

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
25 SIGOURNEY STREET
HARTFORD, CT 06106-5033

██████████ 2014
Signature Confirmation

Client ID # ██████████
Request #536253

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On May 24, 2013, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying his application for Long Term Care ("L01") Medicaid benefits.

On ██████████ 2013, the Appellant's Spouse requested an administrative hearing to contest the Department's decision to deny his application.

On ██████████ ██████████ 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████ 2013.

On ██████████ 2013, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals were present at the hearing:

██████████, Appellant's Community Spouse
██████████, Community Spouse's Son
██, Community Spouse's Representative
██████████, Legal Assistant for ██████████
Janice Scricca, ESW, Department's Representative
Catherine Shires, Investigations Supervisor, Department's Representative
Mark Plurd, Observer, Fair Hearings Liaison
Miklos Mencseli, Hearing Officer

The Appellant expired on [REDACTED] 2013.

The hearing officer held the record open for the submission of additional evidence. On [REDACTED] 2013, the hearing officer closed the record.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly denied the Appellant's application for Long Term Care ("L01") Medicaid benefits as the spousal assets exceeded the maximum Community Spouse Protected Amount ("CSPA").

FINDINGS OF FACT

1. Since [REDACTED] 2009, the Appellant became institutionalized (the date of institutionalization ["DOI"]). (Exhibit 2: W-!F application, Exhibit 8: Department's case narrative, Testimony)
2. On [REDACTED] 2009, the Appellant was admitted to Alzheimer's Resource Center ("ARC"). (Exhibit 3: W-1-SA: Determination of Spousal Assets form, Testimony)
3. On [REDACTED] 2012, the Appellant applied for Long Term Care ("LTC") Medicaid. (Exhibit 2 and 8)
4. The Appellant expired on [REDACTED] 2013. (Exhibit 8)
5. The Appellant's spouse lives in the community. (Summary, Testimony)
6. On [REDACTED] 2012, an Application For Determination of Spousal Assets was received by the Department. (Exhibit 3)
7. The combined total of the Appellant and the Community Spouse's non-exempt assets was \$180,441.23 as of the DOI. (Exhibit 1: Department's Spousal Assessment Worksheet)
9. The CSPA maximum amount was \$113,640.00 as of DOI. (Exhibit 1)
10. The Department determined that the total maximum combined non-exempt assets allowed as of D.O.I. was actually \$115,240.00 (\$113,640.00, CSPA; plus \$1,600.00, Appellant's portion). (Exhibit 1)
11. The Department determined that the couple needed to spend down \$65,201.23 (\$180,441.23, combined assets; minus \$115,240.00, allowed amount) of the total combined non-exempt assets as of the DOI. (Exhibit 1)

12. The Appellant is seeking Medicaid eligibility effective [REDACTED] 2013. (Testimony)
13. As of [REDACTED] 2013, the combined assets equaled \$154,634.00 (Bank accounts of \$34,634.00 + \$120,000.00 value of the [REDACTED] property) (Testimony)
14. The CSPA maximum amount increased to \$115,920.00 as of [REDACTED] 2013. (Testimony)
15. The town of [REDACTED] has the property at [REDACTED]. with an appraised value of \$73,900.00. (Appellant's Exhibit 2)
16. The Appellant's Representatives had a Comparative Market Analysis done for the property at [REDACTED]. on [REDACTED] 2012 by [REDACTED] from Roxanne York Real Estate. She determined the estimated sale price to be \$65,300.00. (Appellant's Exhibit 1)
17. On [REDACTED] 2013, the Department's regional worker made a referral to the resources unit to make a property appraisal to determine the property's fair market value. (Summary, Exhibit 8: Department's case narrative screen printout)
18. The resources unit based on its fair market value analysis determined that the fair market value of the property is \$120,000.00. The Department compared recent a number of comparable sales in the area. The resources unit placed the fair market value of the Appellant's property at \$120,000.00. (Exhibit 9: Resources Unit Addendum to Fair Hearing Summary dated [REDACTED]-13)
19. The Appellant's representatives responded by providing an appraisal by a licensed appraiser. (Appellant's Exhibit 3: Appraisal of Real Property report by [REDACTED] Property Valuation Services, Inc.)
20. The Appraiser as of [REDACTED] 2013, opined the value of the property to be \$75,000.00. (Appellant's Exhibit 3)
21. The Appraiser did a comparable with three other properties in the area. (Appellant's Exhibit 3)
22. The Appraiser noted there was an extreme shortage of similar sales in the market area in the past twelve months. He used dated sales as well as sales from other communities. (Appellant's Exhibit 3)
23. The home on the property is 400 square feet, has no heat, no air conditioning and unfinished siding. (Testimony)

