



STATE OF TENNESSEE
Department of Finance and Administration
Office of General Counsel – Division of TennCare
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April 20, 2022

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West Imboden
Attorney for TennCare
Department of Finance and Administration
Eligibility Appeals Unit
310 Great Circle Road
Nashville, Tennessee 37243

RE: In the matters of: [REDACTED]
Case Number: [REDACTED]

Enclosed is an Initial Order rendered in connection with the above-styled case.

Tennessee Department of Finance and Administration
Office of General Counsel – Division of TennCare
Enclosure

**BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF FINANCE & ADMINISTRATION**

IN THE MATTER OF:

████████████████████

CASE NO. ██████████

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE OFFICE OF GENERAL COUNSEL, DIVISION OF TENNCARE – TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS: THE PARTY CONTESTING THE ORDER FILES A PETITION FOR RECONSIDERATION OR A WRITTEN APPEAL WITH THE ELIGIBILITY CLERK’S OFFICE NO LATER THAN **APRIL 28, 2022**. THE PETITION OR APPEAL MUST BE **RECEIVED** BY THE CLERK’S OFFICE BY THIS DATE.

YOU MAY FILE THE APPEAL OR PETITION FOR RECONSIDERATION WITH THE CLERK’S OFFICE VIA:

**MAIL: TENNCARE ELIGIBILITY APPEALS CLERK’S OFFICE
 P.O. BOX 305240
 NASHVILLE, TENNESSEE 37230**

FAX: (844) 563-1728

EMAIL: APPEALS.CLERK.TENNCARE@TN.GOV

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE CLERK’S OFFICE AT (844) 202-5618. PLEASE CONSULT APPENDIX A, AFFIXED TO THE INITIAL ORDER, FOR NOTICE OF APPEAL PROCEDURES.

**BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF FINANCE & ADMINISTRATION**

IN THE MATTER OF:)
)
)
 [REDACTED],)
Petitioner,)
)
v.) **CASE NO.** [REDACTED]
)
)
TENNESSEE DEPARTMENT OF)
FINANCE & ADMINISTRATION,)
DIVISION OF TENNCARE,)
Respondent.)

INITIAL ORDER

This contested case was scheduled for a telephonic hearing on March 29, 2022, before Patrick Ren, TennCare Administrative Judge, sitting for the Commissioner of the Department of Finance and Administration. Mr. West Imboden, an attorney with TennCare’s Eligibility Appeals Unit, represented the Division of TennCare (“TennCare”). Ms. [REDACTED] (“[REDACTED]”) represented Ms. [REDACTED] (“Petitioner”), as her attorney of record.

The issue in this matter is whether TennCare properly denied Petitioner’s July 21, 2021 application for Long-Term Services and Supports (“LTSS”) Institutional Medicaid benefits.¹ After consideration of the entire record and the arguments of the parties, Petitioners’ requested relief on appeal is granted in part and remanded to TennCare for further processing, as described in greater detail below.

¹Petitioner was approved for Qualified Medicare Beneficiary (“QMB”) benefits, effective January 1, 2022. (Exhibit 18, pg. 208). At the outset of the hearing, Ms. [REDACTED] confirmed that Petitioner was not contesting anything pertaining to the QMB benefits, and that Petitioner was solely contesting the denial of the July 21, 2021 application for Medicaid benefits in the LTSS Institutional Medicaid category. Furthermore, the parties stipulated during the hearing that the sole basis of denial was that Petitioner’s financial resources exceeded the applicable limit due to her [REDACTED] Insurance Company whole life insurance policy. Accordingly, this is the only issue addressed herein.

FINDINGS OF FACT

1. On June 2, 2021, Mr. [REDACTED] (“Mr. [REDACTED]”) was appointed as Limited Conservator of the Property for Petitioner. (Exhibit 1; Exhibit 18, pgs. 188-197). The Order appointing Mr. [REDACTED] as Limited Conservator of the Property for Petitioner explicitly stated that all rights conferred to Mr. [REDACTED], including those to access and dispense of property, were revoked from Petitioner; however, said order also required Mr. [REDACTED] to first obtain the Court’s permission prior to selling any of Petitioner’s property. (Exhibit 1, pgs. 11-13; Exhibit 18, pgs. 192-194).
2. On July 21, 2021, an application for LTSS Institutional Medicaid benefits was filed on Petitioner’s behalf via fax to TennCare Connect. (Exhibit 18, pgs. 21-37²).
3. On August 19, 2021, TennCare mailed Petitioner a letter requesting that she submit additional information regarding her financial resources. (Exhibit 18, pgs. 38-65). Specifically, the letter requested that Petitioner submit “Financial Resources (Checking Account)...Life insurance: A copy of the life insurance policy listing the face and cash values...Burial Resource (Burial Contract/Insurance),” and this information was to be submitted to TennCare by October 14, 2021. (*Id.* at 41).
4. At some point between August 19, 2021, and October 7, 2021, Mr. [REDACTED] became aware of a whole life insurance policy for Petitioner with [REDACTED] Company (“[REDACTED].”).
5. On October 7, 2021, [REDACTED]. provided a face letter confirming Petitioner’s ownership of a life insurance policy with a cash value of \$2,184.66, and on October 8, 2021, Mr. [REDACTED] provided this verification to TennCare. (Exhibit 6; Exhibit 7; Exhibit 18, pg. 68).

²The pagination corresponds with the pagination for the attachment to the Notice of Hearing beginning on page twenty-one and ending on page 297 of the combined, continuously-paginated Notice of Hearing and Attachment documents.

