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August 26, 2022

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Eligibility Appeals Unit
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RE: **In the matter 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 **SEPTEMBER 10, 2022**. IT 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:

████████████████████,
Petitioner,

v.

**TENNESSEE DEPARTMENT OF
FINANCE & ADMINISTRATION,
DIVISION OF TENNCARE,
Respondent.**

CASE NO. ██████████

INITIAL ORDER

This contested case was set for an in-person hearing in Chattanooga, Tennessee on August 2, 2022, before Christie R. Taylor, TennCare Administrative Judge, sitting for the Commissioner of the Department of Finance and Administration. Mr. Amos Bailey, with the Division of TennCare (“TennCare”) Eligibility Appeals Unit, represented the State. Mr. David L. McGuffey (“Mr. McGuffey”), with Elder Law Practice of David L. McGuffey, represented ██████████ (“Petitioner”).

The issue in this matter is whether TennCare properly determined the effective date of Petitioner’s Medicaid benefits. After consideration of the entire record and the arguments of the parties, it is determined that Petitioner’s appeal is granted, in part, as described in greater detail below. This determination is based on the following:

FINDINGS OF FACT

1. On January 22, 2021, an application for Medicaid benefits was submitted on Petitioner’s behalf. *See* Exhibit 5.

2. At the time of this application, Petitioner was confined in a nursing facility. *Id.* at 382.¹
3. On April 22, 2021, a second application for Medicaid benefits was submitted on Petitioner's behalf. Petitioner was confined in a nursing facility at the time of this application. *See* Exhibit 6.
4. On April 27, 2021, TennCare mailed Petitioner and her assisting person a Notice of Decision denying her January 22, 2021 application, as she failed to provide the requested information. *See* Exhibit 1, p. 288-323.²
5. On June 2, 2021, Mr. [REDACTED] ("Mr. [REDACTED]") was appointed as Limited Conservator of the Property for Petitioner. *Id.* at 201-203. 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.
6. On July 21, 2021, an application for Medicaid benefits was filed on Petitioner's behalf via TennCare Connect. *Id.* at 54-70.
7. On July 26, 2021, TennCare mailed Petitioner and her assisting person a Notice of Decision denying her April 22, 2021 application, as she failed to provide the requested information.³
8. On May 10, 2022, pursuant to an order issued by Administrative Judge Patrick Ren on April 20, 2022⁴, TennCare mailed Petitioner an approval notice stating that she was

¹ The pagination referenced for Exhibits 5, 6, and 7 refer to the page numbers provided in the lower left corner of Petitioner's pretrial brief. These numbers appear sequentially beginning at "Appellant 000376".

² For convenience purposes, the pagination referenced for Exhibit 1 refers to the page numbers listed in the lower right corner of Attachment I to the State's Notice of Hearing.

³ Ms. [REDACTED] testified to this information during the hearing, and conceded receipt of the denial notices.

⁴ This Order was issued April 20, 2022 in case number [REDACTED] regarding the denial of Petitioner's July 21, 2021 application for LTSS benefits.

approved for Medicaid benefits in the Institutional Medicaid category effective October 1, 2021. *Id.* at 212-233.

9. On May 18, 2022, an appeal was filed on Petitioner’s behalf contesting October 1, 2021, as the effective date of her Medicaid benefits and requesting an effective date of January 1, 2021. *Id.* at 338-383.

10. It is undisputed that Petitioner was mentally incapacitated at all times pertinent hereto.

11. An in person hearing in Chattanooga, Tennessee was set for August 2, 2022, to address whether TennCare correctly determined the effective date of Petitioner’s coverage.

PRELIMINARY MATTERS

Prior to the scheduled hearing, the State made three motions to dismiss:

1. State’s Motion to Dismiss for *Res Judicata*

In its first motion, the State moved to dismiss this matter on *res judicata* grounds, arguing that the issue of Petitioner’s effective date had already been adjudicated. Specifically, the State argued that this matter was included as part of the hearing set on March 29, 2022, before Administrative Judge Patrick Ren, and that a Final Order was issued in that matter on April 20, 2022, in case number [REDACTED]. Further, the State argued that Petitioner “already had the opportunity to argue that she was eligible on an earlier effective date and it was determined by a court of competent jurisdiction that she was ineligible until her resources were excludable on October 28, 2021.” *See* Division of TennCare’s Motion to Dismiss Based on Res Judicata. In response, Mr. McGuffey argued that this is the same case and that this “is no different room [*sic*] any other case that makes its way to the same appellate court for a second time.” *See* Response to Motion to Dismiss Based on Res Judicata.

