [redacted], 2022 signature. (Department Exhibit 1)

8. On [redacted] 2022, the Department issued a *Notice of Action* granting the Applicant coverage through the Specified Low Income Medicare Beneficiaries (SLMB) coverage group effective [redacted] 2022. (Department Exhibit 2)

9. The Specified Low Income Medicare Beneficiaries (SLMB) coverage group only pays for a participant's Medicare B premiums. (Department Representative Testimony)

10. On [redacted], 2022, the Appellant filed an application (the "second application") online for the Applicant. (Department Exhibit 3) (Appellant Testimony) (Department Representative Testimony)

11. On [redacted], 2022, the Department issued a *Notice of Action* retroactively terminating the Applicant's Specified Low Income Medicare Beneficiaries (SLMB) coverage group effective [redacted] 2022 and granting the Applicant coverage under the Qualified Medicare Beneficiaries (QMB) coverage group effective [redacted] 2022. (Department Exhibit 4)

12. The Qualified Medicare Beneficiaries (QMB) coverage group pays for a participant's co-pays and Medicare B premiums. (Department Representative Testimony)

13. On [redacted] 2022, the Applicant expired. (Appellant Testimony) (Department Exhibit 15)

14. The Social Security Administration suspended or discontinued the Applicant's Medicare A and B coverage effective [redacted] 2022. (Department Exhibit 15)

15. The Appellant seeks coverage to pay for the Applicant's co-pays and other medical expenses owed to the Facility. (Appellant Testimony)

16. Connecticut General Statutes § 17b-61 (a) provides: "The Commissioner of Social Services or the commissioner's designated hearing officer shall ordinarily render a final decision not later than ninety days after the date the commissioner receives a request for a fair hearing pursuant to section 17b-60, …." On [redacted] 2022, the OLCRAH received the online hearing request. This hearing decision ordinarily would be due no later than [redacted] 2022. This decision is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes designates the Department as the state agency for the administration of so identified state and federal programs.

   Section 17b-256f of the Connecticut General Statutes addresses eligibility for Medicare savings programs and permits in part the Commissioner of Social Services to implement policies and procedures to administer the provisions of this section while in the process of adopting such policies and procedures in regulation form.

   "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 Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990)).

   The Department has the authority under State statute to administer the State's Medicare Savings Program and to make regulations for the same.

2. Section 1570.05 D.2. of the Department's Uniform Policy Manual ("UPM") provides: "In the Medicaid program, the following persons have the right to request a Fair Hearing on behalf of a deceased unit member: a. spouse; b. child or parent; c. executor,

administrator or conservator; d. any other person who, during the deceased's lifetime, assumed personal financial liability for the deceased's medical debts which would be covered under Medicaid."

The Appellant had the right under UPM § 1570.05 D.2. to request an administrative hearing on behalf of the Applicant, her deceased father.

3. Section 17b-256f of the Connecticut General Statutes provides:

> The Commissioner of Social Services shall increase income disregards used to determine eligibility by the Department of Social Services for the federal Qualified Medicare Beneficiary, the Specified Low-Income Medicare Beneficiary and the Qualifying Individual programs, administered in accordance with the provisions of 42 USC 1396d(p), by such amounts that shall result in persons with income that is (1) less than two hundred eleven per cent of the federal poverty level qualifying for the Qualified Medicare Beneficiary program, (2) at or above two hundred eleven per cent of the federal poverty level but less than two hundred thirty-one per cent of the federal poverty level qualifying for the Specified Low-Income Medicare Beneficiary program, and (3) at or above two hundred thirty-one per cent of the federal poverty level but less than two hundred forty-six per cent of the federal poverty level qualifying for the Qualifying Individual program….

Conn. Gen. Stat. § 17b-256f.

Section 2540.94 of the Uniform Policy Manual addresses the Qualified Medicare Beneficiaries (QMB) coverage group. This Section provides who qualifies for the coverage group, what beneficiaries of the coverage group receive payment for (Medicare Part A and B premiums as well as coinsurance and deductible amounts for services covered under Medicare), the duration of eligibility, and the income criteria to be met.

Section 2540.95 of the Uniform Policy Manual addresses the Specified Low Income Medicare Beneficiaries (SLMB) coverage group. This Section provides who qualifies for the coverage group, what beneficiaries of the coverage group receive payment for (Medicare Part B premium only), the duration of eligibility, and the income criteria to be met.

The Department had the responsibility as the administrator of the Medicare Savings Program to screen and evaluate the Applicant's applications for the most appropriate coverage for which the Applicant may have been eligible.

4. "Right to File an Application. The assistance unit has the right to apply for assistance under any of the programs administered by the Department." UPM § 1005.05 A.

"The application process outlines the general methods and requirements used in obtaining assistance and in determining an assistance units' initial eligibility. The application process is essentially the same for all programs…." UPM § 1505.

Section 1505.10 B. of the Uniform Policy Manual provides:

1. Individuals who desire to obtain aid must file a formal request for assistance.
2. The formal request must be made in writing on the application form.
3. At a minimum, the following information must be presented:
   a. the full name and address of the applicant; and
   b. the signature of the applicant, caretaker relative or other individual who is requesting assistance on behalf of the applicant.
4. The application *may* be submitted in person or by mail.
5. Telephone contacts or other requests for aid *which are not written,* do not contain the required information, or are not made on the prescribed application form are considered inquiries and do not constitute an application.
6. Individuals who appear in person to request assistance must be given an opportunity to file an application for any desired program on the day they personally appear.

UPM § 1505.10 B. (emphasis added)

The first application contained the minimum information required by UPM § 1505.10 B. 3.

The first application sent to the Department by fax was <u>not</u> an inquiry but was a formal request in writing to participate in the Medicare Savings Program.

The language at UPM § 1505.10 B. 4. *is permissive* rather than mandatory, as it utilizes the word "may" rather than "shall" or "must."

Section 1505.10 B. of the Uniform Policy Manual *does not prohibit* an individual from submitting a written application to a fax machine in the control of the Department.

5. "<u>Date of Application</u>. For AFDC, AABD and MA applications, … , the date of application is considered *to be the date that a signed application form is received by any office of the Department."* UPM § 1505.10 D.1. (emphasis added)

With respect to the Medicare Savings Program, the Applicant's date of application was [redacted], 2022, the date that the Department received the application at a fax machine at one of the Department's offices.

<u>DECISION</u>

The Appellant's appeal is GRANTED.

ORDER

1. If it has not already done so, the Department will rescreen and process the Applicant's Medicare Savings Program application for Qualified Medicare Beneficiaries (QMB) coverage with an [redacted] 2022 application date.

2. Within 14 calendar days of the date of this Decision, or [redacted] 2022, documentation of compliance with this order is due to the undersigned.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

Pc: Shannon Shlash, DSS-New Haven
Rachel Anderson, DSS-New Haven
Mathew Kalarickal, DSS-New Haven
Lisa Wells, DSS-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.