

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 #535512

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2012, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Decision ("NOA") stating that his appeal regarding the amount of applied income that he must pay toward his cost of long term care was denied. On ██████████ 2012, Attorney ██████████ filed an appeal of the decision in the New Britain Superior Court.

On ██████████ 2013, the New Britain Superior Court remanded the decision to the Department to determine if the alimony received by the Appellant's ex-wife meets the requirements of a Qualified Domestic Relations Order (QDRO).

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:

██████████, Counsel for the Appellant  
Allen Mallory, Department's Representative  
Jennifer L. Callahan, Assistant Attorney General/Department's Representative  
James T. Hummel, Hearing Officer

The hearing record remained open for the submission of additional evidence and briefs, and closed on [REDACTED] 2013.

### **STATEMENT OF THE ISSUE**

The issue is whether or not the Department has correctly determined that the alimony paid to the Appellant's ex-wife does not meet the requirements of a QDRO and is therefore accessible by the Appellant.

### **FINDINGS OF FACT**

1. On [REDACTED] 2012, the Department of Social Services issued a decision denying the Appellant's appeal regarding the amount of applied income he was responsible to pay towards the cost of his care at Laurel Ridge Health Care Center. (Notice of Decision dated 4/25/12)
2. The Appellant appealed the Department's decision on the grounds that the Department incorrectly determined the Appellant's applied income.
3. On [REDACTED] 2013, the Office of The Attorney General argued in a letter to The Honorable Judge Henry Cohn of the Superior Court of Connecticut, that alimony paid by the Appellant was not in accordance with a QDRO. (Exhibit 7: Letter dated [REDACTED]/2013)
4. On [REDACTED], 2013, Judge Cohn remanded the case to the Department for further factual findings and legal conclusions, to determine if a QDRO exists in the present case. (Exhibit c: Order of Remand)
5. The Appellant was divorced from his wife on [REDACTED], 1989. (Exhibit 3: Judgment of Divorce dated [REDACTED] 1989)
6. The judgment of divorce was entered in the Commonwealth of Massachusetts, Trial Court, Probate and Family Court Department, Barnstable Division. (Exhibit 3)
7. The alimony section of the divorce decree states that "after full retirement, the Husband agrees to pay 50% of his pension to his Wife. Said payment shall be made in equal weekly installments payable on each and every Friday." (Exhibit 3)
8. The divorce decree does not instruct the Appellant's retirement plan administrator to pay the benefit to his ex-wife. (Exhibit 3)
9. There is no evidence in the hearing record stating the date of the Appellant's retirement. (Record)

10. On [REDACTED] 2007, the Ridgefield Probate Court ordered that the Appellant's ex-spouse is entitled to 50% of the monthly pension received by the Appellant as and for alimony, and that the gross monthly pension payable on account of the Appellant be split into two equal parts by the [REDACTED]. It orders that 50% of the gross monthly pension be deposited into the Appellant's bank account and that 50% be deposited into his ex-wife's bank account. The order was to continue until the death of either the Appellant or his ex-wife, or the remarriage of his ex-wife. (Exhibit A: Probate Court Order dated January 16, 2007)
11. There is no evidence that the plan administrator of the Appellant's pension plan determined the qualified status of a domestic relations order in the present case. (Record)
12. There is no evidence in the hearing record regarding how the Appellant's ex-wife received her alimony from the Appellant's pension prior to January 16, 2007. (Record)

### **CONCLUSIONS OF LAW**

1. Sections 17b-260 to 17b-264 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Title XIX Medical Assistance Program to provide medical assistance to eligible persons in Connecticut.
2. 29 United States Code (U.S.C.) § 1056(d)(1) provides that each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.
3. 29 U.S.C. § 1056(d)(3)(a) provides Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.
4. 29 U.S.C. § 1056 (d)(3)(B) (i) the term "qualified domestic relations order" means a domestic relations order-
  - (I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term “domestic relations order” means any judgment, decree, or order (including approval of a property settlement agreement) which-

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law).

