

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

[REDACTED]
Signature Confirmation

Client ID # [REDACTED]
Request #129446

NOTICE OF DECISION

PARTY

[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED], 2018, the Department of Social Services (the "Department") sent, [REDACTED] (the "Appellant") Notice of Action ("NOA") denying her application for Long Term Care Medicaid benefits from [REDACTED] 2017 through [REDACTED] 2018 and granting her Long Term Care benefits effective [REDACTED], 2018.

On [REDACTED], 2018, the Appellant requested an administrative hearing to contest the Department's determination of the effective date.

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

On [REDACTED] 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:

[REDACTED], Appellant's daughter, Power of Attorney
[REDACTED], Medicaid Financial Counselor, Hospital for Special Care,
Appellant Representative
Adam Silverman, Department's Representative
Miklos Mencseli, Hearing Officer

The Appellant was not present at the hearing.

STATEMENT OF THE ISSUE

The issue is whether, [REDACTED], (the “Community Spouse”) requires an increase to his protected share of the spousal assets (the “community spouse protected amount” or “CSPA”) due to exceptional circumstances, and if, as a consequence of protecting the assets for the Community Spouse, the Appellant’s Medicaid application should be granted effective for [REDACTED] 2018.

FINDINGS OF FACT

1. Since [REDACTED], 2016, the Appellant became institutionalized (the date of institutionalization [“DOI”]). (Exhibit 2: Spousal Assessment Worksheet)
2. The Appellant has been a resident of the Hospital for Special Care since her DOI. (Exhibit 1: W-1LTC application)
3. On [REDACTED], 2017, the Appellant applied for Long Term Care (“LTC”) Medicaid. (Summary, Exhibit 1)
4. The Appellant’s spouse lives in the community. (Summary, Daughter’s Testimony)
5. A Community Spousal Assessment was done to determine the total value of the assets as date of institutionalization. (Exhibit 2)
6. The combined total of the Appellant and the Community Spouse’s non-exempt assets was \$71,99.46 as of the DOI. (Exhibit 2)
7. The spousal share of the assets was \$35,999.73 as of the DOI ($\frac{1}{2}$ of the couple’s combined non-exempt assets). (Department’s Testimony, Exhibit 2)
8. The Community Spouse Protected Amount (“CSPA”) minimum amount was \$23,844.00 as of the DOI, as of [REDACTED] 2016. (Exhibit 2)
9. The Spousal Assessment contained the following countable assets:
 - Webster Bank # [REDACTED]
 - Webster Bank # [REDACTED]
 - Webster Bank # [REDACTED]
 - Prudential Stock 45 shares
 - Prudential Stock 106 shares
 - Prudential Life Insurance policy # [REDACTED] (Face Value \$5,000.00)
 - Prudential Life Insurance policy # [REDACTED] (Face Value \$5,000.00)
 - Prudential Life Insurance policy # [REDACTED] (Face Value \$5,000.00)
 - 1994 Lincoln Mark vehicle

