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

[redacted] **2014**
Signature Confirmation

Client ID [redacted]
Request #592551

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2014, the Department of Social Services (the Department") sent [redacted] (the "Appellant") a Notice of Action ("NOA") regarding the amount of applied income that he must pay toward his cost of long term care.

On [redacted] 2014, the Appellant, through the attorney for the Appellant's Conservator of the Person and Estate, [redacted], requested an administrative hearing to contest the Department's calculation of the applied income amount.

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

On [redacted] 2014, the Appellant, through the Attorney requested a continuance of the [redacted] 2014 hearing.

On [redacted] 2014, OLCRAH issued another notice rescheduling the administrative hearing for [redacted] 2014.

On [redacted] 2014, the Attorney requested another continuance of the [redacted] 2014 hearing.

On [redacted] 2014, OLCRAH issued another notice rescheduling the administrative hearing for [redacted] 2014.

On [redacted] 2014, 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:

[redacted] Appellant
[redacted], Appellant's Spouse
[redacted], Appellant's Daughter, Conservator of Person and Estate
[redacted], Attorney for the Conservator of Person and Estate and Appellant's Representative
William Johnson, Department's Representative
Jeannine Skitgis, Resources Investigator, Department's Representative
Assistant Attorney General (AAG) Hugh Barber, Department's Representative
Miklos Mencseli, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department was correct to ignore a probate court decree, issued on [redacted] 2013, when calculating the Appellant's applied income.
.

FINDINGS OF FACT

1. On [redacted], 2013, the Appellant began living at Masonic Health Care Center, a long-term care facility. (Appellant's Attorney brief)

2. [redacted] is the Appellant's Conservator of the Estate and Conservator of the Person (the "Conservator").

3. The Appellant's spouse, [redacted], (the "Spouse") lives in the community. (Appellant's Attorney brief and testimony)

4. On [redacted] 2013, the Conservator filed an application for spousal support with the Court of Probate for the District of Wallingford. (Exhibit 1: Department's Hearing summary, Exhibit 2: Court of Probate application for spousal support dated [redacted]-13)

5. At the time of the application for spousal support, the Appellant was not a Title XIX (Medicaid) applicant or recipient, although it was clear at the time of the application for spousal support that the Appellant was going to file a Medicaid application. (Appellant's Attorney brief and testimony)

6. On [redacted] 2013, even though the Appellant had not yet applied for Medicaid, the Department calculated the amount of the Community Spouse Allowance ("CSA") as $1,394.96, which meant that the Appellant's applied income, which is the amount he would need to pay to the nursing facility if he were to become eligible for Medicaid, would be $957.64. (Exhibit 4: Department's calculations for community spouse allowance and applied income)

7. On [redacted] 2013, the Probate Court, pursuant to subsections (a) and (b) of section 45a-655 of the Connecticut General Statutes, issued a decree providing for $3,373.29 of the Appellant's income to be paid monthly to the Spouse for spousal support (the "Probate Court Decree").

8. The Probate Court Decree provides that this payment is "known, identified and defined as the community spouse monthly income allowance or the community spouse allowance in 42 USC 1396r-5(d)(5) and in Uniform Policy Manual § 5035.30 B.1.b." (Appellant's Attorney brief, Exhibit 1, Exhibit 5: Court of Probate decree)

9. On [redacted] 2013, only eight days after the Probate Court Decree was issued, the Appellant applied to the Department for Long-Term Care Medicaid. (Exhibit 1, Testimony)

10. On [redacted] 2013, the Department granted the Appellant's application for Medicaid and followed the Probate Court Decree, which meant that it allowed $3,373.29 of the Appellant's income to go the Spouse as the CSA, with no applied income due from the Appellant to the nursing facility. (Exhibit 1, Exhibit 9: Department's case narrative screen printout, Department's MA Financial Eligibility computer screen printouts)

11. On [redacted]2013, the Department recalculated the Appellant's applied income without consideration of the Probate Court Decree, determining that it was not bound by the Probate Court Decree when calculating the amount of the CSA and the applied income due to the nursing facility. (Exhibit 1)

12. On [redacted], 2014, the Department sent an amended NOA to the Appellant, in which it advised the Appellant that, effective [redacted] 2014, the Appellant's applied income due to the nursing facility was $957.64. (Exhibit 1, Exhibit 10: NOA dated[redacted]-14)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes provides that the Department will administer Title XIX of the Social Security Act ("Medicaid") in the State of Connecticut.

2. Section 17b-261b(a) of the Connecticut General Statutes provides that the Department "shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department."

3. Federal law provides that the "single State agency is responsible for determining eligibility for all individuals applying for or receiving benefits" in the Medicaid program. 42 C.F.R. 431.10(b)(3).

4. Section 17b-261b (c) of the Connecticut General Statutes provides that "[n]o probate court shall approve an application for spousal support of a community spouse unless . . . (2) the order is consistent with state and federal law."

5. Subsection (b) of section 45a-655 of the Connecticut General Statutes provides that "[a]ny conservator of the estate of a married person may apply such portion of the property of the conserved person to the support, maintenance and medical treatment of the conserved person's spouse which the Court of Probate, upon hearing after notice, decides to be proper under the circumstances of the case.

