

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

██████████ 2014  
Signature Confirmation

Client ID # ██████████  
Request # 606288

NOTICE OF DECISION

PARTY

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

On ██████████ 2014, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Assessment of Spousal Assets. The notice stated the Appellant is not eligible for Medicaid because the assets retained by the Appellant and her spouse exceed the Medicaid asset limit.

On ██████ ██████ 2014, the Appellant requested an administrative hearing to contest the Department’s decision to deny such benefits.

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

On ██████████ 2014, the Appellant requested a continuance of the hearing, which OLCRAH granted.

On ██████████ 2014, the OLCRAH issued a notice scheduling the administrative hearing for ██████ ██████ 2014.

On ██████████ 2014, the Appellant requested a continuance of the hearing, which OLCRAH granted.

On [REDACTED] 2014, the OLCRAH issued a notice scheduling the administrative hearing for [REDACTED] 3014.

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], Appellant's Spouse  
 [REDACTED] Attorney for the Appellant  
 Marilyn Phillips, Department's Representative, Participated by telephone  
 Barbara Brunner, Department's Representative  
 Lisa Nyren, Hearing Officer

The record remained open for the submission of additional evidence. On [REDACTED] 2014, the hearing record closed.

### **STATEMENT OF THE ISSUE**

1. 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.
2. A secondary issue to be decided is whether the Department correctly denied the Appellant's Medicaid application under the LTC program.

### **FINDINGS OF FACT**

1. On [REDACTED] 2013, the Appellant applied for Medicaid under the LTC Program. (Exhibit B: Application for LTC and Exhibit 17: Notice of Denial [REDACTED]/14)
2. On [REDACTED] 2013, the Appellant submitted an Application for Determination of Spousal Assets to the Department. (Exhibit B: Application for Medicaid under the LTC Program and Exhibit C: Application for Determination of Spousal Assets)
3. The Appellant is married to [REDACTED] ("Appellant's Spouse"). (Hearing Record)
4. The Appellant resides at [REDACTED] Health Care Center. (Exhibit 7: Application for Determination of Spousal Assets and Exhibit B: Application for Medicaid under the LTC Program)
5. The Appellant's Spouse resides in the community. (Exhibit 7: Application for Determination of Spousal Assets and Exhibit B: Application for Medicaid under the LTC Program)

6. In 2012, the Appellant's Spouse received Power of Attorney appointment for the Appellant. (Appellant's Spouse Testimony)
7. Attorney [REDACTED] (the "Attorney") is the Appellant's Attorney. (Hearing Record)
8. The Department determined the date of institutionalization ("DOI") as [REDACTED] 2013. (Exhibit 1: Assessment of Spousal Assets 4/2/14)
9. On [REDACTED] 2014, the Department corrected the DOI to [REDACTED] 2013. (Exhibit 19: Clarification Memo [REDACTED]/14)
10. The Appellant and the Appellant's Spouse own a checking account at Union Savings Bank ("checking account") valued at \$1,355.56 as of the DOI. (Exhibit 1: Assessment of Spousal Assets [REDACTED]/4 and Exhibit D: Bank Statements)
11. The Appellant owns a savings account at Wells Fargo Bank ("savings account") valued at \$500.02 as of DOI. (Exhibit 1: Assessment of Spousal Assets [REDACTED]/14)
12. The Appellant and the Appellant's Spouse own a prime share account at [REDACTED] Cyanamid Employee Credit Union ("prime account") valued at \$106,185.25 as of the DOI. (Exhibit 1: Assessment of Spousal Assets [REDACTED]/14 and Exhibit F: Bank Statements)
13. The Appellant and the Appellant's Spouse own a share draft account at [REDACTED] Cyanamid Employee Credit Union ("draft account") valued at \$3,389.67 as of DOI. (Exhibit 1: Assessment of Spousal Assets [REDACTED] 14 and Exhibit F: Bank Statements)
14. The Appellant owns a life insurance policy with Colonial Penn Life Insurance ("life insurance 1") with a face value of \$1,256.73 and cash value of \$814.92 as of DOI. (Exhibit 1: Assessment of Spousal Assets [REDACTED]/14 and Exhibit G: Emails and Supporting Documents)
15. The Appellant's spouse owns a life insurance policy with Prudential Insurance Company of America ("life insurance 2") with a face value of \$5,000.00 and cash value of \$2,172.10 as of DOI. (Exhibit 1: Assessment of Spousal Assets [REDACTED]/14 and Exhibit G: Emails and Supporting Documents)
16. The Department determined the total of the marital non-exempt assets as \$114,417.52 as of the DOI. Refer to chart below. (Exhibit 1: Assessment of Spousal Assets [REDACTED]/14, Exhibit 16: Spousal Assessment Worksheet, Exhibit D: Bank Statements, Exhibit E: Waiver Application and Supporting Documents, Exhibit F: Bank Statements, Exhibit G: Emails and Supporting Documents)

