

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVE.
HARTFORD, CT 06105-3725

██████████ 2018
Signature Confirmation

Client ID # ██████████
Request # 128562

NOTICE OF DECISION

PARTY

██████████
██████████
████████████████████

PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (the “Department”) sent ██████████ (the “Applicant”) a Notice of Action (“NOA”) denying his application for Medicaid benefits under the Long Term Care Program effective ██████████ 2018.

On ██████████, 2018, ██████████ (the “Appellant”), the Applicant’s spouse, requested an administrative hearing to contest the Department’s decision to deny such benefits.

On ██████████, 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2018.

On ██████████ 2018, ██████████ (“Attorney”), Attorney for the Appellant, requested a continuance, which OLCRAH granted.

On ██████████, 2018, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2018.

On ██████████ 2018, 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

██████████, Witness for the Appellant

██████████, Witness for the Appellant

██████████, Attorney for the Appellant

Marilyn Phillips, Department Representative, Participated by Telephone

Lisa Nyren, Fair Hearing Officer

The record remained open for the submission of additional evidence. On ██████████ 2018, the record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly calculated the assessment of spousal assets under the Medicaid for Long Term Care (“LTC”) program.

A secondary issue to be decided is whether the Department correctly denied the Applicant’s Medicaid application under the LTC program.

A tertiary issue to be decided is whether the Appellant needs additional assets protected from the Applicant’s share of assets to produce additional income to meet the Appellant’s Minimum Monthly Needs Allowance.

FINDINGS OF FACT

1. On ██████████ 2018, the Applicant applied for Medicaid under the LTC program. (Exhibit 4: W-1LTC Application)
2. The Applicant is married to the Appellant. (Hearing Record)
3. The Applicant resided at ██████████ (the “nursing facility”), a nursing facility. (Exhibit 4: W-1LTC Application)
4. The Appellant resides in the community. (Appellant’s Testimony and Exhibit 4: W-1LTC Application)
5. ██████████ (the “Attorney”) is the Appellant’s attorney. (Exhibit 1: Notice of Counsel)
6. The Applicant received social security benefits of \$1,138.00 per month. (Exhibit 4: W-1LTC Application and Exhibit 10: Income Verifications)

7. The Appellant receives social security benefits of \$858.00 per month. (Exhibit 4: W-1LTC Application and Exhibit 6: Community Spouse Allowance Calculation)
8. The Appellant receives a pension of \$732.87 per month. (Exhibit 4: W-1LTC Application, Exhibit 6: Community Spouse Allowance Calculation, and Exhibit 10: Income Verifications)
9. The Appellant pays \$577.00 per month for rent and pays utilities. (Exhibit 4: W-1LTC Application, Exhibit 6: Community Spouse Allowance Calculation, and Exhibit 11: Rental Verification)
10. The Appellant pays \$264.00 annually for home insurance. (Exhibit 6: Community Spouse Allowance Calculation and Department Representative's Testimony)
11. The Department determined the date of institutionalization ("DOI") as [REDACTED] 2018. (Stipulated)
12. The Applicant and Appellant own a checking account [REDACTED] ("DDA # [REDACTED] at [REDACTED] (the "bank") valued at \$9,921.30 as of the DOI. (Stipulated)
13. The Appellant owns a savings account [REDACTED] ("saving # [REDACTED] at the bank valued at \$4,719.39 as of the DOI. (Stipulated)
14. The Appellant owns a checking account [REDACTED] ("DDA # [REDACTED] at the bank valued at \$17,008.05 as of the DOI. (Stipulated)
15. The Applicant owns life insurance policy # [REDACTED] ("life insurance policy # [REDACTED] with the [REDACTED] ("Life Insurance Company) with a face value of \$12,309.45 and cash value of \$11,883.10 as of [REDACTED] 2016. (Exhibit 2: Spousal Assessment Worksheet, Exhibit 4: W-1LTC Application, Exhibit 5: Life Insurance Notice 7/13/16)
16. As of [REDACTED] 2018, life insurance policy # [REDACTED] had a total cash value of \$12,657.83. (Exhibit 8: Life Insurance Notice 5/2/18)
17. The Applicant owns life insurance policy [REDACTED] ("life insurance policy # [REDACTED] with the Life Insurance Company with a face value of \$9,772.30 and cash value of \$8,523.28 as of [REDACTED] 2016. (Exhibit 2: Spousal Assessment Worksheet, Exhibit 4: W-1LTC Application, Exhibit 5: Life Insurance Notice 7/13/16)