10. The Appellant and the Appellant's daughter were unaware that the Appellant and the Appellant's spouse had Prudential stock. (Daughter's Testimony)
11. The W-1LTC application signed by the Appellant list the Prudential stock for herself and spouse with account numbers. (Exhibit 1)
12. In [REDACTED] 2017, the Appellant's daughter called Prudential and was informed there were no Prudential stocks with the insurance policies. (Daughter's Testimony)
13. The Department informed the Appellant's daughter that the Appellant and her spouse had shares of Prudential stock associated with their Prudential life insurances polices. (Summary, Department's Testimony)
14. On [REDACTED], 2018, the Department sent a W-1348LTC Verification We Need form requesting information needed to process the Appellant's application. The Department provided the Appellant with the following information regarding the Prudential stock:
 - Appellant has 45 shares of Prudential common stock
 - Appellant's spouse has 106 shares of Prudential common stock(Exhibit 3B: W-1348LTC dated [REDACTED]-18)
15. On [REDACTED], 2018, the Appellant's daughter emailed the Department with verifications of the sale of both stock accounts for \$13,310.62 and \$5,638.65 on [REDACTED], 2018. (Summary, Exhibit 4A & 4B: email from Appellant's daughter and verification of stock sale)
16. The Appellant used \$5,638.65 for expenses and \$13,310.62 was deposited into the [REDACTED] (Summary)
17. On [REDACTED], 2018, the Department sent a W-1348LTC Verification We Need form requesting information needed to process the Appellant's application. The Department sent an Updated Assessment of Spousal Assets stating the Appellant's share of assets is \$1600.00 and community spouse share is \$35,999.73. (Exhibit 5A: emailed dated [REDACTED]-18, Exhibit 5B: W-138LTC with attached Assessment of Spousal Assets)
18. The Department sent subsequent W-1348LTC forms as the Appellant provided requested verifications of asset transactions and verifications the assets were within the asset limits. (Summary, Department's Testimony)
19. The total allowable assets per the Spousal Assessment Worksheet was \$37,599.73 (\$1,600.00 Appellant share + \$35,999.73 Spousal share). (Summary, Exhibit 2)

20. The month end total of assets for the Appellant and Spouse were:

- \$46,399.38 for [REDACTED] 2018
- \$38,866.01 for [REDACTED] 2018
- \$39,968.19 for [REDACTED] 2018
- \$38,316.36 for [REDACTED] 2018
- \$38,639.14 for [REDACTED] 2018
- \$29,332.13 for [REDACTED] 2018

(Exhibit 2)

21. On [REDACTED] 2018, Department sent the Appellant a NOA granting the Appellant Medicaid assistance effective for [REDACTED] 2018. The first month the Appellant was under the asset limit for the program. (Summary, Department's Testimony, Exhibit 6: NOA dated [REDACTED]-18)
22. The Appellant's spouse has no mortgage payments. (Daughter's Testimony)
23. The community spouse home was in disrepair and needing substantial improvements. (Appellant's Representative Testimony)
24. The Appellant's spouse did not have the finances to pay for the repairs as the income from the stocks were not received until [REDACTED] 2018. (Daughter's Testimony)
25. The Appellant's spouse borrowed the money from his children and repaid them once the funds from selling the Prudential stock were received. (Daughter' Testimony)
26. There is no written agreement between the Appellant's spouse and children regarding repayment of the money that was loaned. (Department's Testimony, Daughter's Testimony)
27. The Department reduced the assets upon receipt of bills and verification the funds were used to pay back the children. (Department's Testimony)
28. The Appellant's daughter provided receipts for the work done by the Appellant's spouse on the community home:
- RJ's Roofing and Siding - \$12,800.00 (Invoice date [REDACTED]-17)
 - All State HVAC - \$9,600.00 boiler/ hot water replacement
 - (Invoice date [REDACTED]-17)
 - Tree Removal - \$7,000.00 (Invoice date [REDACTED]-17)
 - Roger Anstett - \$6,500.00 deck replacement (Invoice date [REDACTED]-17)
 - Roger Anstett - \$6,800.00 window replacement ((Invoice date [REDACTED]-17)
 - B & M Pump Repair - \$446.67 (Invoice date [REDACTED]-17)
 - \$794.80 (Invoice date [REDACTED]-17)
 - \$488.15 (Invoice date [REDACTED]18)
 - \$270.05 (Invoice date [REDACTED]-18)

(Exhibit 7: Invoices for home repair)