5. 29 U.S.C. § 1056 (d)(3)(C) provides that a domestic relations order meets the requirements of this subparagraph only if such order clearly specifies-
  - (i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,
  - (ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,
  - (iii) the number of payments or period to which such order applies, and
  - (iv) each plan to which such order applies.
  
6. 29 U.S.C. §1056 (d)(3)(D) provides that a domestic relations order meets the requirements of this subparagraph only if such order-
  - (i) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,
  - (ii) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and
  - (iii) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.
  
7. 29 U.S.C. § 1056(d)(3)(G) provides )
  - (i) In the case of any domestic relations order received by a plan-
    - (I) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and
    - (II) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.
  
  - (ii) Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Such procedures-
    - (I) shall be in writing,

(II) shall provide for the notification of each person specified in a domestic relations order as entitled to payment of benefits under the plan (at the address included in the domestic relations order) of such procedures promptly upon receipt by the plan of the domestic relations order, and

(III) shall permit an alternate payee to designate a representative for receipt of copies of notices that are sent to the alternate payee with respect to a domestic relations order.

8. The Massachusetts divorce decree alimony order is not a QDRO as it did not order that the Appellant's retirement plan pay the Appellant's ex-spouse 50% of his retirement pension. The divorce decree only orders the Appellant to pay the alimony in weekly installments payable on each and every Friday.
9. There is no evidence that the Massachusetts divorce decree alimony order was sent to the Appellant's plan administrator nor is there evidence that the plan administrator ever made a determination of the qualified status of a domestic relations order in the present case.
10. Connecticut General Statutes (Conn. Gen. Stat.) § 46b-81 pertains to the assignment of property and transfer of title and states (a) At the time of entering a decree annulling or dissolving a marriage or for legal separation pursuant to a complaint under section 46b-45, the Superior Court may assign to either the husband or wife all or any part of the estate of the other. The court may pass title to real property to either party or to a third person or may order the sale of such real property, without any act by either the husband or the wife, when in the judgment of the court it is the proper mode to carry the decree into effect.
11. The Connecticut Probate Court did not have jurisdiction to enter a QDRO at the time the probate court order was entered on [REDACTED] 2007.
12. Uniform Policy Manual (UPM) § 5010(A) provides that the Department considers all income to be accessible unless otherwise indicated.
13. UPM § 5050.05 (B) provides that Alimony is treated as unearned income and is subject to the appropriate disregard.
14. The amount of the Appellant's pension that was paid as alimony to his ex-spouse as part of his divorce settlement is accessible income.

### **DISCUSSION**

Based on the evidence provided at the hearing it is concluded that neither the Appellant's original divorce decree nor the subsequent Probate Court order meet the requirements to be considered a QDRO. There is no evidence prior to the

Probate Court order in 2007, that the [REDACTED] [REDACTED] paid 50% of the Appellant's pension directly to his ex-wife, nor was there an order to do so. The order in the divorce decree instructs the Appellant to pay 50% of his pension to his ex-spouse in weekly installments. Additionally, the fact that the Probate Court in 2007 instructed the [REDACTED] [REDACTED] to split his pension in half, further demonstrates that the initial divorce decree did not meet QDRO requirements. The Probate order states in part that the Appellant's ex-wife "is entitled to 50% of the monthly pension *received by* (emphasis added) [REDACTED] as and for alimony." This again indicates that initial divorce decree merely instructed the Appellant to pay 50% of his pension as alimony.

29 U.S.C. § 1056(d)(3)(G) states in part that "in the case of any domestic relations order received by a plan- the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination." There is no evidence that the Appellant's retirement plan ever made a determination if the payment from the Appellant to his ex-spouse was a QDRO. This lends further credence to the fact that the payment in question is merely alimony and not a QDRO.

It should be noted that the Appellant's post-hearing brief focused on why the original divorce decree should be considered a QDRO, but did not explain why the Probate Court order of [REDACTED] 2007, would be considered a QDRO.

### DECISION

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

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James T. Hummel  
Hearing Officer

Pc: Carol Sue Shannon, Operations Manager, DSS R.O. #31, Danbury

[REDACTED]  
Jennifer Callahan, AAG

### **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.