6. On October 20, 2021, TennCare mailed Petitioner a letter requesting that she submit additional information regarding her financial resources. (Exhibit 18, pgs. 90-103). This letter specifically requested that Petitioner submit “Financial Resources (Checking Account)...Life insurance: A copy of the life insurance policy listing the face and cash values,” and this information was to be submitted to TennCare by November 9, 2021. (*Id.* at 92).
7. On October 28, 2021, Mr. ██████ filed with the Hamilton County Chancery Court (“Chancery Court”) a “MOTION TO REDEEM WHOLE LIFE INSURANCE POLICY” in order to redeem the ██████ life insurance policy and spend down the funds of said policy so that Petitioner could qualify for Medicaid. (Exhibit 8, Exhibit 10).
8. On November 8, 2021, an appeal was filed on Petitioner’s behalf contesting an alleged denial of her July 21, 2021 application for LTSS Institutional Medicaid benefits. (Exhibit 9; Exhibit 18, pgs. 140-142). This appeal also included a typed explanation of the efforts undertaken to provide verifications of Petitioner’s resources, as well as Mr. ██████’s efforts to obtain court approval to redeem and spend down the proceeds from the ██████ Co. life insurance policy. (*Id.* at 142).
9. On December 27, 2021, an “ORDER SETTING HEARING” was filed by Mr. ██████ with the Chancery Court, setting a hearing date of January 12, 2022, to address his previously filed motion to redeem the ██████ life insurance policy. (Exhibit 10).
10. On December 28, 2021, TennCare mailed Petitioner a letter notifying her that her application for Medicaid benefits was denied because her financial resources exceeded the applicable financial resources limit of \$2,000.00. (Exhibit 12; Exhibit 18, pgs. 205-

- 248). This denial also included an “AGREEMENT TO SELL PROPERTY” form. (Exhibit 13; Exhibit 18, pgs. 213-215).
11. On January 12, 2022, the Chancery Court issued an order approving Mr. ██████’s motion to redeem the ██████ life insurance policy, as well as requiring him, upon receipt of the proceeds from said policy, to “apply by motion with the Court to approve a spenddown plan, which motion the Court will set for hearing expeditiously, as time is of the essence.” (Exhibit 11).
 12. On January 6, 2022, January 25, 2022, and February 2, 2022, Mr. ██████ submitted requests to ██████ that they provide the policy surrender form, and, in the latter two requests, that ██████ comply with the January 12, 2022 Chancery Court order to surrender Petitioner’s life insurance policy. (Exhibit 14; Exhibit 15; Exhibit 16).
 13. On February 2, 2022, ██████ provided Mr. ██████ with the cash surrender request form, which Mr. ██████ also returned to ██████ on February 2, 2022. (Exhibit 18, pgs. 286-287). Mr. ██████ provided TennCare proof of this information via fax on February 8, 2022. (Exhibit 18, pgs. 286-287).
 14. On March 14, 2022, TennCare mailed Petitioner a letter notifying her that her application for Medicaid benefits was denied because her financial resources exceeded the applicable financial resources limit of \$2,000.00. (Exhibit 17). This denial also included an “AGREEMENT TO SELL PROPERTY” form. (*Id.* at 9-11).
 15. A telephonic hearing was held on March 29, 2022, to address Petitioner’s appeal.

SUMMARY OF THE EVIDENCE

Mr. ██████ testified at the hearing on Petitioner's behalf. Ms. Katrina Robinson, a Litigation Specialist for TennCare, testified as a witness for the State. Eighteen exhibits³ were entered into evidence during the hearing:

- Exhibit 1 is the June 2, 2021 "Order" Appointing Conservator of the Person and Property," consisting of seven pages (pgs. 8-14⁴);
- Exhibit 2 is the June 4, 2021 "Order" to allow the conservator to redeem Columbia Life Insurance policy, consisting of two pages (pgs. 15-16);
- Exhibit 3 is the "August 11, 2021 Motion to Approve Spend Down" of the proceeds from the ██████ Insurance Policy, consisting of two pages (pgs. 18-19);
- Exhibit 4 is the August 30, 2021 "Order Setting Hearing" on the motion to approve the spend down of the ██████ Insurance policy, consisting of one page (pg. 17);
- Exhibit 5 is the October 8, 2021 "Order Approving Spend Down" of the ██████ Insurance Policy, consisting of one page (pg. 20);
- Exhibit 6 is the October 7, 2021 information sheet regarding the ██████ Life Insurance Policy, consisting of one page (pg. 22);
- Exhibit 7 is the October 8, 2021 fax to TennCare regarding the ██████ Insurance policy, consisting of one page (pg. 21);

³Exhibits 1-16 are the copies of documents provided by Ms. ██████ on March 28, 2022. The identification of these documents corresponds with that provided under the "Exhibits" section on pages six and seven of Ms. ██████ submission.

⁴These pages correspond with the page on which the documents appear in Ms. ██████'s March 28, 2022 submission, which was uploaded into the TennCare database system as a single, forty-four page document.

