



State of Tennessee  
Division of TennCare  
P.O. Box 305240  
Nashville, TN 37230-5240

July 19, 2022

ELDER LAW PRACTICE  
DAVID MCGUFFEY  
PO BOX 2023  
DALTON GA 30722-2023

We've made a change to how we send our letters. When possible, we try to put all of the letters mailing to your household on the same day in one envelope.

That means there may be more than one letter in this envelope for you. Be sure to look through all of the pages so you don't miss important news!

If you have questions or need more help, please call **TennCare Connect** at **855-259-0701**.

**Want to save time? Create Your TennCare Connect Account Today!**

Access your coverage from anywhere at any time. From your online account, you can read the letters we send you about your coverage and renew your coverage when it's time. You can also upload documents, and report changes directly right from your phone or computer. Go to <https://tenncareconnect.tn.gov> to get started!

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State of Tennessee  
Division of TennCare  
P.O. Box 305240  
Nashville, TN 37230-5240

July 19, 2022

ELDER LAW PRACTICE  
DAVID MCGUFFEY  
PO BOX 2023  
DALTON GA 30722-2023

Appeal ID: [REDACTED]

Dear: [REDACTED] (Age: 88 and Person ID: [REDACTED])

### **Notice of Hearing—TennCare Member Services Eligibility Appeal**

You filed an appeal about your coverage start date.

When you appeal, you are asking to tell an administrative judge the mistake that you think TennCare made. It is called a fair hearing. This letter tells you about your hearing. Keep reading to find out when your hearing is scheduled.

#### **What happens at the fair hearing?**

At the hearing, the judge will look at your case. The judge will listen to an attorney give TennCare's side of the case. The judge will also listen to you give your side of the case.

You can speak for yourself at the hearing or you can have someone else speak for you. This can be an attorney, but it does not have to be. It can be your friend, your relative or anyone else who agrees to speak for you. Your local Legal Services office can tell you if you can get free or low cost legal help.

At the hearing, you and TennCare are allowed to have witnesses. A witness is someone who knows something about the case and can tell this to the judge. The judge will give you an opportunity to ask questions of TennCare's witnesses.

The hearing will be tape recorded or a court reporter will record in writing what everyone says at the hearing. This might be needed if either party appeals the judge's hearing decision.

**TN 606.2**

If you want a telephone hearing instead of an in-person hearing, call **Eligibility Appeals Unit** at **844-202-5618** as soon as possible. Do you need an Interpreter during your hearing? Call **Eligibility Appeals Unit** at **844-202-5618**. They will place someone on the call that can speak to you in your language.

**An in-person hearing is scheduled for you.** The details of the in-person hearing are below.

**You must bring a Driver's License or Photo ID Card to get in to your in-person hearing.**

**HEARING DATE: August 2, 2022**

**HEARING TIME: 09:00 AM Eastern Time.** You must arrive on time. And you must bring a Driver's License or Photo ID Card to get into your in person hearing. Other people will also have in person hearings during this time. How long it takes before we are ready for your hearing depends on how many other people are scheduled that day.

**HEARING ADDRESS: Hamilton Co. Department of Human Services  
Division of Appeals & Hearings  
Eastgate Center Suite 602-B  
5600 Brainerd Road  
Chattanooga TN 37411  
423-634-6250**

**You must call Eligibility Appeals Unit at 844-202-5618 as soon as possible if you want to:**

- change the time of your in-person hearing, or
- change the in-person hearing to a phone hearing, or
- give us the names and phone numbers of people who will speak for you, or
- give us more records.

**How does an in-person hearing work??** During the hearing, you will be in the same room with the Judge. Do you have people who will speak for you or witnesses for your case who cannot be there in person? You must give us their names and phone numbers before your hearing so we can call them.

Remember, you must bring a Driver's License or Photo ID Card to get into your in-person hearing.

