

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

██████████ 2014
Certified Mail

Client ID# ██████████
Hearing ID#: 605562

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
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PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") ██████████
██████████ ("the Appellant") ██████████ 2013, application for Medicaid Long Term
Care benefits effective ██████████ 2014.

On ██████████ 2014, ██████████, the Appellant's Representative requested an
administrative hearing to contest the Department's decision to deny certain months of
benefits and requested that the Department grant benefits back to ██████████ 2013.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative
Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████
2014.

On ██████████ 2014, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-184 of the
Connecticut General Statutes, inclusive, OLCRAH held an administrative hearing.
The following individuals were present at the hearing:

██████████, Appellant's Power of Attorney and daughter
██████████, spouse of Power of Attorney and Appellant's son in law
Ellen Leslie, Director of Social Services, ██████████ Health Care Center
Maureen Harry, Department's Representative

Scott Zuckerman, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly granted the Appellant's Long Term Care Medicaid benefits effective [REDACTED] 2014.

FINDINGS OF FACT

1. On [REDACTED] 2008 the Appellant's representative received her appointment as Power of Attorney ("POA"). (Appellant's Representative Testimony, Exhibit A: Power of Attorney Statutory Short Form – Durable Power Clause, [REDACTED]/08)
2. The Appellant has been institutionalized continuously since [REDACTED] 2013 the date of institutionalization ("DOI"). (Hearing Record)
3. The Appellant is a resident at [REDACTED] Health Care Center ("the facility"). (Hearing Record)
4. On [REDACTED], 2013, the Appellant applied for Title XIX Long-Term Care Medical Assistance. (Hearing Record)
5. The Appellant is seeking Medicaid eligibility effective [REDACTED] [REDACTED] 2013 (Appellant's Representative's Testimony)
6. The Appellant is married to [REDACTED], the community spouse. (Hearing Record)
7. The Asset limit is \$1600.00 for Long Term Care Medical Assistance. (Department Testimony)
8. The Community Spouse Protected Amount ("CSPA") was \$23,184.00 as of DOI (minimum CSPA). (Hearing record)
9. The total non-exempt assets allowed were \$24,784.00 (\$1600 + \$23,184.00). (Hearing record)
10. On [REDACTED] 2014, the Department mailed the Appellant's representative a W-1348LTC, We Need Verification from You form requesting verifications that were needed to establish eligibility. Among the items requested were bank statements, face and cash surrender values of three Colonial Penn Life insurance policies, burial plot contracts and complete the W-1SA, Application for Determination of Spousal Assets. (Exhibit 1: W-1348LTC, [REDACTED]/14)

11. On [REDACTED], 2014, the Department received the W-1SA. The Appellant indicated a bank account at Citizens bank # [REDACTED] and TD Bank North. (Ex. 10: W-1SA, Application for Determination of Spousal Assets)
12. On [REDACTED] 2014, the Department mailed the Appellant's representative a W-1348LTC, requesting verifications that were needed to establish eligibility. Among the items requested were bank statements and cash surrender values of life insurance policies. (Ex. 2: W-1348LTC, [REDACTED]/14)
13. On [REDACTED] 2014, the Department mailed the Appellant's representative a W-1348LTC, requesting verifications that were needed to establish eligibility. Among the items requested were bank statements for Citizens Bank account [REDACTED] (Ex. 3: W-1348LTC, [REDACTED]/14)
14. On [REDACTED], 2014, the Department mailed the Appellant's representative a W-1348LTC, requesting verifications that were needed to establish eligibility. The form contained the Assessment of Spousal Assets results informing the Appellant that she needs to reduce her bank accounts or the surrender value of the life insurance policies. (W-1348LTC, [REDACTED] 14)
15. The Appellant and her spouse were the owners of the following assets during the application process: Citizens bank checking account # [REDACTED], TD Bank # [REDACTED], Colonial Penn Life insurance policy # [REDACTED], Colonial Penn life policy # [REDACTED], Colonial Penn Life policy # [REDACTED] and Catholic Cemeteries Association joint burial plot. (Ex. 7: Spousal Assessment Worksheet, Ex. 12: Colonial Penn policies, Ex. 13: Citizens and TD bank statements, Ex. 14: Catholic Cemeteries Certificate of Burial Rights, [REDACTED]/88)
16. On [REDACTED] 2014, the Appellant's representative received the W-1SA-N, Assessment of Spousal Assets, notification of results. The combined total of the Appellant and Community Spouse's assets was \$30,422.70 as of the DOI. The form indicated that the maximum amount of retainable assets is \$24,784.00. (Exhibit 7: Spousal Assessment Worksheet / and W-1 SA-N Assessment of Spousal Assets and Hearing summary)
17. On [REDACTED] 2014, the Porto Funeral Home is named 100% beneficiary to the three life insurance policies administered by Colonial Penn. (Hearing Record, Ex. 12: Colonial Penn change of beneficiary letters, [REDACTED]/14)
18. The value of the Appellant's assets for the months of [REDACTED] 2013 through March 2014 were the following :