A prior decision by an administrative body of competent jurisdiction, “constitutes an absolute bar to subsequent action involving the same claim[.]” *Richardson v. Tennessee Bd. Of Dentistry*, 913 S.W.2d 446, 459 (Tenn. 1995). Therefore, the Division of TennCare lacks jurisdiction to issue a decision regarding this same claim. While a matter regarding this particular Petitioner was heard previously, a review of that order clearly indicates that the matter to be heard was limited to “whether TennCare properly denied Petitioner’s July 21, 2021 application for Long-Term Services and Supports (“LTSS”) Institutional Medicaid benefits.” *See* Initial Order (April 20, 2022)(emphasis added). That order remanded the case to TennCare to reprocess Petitioner’s eligibility as to the July 21, 2021 application, and excluding the value of the [REDACTED] life insurance policy as of October 28, 2021. *See id.* The order in that matter made no specific finding as to when, specifically, Petitioner met all eligibility requirements, or even that she did meet all eligibility requirements; rather, it directed that the matter be remanded with an instruction to exclude a specific item from processing and consideration. The State then issued a new Notice of Decision on May 10, 2022, after the Initial Order became final, and prior to Petitioner’s new appeal, approving Petitioner effective October 1, 2022. *See* Exhibit 1, p. 212-233. The May 10, 2022 Notice of Decision provided Petitioner with new appeal rights as it pertains to her effective date. Based on this Notice of Decision, the instant appeal was filed on Petitioner’s behalf contesting her *effective date* of coverage. Therefore, the motion was denied.

2. State’s Motion to Dismiss for Failure to State a Claim Pursuant to TENN. R. CIV. PRO. 12.02(6)

The State’s second motion was a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to TENN. R. CIV. PRO. 12.02(6). However, the State’s contention is not well-taken. As provided under case law, “a Rule 12.02(6) motion challenges only the legal sufficiency of the complaint not the strength of the plaintiff’s proof or evidence.” *Highwoods*

Props., Inc. v. City of Memphis, 297 S.W.3d 695, 700 (Tenn. 2009). Thus, a motion to dismiss on these grounds contests the sufficiency of the complaint and not whether Petitioner can successfully prevail on his complaint. Here, an appeal was submitted regarding the effective date of Petitioner's benefits. Effective dates are implemented by TennCare. TENN. COMP. R. & REGS. 1200-13-20-.08(5)(g). The appeal request in the instant matter argues that earlier applications were filed and that Petitioner's effective date should be backdated based on those applications and the circumstances surrounding the filing of those applications. *See* Exhibit 1, p. 256-287. Accordingly, Petitioner did assert a claim for which relief could be afforded, and the State's motion to dismiss was denied, and the matter proceeded to hearing on the merits.

3. State's Motion to Dismiss for Untimeliness

The State's final motion to dismiss Petitioner's appeal was on the grounds of untimeliness, pursuant to TENN. COMP. R. & REGS. 1200-13-19-.06(3). Specifically, the State asserted that approximately 155 days had lapsed between the date of the denial notice mailed to Petitioner regarding her January 22, 2021 application,⁵ and the date Petitioner filed her first appeal on November 8, 2021.⁶ Further, the State argued during the hearing that approximately 105 days had lapsed between the date of the denial notice mailed to Petitioner regarding her April 21, 2021 application, and the date Petitioner filed her first appeal on November 8, 2021. Based upon the consideration of the arguments presented by the parties, the State's motion was taken under advisement, and is now **DENIED**, as explained in detail below.

⁵ The State also argued that any argument regarding a January 2020 application was untimely. This particular application is not addressed herein, as Mr. McGuffey conceded it was not at issue, as he was unaware of an application from January 2020.

⁶ This appeal addressed the denial of Petitioner's July 21, 2021 application, and was heard in March 2022, by Administrative Judge Patrick Ren.

Pursuant to TENN. COMP. R. & REGS. 1200-13-19-.06(3), Petitioner has forty days from the date of an adverse action to request an appeal. Here, the State argues that Petitioner’s appeal must be dismissed, as Petitioner exceeded the allotted time to file an appeal concerning her effective date, with respect to the January 22, 2021 and April 22, 2021 applications for Medicaid benefits. Petitioner’s witnesses testified, however, that while they received the denial notices for the aforementioned applications, when contacting TennCare regarding next steps, they were advised they could file an appeal or file a new application. Based on this advice offered by TennCare, a new application was filed on Petitioner’s behalf, in an attempt to “save the date” of the January 22, 2021 application.