**Important:** Your appeal may be dismissed (closed) if you do not show up for your hearing at the time listed above. Even if you have to wait for your hearing to start, you still must arrive on time. If you need to change the time of your hearing, but have not asked to reschedule the hearing, your case may be dismissed. Be sure to tell us if you need to reschedule the hearing by calling **Eligibility Appeals Unit** at **844-202-5618** as soon as possible.

**Have you changed your mind? Do you want to cancel your hearing and end your appeal?**

- You can complete and send us the page with this letter called “How to End your TennCare Appeal.”
- Or, you may fax a letter to TennCare at **855-315-0669** and ask to close your appeal.

Be sure to keep the originals for your records. Send us a copy.

Go to the “How to Report Changes or Send Information to TennCare” page with this letter to find out how to send us your proof.

Do you have an authorized representative who can talk to us or make decisions on your behalf? This is a trusted person who, with your consent (OK) will:

- talk about the information you’ve given us and your health care with us,
- see your information,
- act for you on matters related to your coverage (including getting information about your application, renewal, or changes)
- and sign on your behalf.

If you want to add an authorized representative, change your authorized representative, or end your authorized representative’s rights, call **Eligibility Appeals Unit** at **844-202-5618**. If you want to learn more about authorized representatives, go to <https://tn.gov/tenncare>.

**Do you need help with this letter because you have a health problem, learning problem or a disability?** Or, do you need help in another language? If so, you have a right to get help and we can help you. See the “Do you need Special Help” page with this letter. Or call **TennCare Connect** for free at **855-259-0701**.

- **Do you have a mental illness and need help with this letter?**  
The TennCare Advocacy Program can help you.  
Call them for free at **800-758-1638**.

**We do not allow unfair treatment in our program.**

No one is treated in a different way because of race, color, birthplace, religion, language, sex, age, or disability. Do you think you’ve been treated unfairly? Do you have more questions? Do you need more help? You can make a **free call** to **TennCare Connect** at **855-259-0701**.

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## How to Report Changes or Send Information to TennCare

This page tells you how to send us proof or information we need from you.

### To Report Changes

1. Call TennCare Connect at **855-259-0701**.
2. Use your online account for TennCare Connect at <https://tenncareconnect.tn.gov>
3. Use the TennCare Connect mobile app.

After you report a change, we may ask you for proof or more information. Be sure to keep the originals for your records and only send us a copy.

### Sending us Information

**When you send us your copy (or copies) you must:**

- **Send THIS page.** It includes a barcode and that will help us know you've sent something to us.
- **AND write your name, your date of birth and this number ( [REDACTED] )** on each additional page you send us.

**There are several ways to get this to us. You only have to pick one:**

1. Use your online account at <https://tenncareconnect.tn.gov>. With TennCare Connect you can also view your case information, update your records, renew your coverage when it's time and view your letters.

Haven't created an online account yet? Go to <https://tenncareconnect.tn.gov> and click on the Create Account button. After you create an account and have logged in, select Link My Case from the menu option at the top. You'll need to enter your Social Security Number (SSN) to link your case to your TennCare Connect account. Or you can enter your Person ID which is found in this letter next to your name.

2. Use the TennCare Connect mobile app. Using the app, you can take a photo of the file(s) we need and send it to us right from your phone! With TennCare Connect you can also view your case information, update your records and view your letters.

Haven't downloaded it yet? Go to the iTunes or Google Play store and look for TennCare Connect. After installing the app, create an account by clicking the Create Account button. You'll need to enter your Social Security Number (SSN) to link your case to your TennCare Connect account. Or you can enter your Person ID which is found in this letter next to your name.

A018

3. Fax it to: 855-315-0669  
Be sure to keep the page that says your fax went through.
4. Mail it to: TennCare Connect  
P.O. Box 305240  
Nashville, TN 37230-5240



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

**IN THE MATTER OF:**

████████████████████  
**Appellant.**

)  
)  
) **APPEAL to the DIVISION OF**  
) **TENNCARE**  
)  
) **Appeal #** ██████████  
)

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**NOTICE OF HEARING**

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The Division of TennCare (“TennCare”) hereby gives notice of a fair hearing (“Hearing”) requested on behalf of ██████████. A Hearing in this matter shall be conducted in person on **August 2, 2022, at 9:00 A.M. Eastern Time** in the presence of an administrative judge at the address listed in 1.5 below.

