

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

██████████ 2016
Signature Confirmation

Client ID # ██████████
Request # 759642

NOTICE OF DECISION

PARTY

██████████
For ██████████
██████████ ██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) denying benefits under the Medicaid for Long Term Care program.

On ██████████ 2016, the Appellant requested an administrative hearing to contest the Department’s decision to deny such benefits.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2016.

On ██████████ 2016, OLCRAH”) issued a notice rescheduling the administrative hearing for ██████████ 2016 at the Appellant’s request.

On ██████████ 2016, 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:

██████████ the Appellant
██████████, the Appellant’s daughter and authorized representative for the DSS application
Rachelle Mighty-Brown, Department’s representative

Victor Robles, DSS Fair Hearing Liaison
Maureen Foley-Roy, Hearing Officer

The hearing record remained open for the submission of additional evidence.
The hearing record closed on [REDACTED] 2016.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny the Applicant's application for medical assistance for failing to provide information was correct.

FINDINGS OF FACT

1. In 1976, the Appellant married [REDACTED] (the "spouse") in New York. (Appellant's testimony)
2. In approximately 2004, the Appellant moved in with her sister. (Appellant's testimony)
3. The Appellant and her spouse have not lived together since 2004 but they never filed legal separation or divorce papers. (Appellant's testimony)
4. On [REDACTED] 2016, the Appellant sent a letter to the Department regarding her marital status. She provided her spouse's name, address and Social Security number and stated that she and her spouse do not have any joint assets. (Exhibit E: [REDACTED] 2015 letter from Appellant)
5. There was no evidence in the record that the community spouse is incompetent or has a medical condition that would prevent him from providing the asset information.
6. On [REDACTED] 2015, the Department received a W1-LTC (Long Term Care/Home Care Waiver application for the Appellant. (Exhibit A: Application form)
7. On [REDACTED] 2015, the Department sent a W1348-Verification We Need form asking the Appellant to clarify and send verification of her marital status. (Exhibit B: Verification We Need form/Request #2 dated [REDACTED] 2015)
8. On [REDACTED] 2015, the Department sent a W1348-Verification We Need form advising the Appellant that since she was still legally married, she would need to verify her spouse's assets in order for the Department to determine eligibility. (Exhibit C: Verification We Need form/Request #3 dated [REDACTED] 2015)

9. On [REDACTED] 2016, the Appellant sent a letter to her spouse requesting proof of his assets in regards to her application for long term care/home care waiver services. (Exhibit F: Letter from Appellant to her spouse dated [REDACTED] 2016)
10. The spouse did not respond to the letter.(Appellant and daughter's testimony)
11. On [REDACTED] 2016, the Department learned that the Appellant was a resident of a long term care facility. (Department's summary)
12. On [REDACTED] 2016, the Department closed the Appellant's application for home care waiver services as opened in error and opened an application for Medicaid for Long term care services with the [REDACTED] [REDACTED] 2015 application date. (Exhibit J: Computer screen prints)
13. On [REDACTED] 2016, the Department sent a referral to the Department's Resource Investigations Unit with the spouse's name, address and social security number to obtain information regarding the spouse's assets. (Exhibit H: Remarks screen/Resource Referral)
14. On [REDACTED] 2016, the Appellant sent a letter to the Commissioner of the Department of Social Services requesting an administrative exception to the policy regarding the deeming of spouse's assets because she was separated from her spouse, did not have information regarding his assets and her spouse was not responding to her requests for information. (Exhibit G: Letter to Commissioner)
15. On [REDACTED] 2016, the Department had all the information needed to determine eligibility for Medicaid for Long Term care with the exception of the income and asset information from the Appellant's spouse. (Department representative's testimony)
16. On [REDACTED] 2016, the Department denied the Appellant's application for Medicaid for Long Term care for failing to provide information necessary to determine eligibility. (Exhibit K: Notice of denial dated [REDACTED] 2016)
17. On [REDACTED] 2016, the Department's representative sent a Legally Liable Relative form to the Appellant's spouse via certified mail. The spouse signed for the certified mail but did not respond to the Department. (Exhibit L: Certified Mail receipts and Department representative's testimony)
18. On [REDACTED] 2016, the Resources Investigations division sent a response to the Department stating "no assets found LLR not on EMS. L01 denied.