- Exhibit 8 is the October 28, 2021 “Motion to Redeem Whole Life Insurance Policy,” consisting of two pages (pgs. 23-24);
- Exhibit 9 is the November 8, 2021 Eligibility Appeal Request and letter stating the reason for the request, consisting of two pages (pgs. 25-26);
- Exhibit 10 is the December 27, 2021⁵ “Order Setting Hearing” on the motion to redeem the ██████████ Life Insurance Policy, consisting of two pages (pgs. 27-28);
- Exhibit 11 is the January 12, 2022 “Order” allowing the conservator to redeem ██████████ Life Insurance policy, consisting of two pages (pgs. 29-30);
- Exhibit 12 is the December 28, 2021 TennCare denial letter, consisting of five pages (pgs. 31-35);
- Exhibit 13 is the “Agreement to Sell Property” form attached to the end of the December 28, 2021 denial letter, consisting of three pages (pgs. 36-38);
- Exhibit 14 is the January 6, 2022 letter to ██████████ Co. to request a claim form, consisting of one page (pg. 39);
- Exhibit 15 is the January 25, 2022 Second Request to ██████████ Co., consisting of three pages (pgs. 40-42);
- Exhibit 16 is the February 2, 2022 Third Request to ██████████ Co., consisting of two pages (pgs. 43-44);

⁵On page seven of Ms. ██████’s March 28, 2022 submission of these documents, she referred to this as an October 28, 2021 Order; however, the record shows that service of this document was completed on December 27, 2021. (Exhibit 10, pg. 2). Furthermore, the record established during the hearing that Mr. ██████ filed the Motion to Redeem order on October 28, 2021, but he was subsequently required to have the matter set for a hearing, which resulted in the December 27, 2021 “Order setting hearing on motion to redeem ██████████ Life Insurance Policy.”

- Exhibit 17 is the March 14, 2022 determination issued by TennCare, consisting of twenty pages;
- Exhibit 18 is Attachment 1 to the Notice of Hearing, consisting of pages twenty-one through 297⁶ of the combined, continuously-paginated Notice of Hearing and Attachment documents.

LEGAL AUTHORITY

1. TENN. COMP. R. & REGS. 1200-13-19-.02(6) states: “Appellant. An applicant or enrollee whose appeal of an action or inaction of the Agency has been determined to present a valid factual dispute. The Appellant bears the burden of proof in any hearing conducted under this chapter. Also referred to as the Petitioner.”
2. TENN. COMP. R. & REGS. 1200-13-19-.02(30) states: “Respondent. The party responding to the action brought by the Petitioner, usually the Agency.”
3. TENN. COMP. R. & REGS. 1200-13-19-.02(8) states, in pertinent part: “Burden of Proof. The minimum evidentiary standard required in order to prevail in an administrative hearing is a preponderance of the evidence. A ‘preponderance of the evidence’ means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion. The Appellant bears the burden of proof in any hearing conducted under this chapter.”
4. TENN. COMP. R. & REGS. 1200-13-20-.05(7)(a) provides: “Eligibility is determined based on information contained on the Valid Application as well as information secured during the application process.”

⁶TennCare’s Information Packet actually extended through page 302. However, Ms. ██████ asserted that her copy of the Information Packet ended at page 296. Pursuant to the agreement of the parties and after discussion regarding the relevancy of pages 298-302 to the matter under appeal, only pages twenty-one through 297 were officially admitted into the record.

5. 42 C.F.R. § 435.952(c)(2) provides: “If information provided by or on behalf of an individual is not reasonably compatible with information obtained through an electronic data match, the agency must seek additional information from the individual, including—
 - (i) A statement which reasonably explains the discrepancy; or
 - (ii) Other information (which may include documentation), provided that documentation from the individual is permitted only to the extent electronic data are not available and establishing a data match would not be effective, considering such factors as the administrative costs associated with establishing and using the data match compared with the administrative costs associated with relying on paper documentation, and the impact on program integrity in terms of the potential for ineligible individuals to be approved as well as for eligible individuals to be denied coverage; or
 - (iii) The agency must provide the individual a reasonable period to furnish any additional information required under paragraph (c) of this section.”
6. 42 C.F.R. § 435.952(d) provides: “The agency may not deny or terminate eligibility or reduce benefits for any individual on the basis of information received in accordance with regulations under § 435.940 through § 435.960 of this subpart unless the agency has sought additional information from the individual in accordance with paragraph (c) of this section, and provided proper notice and hearing rights to the individual in accordance with this subpart and subpart E of part 431.”
7. TENN. COMP. R. & REGS. 1200-13-20-.03(2)(b) provides: “All verifications must be furnished within twenty (20) days of the notice requesting additional information unless otherwise specified by federal law.”

8. TENN. COMP. R. & REGS. 1200-13-20-.05(7)(b) provides in pertinent part: “All applications will be subject to one (1) of the following actions...2. Denial. When one or more eligibility factor(s) is not met, the application is denied...(ii) Applicants who do not respond to requests for verifications by the State in a timely manner will be denied for failure to respond to such requests.”
9. TENN. COMP. R. & REGS. 1200-13-20-.06(3) states in pertinent part: “(a) Coverage groups whose financial eligibility is determined based on SSI financial methodology are...3. Individuals applying for coverage of LTSS, under the Institutional Eligibility category...(c) Resource Determinations. Resources countable for purposes of individuals described in this paragraph are defined at 20 C.F.R. §§ 416.1201, et seq. Unless otherwise specified below, individuals described in this paragraph are subject to the following resource requirement...20. Life Insurance. Countable or excluded based on the type of life insurance owned by the individual and its intended use. Exclude all life insurance if the total face value of all policies does not exceed \$1,500.00 per owner.”
10. TENN. COMP. R. & REGS. 1200-13-20-.08(5) provides in pertinent part: “Institutional Eligibility...(c) Special Eligibility Requirements. To gain eligibility in this category, applicants must: 1. Be in a medical institution at least thirty (30) consecutive days or meet nursing facility level of care according to Chapter 1200-13-01; or 2. Receive CHOICES HCBS or ECF CHOICES and meet the medical (level of care) eligibility criteria, according to Chapter 1200-13-01, to receive payments for long term services and supports through CHOICES. 3. An individual who receives hospice services in a nursing facility for any length of time or dies in a nursing facility or ICF/IID prior to thirty (30)

days of continuous confinement requirement. (f) Resource Limitations: Resources shall not exceed \$2,000.00 for an individual.”