**I. PARTIES AND JURISDICTION**

- 1.1 Pursuant to Executive Order No 23, issued on October 19, 1999, the Department of Finance and Administration is the designated agency to administer all functions related to the TennCare Program.
- 1.2 TennCare has jurisdiction over this appeal and is authorized to provide a fair Hearing in the presence of an administrative judge, as provided by TENN. CODE ANN. § 71-5-112 and TENN. COMP. R. & REGS. 1200-13-19-.01.
- 1.3 Appellant is ██████████.
- 1.4 Appellant has the right to a Hearing to appeal the effective date of TennCare benefits, as provided by 42 C.F.R. § 431.220(a).
- 1.5 Your in-person hearing will be held at:

**Address:     Hamilton Co. Department of Human Services  
                 Division of Appeals & Hearings  
                 Eastgate Center  
                 5600 Brainerd Road  
                 Suite 602-B  
                 Chattanooga, TN 37411**

### III. FACTS

- 3.1 Relevant documents from TennCare's record concerning this matter are included.
- 3.2 On June 2, 2021, Mr. [REDACTED] was appointed as Appellant's Limited Conservator of Property for Petitioner. That appointment allowed Mr. [REDACTED] to access and dispense of Appellant's property, but required that he first obtain the Court's permission prior to selling any of Appellant's property.
- 3.3 Appellant submitted an application for healthcare benefits by fax on July 21, 2021.
- 3.4 On August 19, 2021, TennCare mailed Appellant a request for additional information seeking verification of Appellant's financial resources, life insurance, and burial resources, due to TennCare by October 14, 2021.
- 3.5 Most of the needed verifications were submitted in October 2021, including a verification showing that Appellant had a whole life insurance policy with [REDACTED] Insurance Company ("[REDACTED] Co.") valued at \$ 2,184.66.
- 3.6 On October 20, 2021, TennCare mailed Appellant a second request for additional information, seeking verification of Appellant's financial resources and life insurance, due by November 9, 2021. That letter further informed Appellant that she had yet to provide proof of her burial resources, which was due on October 14, 2021.
- 3.7 On October 22, 2021, TennCare mailed Appellant a notice of decision, informing her that she had been denied for failure to provide requested verifications.
- 3.8 On October 28, 2021, Appellant's conservator filed a motion with the Hamilton County Chancery Court to redeem Appellant's [REDACTED] Co. life insurance policy.
- 3.9 On November 8, 2021, Appellant's nursing home filed an appeal contesting Appellant's October 22, 2021, denial. In that appeal, Appellant's nursing home indicated that Appellant's conservator was attempting to dispose of Appellant's remaining resources.
- 3.10 The resource limit for institutional Medicaid coverage is \$ 2,000.00.<sup>1</sup>
- 3.11 On December 28, 2021, Appellant was mailed a notice of decision informing her that she had been approved for Qualified Medicare Beneficiary ("QMB") coverage, effective January 1, 2022, but was denied TennCare Medicaid coverage due to being over the resource limit.
- 3.12 On March 29, 2022, Appellant's November 8, 2021, appeal was heard before Administrative Judge Patrick Ren. In that hearing, both parties agreed that: (1) The [REDACTED] Co. whole life insurance policy is a countable resource for determining an applicant's

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<sup>1</sup> TENN. COMP. R. & REGS. 1200-13-20-.08(5)(f).

financial eligibility for institutional Medicaid benefits, and (2) the countable value of the █████ Co. life insurance policy exceeded the applicable \$ 2,000.00 resource limit. However, Appellant's attorney at the time, █████, argued that the value of the █████ Co. whole life insurance policy should be excluded because Appellant's conservator was precluded from timely cashing out the policy to bring Appellant's resources under the limit, due to circumstances beyond his control. Ms. █████ also argued that the █████ Co. policy should be excluded based on an AGREEMENT TO SELL.