Month	TD Bank # [REDACTED]	Citizens # [REDACTED]	Colonial Penn # [REDACTED]	Colonial Penn # [REDACTED]	Colonial Penn # [REDACTED]	Catholic Cemeteries Burial Plot
[REDACTED] 2013	\$24,235.55	\$226.23	\$3567.70	\$3034.70	\$904.09	\$1400

██████████ 2014	\$16,503.95	\$424.00	\$3567.70	\$3034.70	\$904.09	\$1400
██████████ 2014	\$16,503.93	\$93.18	\$3567.70	\$3034.70	\$904.09	\$1400
██████████ 2014	\$16,503.93	\$251.74	\$3567.70	\$3567.70	\$3567.7	\$1400

(Ex. 7: Spousal Assessment Worksheet)

19. On April 2, 2014, the Department granted the Appellant's ██████████, 2013 application for Medicaid Assistance effective ██████████ 2014. (Ex. 4: Notice Content, ██████/14)

CONCLUSIONS OF LAW

1. Connecticut General Statutes §17b-2 provides in part that the Commissioner is authorized to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual ("UPM") § 4000.01 defines a Continuous Period of Institutionalization as a period of 30 or more consecutive days of residence in a medical institution or long term care facility, or receipt of home and community based services (CBS) under a Medicaid Waiver.
3. The Department correctly determined that the Appellant's initial period of institutionalization began on ██████████ 2013.
4. Uniform Policy Manual § 4005.05 (B)(1) provides that the Department counts the assistance unit's equity in an asset toward the asset limit if the asset is not excluded by state or federal law and is either: available to the unit; or deemed available to the unit.
5. UPM § 4005.05 (B)(2) provides that under all programs except Food Stamps, the Department considers an asset available when actually available to the individual or when the individual has the legal right, authority or power to obtain the asset, or to have it applied for, his or her general or medical support.
6. UPM § 4005.05 (D) provides that an assistance unit is not eligible for benefits under a particular program if the unit's equity in counted assets exceeds the asset limit for the particular program.
7. UPM § 4020.10 (D) pertains to burial plots and states: (1) For all assistance units except those units consisting of MCCA spouses, one burial plot is excluded. (2) For an assistance unit consisting of a MCCA spouse, one burial plot for the community spouse and each member of the immediate family is excluded in addition to the assistance unit member's plot.
8. UPM § 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.

9. UPM § 4030.05(A) provides that bank accounts include the following. This list is not all inclusive.

1. Savings account;
2. Checking account;
3. Credit union account;
4. Certificate of deposit;
6. Patient account at long-term care facility;
7. Children's school account;
8. Trustee account;
9. Custodial account.

10. UPM § 4030.30 (C) provides for treatment of Life Insurance Policies and states: (1) If the total face value of all life insurance policies owned by the individual does not exceed \$1,500, the cash surrender value of such policies is excluded. In computing the face value of life insurance, the Department does not count insurance such as term insurance which has no cash surrender value. (2) Except as provided above, the cash surrender value of life insurance policies owned by the individual is counted towards the asset limit.