11. 20 C.F.R. § 416.1201 provides, in pertinent part: “(a) Resources; defined. For purposes of this subpart L, resources means cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance. (1) If the individual has the right, authority or power to liquidate the property or his or her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual (or spouse)... (b) Liquid resources. Liquid resources are cash or other property which can be converted to cash within 20 days, excluding certain nonwork days as explained in § 416.120(d). Examples of resources that are ordinarily liquid are stocks, bonds, mutual fund shares, promissory notes, mortgages, life insurance policies, financial institution accounts (including savings, checking, and time deposits, also known as certificates of deposit) and similar items. Liquid resources, other than cash, are evaluated according to the individual's equity in the resources. (See § 416.1208 for the treatment of funds held in individual and joint financial institution accounts.) (c) Nonliquid resources. (1) Nonliquid resources are property which is not cash and which cannot be converted to cash within 20 days excluding certain nonwork days as explained in § 416.120(d). Examples of resources that are ordinarily nonliquid are loan agreements, household goods, automobiles, trucks, tractors, boats, machinery, livestock, buildings and land. Nonliquid resources are evaluated according to their equity value except as otherwise provided. (See § 416.1218 for treatment of automobiles.)”

12. 20 C.F.R. § 416.1208 provides, in pertinent part: “How funds held in financial institution accounts are counted. (a) General. Funds held in a financial institution account (including savings, checking, and time deposits, also known as certificates of deposit) are an individual's resource if the individual owns the account and can use the funds for his or her support and maintenance. We determine whether an individual owns the account and can use the funds for his or her support and maintenance by looking at how the individual holds the account. This is reflected in the way the account is titled.”
13. 20 C.F.R. § 416.1240 provides, in pertinent part: “Disposition of resources. (a) Where the resources of an individual (and spouse, if any) are determined to exceed the limitations prescribed in § 416.1205, such individual (and spouse, if any) shall not be eligible for payment except under the conditions provided in this section. Payment will be made to an individual (and spouse, if any) if the individual agrees in writing to: (1) Dispose of, at current market value, the nonliquid resources (as defined in § 416.1201(c)) in excess of the limitations prescribed in § 416.1205 within the time period specified in § 416.1242; and (2) Repay any overpayments (as defined in § 416.1244) with the proceeds of such disposition.”
14. Aged, Blind and Disabled Manual, Policy Manual No. 110.045, Financial Eligibility Requirements, ABD Treatment of Resources: Ownership, Equity Value & Accessibility, *available* *at*
<https://www.tn.gov/content/dam/tn/tenncare/documents/ABDTreatmentOfResourcesOwnershipEquityValueAndAccessibility.pdf> (last visited on April 8, 2022) provides: “6. Resource Accessibility & Availability. Resources are considered available either when actually available to the individual or when the individual has a legal or equitable interest

in the property or asset, and has the legal or equitable ability to access funds or convert non-cash property into cash. If the individual has the legal or equitable ability to access his or her funds, the resource is considered available regardless of whether the individual has the practical ability to access the resource or convert non-cash property into cash. The individual's incompetence, whether presumed or actual, does not bar the person's legal authority to withdraw his or her liquid resources in the situation where a conservator, guardian or someone acting on the person's behalf has not been legally appointed. The resources belonging to an individual whose conservator, guardian, or legally appointed representative does not cooperate with TennCare during the facilitation of accessing resources, shall be considered inaccessible, assuming the methods to access the resources have been fully exhausted..."

15. Health Care Finance and Administration, Policy Manual No. 110.060, Financial Eligibility Requirements, ABD Inaccessible Resources, *available at* <https://www.tn.gov/content/dam/tn/tenncare/documents/ABDInaccessibleResources.pdf> (last visited on April 7, 2022) provides: "3. Individual's Mental Impairment (applicable to non-liquid resources only). a. General Rule. If the individual has a guardian, conservator, power of attorney or durable power of attorney at the time of application or renewal, the assets of the individual are considered available to the individual. That person is legally appointed to act on behalf of the individual and is expected to make the individual's assets available for use by or for the care of the individual... 8. Litigation: The equity value of any resource involved in litigation is considered to be unavailable to the individual. Litigation means involved in a lawsuit or some type of court action. Verify with the individual's attorney that litigation is ongoing or secure written documentation

that substantiates the individual’s allegation that the asset is involved in litigation. The asset is considered unavailable to the individual effective the date it became involved in the litigation action.”

ANALYSIS AND CONCLUSIONS OF LAW

The issue in this matter is whether TennCare properly denied Petitioner’s July 21, 2021 application for LTSS Institutional Medicaid benefits. TennCare contended that Petitioner’s application was properly denied because her financial resources exceeded the applicable financial resources limit—specifically, Petitioner’s ██████ life insurance policy, with a cash value of \$2,184.66 as of October 7, 2022, placed Petitioner over said limit for eligibility. Petitioner, through Ms. ██████, argued that Mr. ██████, the Limited Conservator of Property for Petitioner, has consistently made good faith efforts to redeem the ██████ life insurance policy and spend down the proceeds but has been precluded from doing so due to multiple delays caused by the Chancery Court.