Asset	Balance as of DOI
Checking # [REDACTED]	\$ 1,355.56

Savings # [REDACTED]	\$ 500.02
prime account	\$106,185.25
draft account	\$ 3,389.67
Life Insurance 1	\$ 814.92
Life Insurance 2	\$ 2,172.10

17. The Department determined the spousal share of the assets as \$57,208.76 as of DOI (1/2 of the couple's combined non-exempt assets). (Exhibit 1: Assessment of Spousal Assets [REDACTED]/14 and Exhibit 16: Spousal Assessment Worksheet)
18. The maximum Community Spouse Protected Amount (CSPA) was \$115,920.00 as of DOI. (Exhibit 16: Spousal Assessment Worksheet)
19. The Department determined the CSPA as \$57,208.76. (Exhibit 1: Assessment of Spousal Assets [REDACTED]/14 and Exhibit 16: Spousal Assessment Worksheet)
20. Based upon its assessment of spousal assets, the Department determined that the Appellant and his community spouse could retain assets in the combined amount of \$58,808.76 without hindering Medicaid LTC eligibility. [\$57,208.76 + \$1,600.00 = \$58,808.76] (Exhibit 1: Assessment of Spousal Assets [REDACTED]/14 and Exhibit 16: Spousal Assessment Worksheet)
21. On [REDACTED] 2014, for the period [REDACTED] 2013 through [REDACTED] 2014, the Department determined the Appellant's assets exceed the Medicaid asset limit under the LTC Program. Refer to chart below. (Hearing Summary and Exhibit 1: Assessment of Spousal Assets [REDACTED]/14)

Asset	As of [REDACTED] / 3	As of [REDACTED] / 3	As of [REDACTED] /14	As of [REDACTED] /14	As of [REDACTED] /14
Checking # [REDACTED]	756.47	1,049.39	1,329.02	1,217.76	1,174.99
Savings # [REDACTED]	1,818.06	500.03	535.04	535.04	535.04
Prime Account	58,346.51	\$56,956.67	58,182.90	57,484.99	56,851.43
Draft Account	5,263.86	5,263.86	5,729.07	5,961.55	5,961.55
Life Insurance 1	814.92	814.92	00.00	00.00	00.00
Life Insurance 2	2,172.10	2,172.10	2,172.10	2,172.10	2,172.10
Total	67,853.89	66,791.98	67,948.13	67,371.44	66,695.11

22. On [REDACTED] 2014, the Department issued a notice to the Appellant. The noticed stated the Department completed the assessment of spousal assets and calculated the total value of all counted assets as \$114,417.52. The Department calculated the Appellant's share of assets as \$57,208.76 and the Appellant's Spouse's share as \$57,208.76 and determined the Appellant ineligible for Medicaid. (Exhibit 1: Assessment of Spousal Assets [REDACTED]/14 and Hearing Summary)

23. On [REDACTED] 2014, the Appellant's Attorney on behalf of the Appellant requested an administrative hearing to contest the Department's determination of the assessment of spousal assets.
24. On [REDACTED], 2014, the Department denied the Appellant's application for Medicaid effective [REDACTED] 2013 and ongoing months due to assets in excess of the allowable limit. [Total combined assets of \$66,695.11 exceed the allowable limit of \$58,808.76] (Hearing Summary)

