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

[redacted] **2014**
Signature Confirmation

Client ID # [redacted]
Request # 594561

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") notifying her that she was eligible for Long Term Care Medicaid, and that the Applied Income ("AI") she must pay monthly to the nursing facility was calculated without consideration of a deduction for a Community Spouse Allowance ("CSA").

On [redacted] 2014, the attorney for the Appellant requested an administrative hearing to contest the Department's failure to use a prior Probate Court finding in determining whether the Appellant should be allowed a deduction for a CSA.

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

Per mutual agreement of the Department and the Appellant, on [redacted] 2014, OLCRAH issued a notice rescheduling the hearing for [redacted] 2014.

At the Appellant's request, OLCRAH issued a notice rescheduling the hearing on [redacted] 2014 for [redacted] 2014, and again on [redacted] 2014 for [redacted] 2014.

On [redacted] 2014, in accordance with sections 17b-60, 17-61 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], Attorney Representing the Appellant
[redacted] Appellant's daughter and Conservator of Estate
Hugh Barber, Assistant Attorney General
Amy Kreidel, Department's Representative
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

1. The issue to be decided is whether the Department's calculation of the Appellant's CSA, without consideration of a probate court decree issued prior to the Appellant's application for Medicaid, was correct.

FINDINGS OF FACT

1. On [redacted] 2012, the Appellant was institutionalized at Meriden Center, a long-term care facility. (Record)

2. On [redacted] 2013, the Appellant's daughter, [redacted] was appointed Conservator of the Estate for the Appellant (the "Conservator"). (Ex. 3: Court of Probate Appointment of Conservator)

3. The Appellant's spouse, [redacted], lives in the community (the "Spouse"). (Record)

4. On [redacted] 2013, the Conservator filed an application with the Court of Probate for an order of spousal support for the Spouse. (Ex. 4: Application for Spousal Support)

5. 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 $1,170.33 of the Appellant's income be paid monthly to the Spouse for spousal support (the "Probate Court Decree"). (Ex. 5: Probate Court Decree)

6. 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." (Ex. 5)

7. On [redacted] 2013, less than one month after the Probate Court Decree was issued, the Appellant applied to the Department for Medicaid. (Record)

8. The Department determined that it was not bound by the Probate Court Decree when calculating the amount of the CSA. (Summary, Ex. 6: [redacted] 2014 email from Daniel Butler. Principal Attorney, DSS)

9. The Department determined that the Appellant was not eligible for a CSA. (Summary, Ex. 7: Community Spouse Allowance calculation sheet)

10. On [redacted], 2014, the Department sent a NOA and a Notice of Approval for Long Term Care Medicaid to the Appellant. The notices advised the Appellant that she was approved for long-term care Medicaid and that she would need to pay $898.45 toward her cost of care. This amount is known as the applied income. (Ex. F: [redacted] 2014 NOA, Ex. E: [redacted] 2014 Notice of Approval for Long Term Care Medicaid)

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 or 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 not be 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's calculation of the Appellant's CSA, without consideration of the Probate Court Decree, is correct.

DISCUSSION

The Appellant made several arguments in support of his position that the Department is not permitted to calculate the CSA in this case. First, he argues that the probate court has already decided the CSA and the Department must follow it. As concluded herein, only the Department may calculate the CSA. 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-261b(a). While the Probate Court is authorized to issue a spousal support order in accordance with subsection (b) of section 45a-655 of the Connecticut General Statutes, it is not authorized to establish a community spouse allowance and make a Medicaid eligibility decision. Once the individual applies for Medicaid, pursuant to section 45a-655(d) of the Connecticut General Statutes, state and federal Medicaid law apply.

Next, the Appellant tries to rely on 42 USC 1396r-5(f)(5) when he argues that the Department must follow the Probate Court Decree when deciding the CSA. A close review of the Probate Court Decree, however, reveals that it is not "an order against the institutionalized spouse." Rather, it is Appellant's attempt to circumvent the Medicaid eligibility process by having the court issue the community spouse monthly income allowance or the community spouse allowance, instead of having the Department make that determination. The provision in federal law could not have contemplated that an applicant or recipient could simply choose which forum to go to calculate the CSA.

It is clear from a review of the Probate Court Decree and the sequence of events that the Appellant was trying to use the Probate Court system to make a Medicaid eligibility determination, which the law does not permit. It is not a coincidence that the Appellant applied for Medicaid on [redacted] 2013, less than three weeks after obtaining the [redacted] 2013 Probate Court Decree. Moreover, even though the Appellant had not yet applied for Medicaid at the time the Probate Court issued the Probate Court Decree, it is obvious from the language of the Probate Court Decree that an application for Medicaid was imminent. Had there been a Medicaid application pending at the time of the Probate Court Decree, the Probate Court would have had no choice but to comply with 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 Spouse's income and assets. The provision in federal law that instructs the Medicaid agency 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. It could not have been intended to allow people with means to hire an attorney to go to the Probate Court before the Medicaid application is filed, get an order of support, and have that order be binding on the Department, thereby negating the authority of the agency to make Medicaid determinations.

The Appellant's other arguments, i.e., that the Department cannot accept and act upon legal advice from an agency attorney; that state regulations take precedence over state and federal statutes; and that the doctrine of collateral estoppel precludes the Department from calculating the CSA because the Probate Court has already done so, must fail. First, there is no prohibition against the Department following legal advice from its attorney when there are issues relating to interpretation of state and federal statutes. Second, it is clear that state and federal statutes supersede state regulations, if, indeed, the state regulation is contrary to such statutes. Third, the doctrine of collateral estoppel does not apply in this situation. The CSA was issued after the Appellant applied for Medicaid. Moreover, this argument merely reinforces that the Probate Court Order was intended to take the place of the Department issuing its CSA, which it is not permitted to do.

DECISION

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

James Hinckley
Hearing Officer

cc: Cathy Robinson-Patton, SSOM, Middletown
[redacted]
Amy Kreidel
Hugh Barber

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, 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 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.