

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

██████████ 2018
Signature Confirmation

Request # 121397
Client ID # ██████████

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (the "Department") issued a Notice of Action ("NOA") to ██████████ ██████████ (the "Appellant") denying his application for Medicaid for Home and Community Based Services because he did not return all of the required verification.

On ██████████ 2018, the Appellant requested an administrative hearing to contest the Department's decision to deny his application for Medicaid.

On ██████████ 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2018.

On ██████████ 2018, in accordance with sections 17b-60, 17b-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:

██████████, Appellant
Shawn Hardy, Department's Representative, via telephone
Kenneth Smiley, Department's Representative
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

1. The issue is whether the Department's decision to deny the Appellant's application for Medicaid for failing to provide information was correct.

FINDINGS OF FACT

1. On [REDACTED] 018 the Appellant applied for Medicaid for Home Care Waiver Services. (Hearing Record)
2. The Appellant indicated on his application form that he was married; he reported his wife's name and reported that she received benefits in unknown amounts from Social Security and from a pension. (Ex. 1: W-1 LTC Application form)
3. Applicants for Medicaid for Home Care Waiver Services are considered "institutionalized", and if they are married, an assessment of spousal assets must be completed for both the applicant, who is considered the "institutionalized" spouse, and the applicant's spouse, who is considered the "community spouse" (Mr. Hardy's testimony)
4. The Appellant separated from his spouse in [REDACTED] 2012, and is estranged from her, although they are not legally separated. (Appellant's testimony)
5. The Appellant has not sought a divorce for various reasons including lack of knowledge about the process, lack of funds, and his own medical problems. (Appellant's testimony)
6. The last time the Appellant spoke with his wife was approximately three years ago. (Appellant's testimony)
7. The last time the Appellant saw his wife was approximately two years ago, but they did not speak at that time. (Appellant's testimony)
8. The Appellant's wife is a long-time user of illicit drugs who associates with people who are dangerous and whom the Appellant is afraid of because life doesn't mean anything to them. (Appellant's testimony)
9. The Appellant is fearful that if he provokes his wife, she will likely try to have something done to him. (Appellant's testimony)
10. To the best of the Appellant's knowledge, his wife does not have a fixed address; he knows that she resides somewhere in the [REDACTED] CT

area, but she may stay at two or three different places, or be homeless. (Appellant's testimony)

11. In order to acquire more information about his wife's whereabouts, the Appellant would have to "ask on the street", such as by going to the local soup kitchen and talking to other drug users there. (Appellant's testimony)
12. On [REDACTED] 2018, the Department sent the Appellant a W-1348LTC *Verification We Need* form that requested the Appellant's spouse's date of birth, last known address and social security number, as well as the couple's current tax filing status and whether they held any joint assets, and requested proof of the Appellant's spouse's gross pension amount. (Ex. 4: W-1348LTC form dated [REDACTED] 18)
13. In order to try to contact his wife, the Appellant made contact with her niece, who provided him with a phone number that he tried to call, but his wife never answered because, he believes, she recognized his telephone number. (Appellant's testimony)
14. On [REDACTED] 2018, the Appellant wrote a letter to the Department whose text in full was: "I, [REDACTED] have been estranged from my spouse, [REDACTED] for at least six years. From what I know, [REDACTED] currently resides somewhere in [REDACTED], CT but I do not know her exact location/address. I have not filed my taxes jointly with Thea since we separated over 6 years ago. Furthermore, [REDACTED] and I do not share any assets, joint accounts, property, etc. Our finances are completely separate. I attempted to contact [REDACTED] asking for the requested information/documents for the DSS Medicaid application, however, she is refusing to comply. Thea's date of birth is [REDACTED] and her social security number is [REDACTED]. Thank you for your consideration in this matter and let me know if there is any additional information I can provide". (Ex. 7: Letter from Appellant)
15. The Department's understanding of the portion of the Appellant's letter where he discussed his attempt to contact his wife was that the Appellant spoke with his wife and she refused to cooperate, whereas the Appellant has since clarified that he only attempted to contact his wife but did not speak with her, and her refusal to pick up the phone was what he referenced as her refusal to comply. (Mr. Hardy's testimony, Facts #13, #14)
16. On [REDACTED] 2018, the Department denied the Appellant's application for Medicaid because he failed to provide the requested information. (Hearing Record)

17. At the time the Appellant's case was denied, the Department was not missing any verification regarding the Appellant or his financial circumstances; the Department was only missing information regarding the Appellant's spouse. (Mr. Hardy's testimony)
18. The Appellant's spouse was a client of the Department's at some point in the past, and the Department knows her demographic information, but does not have her financial information covering the period of the spousal assessment. (Mr. Hardy's testimony)
19. The Department has not independently sought to locate the Appellant's spouse, or obtain any of her financial information. (Mr. Hardy's testimony)
20. The Appellant made reasonable efforts to locate his wife and acquire her financial information, but was unsuccessful. (Hearing Record)
21. The Appellant requested the Department's help in obtaining the needed verification when he wrote in his letter that he did not know his wife's exact whereabouts, and that he was unsuccessful in trying to locate her, and when he offered his willingness to provide any additional information that the Department needed. (Ex. 7)

CONCLUSIONS OF LAW

1. Section 17b-2 and § 17b-260 of the Connecticut General Statutes, authorizes the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual ("UPM") § 1505.40 provides that prior to making an eligibility determination the Department conducts a thorough investigation of all circumstances relating to eligibility and the amount of benefits.