18. As of [REDACTED] 2018, life insurance policy # [REDACTED] had a total cash value of \$9,319.51. (Exhibit 8: Life Insurance Notice 5/2/18)
19. The Applicant owns a life insurance policy [REDACTED] (life insurance policy # [REDACTED] with the Life Insurance Company with a face value of \$9,243.32 and cash value of \$8,629.32 as of [REDACTED] 2016. (Exhibit 2: Spousal Assessment Worksheet, Exhibit 4: W-1LTC Application)
20. As of [REDACTED] 2018, life insurance policy # [REDACTED] had a total cash value of \$12,153.70 and a net cash value of 9,395.68 after policy debt of \$2,758.02 applied. (Exhibit 8: Life Insurance Notice 5/2/18)
21. On May 9, 2018, the Applicant purchased an irrevocable funeral contract with [REDACTED]. (Exhibit 8: Funeral Contract)
22. The Department determined the total of the marital non-exempt assets as \$60,684.44 as of the DOI. Refer to Chart below. (Exhibit 2: Spousal Assessment Worksheet, Exhibit 4: W-1LTC Application, Exhibit 5: Life Insurance Notice 7/13/16 and Department Representative's Testimony)

Assets	Balance as of DOI
DDA # [REDACTED]	\$9,921.30
Saving # [REDACTED]	\$4,719.39
DDA # [REDACTED]	\$17,008.05
Life Insurance Policy # [REDACTED]	\$11,883.10
Life Insurance Policy # [REDACTED]	\$8,523.28
Life Insurance Policy # [REDACTED]	\$8,629.32
Total Marital Assets	\$60,684.44

23. The Department determined the spousal share of the assets as \$30,342.22 as of the DOI. (1/2 of the couple's combined non-exempt assets) (Exhibit 2: Spousal Assessment Worksheet)
24. The maximum Community Spouse Protected Amount (CSPA) was \$119,220.00 as of DOI. (Exhibit 2: Spousal Assessment Worksheet)
25. The Department determined the CSPA as \$30,342.22. (Exhibit 2: Spousal Assessment Worksheet)
26. The asset limit under the Medicaid LTC program is \$1,600.00. (Department Representative's Testimony)
27. Based on the assessment of spousal assets, the Department determined that the Applicant and the Appellant could retain assets in the combined amount of \$31,942.22 without hindering Medicaid LTC eligibility.

[\$30,342.22 + \$1,600.00 = \$31,942.22] (Exhibit 2: Spousal Assessment Worksheet and Department Representative's Testimony)

28. The Department failed to issue a notice to the Appellant informing her that the Department completed their assessment of spousal assets. (Department Representative's Testimony)
29. For the period [REDACTED] 2018 through [REDACTED] 2018, the Department determined the Applicant's assets exceed the Medicaid asset limit under the LTC program. (Department Representative's Testimony and Exhibit 3: Notice of Action)
30. The Applicant died on [REDACTED]. (Hearing Record)
31. On [REDACTED] 2018, the Department denied the Appellant's application for Medicaid effective [REDACTED] 2018 and ongoing months due to assets in excess of the allowable limit. (Exhibit 3: Notice of Action)
32. The issuance of this decision is timely under Connecticut General Statutes § 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED] [REDACTED] 2018. However, to allow the Department time to review new evidence provided by the Appellant's attorney at the administrative hearing, the fair hearing officer authorized three (3) day continuance. Therefore, this decision is due not later than [REDACTED] [REDACTED] 2018.

CONCLUSIONS OF LAW

1. Section 17b-2(a)(6) of the 2018 Supplement to the Connecticut General Statutes provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Section 17b-261(c) of the 2018 Supplement to the Connecticut General Statutes provides that for the purposes of determining eligibility for the Medicaid program, an available asset is one that is actually available to the applicant or one that the applicant has the legal right, authority or power to obtain or to have applied for the applicant's general or medical support. If the terms of a trust provide for the support of an applicant, the refusal of a trustee to make a distribution from the trust does not render the trust an unavailable asset. Notwithstanding the provisions of this subsection, the availability of funds in a trust or similar instrument funded in whole or in part by the applicant or the applicant's spouse shall be

determined pursuant to the Omnibus Budget Reconciliation Act of 1993, 42 USC 1396p. The provisions of this subsection shall not apply to a special needs trust, as defined in 42 USC 1396p(d)(4)(A), as amended from time to time. For purposes of determining whether a beneficiary under a special needs trust, who has not received a disability determination from the Social Security Administration, is disabled, as defined in 42 USC 1382c(a)(3), the Commissioner of Social Services, or the commissioner's designee, shall independently make such determination. The commissioner shall not require such beneficiary to apply for Social Security disability benefits or obtain a disability determination from the Social Security Administration for purposes of determining whether the beneficiary is disabled

