

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-37725

██████████ 2019
Signature Confirmation

Case ID # ██████████
Client ID # ██████████
Request #127389

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2018, the Department of Social Services (the "Department") sent ██████████ the "Appellant") a Notice of Action ("NOA) denying his application for Medicaid for Long Term Care Facility Residents.

On ██████████, 2018, ██████████ (the "Appellant's Attorney") requested an administrative hearing to contest the Department's decision and to seek increase Community Spouse Protected Amount ("CSPA").

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

On ██████████, 2018, the Appellant's Attorney requested reschedule of administrative hearing.

On ██████████ 2018, at the Appellant's Attorney's request the OLCRAH issued another notice rescheduling the administrative hearing for ██████████ 2018.

On ██████████ 2018, the Appellant's Attorney requested another reschedule.

On [REDACTED], 2018, OLCRAH issued another notice rescheduling the administrative hearing for [REDACTED] 2018.

On [REDACTED], 2018 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], Appellant's POA
[REDACTED] s Esq., Appellant's Attorney
Ken Smiley, Department's Representative
Elizabeth Clark, Department's Representative
Stefania Smith, Department's Representative
Swati Sehgal, Hearing Officer

The hearing record left open for submission of additional information. The hearing record closed on [REDACTED] 2018.

The Appellant was not present at the administrative hearing due to his passing on [REDACTED] 2018.

STATEMENT OF THE ISSUE

1. The first issue is whether the Department's decision to deny Medicaid benefits for Long Term Care Facility Residents was correct.
2. The second issue is whether [REDACTED] (the "Appellant's spouse") needs additional assets protected, from the Appellant's share of assets, to produce additional income to meet the Community Spouse's Minimum Monthly needs Allowance ("MMNA")

FINDINGS OF FACT

1. On [REDACTED] 2018, the Department received an application for Medicaid coverage to pay for Long Term Care Facility Residents. (Hearing Summary, Exhibit 2: Application dated [REDACTED] 18, Exhibit 9: Case Notes)
2. The Appellant resided with Community Spouse at [REDACTED], CT. (Exhibit 2: Application submitted [REDACTED] 18 for Long Term Care)
3. On [REDACTED] 2018, the Department mailed a W1348LTC, Verification we need form to the Appellant with a due date of [REDACTED] 2018, requesting for Marriage License, Statements for all bank accounts for the Appellant and his spouse for [REDACTED]/2013,

█/2014, █/2015, and █/2016 to current including █, all other assets for the Appellant and his spouse, Skilled Nursing Facility placement, verification of rent, insurance, taxes and utilities. (Exhibit 9)

4. On █ 2018, the Department mailed a 2nd W1348-LTC requesting same information with a due date of █ 2018. (Exhibit 9)
5. On █ 2018, the Department received birth certificate, Medicare and Social Security cards for the Appellant and his spouse, Copy of power of Attorney, bank statements for both banks accounts with from █. (Exhibit 9)
6. On █, 2018, the Department received verification of closing of saving and checking accounts with █ bank on █ and May █ respectively. (Exhibit 9, Exhibit 4 : Assessment of Spousal Assets)
7. On █, 2018, the Department received █ bank statements, the Appellant and his spouse has an amount of \$ 8,541.38 in their █ checking account # █ and the Applicant's spouse has an amount of \$234,765.34 in her █ saving account █. (Exhibit 5 and Exhibit 4)
8. On █ 2018, the Department completed a Community Spousal Assessment to determine the total value of the assets as of date of application. (Exhibit 3: Spousal Assessment Worksheet, Exhibit 4)
9. The Department determined that combined total of the Appellant and Community Spouse's non-exempt assets was \$243,306.72. (Exhibit 3: Spousal Assessment Worksheet, Exhibit 4)
10. The Department determined that spousal share of the assets was \$121,653.36. (½ of the couple's combined non-exempt assets). (Exhibit 3, Exhibit 4)
11. The Community Spouse Protected Amount ("CSPA") was set at the maximum amount allowed of \$121,653.36. The total amount of assets the Appellant and his spouse could retain without causing ineligibility was determined to be \$123,253.36 (\$121,653.36+1600.00). (Ex. 4: Assessment of Spousal Assets; Notification of Results; Hearing Summary)
12. The Community Spouse is seeking an increase in his MMNA to pay the monthly cost of living in the community effective █ 2018. No exceptional circumstances have been claimed. (Appellant's Attorney's Testimony)
13. On █, 2018, the Department sent the Appellant and his spouse an Assessment of Spousal Assets, Notification of Results stating that he "is not currently eligible for Medicaid ; the maximum amount of assets which you and your spouse may retain without causing (in)eligibility is \$1600 for the applicant + \$121,653.36 for the community spouse totaling \$123,253.36 (1600.00+121,653.36). (Ex. 4: Assessment of Spousal Assets; Notification of Results; Hearing Summary)