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual ("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.
3. UPM § 4000.01 defines 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.
4. The Department correctly determined the Appellant's Spouse as the CS.
5. UPM § 4000.01 defines Institutionalized Spouse ("IS") as a spouse who resides in a medical facility or long-term care facility, or who received 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.
6. The Department correctly determined the Appellant as the IS.
7. UPM § 4000.01 defines MCCA (Medicare Catastrophic Coverage Act of 1988) Spouses are spouses who are members of a married couple one of whom becomes an institutionalized spouse on or after September 30, 1989, and the other spouse becomes a community spouse.
8. The Department correctly determined the Appellant and the Appellant's Spouse as MCCA Spouses.

9. UPM § 4000.01 defines the 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.
10. 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.
11. UPM § 4000.01 defines spousal share as one-half of the total value of assets which results from the assessment of spousal assets.
12. UPM § 1507 provides for the chapter on assessment of spousal assets and the special processing requirements associated with the evaluation of assets of an institutionalized spouse and community spouse.
13. UPM § 1507.05(A)(1) provides that the Department provides an assessment of assets:
  - a. At the request of an institutionalized spouse or a community spouse:
    1. When one of the spouses begins his or her initial continuous period of institutionalization; and
    2. Whether or not there is an application for Medicaid; or
  - b. At the time of application for Medicaid, whether or not a request is made.
14. UPM § 1507.05(B)(1) provides the MCCA spouses shall file a completed written request for the assessment on a form prescribed by the Department.
15. On ██████████ 2013, the Department received a request from the Appellant’s Spouse for an assessment of assets.
16. UPM § 1507.05(A)(2) provides that the beginning date of a continuous period of institutionalization is:
  - a. For those in medical institutions or long term care facilities, the initial date of admission;
  - b. For those applying for home and community based services (CBS) under a Medicaid waiver, the date that the Department determines the applicant to be in medical need of the services.
17. The Department correctly determined the date of institutionalization as ██████████ 2013.
18. UPM § 1507.05(A)(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 September 30, 1989.

19. UPM § 1507.05(A)(4) provides that 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 § 4030.05(A) provides bank accounts include the following. This list is not all inclusive:
1. Savings account;
  2. Checking account;
  3. Credit union account.
21. The Department correctly determined the value of the checking account as \$1,355.56 as of the DOI.
22. The Department correctly determined the value of the savings account as \$500.02 as of the DOI.
23. The Department incorrectly determined the value of the prime account as \$106,185.25. The correct value of the prime account is \$106,186.25 as of the DOI.
24. The Department incorrectly determined the value of the draft account as \$3,389.67. The correct value of the draft account is \$3,155.12 as of the DOI.
25. UPM § 4030.30(C)(1) provides that 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.
26. UPM § 4030.30(C)(2) provides that except as provided above, the cash surrender value of life insurance policies owned by the individual is counted toward the asset limit.
27. The Department correctly determined the life insurance policies as countable assets because the total face value of the two life insurance policies exceed \$1,500.00. (\$1,256.73 life insurance 1 + \$5,000.00 life insurance 2 = \$6,256.73)
28. The Department correctly determined the value of life insurance 1 as \$814.92 as of the DOI.
29. The Department correctly determined the value of life insurance 2 as \$2,172.10 as of the DOI.
30. The Department incorrectly determined the total combined assets as \$114,417.52. The correct total combined assets are \$114,183.97. (\$1,355.56 checking + \$500.02 savings

+ \$106,186.25 share account + \$3,155.12 draft account + \$814.92 life insurance 1 + \$2,172.10 life insurance 2 = \$114,183.97)

31. The Department incorrectly determined the CSPA as \$57,208.76. The correct CSPA is \$57,091.98. ( $\$114,183.97 / 2 = \$57,091.98$ )
32. The Department incorrectly determined the total assets that can be retained by the household without impacting eligibility as \$58,808.76. The correct amount is \$58,691.98.
33. 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.
34. UPM § 4025.67(C) provides that a community spouse is not a member of the institutionalized spouse's needs group for setting the asset limit.
35. UPM § 4005.10(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 \$1,600.00.
36. The Department correctly determined the Appellant is subject to the Medicaid asset limit for one of \$1,600.00.
37. UPM § 4005.05(B) speaks to asset limits and state 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.
38. UPM § 4025.67(A) provides 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's assets are deemed to the IS to the extent that such assets exceed the CSPA.
  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.)