Petitioner bears the burden of proving, by a preponderance of the evidence, that her application for LTSS Institutional Medicaid benefits was improperly denied. TENN. COMP. R. & REGS. 1200-13-19-.02(8). Based on the evidence presented, Petitioner’s July 21, 2021 application for LTSS Institutional Medicaid benefits was improperly denied. This determination is based on the following.

In this case, an application for LTSS Institutional Medicaid benefits was filed on Petitioner’s behalf on July 21, 2021. (Exhibit 18, pgs. 21-37). TennCare will utilize information provided on an application as well as information secured during the application process to make an eligibility determination. TENN. COMP. R. & REGS. 1200-13-20-.05(7)(a). In processing an application, if additional information is needed, TennCare is required to first seek additional

information directly from the applicant before denying an application. 42 C.F.R. § 435.952(c)(2) and (d). Verifications must be submitted within twenty days of the notice requesting additional information. TENN. COMP. R. & REGS. 1200-13-20-.03(2)(b). If an applicant does not properly respond to the request for verifications in a timely manner, the application will be denied. TENN. COMP. R. & REGS. 1200-13-20-.05(7)(b)(2)(ii).

In order to qualify for LTSS Institutional Medicaid, an applicant must meet both non-financial and financial eligibility requirements. TENN. COMP. R. & REGS. 1200-13-20-.08(5). Here, it was undisputed that Petitioner met the non-financial eligibility requirements for LTSS Institutional Medicaid benefits. TENN. COMP. R. & REGS. 1200-13-20-.08(5)(c). However, applicants for said benefits must also show that they are financially eligible by, in part, establishing that their countable resources do not exceed the \$2,000.00 resource limit. TENN. COMP. R. & REGS. 1200-13-20-.08(5)(f).

On August 19, 2021, TennCare mailed Petitioner a letter requesting that she submit additional information regarding her financial resources, and, pertinent to the instant issue, the request specifically requested verifications regarding her life insurance policy. (Exhibit 18, pgs. 38-65). On October 8, 2021, Mr. ██████ submitted to TennCare a whole life insurance policy fact sheet confirming that Petitioner had a ██████ whole life insurance policy, with a cash value of \$2,184.66 as of October 7, 2021. (Exhibit 6; Exhibit 7; Exhibit 18, pg. 68). On December 28, 2021, and March 14, 2022, TennCare mailed Petitioner a letter informing her that her application for LTSS Institutional Medicaid benefits was denied based on her financial resources exceeding the applicable resource limit. (Exhibit 12; Exhibit 17; Exhibit 18, pgs. 205-248). During the hearing, TennCare stipulated that the sole basis of Petitioner's denial was due to the ██████ life

insurance policy exceeding the applicable limit and conceded that without said policy, Petitioner would likely qualify for LTSS Institutional Medicaid benefits.

The parties agreed during the hearing that Petitioner's [REDACTED] whole life insurance policy is generally a countable resource for determining an applicant's financial eligibility for LTSS Institutional Medicaid benefits, pursuant to applicable law. TENN. COMP. R. & REGS. 1200-13-20-.06(3)(a), (c)(20). The parties further agreed that the countable value of the UAI Co. life insurance policy exceeded the applicable resource limit of \$2,000.00. TENN. COMP. R. & REGS. 1200-13-20-.08(5)(f); (Exhibit 6; Exhibit 7; Exhibit 18, pg. 68). However, Petitioner, through Ms. [REDACTED], argued that the [REDACTED] life insurance policy should not have precluded a finding of eligibility, given that, due to circumstances beyond his control, Mr. [REDACTED] was precluded from timely cashing out said policy and spending down the proceeds in order to bring Petitioner's resources within the applicable limit.

1. Whether the [REDACTED] Life Insurance Policy Should be Excluded Pursuant to an "AGREEMENT TO SELL"

In support of this argument, Ms. [REDACTED] averred that the [REDACTED] life insurance policy should have been excluded based on an "AGREEMENT TO SELL." This argument was based on the fact that TennCare provided an "AGREEMENT TO SELL" form with the December 28, 2021 and March 14, 2022 denial notices, and she further asserted that said form should afford Petitioner conditional assistance and coverage while Mr. [REDACTED] continued his efforts to dispense with the disqualifying life insurance policy. (Exhibit 13; Exhibit 17, pgs. 9-11; Exhibit 18, pgs. 213-215). An applicant whose financial resources exceed the applicable resource limit may potentially receive limited, conditional assistance and coverage if the applicant agrees, in writing, to "dispose of, at current market value, the nonliquid resource (as defined in § 416.1201(c)) in excess of the limitations." 20 C.F.R. § 416.1240(a). TennCare initially argued

that conditional assistance was not applicable in this case because said assistance is only limited to individuals whose nonliquid resources exceed the applicable limit, and a life insurance policy is not generally considered a nonliquid resource.

A nonliquid resource is defined as:

[P]roperty which is not cash and which cannot be converted to cash within 20 days excluding certain nonwork days as explained in § 416.120(d). Examples of resources that are ordinarily nonliquid are loan agreements, household goods, automobiles, trucks, tractors, boats, machinery, livestock, buildings and land. Nonliquid resources are evaluated according to their equity value except as otherwise provided.