24. After reviewing the appraisal, the Department maintained the fair market value of the property is \$120,000.00. (Summary, Testimony)
25. The Department objected to the appraiser's use of two foreclosures, none of the comparables are seasonal and only one property has limited water views in the properties used to make his appraisal. (Exhibit 9)
26. The Department did its comparable with six properties in Harpswell. (Exhibit 9)
27. The Department in its assessment factor in; the assessor's value of the land and dwelling: \$73,000.00, an average of 18% markup between assessed values and actual sales based on comparable from Roxanne York Real Estate equals \$86,140.00 and estimated improvements done to the property in 2005 and 2007 totaling \$40,000.00 totals \$126,140.00. (Exhibit 9)
28. The Appellant's representatives did not agree with the Department's determination of the \$40,000.00 worth of improvements done to the property. (Testimony)
29. The Appellant's representatives acknowledge improvements have been made to the property over the years. (Testimony)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual ("UPM") § 1507.05 (A)(4)(a)(b) provides for the assessment of spousal assets. The assessment consists of: a computation of the total value of all non-excluded available assets owned by either or both spouse; and the computation of the spousal share of those assets.
3. UPM § 4030.65 (D)(2)(a)(b)(1)(2)(3)(4) provides for the treatment of other non-home property. All other non-home property is excluded for as long as the individual is making a bona fide effort to sell it. The exclusion period begins with the first month in which all of the following conditions are met: the assistance unit is otherwise eligible for assistance; the assistance unit owns the property; the property is available to the assistance unit; the assistance unit is making a bona fide effort to sell the property.
4. The Department correctly determined the non-home property at [REDACTED] [REDACTED] is an non-excluded asset and part of the spousal assessment computation.

5. UPM § 4022.05 (B)(1)(2)(a)(b)(1)(2) provides for Calculation of Community Spouse Disregard (CSD). The CSD is equal to the amount which results from subtracting the community spouse's total available non-excluded assets from his or her Community Spouse Protected Amount (CSPA). Every January 1, the CSPA shall be equal to the greatest of the following amounts: the minimum CSPA; or the lesser amount of: the spousal share calculated in the assessment of spousal assets (Cross Reference 1507.05); or the maximum CSPA.
6. The Department correctly determined the maximum CSPA was \$113,640.00 at the time of DOI.
7. The Department correctly determined the maximum CSPA increased to \$115,920.00 as of [REDACTED] 2013.
8. UPM § 4005.10(A)(2) provides the asset limit as \$1600.00 for a needs group of one for the AABD and MAABD - Categorically and Medically Needy Programs.
9. UPM § 4099.05 (B)(2) provides for reduction of assets. If the unit does not verify that it has properly reduced its equity in counted assets, the unit is ineligible for assistance.
10. UPM procedures section P-4030.40 provides for treatment of non-home property.
 1. If an assistance unit owns non-home property, inform the unit of the Department's policy concerning non-home property, including the security mortgage and lien requirements.
 2. Refer the case to the Resources Unit, which:
 - computes the unit's equity in the home; and
 - makes sure the unit is making a good-faith effort to sell; and
 - obtains a security mortgage, or places a lien, if required.
11. The Department was correct to make a referral to the Resources unit to determine the property's equity and fair market value.
12. UPM procedures section P-4099.05 provides for verification of asset limits.
 1. Verification regarding the status of the assistance unit's assets as excluded, inaccessible, counted, or deemed is discussed in the previous pages of this chapter.

2. The following sources may be used to verify the assistance unit's or deemor's equity in counted assets:
- NADA "blue" book of trade-in values for automobiles;
 - real estate conveyance records;
 - marketing appraisals;
 - bank records;
 - passbooks;
 - records of stock transactions;
 - property appraisals performed by the Department;**
 - tax assessment records;
 - tracers sent by the Department and answered by appropriate agency personnel (e.g. W-36 completed by bank official; W-279 completed by insurance company official).

13. The Department correctly conducted an appraisal of the property at [REDACTED]
14. The Department incorrectly determined the fair market value of the property at [REDACTED] as \$120,000.00.
15. The Department incorrectly denied the Appellant's application for Long Term Care ("L01") Medicaid benefits with regards to the spousal assets exceeded the maximum Community Spouse Protected Amount ("CSPA").

DISCUSSION

The Appellant's representative argued that the Department's fair market value determination of \$120,000.00 is not sustainable. They reference the comparative market analysis and appraisal of real property report completed for them. They also site the Department did not do a proper professional analysis. The Department under UPM procedures conducts property appraisals to determine

the assistance unit equity in counted assets. The property at [REDACTED] falls within the Department's right to determine its fair market value.

The Appellant's representatives provided three values for the property; the town's appraised value of \$73,900.00, market analysis value of \$65,300.00 and the appraiser's value of \$75,000.00. The undersigned has no reason to doubt the appraisal report submitted by the Appellant's representatives.

The Department sites their comparables are more in line with seasonal (vacation) homes that sold in the town of Harpswell. The Department did use a formula to determine the fair market value. The Department also feels the property's prime asset of location and views of the bay have been under scored. After reviewing the documents and testimony the undersigned finds the Appellant's values as credible. The property value of \$75,000.00 is justified.

DECISION

The Appellant's appeal is **Granted**.

ORDER

1. The Department shall re-open the Appellant's application based on the value of \$75,000.00 for the [REDACTED] property.
2. The Department shall determine the Appellant's eligibility with an effective date of [REDACTED] 2013.
3. The Department shall grant Long Term Care Medicaid benefits based on new effective date as long as all other factors of eligibility are met.
4. No later than [REDACTED] 2014, the Department will provide to the undersigned proof of compliance with this order.


Miklos Mencseli
Hearing Officer

C: George Chamberlin, Operations Manager, DSS R.O. #52 New Britain
[REDACTED]

RIGHT TO REQUEST RECONSIDERATION

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within **25** days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a(a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Legal Counsel, Regulations, and Administrative Hearings, 25 Sigourney Street, Hartford, CT 06106.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 25 Sigourney Street, Hartford, CT 06106. A copy of the petition must also be served on all parties to the hearing.

The **45** day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than **90** days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or his designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.