14. On [REDACTED] 2018, The Department denied the Application for Medicaid for Long Term Care Facility Residents as the Appellant was not a resident of a Long Term Care Facility and his asset exceeded the allowed asset limit for the program.(Hearing Summary and Exhibit 9)
15. On [REDACTED] 2018, the Department mailed a Notice of Action informing the Appellant that his application for Husky C, Long Term Care Residents was denied because value of his assets is more than allowed amount and he did not meet program requirements. (Exhibit 8: Notice of Action, [REDACTED])
16. The Appellant was admitted to Skilled Nursing Facility on [REDACTED] 2018. (Appellant's Attorney's statement)
17. 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. However the hearing, which was originally scheduled for [REDACTED] 2018, was rescheduled for [REDACTED] 2018, at the request of the Appellant, which caused a 29-day delay, again the hearing scheduled for [REDACTED], 2018 was rescheduled for [REDACTED], 2018, at the request of the Appellant, which caused additional 28-day delay. Because this 57-day (29+28) delay resulted from the Appellant's request, this decision is not due until [REDACTED] 1, 2019, and is therefore timely."

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. 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.
3. The Department correctly determined that the Applicant was not institutionalized at the time of application.
4. UPM § 4000.01 defines a community spouse is 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 Appellant's spouse does meet the definition of community spouse.
6. UPM § 4000.01 defines 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.
7. The Appellant and his spouse were not MCCA spouses as defined by the Medicaid program; the Applicant was not an Institutionalized Spouse.
8. UPM § 1500.01 provides a community spouse protected amount ("CSPA") is the amount of the total available non-excluded assets owned by both MCAA spouses which is protected for the community spouse and is not counted in determining the institutionalized spouse's eligibility for Medicaid.
9. In this case the Appellant and his spouse do not meet the criteria of MCCA spouses, Appellant's spouse does not meet the criteria of community spouse, and therefore the Applicant's spouse does not qualify for a CSPA.
10. UPM § 1507.05(A) discusses the Assessment of Spousal Assets for MCCA spouses and provides that:
 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.
11. The Department was incorrect to complete the spousal assessment because the Appellant was not admitted to a long term care facility or applied for home and community based services under a Medicaid waiver at the time of application.
12. UPM § 2540.88(A) provides coverage group description of long term care facility residents. This group includes residents of long term care facilities who reside in the LTCF for at least thirty (30) continuous days.

13. UPM § 2540.88(B) provides that individuals qualify as categorically needy under this coverage group beginning with the first day of the thirty (30) continuous days of residence, for so long as the conditions above are met.
14. The Department correctly denied the application for Medicaid for Long Term Care Residents as the Applicant was not a resident of LTCF and therefor was not categorically needy under this coverage group.

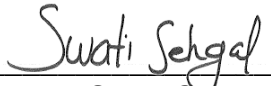
DISCUSSION

The Department's decision to deny the Appellant's request for Medicaid is upheld. The Department did not find the Appellant eligible to receive Medicaid for Long Term Care Facility Residents because he was not a resident of a Long term care facility at the time of application or thirty days after that. Testimony and evidence presented at the fair hearing confirmed the Department's point that the Appellant was not a resident of a Long Term Care Facility at the time of application or 30 days after the submission of the application, therefore he was not categorically eligible for Medicaid for Long Term Care Facility Resident.

Based on the evidence and testimony presented at the hearing, I concluded that the Appellant did not meet the criteria of Institutionalized spouse; the Appellant's spouse did not meet the criteria of community spouse and subsequently did not qualify for spousal assessment. Therefore issue of the Appellant being over asset and the need to protect the additional asset from the Appellant's share of asset is irrelevant.

DECISION

1. The Applicant's appeal is **Denied**



Swati Sehgal
Hearing Officer

PC: Tonya Cook-Beckford, Operations Manager, DSS, Willimantic
Elizabeth Clark, DSS Fair Hearing Liaison, RO #20, New Haven

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.