No further action required on this referral. L01 denied failure to provide info. needed to establish eligibility.”(Exhibit M: Remarks page from resources referral)

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes (“Conn. Gen. Stats.”) provides that 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.
2. Conn. Gen. Stats. § 17b-261(c) provides in part that 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.**
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. (Emphasis added)
4. 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.
5. The Department correctly determined the Appellant’s spouse as the CS.
6. 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 Medicaid waiver, and who is legally married to someone who does not reside in such facilities or who does not receive such services.
7. The Department correctly determined the Appellant as the IS.

8. 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.
9. The Department correctly determined the Appellant and the Spouse as MCCA Spouses.
10. UPM § 4000.01 defines 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.
11. 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.
12. UPM § 4000.01 defines spousal share as one-half of the total value of assets which results from the assessment of spousal assets.
13. 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.
14. 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 if made.
15. UPM § 1507(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 stated on or after September 30, 1989.

UPM § 1507.05(A)(2)(b) provides that the beginning date of a continuous period of institutionalization is 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.

16. 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.
17. 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.
18. The Department correctly determined assets owned by the Spouse as available assets.
19. The Department correctly determined that a spousal assessment is a condition of the Appellant's eligibility under both Medicaid for Long Term Care and the Home and Community Based services program.
20. 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 or 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.)
21. UPM § 4025.67(B) provides that the Department does not deem assets from the community spouse to the institutionalized spouse:
1. After the initial month the institutionalized spouse is eligible as an institutionalized spouse; or
 2. When undue hardship exists (Cross Reference 4025.68); or
 3. When the IS has assigned his or her spousal support right to the Department (Cross Reference: 4025.69); or
 4. When the IS cannot execute the assignment because of a physical or mental impairment (Cross Reference: 4025.69)
22. UPM § 4025.69(C) provides that the assignment of support rights described in section 4025.69A may be made only if:
1. This IS's assets do not exceed the Medicaid asset limit; and
 2. The IS cannot locate the CS, or the CS is unable to provide information regarding his or her own assets.
23. UPM 7520.07(A) provides for assignment of support rights.

1. A person applying for Medicaid benefits as an institutionalized spouse (IS) may assign to the Department rights of support available from the assets of the community spouse (CS) only if:
 - a. The IS's assets do not exceed the Medicaid asset limit; and
 - b. The IS cannot locate the CS, or the CS is unable to provide information regarding his or her own assets.
 2. If the assignment is made or if the applicant is unable to execute the assignment because of a physical or mental impairment, the Department may seek recovery of any medical assistance paid on his or her behalf.
 3. The assignment described in section 7520.07(A)(1) is a separate assignment and is not the general automatic assignment that accompanies a Medicaid application, as described in this chapter. This assignment is required only under the circumstances described in section 7520.07(A)(1).
24. The Department correctly determined that the Appellant does not meet the criteria to assign her support rights because the location of the CS is known and there is no evidence that his medical condition prevents him from providing asset information.
25. UPM § 4025.68(B) provides the assets of the community spouse are considered unavailable due to circumstances beyond the control of the institutionalized spouse when:
1. The location of community spouse is unknown; or
 2. The community spouse is unable, after reasonable efforts have been made, to provide information regarding his or her assets due to circumstances beyond his or her control; or
 3. The community spouse is incompetent **and** is unwilling or unable to provide the information. (Emphasis added)
26. The Department correctly determined the Appellant does not meet the criteria under circumstance beyond his control because the location of the CS is known, the CS is able to provide asset information but refuses to provide the information, and the CS is not incompetent.
27. UPM § 4025.68(A) provides for undue hardship exists when:
1. The facility has threatened, in writing, to evict the institutionalized spouse (IS) due to non-payment of the cost of care; and
 2. All of the assets of the community spouse (CS) are unavailable due to circumstances beyond the control of the institutionalized spouse; and
 3. The institutionalized spouse does not have counted assets exceeding the asset limit; and