- 3.13 In his April 20, 2022, Initial Order, Judge Ren reasoned that the █████ Co. policy could not be excluded based on an AGREEMENT TO SELL because such an agreement did not exist. However, he determined that the █████ Co. policy should have been excluded beginning on October 28, 2021, pursuant to TennCare Policy Manual I10.060, section 8, which states, "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."<sup>2</sup> His order remanded Appellant's case to TennCare to be processed for institutional Medicaid coverage with the determination that her █████ Co. policy was excludable as of October 28, 2021, the date it became inaccessible due to litigation.
- 3.14 On May 10, 2022, TennCare mailed Appellant a notice of decision informing her that she was approved for TennCare Medicaid benefits effective October 1, 2021, the first of the month in which she met the resource limit.<sup>3</sup>
- 3.15 On May 27, 2022, an appeal was filed by Appellant's new attorney, David McGuffey, seeking an earlier effective date.
- 3.16 In light of Appellant's previous appeal, which resulted in a Final Order, TennCare contends that the present appeal is barred by res judicata.
- 3.18 Res judicata "bars a second suit between the same parties or their privies on the same claim with respect to all issues which were, or could have been, litigated in the former suit."<sup>4</sup> The primary purposes of the doctrine are "to promote finality in litigation, prevent inconsistent or contradictory judgments, conserve legal resources, and protect litigants from the cost and vexation of multiple lawsuits."<sup>5</sup> Thus, application of res judicata "is not based on any presumption that the final judgment was right or just. Rather, it is justifiable on the broad grounds of public policy which requires an eventual end to litigation."<sup>6</sup>

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<sup>2</sup> TennCare Policy Manual I10.060, on ABD Inaccessible resources, section 8.

<sup>3</sup> TENN. COMP. R. & REGS. 1200-13-20-.08(5)(g); 11A. of Supplement 8b to Attachment 2.6-A of the State Plan states, "for institutionalized categories, the individual/couple whose countable resources are valued at or below the resource limit at any time during the month meets resource eligibility throughout the entire month."

<sup>4</sup> Elvis Presley Enters., Inc. v. City of Memphis, 620 S.W.3d 318, 323-24 (Tenn. 2021) (quoting Jackson v. Smith, 387 S.W.3d 486, 491 (Tenn. 2012)).

<sup>5</sup> Napolitano v. Bd. of Pro. Resp., 535 S.W.3d 481, 496 (Tenn. 2017) (quoting Creech v. Addington, 281 S.W.3d 363, 376 (Tenn. 2009)).

<sup>6</sup> Moulton v. Ford Motor Co., 533 S.W.2d 295, 296 (Tenn. 1976).

- 3.19 The doctrine of *res judicata* also “applies in an administrative law context following a trial type hearing.”<sup>7</sup> The Court in *Richardson v. Tennessee Bd. Of Dentistry*, stated that a prior decision by an administrative body of competent jurisdiction, “constitutes an absolute bar to subsequent action involving the same claim[.]”<sup>8</sup>
- 3.20 The party asserting *res judicata* bears the burden of proving that:
- (1) The underlying judgment was rendered by a court of competent jurisdiction;
  - (2) The same parties or their privies were involved in both suits;
  - (3) The same claim or cause of action was asserted in both suits;
  - (4) The underlying judgment was final and on the merits.<sup>9</sup>
- 3.21 In certain circumstances the defense may be raised in a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure.<sup>10</sup> The Supreme Court of Tennessee observed, “[a] party asserting a *res judicata* defense may generally prove its defense with a copy of the judgement in the former proceeding.”<sup>11</sup>
- 3.22 Here, Appellant previously argued before this court that her July 21, 2021, application for benefits should be granted with an effective date of July 21, 2021. That hearing involved the same parties, Appellant and TennCare, and is based on the same claim that Appellant’s ██████ Co. life insurance policy should have been excluded from Appellant’s countable resources. Finally, a final Judgment was already entered regarding the date that life insurance policy should be excluded by TennCare—Administrative Judge Patrick Ren found that the policy could not be excluded until October 28, 2021, the date that policy became tied up in litigation. *See* Attached initial order.
- 3.23 TennCare further contends that Appellant has failed to state a claim for which relief can be granted, as TennCare is unable to grant coverage prior to the submission date of an approved application or a qualifying event. 1115 CMS Demonstration Waiver; Tenn. R. Civ. P. 12.02(6).
- 3.24 TennCare records do not reflect that Appellant submitted a relevant application for TennCare Medicaid earlier than July 21, 2021.<sup>12</sup>

