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

[redacted] **2018**
Signature Confirmation

Client ID #[redacted]
Request # 123397

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted], the Department of Social Services (the "Department") sent [redacted] (the "Applicant") a Notice of Action ("NOA") denying Long Term Care Medicaid benefits.

On [redacted], the Appellant's daughter and Power of Attorney, requested an administrative hearing to contest the denial of the Long Term Care Medicaid benefits as determined by the Department.

On [redacted], the Appellant's daughter and Power of Attorney also requested an administrative hearing to contest the denial of Long Term Care Medicaid Benefits.

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

On [redacted], 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], the Appellant's daughter and authorized representative
Jessica Gomez, Department's representative
Christine Forgette, Department's representative
Maureen Foley-Roy, Hearing Officer

The hearing record remained open for the submission of additional evidence. On [redacted] 2018 the record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny Long Term Care benefits was correct.

FINDINGS OF FACT

1. On [redacted], the Applicant was admitted to the [redacted] facility for rehabilitation. (Exhibit 1: Application and Appellant's testimony)

2. On [redacted], the Applicant's status changed from rehab to long term care. (Exhibit 1)

3. The Applicant had a spouse who was living in the community who was [redacted] years old. She has dementia and is receiving home care services through the state funded program. (Appellant's testimony and Exhibit 12: Bill from Allied Community Resources)

4. On [redacted], the Appellant was told that the facility would have a room available for the Applicant's spouse within 3 months and she should apply for Medicaid for Long Term Care in a facility for both the Applicant and his spouse. (Appellant's testimony)

5. On [redacted], the Department received an application for Medicaid for Long Term Care in a facility for the Applicant from the facility. (Exhibit 1)

6. On [redacted], the Department received an application for Medicaid for Long Term for the Applicant's spouse. (Exhibit 10: Application for Judith)

7. On [redacted], the Applicant passed away. (Exhibit 3: Discharge Notice)

8. After the Applicant passed away, the facility advised the Appellant that the Applicant's spouse would now be on a waiting list for admission to the facility and generally the wait would be 2-3 years. (Appellant's testimony)

9. The Applicant and spouse's only assets are three bank accounts. (Appellant's testimony)

10. On [redacted] the couple's assets totaled $24,311.27. The balances in the couple's bank accounts were as follows:

Account ending in [redacted] $18,033.75

Account ending in [redacted]: $1,043.22
Account ending in [redacted]: $5,234.30 (Exhibit 6: Bank Statements)

11. On [redacted], the Department determined that the Applicant's one half share of the couple's assets was $12,155.63. (Department's summary)

12. On [redacted], the Department denied the Applicant's application for Medicaid for Long Term Care services because his assets exceeded the allowable limit. (Exhibit 11: Notice of Action dated [redacted] 2018)

13. The Applicant's spouse's application for Medicaid for Long Term care services in a facility remains pending but the spouse has not been admitted to a facility as of the date of the hearing. (Department representative's and Appellant's testimony)

CONCLUSIONS OF LAW

1. Section 17b-2 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") Section 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.

3. Uniform Policy Manual ("UPM") § 4000.01 provides that an Institutionalized Spouse is defined as 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; and provides that a Community Spouse is defined 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. UPM § 1500.01 provides that 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.

   The Applicant was an institutionalized spouse and his wife, who was living in the community with state funded home care services, was a community spouse. The Department was unaware of this because the facility had submitted an application for facility care for the Applicant's wife.

5. UPM § 1500.01 provides that a Community Spouse Protected Amount (CSPA) is the amount of the total available 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. UPM § 4025.67(D)(3)a and b provides that every January 1, the CSPA shall be equal to the greatest of the following amounts: the minimum CSPA or the lesser of the spousal share calculated in the assessment of spousal asset (Cross Reference 1507.05); or the maximum CSPA.

7. Effective January of 2018, the minimum CSPA was $24,720.00.

   The Applicant and his spouse's assets were less than the minimum CSPA of $24,720.00.

8. UPM § 1507.05(A) discusses the Assessment of Spousal Assets for MCCA spouses and provides that:

   Assessment Process

   1. 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.
   2. 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.
   3. 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.
   4. 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.
   5. 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.
   6. Initial eligibility is determined using an assessment of spousal assets except when:
      a. undue hardship exists (Cross Reference 4025.68); or
      b. the institutionalized spouse has assigned his or her support rights from the community spouse to the department (Cross Reference: 4025.69); or the institutionalized spouse cannot execute the assignment because of a physical or mental

Effective [redacted] 2018, the CS' CSPA must be raised to include all of the couple's assets of $24,311.27, which is less than the minimum CSPA.

9. 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.

10. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is $1,600.00 per month.

The Applicant's assets did not exceed the limit because the couple's assets were assigned to his spouse in the community.

Effective [redacted], the Applicant had 00.00 in assets.

The [redacted] denial of the application for Title 19- Medicaid for Long Term Care was incorrect because the Applicant's assets were within the allowable limit.

DISCUSSION

Both of the Appellant's parents needed nursing facility care. When her father was admitted to the facility, the staff advised that there would be a place for her mother in approximately three months. They recommended that the Appellant apply for Medicaid for long term care assistance for both parents. The Department did not know that the mother had not been admitted. To date the mother had not been admitted to the facility and was in actuality a community spouse all along. She remains a community spouse and will need her assets to continue to live in the community until a space opens for her at a facility.
It should be noted that the denial was based upon incorrect information provided to the Department.

DECISION

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

ORDER

The Department must reopen and grant the Applicant's Medicaid application effective [redacted] 2018, as of which date the Applicant's assets were below the Medicaid asset limit, because the protected assets are not counted in determining the Applicant's eligibility for Medicaid. Compliance with this order is due by [redacted] 2018 and shall consist of documentation that the Medicaid application was reopened and granted.

Maureen Foley-Roy,
Hearing Officer

Pc: Fred Presnick, Yesenia Acosta, Tim Latifi DSS Managers. Bridgeport
Jessica Gomez, Eligibility Services Worker, DSS R.O. # 30, Bridgeport

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 06105-3725.

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.