29. The majority of the work was done from [REDACTED] 2017 through [REDACTED] 2017. (Department's Testimony, Exhibit 7)
30. The work had to be done before the winter months. (Daughter's Testimony)
31. The Appellant's spouse had high electric and water bills due to the work needed to be done to the home. (Exhibit 8: Eversource statement history [REDACTED]-17 through 6-18-18, Bristol Water Department [REDACTED]-17 through [REDACTED]-18)
32. The Appellant's spouse spent \$575.59 to repair the transmission in the 1994 Lincoln vehicle. (Exhibit 8: Economy transmission bill)
33. The Appellant's spouse spent \$77.00 for dental work at the UCONN School of Dental Medicine. (Exhibit 8: UCONN patient receipt)
34. The Appellant has a balance due for her residence at the Hospital for Special Care. (Exhibit 8: Hospital for Special Care patient statement as of [REDACTED]-18)
35. The Appellant is seeking Medicaid eligibility effective [REDACTED], 2018. (Daughter's Testimony)
36. The hearing record is devoid of medical evidence to support the Appellant's spouse's claim of exceptional circumstances. (Record)
37. As of the hearing date, [REDACTED], 2018, the average rate of return generated by a 12 month Certificate of Deposit was 2.69%. ([REDACTED], 2018: BankRate.com printout)
38. "The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED], 2018. Therefore, this decision is due not later than [REDACTED], 2018."

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Section 4000.01 of the Uniform Policy Manual ("UPM") in part provides 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.

Counted Asset

A counted asset is an asset which is not excluded and either available or deemed available to the assistance unit.

3. Uniform Policy Manual (UPM) § 4005.05 (B)(1) provides that 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.
4. UPM § 4005.05 (B)(2) provides that 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.
5. UPM § 4005.05 (D) provides that an assistance unit is not eligible for benefits under a particular program if the units equity in counted assets exceeds the asset limit for the particular program.
6. UPM 4030.05 provides for treatment of assets and specific types of assets.

A. Types of Bank Accounts

Bank accounts include the following. This list is not all inclusive.

1. Savings account;
 2. Checking account;
 3. Credit union account;
 4. Certificate of deposit;
 6. Patient account at long-term care facility;
 7. Children's school account;
 8. Trustee account;
 9. Custodial account.
7. The Department correctly determined the Webster Bank savings accounts # [REDACTED] # [REDACTED] and # [REDACTED] are counted asset in determining eligibility for Medicaid benefits.
 8. UPM 4030.75 provides for treatment of Stocks and Bonds.

A. Stocks

1. The equity value of a share of stock is the net amount the owner would receive upon selling the share.
 2. In computing this net amount due the owner, the Department subtracts the broker's fee, if any, from the market value of the share of stock.
9. The Department correctly determined the Prudential shares of stock are counted asset in determining eligibility for Medicaid benefits.
10. UPM § 4030.30 discusses the treatment of life insurance policies as assets.
- UPM § 4030.30(A) provides that for all programs: 1. The owner of a life insurance policy is the insured unless otherwise noted on the policy, or if the insurance company confirms that someone else, and not the insured, can cash in the policy; and 2. Policies such as term insurance policies having no cash surrender value are excluded assets.
- UPM § 4030.30(C) provides that for the AABD and MAABD programs: 1. If the total face value of all life insurance policies owned by the individual does not exceed \$1500.00, 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; and 2. Except as provided above, the cash surrender value of life insurance policies owned by the individual is counted toward the asset limit.
11. The Department correctly determined that the Prudential insurance policies #x332, #x110 and #x405 had a face value exceeding \$1500.00, and that the policy's cash surrender value was therefore counted toward the asset limit.
12. UPM § 4020.10(K) (2) provides for Excluded Assets for the AABD and MAABD programs regarding Motor Vehicles: For an assistance unit consisting of a MCCA spouse, one motor vehicle owned by either the institutionalized spouse or the community spouse is excluded.
13. The Department correctly excluded the Cadillac and counted the 1994 Lincoln Mark vehicle toward the asset limit.
14. Uniform Policy Manual ("UPM") § 4000.01 defines a Continuous Period of Institutionalization as 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.
15. The Department correctly determined that the Appellant's initial period of institutionalization began on [REDACTED], 2016.

