

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

██████████ 2015
Signature Confirmation

Client ID # ██████████
Request # 665073

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 Action ("NOA") granting Long Term Care Medicaid benefits effective ██████████ 2014 and denying Long Term Care benefits for the months of ██████████ 2014 through ██████████ 2014.

On, ██████████ 2015, ██████████, the Appellant's Spouse (the "Spouse") requested an administrative hearing to contest the effective date of the Long Term Care Medicaid benefits as determined by the Department.

On ██████████ ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2015.

On ██████████ 2015, 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:

██████████, Power of Attorney for the Appellant
██████████ Attorney at Law and Appellant's Representative
Liza Morais, Department's Representative
Lisa Nyren, Hearing Officer

The record remained open for the submission of additional evidence. On [REDACTED] 2015, the record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny Medicaid under the Long Term Care Program for [REDACTED] 2014 and [REDACTED] 2014 was correct.

FINDINGS OF FACT

1. The Appellant is a resident of [REDACTED] (the "Nursing Facility"), a skilled nursing facility, since [REDACTED] 2012. (Department Representative's Testimony)
2. The Appellant is married to [REDACTED] (the "Spouse"). (Hearing Record)
3. On [REDACTED] 2014, the Department received an application for Medicaid under the Long Term Care Program ("LTC") from the Appellant. (Hearing Summary)
4. On [REDACTED] 2014, [REDACTED] (the "POA") received Power of Attorney appointment for the Spouse. (POA Testimony)
5. On [REDACTED] 2014, the POA received Power of Attorney appointment for the Appellant. (POA Testimony)
6. As of [REDACTED] 2014, the Appellant owned a life insurance policy with Protective Life Insurance Company ("Protective") with a face value of \$1,402.00 and cash value of \$1,033.72. (Exhibit 8: Spousal Assessment Worksheet, Exhibit 11: Protective Statement, and Exhibit A: Transmittal [REDACTED]/15)
7. As of [REDACTED] 2014, the Appellant owned a life insurance policy with Prudential Insurance Company of America ("Prudential") with a face value of \$5,000.00 and cash value of \$13,112.81. (Exhibit 8: Spousal Assessment Worksheet, Exhibit 13: Case Narrative, Exhibit 10: Prudential Statement, and Exhibit A: Transmittal [REDACTED]/15)
8. As of [REDACTED] 2014, the Appellant owns a life insurance policy with Woman's Life Insurance Company ("WLIC [REDACTED]") with a face value of \$1,681.00 and cash value of \$2,446.62. (Exhibit 8: Spousal Assessment Worksheet and Exhibit 13: Case Narrative)