UPM § 3029.05(B)(1) provides that the policy contained in chapter 3029 pertains to institutionalized individuals and to their spouses.

UPM § 3029.05(B)(2)(c) provides that an individual is considered institutionalized if he or she is receiving home and community-based services under a Medicaid waiver (cross references: 2540.64 and 2540.92).

UPM § 4000.01 defines MCCA spouses as spouses who are members of a married couple one of whom becomes an institutionalized spouse on or after [REDACTED] 1989, and the other spouse becomes a community spouse.

UPM §1570.05(A)(1)(b) provides that the Department provides an assessment of spousal assets for MCCA spouses at the time of application for Medicaid whether or not a request is made.

The Department correctly determined that the Appellant and his wife were MCCA spouses at the time of his application, because the Appellant was considered institutionalized because he was an applicant for home and community-based services under a Medicaid waiver, and correctly determined that an assessment of spousal assets was required as part of the Appellant's application.

3. 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.

UPM § 1010.05(A)(2) provides that the assistance unit must permit the Department to verify information independently whenever the unit is unable to provide the necessary information, whenever verification is required by law, or whenever the Department determines that verification is necessary (cross reference: 1540)

UPM § 1540.10 provides that the verification of information pertinent to an eligibility determination or a calculation of benefits is provided by the assistance unit or obtained through the direct efforts of the Department.

- A. The assistance unit bears the primary responsibility for providing evidence to corroborate its declarations.
- B. The assistance unit may submit any evidence which it feels will support the information provided by the unit.
- C. The Department obtains verification on behalf of the assistance unit when the following conditions exist:
 1. the Department has the internal capability of obtaining the verification needed through such means as case files, microfiche records, or direct access to other official records; or
 2. the Department has the capability to obtain the verification needed, and the assistance unit has done the following:
 - a. made a reasonable effort to obtain the verification on its own; and
 - b. been unable to obtain the verification needed; and
 - c. requested the Department's help in obtaining the verification; and
 - d. continued to cooperate in obtaining the verification.
 3. when the evidence necessary can only be obtained by payment of a fee, and the Department is able to obtain the evidence.
- D. The Department considers all evidence submitted by the assistance unit or received from other sources.

The Appellant made a reasonable effort to obtain the needed verification but was unable to obtain it, and he requested the Department's help in obtaining the verification and was willing to continue to cooperate in the application process. Under these circumstances, the Department was required to assist the Appellant in obtaining the needed verification, because it had sufficient information and resources to conduct its own investigation to try to locate the community spouse.

4. UPM § 1505.35(C) provides that the following promptness standards be established as maximum times for processing applications: forty-five calendar days for AABD or MA applicants applying based on age or blindness.

UPM § 1505.40(B)(4)(a) provides that the eligibility determination is delayed beyond the AFDC, AABD or MA processing standard if because of unusual circumstances beyond the applicant's control, the application process is incomplete and one of the following conditions exists:

- (1) eligibility cannot be determined; or
- (2) determining eligibility without the necessary information would cause the application to be denied.

UPM § 1505.40(B)(4)(b) provides that if the eligibility determination is delayed, the Department continues to process the application until:

- (1) the application is complete; or
- (2) good cause no longer exists.

The Department was incorrect when it denied the Appellant's application on [REDACTED] 2018, because the incompleteness of the spousal assessment was not due to a failure or refusal on the part of the Appellant to provide the needed information, and because the Department was required to assist the Appellant in obtaining the information and did not. The Appellant had good cause because there is no evidence that he failed or refused to provide any requested information that was possessed by or known to him, or readily obtainable by him.

The case is therefore remanded to the Department for further action.

DISCUSSION

The Appellant did not fail or refuse to provide the Department with any information that he possessed, or was able to obtain through reasonable efforts. He provided the Department with his wife's social security number and date of birth, and what he knew about her sources of income and general location, as well as the name of the bank he and his wife used when they were last together approximately 6 years ago,

and he was willing to cooperate with the Department by providing any other information he had that the Department might need.

The Department already has the community spouse's demographic information in its records, and the ability to research records from agencies such as DMV, Social Security and others to try to locate her. It also has authority under Section 17b-137 of the Connecticut General Statutes to compel financial institutions to provide financial information for the community spouse, because she is legally liable for the Appellant.

The Department must reopen the Appellant's application and initiate a resources referral to try to locate the community spouse and obtain the information needed to complete the spousal assessment and process the application to completion.

DECISION

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

ORDER

1. The Department must reopen the Appellant's [REDACTED] 2018 Medicaid application, initiate a resource referral, and assist the Appellant in obtaining the information necessary to complete the spousal assessment and application.
2. The Department must send proof of compliance with the above to the undersigned fair hearing officer by no later than [REDACTED] 2018.



James Hinckley
Hearing Officer

cc: Tonya Cook-Beckford
Shawn Hardy

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, law, and 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, if 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.