3. UPM § 4000.01 defines asset limit as the maximum amount of equity in counted assets which an assistance unit may have and still be eligible for a particular program administered by the Department. An available asset is cash or any item of value which is actually available to the individual or which the individual has the legal right, authority or power to obtain, or to have applied for, his or her general or medical support. A counted asset is an asset which is not excluded and either available or deemed available to the assistance unit. A deemed asset is an asset owned by someone who is not a member of the assistance unit but which is considered available to the unit.
4. UPM § 4000.01 defines a community spouse ("CS") as an individual who resides in the community, who does not receive home and community based services under a Medicaid waiver, who is married to an individual who resides in a medical facility or long term care facility or who receives home and community based services (CBS) under a Medicaid waiver.
5. The Department correctly determined the Appellant as the CS.
6. UPM § 4000.01 defines an institutionalized spouse ("IS") as a spouse who resides in a medical facility or long term care facility, or who receives home and community based services (CBS) under a Medicaid waiver, and who is legally married to someone who does not reside in such facilities or who does not receive such services.
7. The Department correctly determined the Appellant as the IS.
8. UPM § 4000.01 defines MCCA (Medicare Catastrophic Coverage Act of 1988) Spouses as spouses who are members of a married couple one of whom becomes an institutionalized spouse on or after [REDACTED] 1989, and the other spouse becomes a community spouse.

9. The Department correctly determined the Applicant and the Appellant as MCCA spouses.
10. UPM § 4000.01 defines an assessment of spousal assets as a determination of the total value of all non-excluded available assets owned by both MCCA spouses which is done upon the request of an institutionalized spouse or a community spouse and is used to calculate the Community Spouse Protected Amount.
11. UPM § 4000.01 defines community spouse protected amount ("CSPA") as the amount of the total available non-excluded assets owned by both MCCA spouses which is protected for the community spouse and is not counted in determining the institutionalized spouse's eligibility for Medicaid.
12. UPM § 4000.01 defines spousal share is one-half of the total value of assets which results from the assessment of spousal assets.
13. UPM § 1507 provides for the chapter on assessment of spousal assets discusses the special processing requirements associated with the evaluation of assets of an institutionalized spouse and community spouse.
14. UPM § 1507.05(A)(1)(b) provides that the Department provides an assessment of assets at the time of application for Medicaid whether or not a request is made.
15. The Department correctly conducted an assessment of spousal assets.
16. UPM § 1507.05(A)(2)(a) provides that the beginning date of a continuance period of institutionalization is: for those in medical institutions or long term care facilities, the initial date of admission.
17. The Department correctly determined the date of institutionalization as [REDACTED] 2018.
18. UPM § 1507.05()(3) provides that the assessment is completed using the assets which existed as of the date of the beginning the initial continuous period of institutionalization which started on or after [REDACTED] 1989.
19. UPM § 1507.05(A)(4) provides the assessment consists of:
 - a. A computation of the total value of all non-excluded available assets owned by either or both spouses; and
 - b. A computation of the spousal share of those assets.
20. UPM § 4030.10(C) provides that an irrevocable burial fund is considered an excluded asset, regardless of the amount in the fund.

21. The Department correctly determined the Applicant's irrevocable burial fund an excluded asset.
22. UPM § 4030.05(A) provides bank account include the following. This list is not all inclusive.
 1. Savings account;
 2. Checking account.
23. UPM § 4030.05 provides that part of a checking account to be considered as a counted asset during a given month is calculated by subtracting the actual amount of income the assistance unit deposits into the account that month from the highest balance in the account for that month.
24. The Department correctly determined DDA # [REDACTED] as a countable asset.
25. The Department correctly determined the value of DDA # [REDACTED] as \$17,008.05 as of the DOI.
26. The Department correctly determined savings # [REDACTED] as a countable asset.
27. The Department correctly determined the value of savings # [REDACTED] as \$4,719.39 as of the DOI.
28. The Department correctly determined DDA # [REDACTED] a countable asset.
29. The Department correctly determined the value of DDA # [REDACTED] as \$9,921.30 as of the DOI.
30. UPM § 4030.30(C)(2) provides in part, the cash surrender value of life insurance policies owned by the individual is counted towards the asset limit.
31. Section § 17b-261(h) of the Connecticut General Statutes provides to the extent permissible under federal law, an institutionalized individual, as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3), shall not be determined ineligible for Medicaid solely on the basis of the cash value of a life insurance policy worth less than ten thousand dollars provided the individual is pursuing the surrender of the policy.
32. The Department correctly determined life insurance policy [REDACTED] as a countable asset because the Appellant failed to pursue the surrender of the policy.