6. Subsection (d) of section 45a-655 provides that "In the case of any person receiving . . . Medicaid, the conservator of the estate shall apply toward the cost of care of such person any assets exceeding limits on assets set by statute or regulations adopted by the Commissioner of Social Services. **Notwithstanding the provisions of subsections (a) and (b) of this section, in the case of an institutionalized person who has applied for or is receiving such medical assistance, no conservator shall apply and no court shall approve the application of (1) the net income of the conserved person to the support of the conserved person's spouse in an amount that exceeds the monthly income allowed a community spouse as determined by the Department of Social Services pursuant to 42 USC 1396r-5(d)(2)-(4),** or (2) any portion of the property of the conserved person." (emphasis added).

7. Because the Appellant applied for Medicaid on [redacted] 2013, the Conservator is prohibited, pursuant to subsection (d) of section 45a-655, from applying the net income of the Appellant to the Appellant's spouse in any amount that exceeds the monthly income allowed by the Department, pursuant to 42 USC 1396r-5(d) (2)-(4) on and after that date, notwithstanding the Probate Court Decree.

8. Federal law provides that, "[i]f a court has entered an order **against an institutionalized spouse** for monthly income for the support of the community spouse, the community spouse's monthly income allowance for the spouse shall be not less than the amount of the monthly income so ordered." 42 U.S.C. 1396r-5(d)(5) (emphasis added).

9. The Probate Court Decree purports to be a community spouse allowance; it is not an order against the Appellant.

10. The Probate Court does not have the authority to establish a community spouse allowance because the Department is the sole agency to determine eligibility for the Medicaid program in Connecticut.

11. The Department has primary jurisdiction over Medicaid determination issues and is not bound by the Probate Court Decree. *See Pikula v. Commissioner of Social Services*, No. HHB CV-14-6024057S at 6-7 (November 13, 2013) (appeal pending).

12. The Appellant's attempt "to circumvent the administrative process in hopes of obtaining a more favorable forum . . . promotes a race to the courthouse . . .Such an approach is contrary to the policy 'of fostering an orderly process of administrative adjudication and judicial review in which a reviewing court will have the benefit of the agency's findings and conclusions. . . . '" *Pikula* at 6 (quoting *Dontigney v. Brown*, 82 Conn. App. 11, 15(2004))

13. The Department's calculation of the Appellant's CSA and applied income due to the facility, without consideration of the Probate Court Decree, is correct.

DISCUSSION

After reviewing the evidence and testimony presented, the Department's action to not consider a probate court decree, issued on [redacted] 2013, when calculating the Appellant's applied income, is upheld.

The Appellant argues that the Department must follow the CSA as ordered by the Court of Probate. I disagree and find that the Department is the sole agency authorized to determine eligibility for its programs. 42 C.F.R. 431.10(b)(3): Conn.

Gen. Stat. 17b-261(a). Although subsection (b) of section45a-655 of the Connecticut General Statutes authorizes the Probate Court to issue a spousal support order, it is not authorized to establish a community spouse allowance and make Medicaid eligibility decisions. Once the individual applies for Medicaid, pursuant to section 45a-655(d) of the Connecticut General Statutes, state and federal Medicaid law apply.

The Appellant then attempts to rely on 42 USC 1396r-5(f)(5) arguing that the Department must follow the Probate Court Decree when deciding the CSA. A review of the Probate Court Decree shows that it is not "an order against the institutionalized spouse." Instead it is the Appellant's attempt to circumvent the Medicaid eligibility process by having the court issue a determination of the community spouse monthly income allowance or the community spouse allowance, instead of having the Department making that determination. The federal law provision could not have foreseen that an applicant or recipient could simply choose which forum to go to calculate the CSA.

Based on the Appellant's actions and review of the Probate Court Decree, the Appellant was trying to use the Probate Court system to make a Medicaid eligibility determination which the law does not allow. The Appellant applied for Medicaid on [redacted] 2013, only eight days after obtaining the [redacted] 2013 Probate Court Decree. However, even though the Appellant had not yet applied for Medicaid at the time the Probate Court issued the Probate Court Decree, it is clear from the language in the Probate Court Decree that an application for Medicaid was imminent. Had the Appellant had a Medicaid application pending at the time of the Probate Court Decree, the Probate Court would have had no choice but to follow the provisions of section 45a-655(d) of the Connecticut General Statutes, and follow the state and federal Medicaid law when making a decision about the distribution of the Appellant's income and assets. The provision in federal law that instructs the Department to use "an order against the institutionalized spouse" must have been intended for situations where there was a pre-existing spousal support order that had been entered against the institutionalized spouse. The law could not have been intended to allow people to hire an attorney to go to Probate Court before a Medicaid application is submitted, get an order of support, and have that order binding on the Department, taking away the Department's authority to make a Medicaid eligibility determination.

The Appellant also argues that the doctrine of collateral estoppel does not allow the Department to calculate the CSA because Probate Court has already done so. Collateral estoppel does not apply in this situation. The Probate Court Order was issued prior to the Appellant filing his Medicaid application. The CSA was issued after the Appellant applied for Medicaid. The argument only reinforces that the Probate Court Order was intended to take place of the Department issuing its CSA, which the Probate Court is not permitted to do, See Pikula at 6-7.

DECISION

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

Miklos Mencseli
Hearing Officer

C: Peter Bucknall, Operations Manager, DSS R.O. #20 New Haven

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.