20 C.F.R. § 416.1201(c). On the other hand, a liquid resource is defined as:

[C]ash or other property which can be converted to cash within 20 days, excluding certain nonwork days as explained in § 416.120(d). Examples of resources that are ordinarily liquid are stocks, bonds, mutual fund shares, promissory notes, mortgages, *life insurance policies*, financial institution accounts (including savings, checking, and time deposits, also known as certificates of deposit) and similar items.

20 C.F.R. § 416.1201(b) (*Emphasis added*). Ms. ██████ argued that the evidence established that the UAI Co. life insurance policy could not be converted to cash within twenty days, and thus, should have been considered a nonliquid resource. She further averred that the “AGREEMENT TO SELL” provided with the March 14, 2022 denial specifically listed life insurance policies as a potential resource that could be excluded under such an agreement. (Exhibit 17, pg. 9). Based on these arguments, TennCare’s initial assertion that conditional assistance was not available in this case because the ██████ life insurance policy could not be considered under an agreement to sell, is not well-taken.

TennCare argued in the alternative, though, that even if the ██████ life insurance policy could potentially be excluded pursuant to an agreement to sell and a granting of conditional assistance, the record shows that Petitioner never submitted a completed “AGREEMENT TO

SELL” form in order to allow TennCare the chance to review Petitioner’s potential eligibility pursuant to such an agreement. Mr. ██████ conceded during the hearing that he first received the “AGREEMENT TO SELL” form with the December 28, 2021 denial letter. However, he also testified that any serious discussion of this form, along with the second one received with the March 14, 2022 denial, did not occur until preparations for the appeal of the instant matter began sometime in March.

Mr. ██████ explained during the hearing that the eventual discussions resulted in hesitations to submit the form due to a belief that the instant appeal would need to be resolved before the form could or should be submitted and/or that submission of the form could result in a waiver of the instant appeal. Mr. ██████ conceded that these understandings and concerns were not based on any communication received from a TennCare representative. Given that there was extensive prior communication between Mr. ██████, the nursing home at which Petitioner resides, and TennCare during the processing of Petitioner’s application, the failure to submit the form based on their own concerns without any attempt to verify the legitimacy of said concerns with TennCare is found to be unreasonable. Accordingly, TennCare properly argued that the ██████ life insurance policy cannot be excluded pursuant to a non-existent agreement to sell. Furthermore, Ms. ██████’s argument that Petitioner would have submitted such a form had it been provided or explained sooner is not well-taken, given the above-referenced testimony of Mr. ██████ as to why the form was not completed and returned to TennCare as of the hearing date.

2. Whether the ██████ Life Insurance Policy was an Accessible Resource

Although the evidence does not support a finding that the ██████ life insurance policy should have been excluded pursuant to an agreement to sell and a granting of conditional assistance, TennCare’s policies provide another basis of exclusion that match Ms. ██████’s

general argument for the exclusion of said resource in the instant case. Ms. [REDACTED]'s main argument during the hearing was that Mr. [REDACTED] was and continues to be precluded from accessing and dispensing with the [REDACTED] life insurance policy due to actions of the court that are beyond his control and despite his reasonable efforts to comply. Essentially, Ms. [REDACTED]'s argument is that the [REDACTED] life insurance policy has been, and remains, an inaccessible resource due to the prolonged court proceedings that are required pursuant to the conservatorship and applicable court orders.

a. Legal Authority to Liquidate the [REDACTED] Life Insurance Policy

It is undisputed that Mr. [REDACTED] was appointed as the Limited Conservator of Property for Petitioner on June 6, 2021. (Exhibit 1; Exhibit 18, pgs. 188-197). Furthermore, this conservatorship converted all rights to access and dispense of property to Mr. [REDACTED] and revoked said rights for Petitioner. (Exhibit 1, pgs. 11-13; Exhibit 18, pgs. 192-194). Pursuant to 20 C.F.R. § 416.1201:

Resources; defined...resource means cash or other liquid assets or any real or personal property that an individual...owns and can convert to cash to be used for his or her support and maintenance...[if] the individual has the right, authority or power to liquidate the property...it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual (or spouse).

Thus, the record establishes that at the time of application and at all times relevant to this matter, Petitioner no longer had the legal right or authority to liquidate the [REDACTED] life insurance policy of her own accord, as this right was exclusively conferred upon Mr. [REDACTED].

TennCare argued, however, that pursuant to policy, as Mr. [REDACTED] was appointed Petitioner's Limited Conservator of her Property as of her application date, and because he has remained cooperative throughout the entire application process, the [REDACTED] life insurance

policy cannot be deemed an inaccessible resource. Aged, Blind and Disabled Manual, Policy Manual No. 110.045, Financial Eligibility Requirements, ABD Treatment of Resources: Ownership, Equity Value & Accessibility, Sec. 6. Resource Accessibility & Availability, pgs. 2-3, *available at* <https://www.tn.gov/content/dam/tn/tenncare/documents/ABDTreatmentOfResourcesOwnershipEquityValueAndAccessibility.pdf> (last visited on April 8, 2022); *See also*, Health Care Finance and Administration, Policy Manual No. 110.060, Financial Eligibility Requirements, ABD Inaccessible Resources, Sec. 3. Individual's Mental Impairment (applicable to non-liquid resources only), pgs. 1-2, *available at* <https://www.tn.gov/content/dam/tn/tenncare/documents/ABDInaccessibleResources.pdf> (last visited on April 7, 2022). The argument that the existence of a conservator at the time of application, who happens to be cooperative rather than uncooperative⁷, should result in a finding that all of the applicant's resources are automatically deemed accessible, was not supported by legal authority.