33. The Department correctly determined life insurance policy [REDACTED] as a countable asset because the Appellant failed to pursue the surrender of the policy.
34. The Department correctly determined life insurance policy [REDACTED] as a countable asset because the Appellant failed to pursue the surrender of the policy.
35. The Department incorrectly determined the value of life insurance policy [REDACTED] as \$11,883.10 as of the DOI. Based on the hearing record, the value of life insurance policy [REDACTED] as of the DOI cannot be determined. Refer to Findings of Fact (“FOF”) # 15 and 16.
36. The Department incorrectly determined the value of life insurance policy [REDACTED] as \$8,523.28 as of the DOI. Based on the hearing record, the value of life insurance policy [REDACTED] as of the DOI cannot be determined. Refer to FOF # 17 and 18.
37. The Department incorrectly determined the value of life insurance policy [REDACTED] as \$8,629.32 as of the DOI. Based on the hearing record, the value of life insurance policy [REDACTED] as of the DOI cannot be determined. Refer to FOF # 19 and 20.
38. The Department incorrectly determined the total value of all non-excluded available assets as \$60,684.44 as of the DOI. Based on the hearing record, the total combined assets as of the DOI cannot be determined since the value of the life insurance policies as of DOI cannot be determined. Refer to FOF # 22.
39. The Department incorrectly determined the CSPA as \$30,342.22. Based on the hearing record, the spousal share of assets cannot be determined since the value of the total non-excluded available assets as of the DOI cannot be determined.
40. The Department incorrectly determined the total assets that can be retained by the household without impacting eligibility as \$31,942.22. Based on the hearing record, the total assets that can be retained by the household without impacting eligibility cannot be determined. Refer to Conclusions of Law # 38 and 39.
41. UPM § 1507.05(C)(1) provides that the Department provides a notification of the results of the assessment to each spouse.

UPM § 1507.05(C)(2) provides that the notification contains the following information:

- a. The results of the assessment; and

- b. The documents used for the assessment; and
 - c. The amount of the spousal share; and
 - d. The maximum amount of assets which may be retained by the spouses at the time of the results of the assessment which would not adversely affect eligibility; and
 - e. The Department's determination of the assistance unit's current eligibility status in regard to assets; and
 - f. The right of each spouse to request a Fair Hearing (Cross Reference 1570)
42. The Department failed to provide the results of the assessment to the Applicant and to the Appellant.
43. UPM § 1507.05(A)(5) provides that the results of the assessment are retained by the Department and used to determine the eligibility at the time of application for assistance as an institutionalized spouse.
44. UPM § 4025.67(C) provides as noted in section 4025.67(A)(2), a community spouse is not a member of the institutionalized spouse's needs group for setting the asset limit.
45. UPM § 4005.05(A) provides that for every program administered by the Department, there is a definite asset limit.
- UPM § 4005(A)(2)(a) provides that the asset limit for Medicaid under the Medical Aid for the Aged, Blind, and Disabled program ("MAABD") for a needs group of one is \$1,600.
46. The Department correctly determined the Appellant is subject to the Medicaid asset limit for one of \$1,600.00.
47. UPM § 4005.05(B) speaks to asset limits and states in part:
- 1. 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:
 - a. Available to the unit; or
 - b. Deemed available to the unit.
 - 2. 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.
48. UPM § 4025.67(A) provides that when the applicant or recipient who is a MCCA spouse begins a continuous period of institutionalization, the assets of his or her community spouse (CS) are deemed through the

institutionalized spouse's initial month of eligibility as an institutionalized spouse (IS).

1. As described in section 4025.67D, the CS' assets are deemed to the IS to the extent that such assets exceed the Community Spouse Protected Amount.
2. Any assets deemed from the CS are added to the assets of the IS and the total is compared to the Medicaid asset limit for the IS (the Medicaid asset limit for one adult).