39. 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 CSPA from the CS'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. 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.
3. Every January 1, the CSPA shall be equal to the greatest of the following amounts:
4. For the purpose of calculating the amount to be deemed, the community spouse's total available non-excluded assets include only those assets which are:
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.

40. 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.

41. UPM § 4005.05 (D) (1) provides that the Department compares the assistance unit's equity in counted assets with the program asset limit when determining whether the unit is eligible for benefits.

42. For the period [REDACTED] 2013 through [REDACTED] 2014, the Department correctly determined the Appellant and her spouse had assets that exceeded the allowable community spouse protected amount of \$57,091.98 and \$1,600.00 Medicaid asset limit for a combined total of \$58,691.98. See chart below.

Month	[REDACTED]/13	[REDACTED]/13	[REDACTED]/14	[REDACTED]/14	[REDACTED]/14
Total assets	\$67,853.89	\$66,791.98	\$67,948.13	\$67,371.44	\$66,695.11

43. Based on the hearing record, the total combined assets for the period [REDACTED] 2014 through [REDACTED] 2014 cannot be determined.

44. UPM § 4005.15(A)(2) provides that in the Medicaid program at the time of application, the assistance unit is ineligible until the first day of the month in which it reduces its equity in counted assets to within the asset limit.

45. On [REDACTED] 2014, the Department correctly denied the Appellant's application for Long Term Care Medicaid for the period [REDACTED] 2013 through [REDACTED] 2014.
46. On [REDACTED] 2014, the Department incorrectly denied the Appellant's application for Long Term Care Medicaid for the period [REDACTED] 2014 through [REDACTED] 2014.

### **DISCUSSION**

The Appellant's spouse testified due to the delay in the Department's determination of the assessment of spousal assets, he retained additional assets resulting in the Department's denial of the Appellant's application for Medicaid due to excess assets. Had the Department completed an assessment of spousal assets timely, he would have properly reduced the assets to within the Medicaid asset limit and his wife would have qualified for Medicaid. While waiting for the results of the assessment of spousal assets, his wife remained in the nursing home incurring charges he is unable to pay.

Although there was a delay between the request for a determination of spousal assets made on [REDACTED] 2013 and the notification of the assessment of spousal assets on [REDACTED] 2014, the Appellant remained over the asset limit during this period. It was not until [REDACTED] 2014, that the Department denied the Appellant's application for Medicaid under the LTC program for the period [REDACTED] 2013 through [REDACTED] 2014. However, the Department failed to determine the value of the Appellant and her spouse's assets for the period [REDACTED] 2014 through [REDACTED] 2014 therefore the denial for this time period is incorrect. The Department must reopen the Appellant's application for Medicaid and continue to process eligibility for the period [REDACTED] 2014 forward.

The Department originally calculated the DOI as [REDACTED] 2013 but corrected this to [REDACTED] 2013 at the administrative hearing. This correction does not change the outcome of the assessment of spousal assets.

### **DECISION**

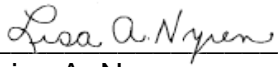
With respect to the assessment of spousal assets the Appellant's appeal is Granted.

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

### **ORDER**

1. The Department must correct the amount of the spousal share of assets as determined by the assessment of spousal assets from \$57,208.76 to \$57,091.98.

2. The Department must issue a corrected notice of assessment of spousal assets.
3. The Department must reopen the Appellant's application for Medicaid under LTC effective date of application and continue to process eligibility beginning [REDACTED] 2014.
4. Upon an eligibility determination, a corrected notice must be issued to the Appellant and her spouse.
5. Compliance with this order is due [REDACTED] 2014.

  
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Lisa A. Nyren  
Hearing Officer

CC: Carol Sue Shannon, Field Operations Manager

### **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.