11. The Department correctly determined that the Appellant's Colonial Penn cash surrender values, TD bank and citizens bank accounts were available to the Appellant.

12. The Department incorrectly determined the Appellant's burial plot was a countable non – excluded asset.

13. UPM § 4026.05 pertains to the calculation method for counted assets and states:

The amount of assets counted in determining the assistance unit's eligibility is calculated in the following manner:

- A. The Department determines the amount of the assistance unit's available non-excluded assets by subtracting the value of the following assets owned by the assistance unit:
 1. those assets considered to be inaccessible to the assistance unit at the time of determining eligibility; and
 2. assets which are excluded from consideration.
- B. The Department adjusts the amount of the assistance unit's available non-excluded assets by:
 1. subtracting a Community Spouse Disregard (CSD), when appropriate, for those individuals applying for assistance under the MAABD program (Cross Reference: 4022.05); and
 2. adding any amount of assets deemed to be available to the assistance unit (Cross Reference: 4025); and

3. subtracting a Long-Term Care Insurance Disregard (LTCID), when appropriate, for those individuals applying for or receiving assistance under the MAABD program (Cross Reference: 4022.10).

C. The amount remaining after the above adjustments is counted.

7. The Department incorrectly counted the Appellant's excluded burial plot asset of \$1400.00 for the months of [REDACTED] 2013 through [REDACTED] 2014. The correct total asset for each month is as follows: [REDACTED] 2013: \$29022.70 (\$30,422.70 total - \$1400.00 excluded burial plot; [REDACTED] 2013: \$31,969.27 (\$33,369.27 total - \$1400.00 excluded burial plot; [REDACTED] 2014: \$24,434.42 (\$25,834.42 - \$1400.00 excluded burial plot; [REDACTED] 2014: \$24,105.41 (\$25,504.41 total - \$1400.00 excluded burial plot; [REDACTED] \$16,755.67 (\$18,155.67 - \$1400.00 excluded burial plot).
8. UPM Section 4005.10 (A) provides that in the Medicaid program, the asset limit for one person is \$1,600.00.
9. UPM § 4022.05(B)(2) provides that every January 1, the CSPA shall be equal to the greatest of the following amounts:
 - a. the minimum CSPA; or
 - b. the lesser amount of:
 - (1) the spousal share calculated in the assessment of spousal assets (Cross Reference 1507.05); or
 - (2) the maximum CSPA; or
 - c. the amount established through a Fair Hearing decision (Cross Reference 1507); or
 - d. the amount established pursuant to a court order for the purpose of providing necessary spousal support.
10. On [REDACTED] 2014, the Department incorrectly granted the Appellant's [REDACTED] [REDACTED] 2013 application for Long Term Care Medicaid effective [REDACTED] 2014. The correct effective date is [REDACTED] 2014 as the assets were reduced to under the allowable limit.

DISCUSSION

The Department acted correctly in its determination of the amount of assets that the Appellant and her spouse were able to retain. The Department correctly counted the cash surrender value of the life Insurance policies and the amount in the bank accounts. The Department was incorrect to count the burial plots for the Appellant and the Community Spouse. Policy states that one burial plot for the community spouse in addition to the assistance unit member's plot is

excluded. The removal of the burial plots allows the Appellant to become asset eligible effective [REDACTED] 2014. The countable assets for [REDACTED] 2013 remain over the limit.

DECISION

The Appellant's appeal is **GRANTED in part and DENIED in part.**

ORDER

1. The Department is ordered to remove the Appellant and Community Spouse's burial plots from consideration in determining the Appellant's assets and grant the application back to [REDACTED] 2014.
2. No later than [REDACTED] 2014, the Department will submit to the undersigned proof of compliance with this order.



Scott Zuckerman
Hearing Officer

Cc: Bonnie Shizume, Social Services Program Manager, DO # 20

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.

