

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

[REDACTED] 2015
Signature confirmation

Client: [REDACTED]
Request: 660972

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED], 2014, the Department of Social Services (the "Department") issued [REDACTED] (the "Appellant" or "institutionalized spouse") a notice denying the Appellant's [REDACTED], 2013 Medicaid application for coverage for long-term care services for the period from [REDACTED] 2013 through [REDACTED] 2014 for the reason that the value of his assets exceeded the program's limits.

On [REDACTED], 2014, the Appellant filed a new Medicaid application for coverage of long-term care services.

On [REDACTED], 2014 the Appellant filed a request with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") for an administrative hearing to dispute the Department's [REDACTED] 2014 action.

On [REDACTED] 2015, the OLCRAH issued a notice scheduling the administrative hearing for [REDACTED] 2015. The Appellant requested postponements of the administrative hearing; the OLCRAH granted the requests.

On [REDACTED], 2015, the Department granted the Appellant's [REDACTED], 2014 Medicaid application for long-term care services effective [REDACTED] 2014.

On [REDACTED] 2015, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. [REDACTED] [REDACTED] (the "community spouse"), the Appellant's spouse and holder of his durable power of attorney, represented the Appellant's interests at the administrative hearing, as the Appellant was unable to participate due to physical or mental frailty.

The following individuals attended the hearing:

██████████, Appellant's attorney-in-fact (community spouse)
██████████, Appellant's counsel
██████████, C.P.A., Appellant's witness
James Patrick Toce, Department's representative
Eva Tar, Hearing Officer

The hearing record remained open for the submission of additional evidence. On ██████████ 2015, the hearing record closed.

STATEMENT OF ISSUE

The issue to be decided by this administrative hearing is whether the Appellant's community spouse's ██████████ 401(k) Savings Plan (the "401K") was an "inaccessible asset" for the purposes of the Medicaid program, with respect to the Appellant's ██████████, 2013 Medicaid application.

FINDINGS OF FACT

1. The Appellant is 60 years old. (Appellant's community spouse's testimony)
2. The Appellant and the Appellant's community spouse are married. (Appellant's community spouse's testimony)
3. The Appellant's community spouse is 48 years old. (Appellant's community spouse's testimony)
4. On ██████████, 2011, the Appellant assigned his durable power of attorney to the community spouse. (Appellant's Exhibit G: Fax, ██████████/15)
5. The Appellant is a resident of Riverside Health and Rehabilitation Center, a skilled nursing facility. (Appellant)
6. The Appellant's initial date of continuous institutionalization was ██████████ 2013. (Stipulated)
7. The Appellant's and the community spouse's assets totaled \$49,571.03 as of ██████████ 2013. (Stipulated)
8. On ██████████, 2013, the Department received the Appellant's Medicaid application for long-term care services. (Department's Exhibit 1: W-1 LTC, marked as received ██████████/13)
9. On ██████████, 2014, the Department issued a *Notification of Results* individually to the Appellant and his community spouse, stating that the total value of the couple's reported

counted assets equaled \$49,571.03. (Department's Exhibit 3: *Assessment of Spousal Assets/Notification of Results*, [REDACTED]/14)

10. The Department's [REDACTED] 2014 *Notification of Results* stated that the maximum amount of assets that the couple could retain without causing Medicaid ineligibility was \$26,385.52, or \$24,785.52 (community spouse's share) plus \$1,600.00. (Department's Exhibit 3)
11. The Appellant's community spouse is the owner of [REDACTED] 401(k) Savings Plan (the "401K"), administered by Fidelity Investments. (Appellant's Exhibit G)(Appellant's community spouse's testimony)
12. On [REDACTED], 2013, the Appellant's community spouse's 401K had a balance of \$41,338.74. (Appellant's Exhibit G)
13. Of the couple's total of \$49,571.03 in assets as of [REDACTED], 2013, \$41,338.74 of the total was derived from the value of the Appellant's community spouse's 401K with [REDACTED] (Department's Exhibit 5: *Spousal Assessment Worksheet*)
14. The Appellant disagreed with the Department's determination that the community spouse's 401K is a counted asset for the purposes of the Medicaid program. (Hearing record)
15. On [REDACTED] 2014, the Department issued the Appellant a notice denying the Appellant's [REDACTED], 2013 Medicaid application for coverage for long-term care services for the period from [REDACTED] 2013 through [REDACTED] 2014 for the reason that the value of his assets exceeded the program's limits. (Department's Exhibit 9: Notice Content-NCON, [REDACTED]/14)
16. On [REDACTED] 2014, the Appellant filed a new Medicaid application for coverage of long-term care services. (Department's Exhibit 2: W-1 LTC, marked as received [REDACTED]/14)
17. In [REDACTED] 2014, the Appellant's community spouse withdrew \$26,031.64 from her 401K. (Appellant's Exhibit D: Emails and correspondence, varying dates)(Appellant's Exhibit F: 1099-R-2014, undated)
18. Of the \$26,031.64 the Appellant's community spouse withdrew from her 401K in [REDACTED] 2014, the 401K administrator withheld \$7,809.49 for federal income taxes. (Appellant's Exhibit F)
19. The Department determined that the total of the Appellant and the community spouse's equaled \$24,013.44 as of [REDACTED] 2014. (Department's Exhibit 5)
20. On [REDACTED] 2015, the Department granted the Appellant's [REDACTED] 2014 Medicaid application for long-term care services effective [REDACTED] 2014. (Department's Exhibit 10: Notice Content-NCON, [REDACTED]/15)

CONCLUSIONS OF LAW

1. 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. Conn. Gen. Stat. § 17b-2.
2. Section 4000.01 of the Uniform Policy Manual (“UPM”) provides in part the following definitions:
 - Asset Limit: The asset limit is 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.
 - Available Asset
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.
 - Community Spouse: A community spouse is 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.
 - Community Spouse Protected Amount (CSPA): A community spouse protected amount is 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.
 - Continuous Period of Institutionalization: A continuous period of institutionalization is a period of 30 or more consecutive days of residence in a medical institution or long term care facility, or receipt of home and community based services (CBS) under a Medicaid waiver.
 - Counted Asset: A counted asset is an asset which is not excluded and either available or deemed available to the assistance unit.
 - Institutionalized Spouse: An institutionalized spouse is 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.
 - MCCA¹ Spouses: MCCA 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.
 - Spousal Share: A spousal share is one-half of the total value of assets which results from the assessment of spousal assets.
3. 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. UPM § 1507.05 (A)(2).