Furthermore, despite this argument, the record establishes that Mr. ██████ *does not* have carte blanche legal authority to access and liquidate Petitioner's resources; rather, as addressed above, the order establishing Mr. ██████ as limited conservator requires him to first get court approval to access and sell Petitioner's resources.⁸ (Exhibit 1, pgs. 11-13; Exhibit 18, pgs. 192-194). Mr. ██████'s limitations regarding his legal right to access and sell Petitioner's resources is supported by the court orders and proceedings in the disposition of an earlier-discovered life

⁷Such an interpretation would also suggest that, under TennCare's policy, Mr. ██████ would be placed in the impossible position of trying to act in Petitioner's best interests by actively choosing to not cooperate with TennCare, which, by doing so, could also be seen as him failing to properly fulfill his duties to Petitioner, as outlined under the conservatorship.

⁸Although the order allows an exception to this requirement pursuant to T.C.A. § 34-1-116(b), this provision is not applicable in the instant matter, as it only carves out an exception for tangible property with a fair market value of less than \$1,000.00 or a motor vehicle without specific court approval, neither of which is at issue under the instant appeal.

insurance policy. (Exhibit 2; Exhibit 3; Exhibit 4; Exhibit 5). With regard to the insurance policy at issue, Mr. ██████ testified that upon receipt of information for the ██████ life insurance policy, he filed a “MOTION TO REDEEM WHOLE LIFE INSURANCE POLICY” with the Chancery Court on October 28, 2021. (Exhibit 8). Mr. ██████ further testified that after waiting for approval of the motion, he was eventually informed that he would first have to set the matter for hearing, due to ongoing protocols of the Chancery Court that were put in place due COVID-19 and remained ongoing.⁹ On December 27, 2021, an order was issued setting a hearing date of January 12, 2022, to address Mr. ██████’s motion. (Exhibit 10). On January 12, 2022, the Chancery Court issued an order approving Mr. ██████’s motion to redeem the ██████ life insurance policy; however, it also required that, upon receipt of the proceeds from said policy, he would also have to “apply by motion with the Court to approve a spenddown plan, which motion the Court will set for hearing expeditiously, as time is of the essence.” (Exhibit 11). Thus, neither Petitioner nor Mr. ██████ had the legal authority to redeem the life insurance policy or to spend down the proceeds of said policy, absent a court order authorizing such action. Moreover, the record reflects that any delay in securing such an order was not the fault of Mr. ██████ or Petitioner.

b. Whether the ██████ Life Insurance Policy is Inaccessible due to Litigation

Additionally, TennCare’s own policies contemplate a situation in which ongoing litigation may render an asset inaccessible. “The equity value of any resource involved in litigation is considered to be unavailable to the individual. Litigation means involved in a lawsuit *or some type of court action.*” Health Care Finance and Administration, Policy Manual No. 110.060, Financial Eligibility Requirements, ABD Inaccessible Resources, Sec. 8. Litigation, *available* *at*

⁹Said protocols are referenced and shown to have been in place as of August 11, 2021. (Exhibit 3, pg. 1).

<https://www.tn.gov/content/dam/tn/tenncare/documents/ABDIInaccessibleResources.pdf> (last visited on April 7, 2022) (*Emphasis added*). As shown above, the ██████ life insurance policy has been involved in litigation, under TennCare’s policy’s broad definition of “litigation” to include “involved in...some type of court action,” since October 28, 2021, with filing of the “MOTION TO REDEEM WHOLE LIFE INSURANCE POLICY.” (Exhibit 8). During the hearing, TennCare offered no legal authority to narrow the scope of its own definition of “litigation” for the purposes of determining the availability of a financial resource. Nor did TennCare present any legal authority to provide further guidance on interpreting this provision of its own policy. Rather, TennCare argued that the UAI Co. life insurance policy remained accessible under the reasons discussed in the previous section—that Mr. ██████ was appointed conservator of Petitioner’s property as of the application date and that he remained cooperative throughout the processing of the application.

TennCare also averred, though, that, with regard to inaccessibility due to litigation, as of the issuance of the January 12, 2022 order granting Mr. ██████’s motion to redeem the ██████ life insurance policy, any litigation had concluded. Ms. ██████ rebutted the latter argument by pointing out that even after Mr. ██████ obtains proceeds from the ██████ life insurance policy, the order requires him to “apply by motion with the Court to approve a spenddown plan, which motion the Court will set for hearing expeditiously, as time is of the essence.” (Exhibit 11, pg. 2). There is no court order or other documentation in the available record reflecting that the proceeds of the life insurance policy were at any point approved for a spenddown or otherwise released to Mr. ██████ for disposition. (Exhibits 1-18). Consequently, the record reflects that the life insurance policy, or its proceeds, remain involved in litigation, as that term has been defined in TennCare’s own policy.