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<sup>7</sup> *Drummond v. Commissioner of Social Sec.*, 126 F.3d 837, 841 (6th Cir. 1997) (citing 2 Kenneth Culp Davis & Richard J. Pierce, Jr., *Administrative Law Treatise* § 13.3 (3d ed. 1994) (“When an agency conducts a trial-type hearing, makes findings, and applies the law, the reasons for treating its decision as *res judicata* are the same as the reasons for applying *res judicata* to a decision of a court that has used the same procedure.”))

<sup>8</sup> *Richardson v. Tennessee Bd. Of Dentistry*, 913 S.W.2d 446, 459 (Tenn. 1995).

<sup>9</sup> *Elvis Presley Enters.*, 620 S.W.3d at 324 (citing *Jackson*, 387 S.W.3d at 491); *Napolitano*, 535 S.W.3d at 496.

<sup>10</sup> *Jackson*, 387 S.W.3d at 491-92.

<sup>11</sup> *Id.* at 492 n. 10.

<sup>12</sup> TennCare records show that Appellant submitted an application seeking Medicare Savings Program benefits on January 6, 2020. That application was denied on February 6, 2020. Appellant also filed an application on January 22, 2021. That application was denied on April 27, 2021. TennCare has no record of an appeal being submitted regarding either of these applications.

- 3.25 To the extent Appellant intends to litigate the denial of applications submitted prior to July 21, 2021, TennCare moves to dismiss any such appeals for untimeliness pursuant to Tenn. Comp. R. & Regs. 1200-13-19-.06(3).
- 3.26 TennCare Medicaid eligibility in the institutional Medicaid category begins on the date that an application for service is filed, or the first of the month that an applicant meets all eligibility requirements, *whichever is later*. Tenn. Comp. R. & Regs. 1200-13-20-.08; 1115 CMS Demonstration Waiver.
- 3.27 A Hearing was granted to determine whether the effective date of Appellant's coverage is correct.

#### IV. RESERVATION OF RIGHTS

- 4.1 TennCare hereby reserves the right to present evidence and argue at a Fair Hearing that this appeal was not timely filed or that Appellant has failed to state a claim upon which relief may be granted. The mere fact that the complaint in this matter was approved for a Fair Hearing does not and should not constitute a waiver of any such right to assert any affirmative defenses available to TennCare. In addition, TennCare reserves the right to any other affirmative defenses which may be available at law, regardless of whether or not they are mentioned herein and failure to specifically list any such affirmative defense does not constitute a waiver of same.

#### V. LEGAL AUTHORITY

- 5.1 TennCare is 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." TENN. COMP. R. & REGS. 1200-13-19-.02(32).
- 5.2 Section 11A. of Supplement 8b to Attachment 2.6-A of the State Plan states, in relevant part:
- For the Adult Medically Needy and Institutionalized categories, the individual/couple whose countable resources are valued at or below the resource limit at any time during the month meets resource eligibility throughout the entire month.
- 5.3 The TennCare program operates as a Medicaid demonstration project under the authority of an 1115 waiver from the Centers for Medicare and Medicaid Services (CMS). ("1115" refers to the section of the Social Security Act under which the demonstration is authorized.) The CMS Waiver at Item 9 waives the federal requirements for retroactive eligibility found in Social Security Act Section 1902(a)(34) and in 42 C.F.R. § 435.915. Under this provision of the waiver, the State is not required to extend eligibility prior to the date that an application for assistance is made.