9. As of [REDACTED] 2014, the Spouse owned a life insurance policy with John Hancock Life Insurance Company ("Hancock") with a face value of \$1,000.00 and cash value of \$5,833.22. (Exhibit 8: Spousal Assessment Worksheet, Exhibit 13: Case Narrative, and Exhibit A: Transmittal [REDACTED]/15)
10. As of [REDACTED] 2014, the Spouse owns a life insurance policy with Woman's Life Insurance Company ("WLIC [REDACTED]") with a face value of \$1,568.00 and cash value of \$2,310.15. (Exhibit 8: Spousal Assessment Worksheet and Exhibit 13: Case Narrative)
11. As of [REDACTED] 2014, the Appellant and his Spouse own a checking account with Bank of America ("BOA [REDACTED]") valued at \$1,580.00. (Exhibit 8: Spousal Assessment Worksheet, Exhibit 18: Bank Statement and Exhibit B: Attorney Fax [REDACTED]/15)
12. As of [REDACTED] 2014, the Spouse owns a checking account with Bank of America ("BOA [REDACTED]") valued at \$10,478.53. (Exhibit 8: Spousal Assessment Worksheet, Exhibit 19: Bank Statement, and Exhibit B: Attorney Fax [REDACTED]/15)
13. As of [REDACTED] 2014, the Spouse owns a savings account with First Niagara Savings Bank ("FNSB [REDACTED]") valued at \$4,320.37. (Exhibit 8: Spousal Assessment Worksheet, Exhibit 17: Bank Statement, and Exhibit B: Attorney Fax [REDACTED]/15)
14. As of [REDACTED] 2014, the Spouse owns a savings account with First Niagara Savings Bank ("FNSB [REDACTED]") valued at \$175.00. (Exhibit 8: Spousal Assessment Worksheet, Exhibit 16: Bank Statement, and Exhibit B: Attorney Fax [REDACTED]/15)
15. As of [REDACTED] 2014, the Appellant owns a life insurance policy with WLIC [REDACTED] with a face value of \$1,681.00 and cash value of \$2,446.62. (Exhibit 8: Spousal Assessment Worksheet)
16. As of [REDACTED] 2014, the Spouse owns a life insurance policy with WLIC [REDACTED] with a face value of \$1,568.00 and cash value of \$2,310.15. (Exhibit 8: Spousal Assessment Worksheet)
17. As of [REDACTED] 2014, the Appellant and his Spouse own a joint checking account with BOA [REDACTED] valued at \$1,535.27. (Exhibit 8: Spousal Assessment Worksheet, Exhibit 18: Bank Statement, Exhibit B: Attorney Fax [REDACTED]/15)
18. As of [REDACTED] 2014, the Spouse owns a checking account with BOA [REDACTED] valued at \$8,516.77. (Exhibit 8: Spousal Assessment Worksheet, Exhibit 19: Bank Statement, and Exhibit B: Attorney Fax [REDACTED]/15)

19. As of [REDACTED] 2014, the Spouse owns a savings account with FNSB [REDACTED] valued at \$4,320.37. (Exhibit 8: Spousal Assessment Worksheet, Exhibit 17: FNSB Statement, and Exhibit B: Attorney Fax [REDACTED]/15)
20. As of [REDACTED] 2014, the Spouse owned a savings account with FNSB [REDACTED] valued at \$275.00. (Exhibit 8: Spousal Assessment Worksheet, Exhibit 16: FNSB Statement, and Exhibit B: Attorney Fax [REDACTED]/15)
21. On [REDACTED] 2014, Protective issued a check for \$1,033.72 to the Appellant surrendering the life insurance policy. (Exhibit 11: Cash Surrender Payment Statement)
22. On [REDACTED] 2014, Hancock issued a check for \$5,833.22 to the Spouse surrendering the life insurance policy. (Exhibit: 12: Cash Surrender Payment Statement)
23. On [REDACTED] 2014, Prudential issued a check for \$13,112.81 to the Appellant surrendering the life insurance policy. (Exhibit 10: Cash Surrender Payment Statement)
24. The Medicaid asset limit is \$1,600.00. (Hearing Record)
25. The Department determined the spousal share of the assets as \$25,994.40. (Stipulated)
26. The Department determined the Community Spousal Protected Amount as \$25,994.40. (Stipulated)
27. The Department determined that the Appellant and his community spouse could retain assets in the combined amount of \$27,594.40 without hindering Medicaid LTC eligibility. (\$1,600.00 Medicaid Asset Limit + \$25,994.40 Spousal Share = \$27,594.40) (Exhibit 8: Spousal Assessment Worksheet)
28. For the period [REDACTED] 2014 and [REDACTED] 2014, the Department determined the Appellant's assets exceed the Medicaid asset limit under the LTC program and denied benefits for the same period. Total combined assets as noted in the chart below exceed the allowable limit of \$27,594.40. (Hearing Summary and Exhibit 8: Spousal Assessment Worksheet)

Asset	[REDACTED] 2014	[REDACTED] 2014	
Protective	1,033.72	00	
Prudential	12,884.72	12,884.72	
WLIC [REDACTED]	2,446.62	2,446.62	