In further support of Ms. ██████'s argument that the litigation is ongoing, despite Mr. ██████'s best efforts, the record shows that on January 6, 2022, January 25, 2022, and February 2, 2022, Mr. ██████ notified ██████ of the need to release Petitioner's whole life insurance policy. (Exhibit 14; Exhibit 15; Exhibit 16). On February 2, 2022, ██████ provided the appropriate form for a cash surrender of the policy, and Mr. ██████ returned the form on the same day. (Exhibit 18, pgs. 286-287). Mr. ██████ testified during the hearing, however, that as of the hearing date, ██████ had not released the cash surrender amount for the whole life insurance policy, and thus, he was unable to return to the Chancery Court to apply for a spenddown plan regarding said proceeds. Given Mr. ██████'s detailed, first-hand knowledge regarding the efforts to redeem and spend down the ██████ life insurance policy, along with the corroborating documentation, Mr. ██████'s testimony was deemed credible. *See Whitaker v. Whitaker*, 957 S.W.2d 834, 837 (Tenn. Ct. App. 1997) (providing that the weight, faith, and credit to be given the witnesses' testimony lies in the first instance with the trier of fact). Accordingly, Ms. ██████'s argument that the litigation regarding the ██████ life insurance policy had *not* concluded as of the hearing date is well-taken.

Once a resource is determined to be inaccessible due to litigation, the resource "is considered unavailable to the individual effective the date it became involved in the litigation action." Health Care Finance and Administration, Policy Manual No. 110.060, Financial Eligibility Requirements, ABD Inaccessible Resources, Sec. 8. Litigation, *available at* <https://www.tn.gov/content/dam/tn/tenncare/documents/ABDInaccessibleResources.pdf> (last visited on April 7, 2022). As outlined above, the ██████ life insurance policy first became involved in "litigation," as that term has been broadly defined by TennCare in its own policy, on October 28, 2021, and, as of the hearing date, it remains involved in litigation pursuant to the

January 12, 2022 order. It is also noted that TennCare was notified of Mr. ██████'s endeavors to get court approval to redeem and spend down the ██████ life insurance policy as early as November 8, 2021, with the filing of the appeal in this instant matter. (Exhibit 9; Exhibit 18, pgs. 140-142). Based on these findings, the ██████ life insurance policy is an inaccessible resource and should not have been counted in calculating Petitioner's resources, effective October 28, 2021. 20 C.F.R. § 416.1201; Health Care Finance and Administration, Policy Manual No. 110.060, Financial Eligibility Requirements, ABD Inaccessible Resources, Sec. 8. Litigation, *available* *at*
<https://www.tn.gov/content/dam/tn/tennicare/documents/ABDInaccessibleResources.pdf> (last visited on April 7, 2022).

Accordingly, the evidence preponderates that it is more likely than not that TennCare improperly denied Petitioner's July 21, 2021 application for LTSS Institutional Medicaid benefits based on her resources exceeding the applicable limit due to the UAI Co. life insurance policy.

This appeal is, therefore, decided in favor of Petitioner and is **GRANTED, in part**, and **REMANDED** to TennCare for further processing pursuant to the findings of this order. TennCare **SHALL** review Petitioner's entire record and reconsider her eligibility for LTSS Institutional Medicaid benefits, excluding the value of the ██████ life insurance policy as of October 28, 2021. Should TennCare require additional information, TennCare shall request such information from Petitioner, Mr. ██████, and Ms. ██████, in writing, and said individuals are strongly encouraged to cooperate with TennCare and timely provide any requested information pursuant to the instructions in any request. TennCare **SHALL** provide Petitioner, Mr. ██████, and Ms. ██████ with written notice of its determination, and full appeal rights for Petitioner shall

attach to said determination. Should Petitioner be found eligible for LTSS Institutional Medicaid benefits, TennCare **SHALL** grant said benefits with an effective date in compliance with applicable law. Nothing in this order shall affect Petitioner's current QMB coverage, nor shall it preclude Petitioner from submitting a new application for LTSS Institutional Medicaid benefits.¹⁰

It is so **ORDERED**.

This Initial Order is entered and effective this 20th day of April, 2022.

A handwritten signature in black ink, appearing to read "Patrick Ren", written over a horizontal line.

PATRICK REN
TennCare Administrative Judge

¹⁰New applications may be submitted via the FFM telephonically at 1-800-318-2569, or online at www.healthcare.gov. Additionally, applications may be filed directly with TennCare via TennCare Connect telephonically at 855-259-0701, or online at www.tennconnect.tn.gov.

**APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES**

This Initial Order shall become a Final Order fifteen days after the entry date of this Initial Order, *see* TENN. CODE ANN. § 4-5-314(b), unless either or both of the following actions are taken:

1. A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives notice of its intention to review the Initial Order, within fifteen days after the entry date of the Initial Order. A petition for appeal must be received by the Clerk's office by the fifteenth day to be considered timely. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. *See* TENN. CODE ANN. § 4-5-315 (on review of initial orders by the agency).
2. A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen days of the entry date of the Initial Order. A petition for reconsideration must be received by the Clerk's office by the fifteenth day to be considered timely. A petition for reconsideration is deemed denied if no action is taken within twenty days of filing. A new fifteen day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. *See* TENN. CODE ANN. § 4-5-317 (on petitions for reconsideration).

Petitions for reconsideration and petitions for appeal shall be submitted to the Clerk's Office via mail at TennCare Eligibility Appeals Clerk's Office, P.O. Box 305240, Nashville, TN 37230-5240; via email at appeals.clerk.tennCare@tn.gov; or via fax at (844) 563-1728. For questions, the Appeals Clerk's Office may be reached via telephone at (844) 202-5618.

A party may petition the agency for a stay of the Initial Order within seven days after the entry date of the order. *See* TENN. CODE ANN. § 4-5-316.

**YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER
BECOMING A FINAL ORDER BY OPERATION OF LAW. THE EFFECTIVE DATE
OF SUCH AN ORDER SHALL BE ITS DATE OF ENTRY.**

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty days of the entry date of the Final Order disposing of the petition. However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-317, 4-5-322.