¹ MCCA – Medicare Catastrophic Coverage Act of 1988, Public Law 100-105.

4. For the purposes of the Medicaid program, the Appellant's beginning date of a continuous period of institutionalization was [REDACTED] 2013.
5. For the purposes of the Medicaid program, the Appellant and his spouse are MCCA spouses.
6. For the purposes of the Medicaid program, the Appellant's spouse is a community spouse.
7. 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: available to the unit; or deemed available to the unit. UPM § 4005.05 (B)(1).
8. Under all programs except [the Supplemental Nutrition Assistance Program], 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. UPM § 4005.05 (B)(2).
9. 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. An assistance unit is not eligible for benefits under a particular program if the unit's equity in counted assets exceeds the asset limit for the particular program, unless the assistance unit is categorically eligible for the program and the asset limit requirement does not apply. UPM § 4005.05 (D).
10. 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. UPM 1507.05 (A)(1).
11. 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. UPM § 1507.05 (A)(3).
12. 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. UPM § 1507.05 (A)(2).
13. 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. UPM § 1507.05 (A)(4).
14. 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. UPM § 1507.05 (A)(5).

15. The Department provides a notification of the results of the assessment to each spouse. The notification contains the following information: the result of the assessment; and the documents used for the assessment; and the amount of the spousal share; and 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 the Department's determination of the assistance unit's current eligibility in regard to assets; and the right of each spouse to request a fair hearing. UPM § 1507.05 (C).
16. The Fair Hearing official modifies the results of the assessment of spousal assets when: a. either MCCA spouse requests a hearing regarding the assessment; and b. the Fair Hearing official determines the results of the assessment were incorrectly determined (Cross Reference 1507). UPM § 1570.25 (D)(2).
17. 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 4025.67 D., 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). UPM § 4025.67 (A)(1) and (2).
18. 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. UPM § 4025.67 (D)(3).
19. At the time of the Appellant's ██████████, 2013 Medicaid application, the minimum CSPA was \$23,184.00 and the maximum CSPA was \$115,920.00.
20. MA, AABD Residents of Long-Term Care Facilities: 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. UPM § 4005.15 (A)(2).
21. 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. UPM § 4005.05 (B)(1).
22. 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). 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. Conn. Gen. Stat. § 17b-261 (c)

23. 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. UPM § 4005.05 (B)(1).
24. Under all programs except [the Supplemental Nutrition Assistance Program], 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. UPM § 4005.05 (B)(2).
25. The Appellant's community spouse had a legal right to obtain the funds in the 401K or to have the monies in that account applied for the Appellant's general or medical support.
26. 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. UPM § 4005.05 (D)(1).
27. Some assets are not counted because they are considered inaccessible to the assistance unit. This chapter describes the Department's policies and procedures concerning inaccessible assets and their effect upon the assistance unit's eligibility. UPM § 4015.
28. Subject to the conditions described in this section, equity in an asset which is inaccessible to the assistance unit is not counted as long as the asset remains inaccessible. UPM § 4015.05 (A)(1).
29. The burden is on the assistance unit to demonstrate that an asset is inaccessible. UPM § 4015.05 (B)(1).
30. The assistance unit must verify that an otherwise counted asset is inaccessible to the unit if the unit claims it cannot convert the asset to cash. UPM § 4099.15 (A)(1).
31. If the unit is unable to verify that the asset is inaccessible, the asset is considered a counted asset. UPM § 4099.15 (A)(2).
32. The Appellant did not meet his burden to demonstrate that the funds in the Appellant's community spouse's 401K were inaccessible assets.
33. The Appellant's community spouse's 401K was an "inaccessible asset" for the purposes of the Medicaid program, with respect to the Appellant's [REDACTED], 2013 Medicaid application.

34. The Department correctly determined that the Appellant was ineligible for Medicaid coverage of his long-term care services until the month in which the couple's counted assets were equaled \$26,385.52 or less.

DISCUSSION

Section 17b-261 (c) of the Connecticut General Statutes states: "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."

The Appellant's community spouse argues that her 401K was an inaccessible asset with respect to the Appellant's [REDACTED], 2013 Medicaid application for coverage of long-term care services. She opines that although the 401K administrator erred when it released \$26,031.64 to her in [REDACTED] 2014 by means of a hardship withdrawal. The Appellant's community spouse alleges that the Appellant's situation during the pendency of the [REDACTED], 2013 Medicaid application did not meet the hardship rules pursuant to IRS regulations, as the community spouse had not yet been billed by the long-term care facility for the Appellant's care. The hearing officer finds this argument unpersuasive.

The Appellant's community spouse was able to obtain a portion of the funds in her 401K by informing the administrator that the monies would be used for the Appellant's medical support. These assets are "available assets" and are counted toward the Medicaid program's asset limit.

DECISION

The Appellant's appeal is DENIED.



Eva Tar
Hearing Officer

cc: [REDACTED]
Attorney [REDACTED], [REDACTED]
[REDACTED]
John Hesterberg, DSS-Manchester (11)

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.