Hancock FV	5,833.22	00	
WLIC [REDACTED]	2,310.15	2,310.15	
BOA dda [REDACTED]	1,580.00	1,535.27	
BOA dda [REDACTED]	10,478.53	8,516.77	
FNSB [REDACTED]	4,320.37	4,320.37	
FNSB [REDACTED]	175.00	275.00	
Total assets	41,062.33	32,288.90	

29. On [REDACTED] 2014, the Department denied the Appellant's application for Medicaid under the LTC effective [REDACTED] 2014 through [REDACTED] 2014 due to assets owned in excess of the allowable limit. (Department Representative's Testimony and Hearing Summary)
30. On [REDACTED] 2014, the Department granted Medicaid LTC effective [REDACTED] 2014. (Department's Representative's Testimony and Hearing Summary)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes, authorizes the Commissioner of the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual ("UPM") § 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.
3. 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.
4. 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.
5. 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.

6. The Department correctly completed an assessment of spousal assets.
7. The Department correctly determined the CSPA as \$25,994.40.
8. The Department correctly determined the total assets that can be retained by the household without affecting eligibility as \$27,594.40. (\$25,994.40 CSPA + \$1,600.00 Medicaid asset limit = \$27,594.40 total combined assets)
9. 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.
10. 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.
11. 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.
12. The Department correctly determined the Appellant is subject to the Medicaid asset limit for one of \$1,600.00.
13. UPM § 4005.05(B) speaks to asset limits and states 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.
14. 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 SCPA.
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.)

15. 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. Inaccessible assets; and
 - b. Excluded assets.
3. 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.
4. For the purpose of calculating the amount to be deemed, the community spouse's total available non-excluded assets included only those assets which are:
 - a. Owned solely by the Community spouse; and
 - b. Owned jointly with any other person except the institutionalized spouse. Assets owned jointly with the IS are treated as being owned by the IS, as described in UPM 4010.
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.

16. UPM § 4030.05(A) provides bank accounts include the following. The list is not all inclusive.

1. Savings account;
2. Checking account.

17. For █████ 2014, the Department correctly determined the value of the BOA █████ as \$1,580.00.
18. For █████ 2014, the Department correctly determined the value of the BOA █████ as \$10,478.53.
19. For █████ 2014, the Department correctly determined the value of the FNSB █████ as \$4,320.37.
20. For █████ 2014, the Department correctly determined the value of the FNSB █████ as \$175.00.
21. For █████ 2014, the Department correctly determined the value of the BOA █████ as \$1,535.27.
22. For █████ 2014, the Department correctly determined the value of the BOA █████ as \$8,516.77.
23. For █████ 2014, the Department correctly determined the value of the FNSB █████ as \$4,320.37.
24. For █████ 2014, the Department correctly determined the value of the FNSB █████ as \$275.00.
25. UPM § 4030.30(C)(1) provides that if the total of the face value of all life insurance policies owned by the individual does not exceed \$1,500.00, 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. For █████ 2014, the Department correctly determined the value of Protective LI as \$1,033.72.
28. For █████ 2014, the Department correctly determined the value of Hancock LI as 5,833.22.
29. For █████ 2014, the Department correctly determined the value of Prudential LI as \$12,884.72,
30. For █████ 2014, the Department correctly determined the value of the WLIC 832684 as \$2,446.62.

31. For █████ 2014, the Department correctly determined the value of the WLIC █████ as \$2,310.15.
32. For █████ 2014, the Department correctly determined the value of the Protective LI as \$00.00.
33. For █████ 2014, the Department correctly determined the value of Hancock LI as \$00.00.
34. For █████ 2014, the Department incorrectly determined the value of the Prudential LI as \$12,884.72. The correct value is \$00.00.
35. For █████ 2014, the Department correctly determined the value of the WLIC 832684 as \$2,446.62.
36. For █████ 2014, the Department correctly determined the value of the WLIC 855036 as \$2,310.15.
37. As of █████ 2014, the Department incorrectly determined the total combined assets as \$41,062.33. The correct total combined assets are \$41,290.42.