16. 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.
17. Effective [REDACTED], 2016, the Applicant and her husband were MCCA spouses as defined by the Medicaid program; the Applicant was an Institutionalized Spouse (IS) and her husband was a Community Spouse **(CS)**.
18. 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.
19. 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
 - c. the institutionalized spouse cannot execute the assignment because of a physical or mental impairment. (Cross Reference: 4025.69).

20. UPM § 4022.05(B)(2) provides that every January 1, the CSPA shall be equal to the greatest of the following amounts:

- b. the minimum CSPA; or
- c. the lesser amount of:
 - i. the spousal share calculated in the assessment of spousal assets (Cross Reference 1507.05); or
 - ii. the maximum CSPA; or
- d. the amount established through a Fair Hearing decision (Cross Reference 1507); or
- e. the amount established pursuant to a court order for the purpose of providing necessary spousal support.

21. The Department correctly calculated the CSPA to be \$35,999.73

22. UPM § 4022.05(D)(3) provides for Exceptional Circumstances:

The official increases the community spouse's MMNA previously determined by the Department if either MCCA spouse establishes that the community spouse has exceptional circumstances resulting in significant financial duress, and the MMNA previously calculated by the Department is not sufficient to meet the community spouse's monthly needs as determined by the hearing official.

- a. Exceptional circumstances are those that are severe and unusual and that:
 - (1) prevent the community spouse from taking care of his or her activities of daily living; or
 - (2) directly threaten the community spouse's ability to remain in the community; or
 - (3) involve the community spouse's providing constant and essential care for his or her disabled child, sibling or other immediate relative (other than institutionalized spouse).

- b. Significant financial duress is an expense or set of expenses that:
 - (1) directly arises from the exceptional circumstances described in subparagraph a above; and
 - (2) is not already factored into the MMNA; and
 - (3) cannot reasonably be expected to be met by the community spouse's own income and assets.
 - c. Expenses that are factored into the MMNA, and thus do not generally qualify as causing significant financial duress, include, but are not limited to:
 - (1) shelter costs such as rent or mortgage payments;
 - (2) utility costs;
 - (3) condominium fees;
 - (4) real estate and personal property taxes;
 - (5) real estate, life and medical insurance;
 - (6) expenses for the upkeep of a home such as lawn maintenance, snow removal, replacement of a roof, furnace or appliance;
 - (7) medical expenses reflecting the normal frailties of old age.
 - d. In order to increase the MMNA, the Fair Hearing official must find that the community spouse's significant financial duress is a direct result of the exceptional circumstances that affect him or her.
23. The bills for maintaining the home; roof repair, window replacement, furnace replacement, water system and tree removal are not exceptional circumstance.
24. The utility bills are monthly expenses that are not exceptional circumstances.
25. The cost associated with auto repairs are not considered exceptional circumstance.
26. Dental work is a medical expense associated with normal frailties of old age is not exceptional circumstance.

27. The Appellant's spouse did not prove that he has exceptional circumstances that threatens his ability to remain in the community.
28. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1600.00.
29. UPM § 4005.15 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.
30. UPM § 1560.10 (A) provides for begin dates of Medicaid Assistance. The beginning date of assistance for Medicaid may be one of the following: the first day of the first, second or third month immediately preceding the month in which the Department receives a signed application when all non-procedural eligibility requirements are met and covered medical services are received at any time during that particular month.
31. The Department correctly determined that the Appellant's Medicaid eligibility begin date is [REDACTED] 2018, the first day of the month in which assets were reduced below the asset limit for the program.

DISCUSSION

The Department acted correctly in its determination of the Appellant's spouse's CSPA. The Department correctly determined the Appellant's eligibility date as [REDACTED] [REDACTED] 2018. The receipts for expenses provided by the Appellant's representative do not meet the required criteria to be considered as exceptional circumstances.

DECISION

The Appellant's appeal is Denied



Miklos Mencseli
Hearing Officer

C: Patricia Ostroski, Operations Manager, DSS R.O. #52 New Britain

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.