A review of agency regulations and policy illustrates a clear finding that the agency does contemplate situations where persons can establish “good cause” for a failure to take a timely action. *See* TENN. COMP. R. & REGS. 1200-13-19-.02(20). These situations include failing to timely appeal an adverse action.⁷ In the instant matter, it is undisputed that Petitioner and her assisting agents were sent denial notices on April 27, 2021, for the January 22, 2021 application, and on July 26, 2021, for the April 22, 2021 application. *See* Exhibit 5, p. 418-420, *see* Exhibit 6, p. 440-442.⁸ Therefore, Petitioner was duly notified of the outcome of these applications, and was provided ample opportunity to appeal. *Id.* While this was not a point of contention during the hearing, Ms. [REDACTED] testified in detail that she relied upon the statements made by TennCare’s agent that she could file a new application or appeal. Based on this information, Ms. [REDACTED]

⁷ *See generally* TENN. COMP. R. & REGS. 1200-13-13-.01 *et seq.*; TENN. COMP. R. & REGS. 1200-13-19-.01, *et seq.*; Health Care Finance and Administration Policy Manual Number 200.015, pg. 3 (<https://www.tn.gov/content/dam/tn/tenncare/documents/ApplicationForOtherProgramBenefits.pdf>); Health Care Finance and Administration Policy Manual Number 200.055, pg. 2 (<https://www.tn.gov/content/dam/tn/tenncare/documents/Appeals.pdf>).

⁸ While these notices are addressed to Petitioner, Ms. [REDACTED] conceded to receipt of these notices during her testimony.

believed filing a new application was creating a “continuous application chain” that would sufficiently preserve the matter for appeal. Based on Ms. [REDACTED]’s reliance on the statement by TennCare’s agent, good cause has been established for Petitioner’s failure to timely appeal the denial of her January and April applications. TENN. COMP. R. & REGS. 1200-13-19-.02(20).

SUMMARY OF EVIDENCE

Mr. [REDACTED], Mr. [REDACTED], and Ms. [REDACTED] testified on Petitioner’s behalf during the hearing. Dr. [REDACTED] provided testimony on Petitioner’s behalf via affidavit pursuant to TENN. Code ANN. § 4-5-313.⁹ Ms. [REDACTED], Appeals Litigation Specialist for TennCare, testified as a witness for the State. Seven exhibits were entered into evidence:

- Exhibit 1 is Attachment 1 to the Notice of Hearing, consisting of pages twenty-two through 386, and containing an Initial Order in Petitioner’s prior case, application information, correspondence, and appeal information.
- Exhibit 2 is Division of TennCare Policy Number 110.060, consisting of nine pages.
- Exhibit 3 is page seventy-three of Attachment I to the Notice of Hearing, containing the first page of the request for information mailed to Mr. [REDACTED] on August 19, 2021.¹⁰
- Exhibit 4 is the June 17, 2021 facsimile transmission from Mr. [REDACTED] to TennCare, consisting of eighteen pages, and containing [REDACTED] bank statements date May 18, 2021.

⁹ The State objected to the admission of this evidence on the basis of relevance, arguing that Petitioner’s cognitive impairment was not contested. This objection was overruled, as TennCare argued that Petitioner was able to enter into an agreement to sell property at the time of application, and this was contested by Mr. McGuffey.

¹⁰ Mr. McGuffey conceded that this is a duplicious exhibit but requested its entry for ease of citation should this matter be appealed. The State did not object.

- Exhibit 5 is Petitioner’s Pre-trial Brief, pages 376 through 420, containing Petitioner’s January 22, 2021 application information.
- Exhibit 6 is Petitioner’s Pre-trial Brief, pages 421 -442, containing Petitioner’s April 22, 2021 application information.
- Exhibit 7 is Petitioner’s Pre-trial Brief, pages 443-461, containing Petitioner’s July 21, 2022 application information.

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. 1200-13-19-.02(32) states: “TennCare. The program administered by the Single State Agency as designated by the State and CMS pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration waiver granted to the State of Tennessee.”

5. TENN. COMP. R. & REGS. 1200-13-20-.05(1)(C) provides: “Right to apply. (c) Applications may be filed by the applicant, an individual listed in Rule .05(3)(b), his Authorized Representative or someone acting responsibly for him. See 42 C.F.R. § 435.923.”
6. 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; (iii) The agency must provide the individual a reasonable period to furnish any additional information required under paragraph (c) of this section.”
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-.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.”