5.4 The importance of a Waiver is explained in 42 C.F.R. § 431.420(a), which states, in relevant 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."

5.5 Tennessee Rules of Civil Procedure Rule 12.02 on how defenses and objections are presented states, in relevant part:

Every defense, in law or fact, to a claim for relief in any pleading...shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion in writing: ... (6) failure to state a claim upon which relief can be granted.

5.6 TENN. COMP. R. & REGS.1200-13-20-.08, which includes the aged, blind, or disabled categories, states:

...

(5) Institutional Eligibility.

(a) Definition: See Rule .02.

(b) Technical Requirements: See Rule .04.

(c) Special Eligibility Requirements: To gain eligibility in this category, applicants must either be determined to meet the medical (level of care) eligibility criteria for CHOICES or ECF CHOICES, according to Rule Chapter 1200-13-01, to receive payments for long term services and supports through the CHOICES or ECF CHOICES benefits package or be continuously confined in an institution for thirty (30) consecutive days. Receipt of hospice services in a nursing facility for any length of time meets the 30-day continuous confinement requirement.

(d) Household size is based upon the Aged, Blind, and Disabled household composition Rule .06.

(e) Income Limitations: Income shall not exceed three hundred percent (300%) of the SSI Federal Benefit Rate for an individual.

(f) Resource Limitations: Resources shall not exceed \$2,000.00 for an individual.

(g) 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.

....

5.7 The financial requirements for TennCare Medicaid in the institutional category are set out in TENN. COMP. R. & REGS. 1200-13-20-.06(3), which states in relevant part:

(3) ABD Financial Determinations.

(a) Coverage groups whose financial eligibility is determined based on SSI financial methodology are:

1. Individuals applying for SSI-Related categories.
2. MSP Applicants.
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 requirements:

...

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.

...

(d) Conditional Assistance. Nonliquid resources, which are not exempt under another resource provision are exempt as a resource if the individual enters into a Conditional Assistance agreement with the State. Nonliquid resources include real and personal property that cannot be converted to cash within twenty (20) days. The individual must make a bona fide effort to dispose of the excess nonliquid resources at current market value and use the proceeds to repay the State for medical expenses covered by TennCare during the period of conditional assistance.

1. The exclusion period for real property is not to exceed nine (9) months. The exclusion period for personal property is not to exceed three (3) months, however a three (3) month extension may be granted if the individual is able to show a good cause for failure to dispose of the property. Property that remains unsold at the end of the exclusion period will be considered inaccessible so long as the individual continues the bona fide effort to sell.
2. Repayment of medical expenses covered by TennCare during the period of conditional assistance may not exceed the total net proceeds of the sale. Any proceeds remaining after the repayment of medical expenses is paid are

considered a resource.

....

5.8 TennCare Policy Manual 110.060 on ABD Inaccessible resources states, in relevant part:

...

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.**

If the individual's mental 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....

...

#### 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.** (Emphasis added).

5.9 TENN. COMP. RULES & REGS. 1200-13-20-.05(5) states in relevant parts:

...

- (c) By fax. Paper applications may be faxed to TennCare. The Application File Date for applications faxed to TennCare will be the date a Valid Application is received.

....

5.10 TENN. COMP. R. & REGS. 1200-13-19-.02(8) requires that the burden of proof, or "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."



- 5.11 TENN. R. CIV. P. 12.02 states in relevant part: Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion in writing: (6) failure to state a claim upon which relief can be granted.
- 5.12 TENN. COMP. R. & REGS. 1200-13-19-.07(3) states, in “The Agency may dismiss a previously accepted appeal upon evidence presented at a good cause hearing, pre-hearing conference, or in the pleadings that the appeal was not timely filed and that good cause for the untimely filing did not exist.”
- 5.13 TENN. COMP. R. & REGS. 1200-13-19-.11 states, in pertinent part,
- (1) Any party to a contested case hearing may be advised and represented, at his own expense, by an attorney in good standing and possessing a current license to practice law in the state of Tennessee.
  - (2) Any party to a contested case hearing may represent himself or be represented by a non-attorney of his choice, such as a relative, friend or another spokesperson. If the party is represented by a non-attorney, he must provide valid written or oral attestation on the record authorizing representation.