Asset	June 2014
Protective	\$1,033.72
Prudential	\$13,112.81
WLIC █████	\$2,446.62
Hancock	\$5,833.22
WLIC █████	\$2,310.15
BOA █████	\$1,580.00
BOA █████	\$10,478.53
FNSB █████	\$4,320.37
FNSB █████	\$175.00
Total assets	\$41,290.42

38. As of █████ 2014, the Department incorrectly determined the Appellant's total assets as \$32,288.90. The correct amount is \$19,404.18.

Asset	June 2014
Protective	\$00.00
Prudential	\$00.00
WLIC █████	\$2,446.62
Hancock	\$00.00
WLIC █████	\$2,310.15
BOA █████	\$1,535.27
BOA █████	\$8,516.77

FNSB [REDACTED]	\$4,320.37
FNSB [REDACTED]	\$275.00
Total assets	\$19,404.18

39. UPM § 4005.05(D)(1) provides that the Department compares the assistance unit's equity in counted assets with the program asset limit with determining whether the unit is eligible for benefits.
40. For June 2014, the Department correctly determined the Appellant and her spouse had assets that exceeded the allowable community spouse protected amount of \$25,994.40 and \$1,600.00 Medicaid asset limit for a combined total of \$41,062.33.
41. For [REDACTED] 2014, the Department incorrectly determined the Appellant and his spouse had assets that exceeded the allowable CSPA of \$25,994.40 and \$1,600.00 Medicaid asset limit for a combined total of \$32,288.90. The correct combined total assets equals \$19,404.18 less than the allowable limit.
42. 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.
43. The Department correctly denied the Appellant's application for Long Term Care Medicaid for the month of [REDACTED] 2014 for assets exceed the allowable limit.
44. The Department incorrectly denied the Appellant's application for LTC Medicaid for the [REDACTED] 2014 for assets exceed the allowable limit. The combined total assets are less than the allowable limit and the Appellant eligible for Medicaid under the LTC for [REDACTED] 2014.

DISCUSSION

The Appellant and his spouse owned five life insurance policies during the Medicaid application process. The POA testified due to non-cooperation from the Appellant and his spouse along with delays with the insurance companies, the Appellant remained over the Medicaid asset limit resulting in the denial of benefits. The life insurance policies remained in effect until [REDACTED] 2014 when the Appellant surrendered three of those five policies reducing the total countable assets for the month of [REDACTED]. Although there were delays in accessing the life insurance policies, the Appellant remained over the asset limit during this time and therefore ineligible for Medicaid.

Policy does not allow for good cause for the issue of excess assets. The life insurance policies were an available asset or deemed available to the Appellant and his spouse and were not excluded assets. The Appellant's assets remained over the Medicaid asset limit for [REDACTED] 2014.

The Appellant's counsel maintains that based on CGS-17b-261 (h) the value of the life insurance policies are excluded because the cash surrender values were less than ten thousand dollars, the Appellant was pursuing the surrender values and the proceeds were used to pay for long-term care. However, CGS-17b-261 (h) has not been federally approved by the Center for Medicare and Medicaid Services, thus not permissible. The Department cannot implement this provision and must continue to apply the regulations that are currently in place.

DECISION

The Appellant's appeal in reference for the denial of Medicaid under the LTC for [REDACTED] 2014 is denied.

The Appellant's appeal in reference to the denial of Medicaid under the LTC for [REDACTED] 2014 is granted.

ORDER

1. The Department must grant Medicaid under the LTC program for the month of [REDACTED] 2014.
2. Compliance is due [REDACTED] 2015.

Lisa A. Nyren
Hearing Officer

PC: John Hesterberg, Social Services Operations Manager
Liza Morais, Long Term Care, Hartford Regional Office

[REDACTED]
Attorney [REDACTED]

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.