9. 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.)”

10. 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.”
11. 42 C.F.R. § 431.420(a) states, in pertinent part: “(1) Any provision of the Social Security Act that is not expressly waived by CMS in its approval of the demonstration project are not waived, and States may not stop compliance with any of these provisions not expressly waived. Waivers may be limited in scope to the extent necessary to achieve a particular purpose or to the extent of a particular regulatory requirement implementing the statutory

provision. (2) States must comply with the terms and conditions of the agreement between the Secretary and the State to implement a State demonstration project.”

12. U.S. Department of Health & Human Services, Centers for Medicare & Medicaid Services Special Terms and Conditions, TennCare III Medicaid Section 1115 Demonstration, No. 11-W-00369/4 Title XIX (Jan. 8, 2021), at § 7, *available at* <https://www.tn.gov/content/dam/tn/tenncare/documents/tenncarewaiver.pdf> states, in pertinent part that TennCare is “enable(d) not to extend eligibility prior to the date that an application for assistance is made.”

13. TENN. COMP. R. & REGS. 1200-13-20-.08(5)(g) states, in pertinent part: “Institutional Eligibility. Effective Date of Eligibility: Eligibility begins on the Application File Date, according to Rule .05, or the date all eligibility requirements are met, whichever is later.”

ANALYSIS AND CONCLUSIONS OF LAW

It is undisputed that Petitioner is eligible and has been approved for Institutional Medicaid benefits. The issue is whether TennCare properly determined the effective date of Petitioner’s Medicaid coverage. Here, Petitioner requested an effective date of January 1, 2021, based on the following three arguments: 1) because she was confined to a nursing facility and began receiving medical bills on that date, 2) because she was mentally incapacitated at all times pertinent hereto, and therefore was unable to respond to the State’s requests for information or access her resources,¹¹ and 3) because of conservatorship laws, her resources were unavailable to her conservator at all times pertinent hereto, until a court order permitted liquidation of Petitioner’s resources, and should be excluded based on TennCare’s rules and policies. However, the State contends that Petitioner is not entitled to an effective date earlier than October 1, 2021, because

¹¹ The findings regarding Petitioner’s incapacity were entered via affidavit of Dr. [REDACTED]. Because the State does not contest Petitioner’s mental capacity, his testimony is not addressed herein.

her earliest approved application was submitted on July 21, 2021, and she met all eligibility criteria as of October 28, 2021. As the parties concede that the only resource at issue is the [REDACTED] life insurance policy, the scope of this Order is limited to the accessibility of that resource prior to October 28, 2021.

As Petitioner is contesting the effective date of her Medicaid coverage, Petitioner bears the burden to prove by a preponderance of the evidence that TennCare improperly determined the effective date her Medicaid coverage as October 1, 2021, and that she is entitled to coverage on an earlier date. *See* TENN. COMP. R. & REGS. 1200-13-19-.02(8).

For Medicaid recipients in the Institutional Medicaid category, the effective date of Medicaid eligibility is “...the Application File Date, according to Rule .05, or the date all eligibility requirements are met, whichever is later.” TENN. COMP. R. & REGS. 1200-13-20-.08(5)(g). Despite any medical bills incurred, TennCare generally does not backdate coverage prior to the date of application. Specifically, with the expansion of Medicaid under the Affordable Care Act of 2010, states *may* allow retroactive coverage up to three months prior to an application. *See* 42 C.F.R. § 435.915. However, the State of Tennessee operates pursuant to a waiver related to that provision and is not required to extend Medicaid coverage prior to the date of application except for *pregnant women, infants under one year of age, or individuals under age 21* who applied after June 30, 2021. *See* U.S. Department of Health & Human Services, Centers for Medicare & Medicaid Services Special Terms and Conditions, *TennCare III Medicaid Section 1115 Demonstration*, No. 11-W-00369/4 Title XIX, at § 7 (emphasis added). Here, it was undisputed that Petitioner was only potentially eligible for Medicaid benefits in the Institutional Medicaid category at all times pertinent hereto, and that she was approved for benefits in that category. As she was not a pregnant woman or under the age of 21, the aforementioned waiver provision does not apply to Petitioner.