4. The institutionalized spouse executes an assignment of support rights.
(Cross Reference 7520.07)
28. The Department correctly determined the Appellant does not meet the criteria under undue hardship because the Appellant is not in an institution threatening eviction, the Appellant does not meet the criteria under circumstances beyond her control, and the Appellant does not qualify to execute an assignment of support.
29. UPM § 4025.68(C) provides that when the conditions described in paragraphs A and B above exist, no assets of the community spouse are deemed to the institutionalized spouse (cross reference: 4025.67B)
30. UPM § 4025.69(A) provides that the Department does not deem assets from a community spouse (CS) to his or her institutionalized spouse (IS) if:
 1. The institutionalized spouse has assigned his or her support rights from the community spouse to the department (Cross References: 1507.05, 4025.67); or
 2. The institutionalized spouse cannot execute the assignment because of a physical or mental impairment (Cross References: 1507.05, 4025.67); or
 3. Undue hardship exists (Cross Reference: 4025.68).
31. The Department correctly determined the Spouse's assets as deemed assets.
32. UPM § 1010 provides that the assistance unit, by the act of applying for or receiving benefits, assumes certain responsibilities in its relationship with the Department.

UPM § 1010.05(A)(1) provides that the assistance unit must supply the Department, in an accurate and timely manner as defined by the Department, all pertinent information and verification which the Department requires to determine eligibility and calculate the amount of benefits. (Cross Reference 1555)
33. UPM § 1540.05(C)(1) provides that the Department requires verification of information:
 - a. When specifically required by federal or State law or regulations; and
 - b. When the Department considers it necessary to corroborate an assistance unit's statements pertaining to an essential factor of eligibility.

34. UPM § 4099.25(A) provides that the assistance unit must verify the amount of the deemor's equity in counted assets.
35. The Department correctly determined the equity in the Appellant's assets and Spouse's assets as a condition of eligibility.
36. UPM § 3525.05 provides that as a condition of eligibility, members of the assistance unit are required to cooperate in the initial application process and in reviews, including those generated by reported changes, redetermination and Quality Control. (Cross reference: Eligibility Process 1500)
37. UPM § 3525.05(A)(1) provides that applicants are responsible for cooperating with the Department in completing the application process by:
- a. Fully completing and signing the application form; and
 - b. Responding to a scheduled appointment for an interview; and
 - c. Providing and verifying information as required.
38. UPM § 1010.05(C)(6)(b) provides that the assistance unit must satisfy certain procedural requirements as described in Section 3500, including cooperating with the Department as necessary. Cooperation includes seeking any potential income or assets for which the unit may be eligible.
39. The Department correctly determined the Appellant failed to cooperate in the eligibility process by failing to provide asset information necessary to determine eligibility.
40. UPM § 1540.05(D)(1) provides that the penalty for failure to provide required verification depends upon the nature of the factor or circumstance for which verification is required:
1. If the eligibility of the assistance unit depends directly upon a factor or circumstance for which verification is required, failure to provide verification results in ineligibility for the assistance unit. Factors on which unit eligibility depends directly include, but are not limited to:
 - a. Income amounts;
 - b. Asset amounts.
- UPM § 4099.25(B) provides that if the assistance unit fails to verify the amount of the deemor's counted assets, the unit is ineligible for assistance.
41. The Department correctly determined the Appellant ineligible for Medicaid under the L01 program for failure to submit spousal asset information needed to establish eligibility.

DISCUSSION

The Appellant has attempted to contact her spouse and has provided information. She remains legally married, the whereabouts of her spouse are known and there is no evidence that her spouse has a medical condition that would prevent him from providing the required information. The regulations do not allow for an eligibility determination to be made without her spouse's income and asset information. The Department was correct when it denied the Appellant's application for Medicaid for Long Term care because it did not have the information required to determine eligibility.

DECISION

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

Maureen Foley-Roy
Maureen Foley-Roy,
Hearing Officer

CC: Elizabeth Thomas, DSS Operation Manager, Manchester
Victor Robles, Fair Hearing Liaison, DSS, Hartford
Rachelle Mighty-Brown, DSS, Hartford.

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.