49. UPM § 4025.67(D) provides for the deeming methodology.

1. The Department calculates the amount of assets deemed to the institutionalized spouse from the community spouse by subtracting the Community Spouse Protected Amount (CSPA) from the community spouse's total available non-excluded assets.
2. The Department calculates the community spouse's total available non-excluded assets by subtracting the value of the following assets from the total value of the assets owned by the community spouse:
 - a. Inaccessible assets; and
 - b. Excluded assets.
3. Every January 1, the CSPA shall be equal to the greatest of the following amounts:
 - a. The minimum CSPA; or
 - b. The lesser 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 1570); or
 - d. The amount established pursuant to a court order for the purpose of providing necessary spousal support.
4. For the purpose of calculating the amount to be deemed, the community spouse's total available non-excluded assets includes only those assets which are:
 - a. Owned solely by the community spouse; and
 - b. Owned jointly with any other person except the institutionalized spouse. Assets owned jointly with the IS are treated as being owned by the IS, as described in UPM 4010.
5. When the calculation results in a zero or lesser amount, the Department does not deem any portion of the community spouse's assets to the institutionalized spouse.

50. Based on the hearing record, the total combined assets for the period [REDACTED] 2018 through [REDACTED] 2018 cannot be determined.

51. UPM § 4005.15(A)(2) provides that in the Medicaid program at the time of application, the assistance unit is eligible until the first day of the month in which it reduces its equity in counted assets to within the asset limit.
52. On ██████████ 2018, the Department incorrectly denied the Appellant's application for Long Term Care Medicaid for exceeding the Medicaid asset limit. The Department failed to establish the value of the Appellant's assets for the period ██████████ 2018 through ██████████ 2018 and failed to properly calculate the CSPA.
53. UPM § 1570.25(D)(4) provides that the Fair Hearing official increases the Community Spouse Protected Amount (CSPA) if either MCCA spouse establishes that the CSPA previously determined by the Department is not enough to raise the community spouse's income to the MMNA (Cross References 4022.05 and 4025.67).

UPM § 1570.25(D)(4)(b) provides that for application filed on or after 10-1-03, in computing the amount of the community spouse's income, the Fair Hearing official first allows for a diversion of the institutionalized spouse's income in all cases.

UPM § 1570.25(D)(4)(c) provides that in determining the amount of assets needed to raise the community spouse's income to the MMNA, the Fair Hearing official computes the amount of assets that would generate the required income, assuming the asset is producing income at the higher of the following rates: the current average rate of return generated by a 12 month certificate of deposit as determined by the Department as of the date of the Fair Hearing; or the rate that is actually being generated by the asset.

54. Based on the hearing record, the correct CSPA as of the DOI cannot be determined. Without a correct spousal assessment, the need for an increase in the CSPA cannot be determined.

DECISION

With the respect to the assessment of spousal assets the Appellant's appeal is granted.

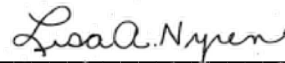
With respect to the denial of the application for Medicaid under the LTC program, the Appellant's appeal is granted.

With respect to the request for additional assets to be protected from the Applicant's share of assets to produce additional income to meet the Appellant's needs in the community, the Appellant's appeal is denied. Without a proper

calculation of the CSPA by the Department, a determination of assets to be protected from the Applicant's share cannot be determined.

ORDER

1. The Department must reopen the Applicant's application for Medicaid under the LTC program effective [REDACTED] 2018, the original application date.
2. The Department must complete the assessment of assets using the total value of all non-excluded available assets owned by the Applicant and the Appellant which existed as of [REDACTED], 2018, the DOI to compute the spousal share of those assets.
3. The Department must issue a notice of assessment of spousal assets to the Appellant upon completion.
4. The Department must obtain the value of all non-excluded available assets owned by the Applicant and Appellant for the period [REDACTED] 2018 through [REDACTED] 2018 in order to correctly determine the total combined assets for this same period.
5. Upon an eligibility determination, a corrected notice must be issued to the Appellant.
6. Compliance is due 30 days from the date of the decision.



Lisa A. Nyren
Fair Hearing Officer

CC: Fred Presnick, DSS RO #30
Yecenia Acosta, DSS RO #30
Tim Latifi, DSS RO #30
Marilyn Phillips, DSS RO # 30

[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 Administrative Hearings and Appeals, 55 Farmington Avenue Hartford, CT 06105.

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, 55 Farmington Avenue Hartford, CT 06105. 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 the Commissioner's 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.