As such, the remaining questions are whether TennCare properly denied Petitioner's earlier applications, and whether the [REDACTED] Life Insurance policy was inaccessible at all times. These questions are discussed in greater detail below:

1. Whether TennCare properly denied Petitioner's January 22, 2021 and April 22, 2021 applications for Medicaid benefits.

It is undisputed that Petitioner filed applications for Medicaid benefits on January 22, 2021 and April 22, 2021. *See* Exhibit 5; *see* Exhibit 6. It is also undisputed that TennCare requested additional information to process Petitioner's applications, including proof she was in a nursing home, life insurance policies, burial resources, unearned income, and shelter/utility expenses. *See* Exhibit 5, p. 412-417; *see* Exhibit 6, p. 437-439. During her testimony, Ms. [REDACTED], an employee with the [REDACTED] ("[REDACTED]"), stated that she was involved with the filing of Petitioner's applications and subsequent processing. Ms. [REDACTED] testified that during the processing of the January 22, 2021 application, she was advised by TennCare that a [REDACTED] Life insurance policy needed to be cashed out in order to determine Petitioner's financial eligibility for Medicaid. At this point, Ms. [REDACTED] attempted to contact Petitioner's family members in order to locate an individual with legal rights to dispose of this policy. Ms. [REDACTED] averred that, despite her efforts, she was unable to locate anyone willing to assist her, and so was unable to assign the policy to a burial contract, or otherwise dispose of said policy. Due to this difficulty, Ms. [REDACTED] requested an extension of time to submit the requested information, and subsequently filed the April 22, 2021 application to "protect the date" and create a "continuous application chain." The January 22, 2021 and April 22, 2021 applications were ultimately denied for failure to provide the requested information.¹²

¹² It is noted for the record, that Petitioner did not attempt to expand the issue in the prior hearing to include the January 22, 2021 or April 22, 2021 applications.

During her testimony, Ms. ██████ conceded that she received the requests for information and the subsequent Notices of Decision for both the January 22, 2021 and April 22, 2021 applications. She stated that no appeal was filed regarding these applications, because she believed by filing the July 21, 2021 application, she was creating a continuous application chain, and that a decision needed to be made on the July application. Further, Ms. ██████ argued that she was relying on what she referred to as TennCare’s “standard of practice” of protecting the date in prior cases.¹³ While the veracity of Ms. ██████’s statements is not at issue, it does not alleviate Petitioner’s, or her assisting party’s, responsibility of complying with TennCare’s requests for information. The argument that Petitioner’s family members did not provide the resources to ██████, and that no individual was legally permitted to act on her behalf is not well-taken. The nursing facility, which was acting as an assisting party at the time of both applications, was required to comply with TennCare’s requests on Petitioner’s behalf. *See* 42 C.F.R. § 435.952(c)(2). Ms. ██████ conceded that she did not fully respond, because she was unable to gather the necessary information from Petitioner’s family members. Without the additional information, Ms. ██████ testified that TennCare was unable to make a substantive decision regarding the January 22, 2021 and April 22, 2021 applications. Accordingly, the denial for failure to provide the requested information for these applications was proper. As such, Petitioner’s effective date can be no earlier than July 21, 2021, the date of her first approved application.

II. Whether the ██████ Life Insurance Policy Should be Excluded as of Petitioner’s July 21, 2021 application.

During the hearing, Mr. McGuffey argued that Petitioner’s resources, and specifically the ██████ life insurance policy, were inaccessible to her at all time pertinent hereto, as she was

¹³ Mr. McGuffey requested to enter a spreadsheet of instances where TennCare did this for other individuals. This exhibit was not permitted into evidence, as it was deemed not relevant.

incapacitated at all times. In support of this argument, he relied upon Division of TennCare Policy Manual Number 110.060(3)(a), which states that “if an individual’s impairment precludes her negotiating the sale of an asset, and she has no guardian or conservator to act on her behalf, exclude the asset as unavailable under certain conditions. It is not necessary that the individual be adjudicated incompetent by a court of law.” Further, he argued that under conservatorship laws, the [REDACTED] life insurance policy was inaccessible to Petitioner’s conservator, Mr. [REDACTED], as of the date the conservatorship paperwork was filed with the court, May 20, 2021. As the denial of the January 22, 2021 and April 22, 2021 applications was proper, the argument as to Petitioner’s mental status prior to the July 21, 2021 application is not relevant, because Mr. [REDACTED] was already Petitioner’s acting conservator. *See* 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>

It is undisputed that Mr. [REDACTED] was appointed as the Limited Conservator of Property for Petitioner on June 2, 2021. *See* Exhibit 1, p. 198-207. TennCare argued during the hearing that because Mr. [REDACTED] was Petitioner’s conservator at all times pertinent hereto, her resources were accessible to him. Thus, the [REDACTED] Life Insurance policy was countable until it entered litigation on October 28, 2021, and she did not meet the eligibility requirements for Medicaid until that date. Petitioner argues, however, that this resource was not accessible and should have been excluded as of the date of application, because Mr. [REDACTED] did not have legal authority to access or sell her [REDACTED] Life Insurance policy without a court’s authorization. In the alternative, Petitioner argued the life insurance policy at issue was ultimately involved in ongoing litigation from the date Mr. [REDACTED] was appointed as Petitioner’s Conservator.