## VI. NOTICE OF SCHEDULING AND HEARING RIGHTS

The Division of TennCare (“TennCare”) gives notice to Appellant as follows:

- 6.1 A Hearing in this matter shall be conducted **in person** on **August 2, 2022**, at **9:00 A.M. Eastern Time** in the presence of an administrative judge.
- 6.2 If Appellant does not appear on **August 2, 2022**, the hearing date, it will be assumed that Appellant does not want the hearing and Appellant’s appeal **may be dismissed**.
- 6.3 Appellant has a right to a telephone hearing with the administrative judge. If Appellant desires a telephone hearing instead of an in-person hearing, Appellant must contact TennCare at 1-844-202-5618 or [appeals.clerk.tennCare@tn.gov](mailto:appeals.clerk.tennCare@tn.gov) as soon as possible. Scheduling a telephone hearing may mean the hearing will take place on a different date
- 6.5 If Appellant cannot attend the scheduled Hearing, Appellant must contact TennCare at 1-844-202-5618 or [appeals.clerk.tennCare@tn.gov](mailto:appeals.clerk.tennCare@tn.gov) **before August 2, 2022**, the Hearing date. This request to reschedule will be forwarded to the administrative judge assigned to Appellant’s appeal. If the administrative judge agrees to change Appellant’s Hearing date, TennCare will send Appellant a letter that states when the new Hearing will take place. If an Appellant requests a delay, any mandatory time limits or deadlines for conducting hearings and issuing orders will be extended.
- 6.6 Appellant is entitled to be represented by an attorney or any other person. If Appellant chooses to be represented by a lawyer, that lawyer should enter a notice of appearance containing the Appellant’s name and appeal number. Appellant must submit an

authorization form before TennCare will communicate with any representative outside of Appellant's presence.

- 6.7 Appellant has a right to present written evidence and testimony at the Hearing, bring witnesses and family members to the Hearing, to inspect the Agency file regarding the matter under appeal, to copy from the file, and to cross-examine TennCare's witnesses.
- 6.8 The Hearing shall be conducted before an administrative judge who shall render an initial order. The initial order shall be in writing and shall explain the facts and law that support the order.
- 6.9 Either party has a right to request reconsideration of the initial order or to petition the Commissioner's Designee to review the initial order.



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Amos Bailey (BPR# 037296)  
Attorney, Member Services Eligibility Appeals  
P.O. Box 305240  
Nashville, TN 37230-1728  
(844) 202-5618 Telephone  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copies of the foregoing Notice of Hearing and Information Packet was mailed to the Appellant at: [REDACTED] Chattanooga, Tennessee 37421 via FedEx; and to Appellant's attorney at: P.O. Box 2023, Dalton, Georgia 30722 via U.S.P.S. Certified Mail, on this 19<sup>th</sup> day of July 2022.



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Amos Bailey (BPR# 037296)  
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BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF  
FINANCE AND ADMINISTRATION

IN THE MATTER OF: )

██████████, )  
Appellant )

) APPEAL to the DIVISION OF  
) TENNCARE

) Appeal # ██████████  
)

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LIST OF WITNESSES AND EXHIBITS

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TennCare hereby submits its list of witnesses and exhibits.

Witnesses

1. Amani Brown, Appeals Litigation Specialist for TennCare, or a substitute Appeals Litigation Specialist in the event Ms. Brown is unavailable to testify for any reason.
2. Appellant and/or Appellant's Representative.
3. Any other witness identified by Appellant.

Exhibits

1. Documents from TennCare's record on this appeal are included.



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cc: TennCare Clerk's Office