To Petitioner's first point, Mr. ██████ testified that in his position as a conservator, he is not permitted to sell or access an individual's property without prior authorization from the court. Petitioner argued that under 20 C.F.R. § 416.1201(a)(1), Petitioner's ██████ life insurance policy cannot be considered a resource of Petitioner because Mr. ██████ did not have the authority or power to liquidate the property until such time that the court entered an order approving liquidation on January 12, 2022. Pursuant to 20 C.F.R. § 416.1201(a):

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...(1)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).

Here, the record establishes, and it is uncontested, that Petitioner did not have access to this resource herself at the time of application, as Mr. ██████ was appointed conservator of her property on June 2, 2021. *See* Exhibit 1, p. 198-207. TennCare argued, however, that the earliest effective date of October 1, 2021, was provided to Petitioner as Mr. ██████ had access to the ██████ life insurance policy as of June 2, 2021, and the resource was not excludable until such time that it entered litigation on October 28, 2021. In support of this argument, TennCare relies on the Order entered by Administrative Judge Patrick Ren. *See* Initial Order in Case Number ██████ (April 20, 2022).¹⁴ The State fails to acknowledge, however, that per the conservatorship order entered on June 2, 2021, Mr. ██████ was prohibited from selling "any of Respondent's property...without prior permission of the Court."¹⁵ *See* Exhibit 1, p. 204. Furthermore, as

¹⁴ The mere finding that the date of the motion was used to show the ██████ life insurance policy was involved in litigation is not a finding as to the earliest possible effective date, or that Petitioner was not eligible prior to that date.

¹⁵ Although 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. *See* Exhibit 1, p. 204.

provided in paragraphs nine and ten of the conservatorship order, Mr. [REDACTED] was required to provide a Property Management Plan and an inventory of assets to the court and was prohibited from selling “any of Respondent’s property, except as permitted by Tennessee Code Annotated § 34-1-116(b) without prior permission from the Court.” *Id.* at p. 203-204. The January 21, 2022 order is the first time Mr. [REDACTED] is specifically granted authority to apply to the insurance company and surrender the policy for its cash value. *Id.* at 208-209. The court then adds yet another step to use those funds by requiring Mr. [REDACTED] to make another motion with the court to approve a spenddown plan. *Id.* Based on the conservatorship order and the totality of the circumstances surrounding the liquidating of the [REDACTED] life insurance policy, Mr. [REDACTED] did not have the “right, authority or power” to liquidate Petitioner’s share of the life insurance policy without prior court approval, as noted with specificity within the January 21, 2022 order granting the motion to surrender the policy for its cash value. Consequently, the life insurance policy was inaccessible to Mr. [REDACTED], or to anyone acting on Petitioner’s behalf, at the time of the July 21, 2021 application and so should not have been considered an accessible resource at that time.

TennCare conceded during the hearing that the [REDACTED] life insurance policy was the only thing disqualifying Petitioner from eligibility for Institutional Medicaid benefits as of the date of the July 21, 2021 application. As said policy has been determined inaccessible at the time of application, Petitioner’s appropriate effective date of coverage is the date of application – July 21, 2021. *See* TENN. COMP. R. & REGS. 1200-13-20-.08(5)(g). Based on this finding, the question of when the [REDACTED] life insurance policy first became involved in litigation need not be addressed.

For these reasons, it is concluded that TennCare improperly determined Petitioner’s TennCare Medicaid coverage to be effective on October 1, 2021. Accordingly, Petitioner has proven by a preponderance of the evidence that TennCare should have extended her eligibility for

benefits prior to that date. This appeal is therefore decided in favor of the Petitioner and is hereby **GRANTED, IN PART**. The effective date of Petitioner's coverage **SHALL** backdate to July 21, 2021. However, the request to backdate coverage to January 1, 2021, or any date prior to the aforementioned date, is hereby **DENIED**.

This Initial Order is entered and effective this the 26th day of August, 2022.



CHRISTIE R. TAYLOR
TennCare Administrative Judge

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.