

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

██████████  
Signature Confirmation

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

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████ the Department of Social Services (the "Department") sent ██████████ (the "Applicant"), a Notice of Action ("NOA") denying Long Term Care ("LTC") Medicaid benefits for the months of ██████████ through ██████████ and approving Medicaid Long Term Care benefits effective ██████████.

On ██████████, (the "Appellant") wife and power of attorney ("POA") of the Applicant requested an administrative hearing to contest the denial of the LTC Medicaid benefits for the months of ██████████.

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

On ██████████, 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, wife and POA for the Applicant, Louis Scanzillo  
██████████, Attorney for the Applicant and the Appellant  
Marissa Luciani, Eligibility Staff Department of Social Services,  
Maureen Foley-Roy, Hearing Officer

The hearing record remained open for the submission of additional evidence. On ██████████, the record closed.

## **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department's decision to deny LTC benefits for the months of [REDACTED] was correct.

## **FINDINGS OF FACT**

1. On [REDACTED], the Applicant was admitted to the facility for LTC. (Exhibit 1: LTC application)
2. On [REDACTED], the date the Applicant was admitted to the facility, he and his wife's (the "couple") total countable assets were \$166,148.32. (Exhibit 6: Spousal Assessment Worksheet)
3. In [REDACTED], the couple's total countable assets were \$106,789.53. (Exhibit 6)
4. In [REDACTED], the couple's total countable assets were \$109,099.30. (Exhibit 6)
5. On [REDACTED], the Appellant submitted an application for Medicaid for LTC for the Applicant to the Department. (Exhibit 1)
6. The Appellant noted on the application that she and her spouse had at least one annuity and they had requested statements. (Exhibit 1)
7. On [REDACTED], the Department issued a W1348LTC Verification We Need form to the Appellant requesting proof of income, tax returns, verification of admission to nursing home and proof of the TIAA and Jackson National annuity contracts. (Exhibit 2 W1348 LTC, Request #1)
8. On [REDACTED], the Department sent additional W1348 LTC Verification We Need forms to the Appellant requesting the annuity contracts. (Exhibit 2: Verification We Need forms, Request #'s 2 and 3)
9. On [REDACTED], the Department sent another W1348 LTC Verification We Need form requesting statements from the annuities (among other items). The Department initially set the due date as [REDACTED] but extended it to [REDACTED] as the Appellant had indicated that she was waiting for information from the annuity company. (Exhibit 2: Request # 4)
10. On [REDACTED], Counsel for the Appellant contacted Jackson National Life Insurance Company and requested a copy of the annuity contract and statements from [REDACTED] of 2013, 2014, 2015, and statements from [REDACTED] of 2016 through present. Counsel included releases, power of attorney paperwork

and affidavit with the request. (Appellant's Exhibit A: Letter to Jackson National Life Insurance Company dated [REDACTED])

11. On [REDACTED], the Department sent W1348LTC requesting additional information by [REDACTED]. (Exhibit 2: Request #5)
12. On [REDACTED], Jackson National Life Insurance Company responded to Counsel's June 8<sup>th</sup> inquiry with a letter regarding the address for the POA and her spouse. The letter did not provide or even mention the specific items that were requested. (Appellant's Exhibit C: [REDACTED] letter from Jackson National)
13. On [REDACTED], Jackson National sent a letter to the Applicant advising that they would not accept the Power of Attorney paperwork that had been submitted with the request of [REDACTED]. There was a space on the letter for the POA to indicate that the paperwork was still in effect. The POA was instructed to sign it and have a notary witness the signature. (Appellant's Exhibit D: [REDACTED] 22, letter from Jackson National)
14. On [REDACTED], the paperwork sent to the Appellant from Jackson National Life Insurance Company included the information that the Appellant's "representative" was from People's Securities Inc and included that representative's name and phone number. (Exhibit D)
15. In [REDACTED] the couple's total countable assets were \$113,027.76. (Exhibit 6)
16. On [REDACTED], the Department sent a W1348LTC requesting proof of gross pension and annuity information by [REDACTED]. (Exhibit 2: Request #6)
17. On [REDACTED], the Appellant returned the POA notarized affidavit to Jackson National Life with additional POA paperwork, a copy of the Department's Verification We Need form, request # 5 and a letter requesting the information urgently. (Appellant's Exhibit E: Packet from Attorney sent to Jackson National Life Insurance Company dated [REDACTED])
18. In [REDACTED], the couple's total countable assets were \$109,044.09. (Exhibit 6)
19. The Appellant was in communication with the Department's representative throughout the process informing it of the steps taken and difficulties she has been having obtaining the information regarding the annuities. (Appellant and Department representative's testimony)
20. On [REDACTED], the Department sent a referral to the investigators in their Resources division, explaining that the Appellant's attorney had contacted Jackson National Life Insurance Company requesting information and had not received a response. The Department's representative requested the Resource investigator's assistance in obtaining the information. (Exhibit 7: Referral Details)



21. On [REDACTED], the Department sent a W1348LTC to the Appellant requesting the Jackson National Annuity Statements by [REDACTED]. The Department advised the Appellant that the Resources division had been asked to assist. (Exhibit 2: Request #7)
22. In [REDACTED], the couple's total countable assets were \$109,318.46. (Exhibit 6)
23. On [REDACTED], the Resources division informed the Department that they would take no action on the investigation request because "there should be no issue as to why the spouse/POA could not obtain the necessary information." (Exhibit 7)
24. On [REDACTED] the Department sent a W1348 LTC to the Appellant requesting some bank account information and the Jackson National annuity statements by [REDACTED]. (Exhibit 2: Request #9)
25. The Appellant forwarded Request #9 to Jackson National Life Insurance Company. (Exhibit F: Request #9 with handwritten notes)
26. On [REDACTED], the Department issued a W1348 LTC to the Appellant requesting bank account information and the Jackson National information. The Department initially set the deadline for the information as [REDACTED] but changed it [REDACTED]. (Exhibit 2: Request #10)
27. In [REDACTED], the couple's total countable assets were \$112,777.81. (Exhibit 6)
28. On [REDACTED], the Department issued a W1348 LTC to the Appellant requesting bank account information and proof that the Applicant and spouse's assets had been reduced to \$123,288.53 by [REDACTED] (Exhibit 2: Request #11)
29. On [REDACTED], the Appellant received a letter from Jackson National Life Insurance Companies through their representative at People's Securities that the value of the Applicant's annuities was \$22,860.35. The letter also indicated that the value of the annuity was not information that had been available to People's Securities. (Exhibit G: Fax from People's Securities)
30. After receiving the information in FOF#22, the Department completed the spousal assessment and determined that the total allowable assets for the Applicant and his spouse were \$84,674.16. (Exhibit 6)

31. On [REDACTED], the Department sent a W1348 LTC to the Appellant requesting bank account information and proof that assets had been reduced to \$84,676.16 by [REDACTED]. (Exhibit 2: Request #13)
32. In [REDACTED], the couple's total countable assets were \$110,227.78. (Exhibit 6)
33. On [REDACTED], the Department sent a W1348 LTC to the Appellant requesting bank account information, funeral contracts and proof that the assets had been reduced to \$84,676.16 by [REDACTED]. (Exhibit 2: Request #15)
34. In [REDACTED], the couple's total countable assets were \$82,747.58. (Exhibit 6)
35. On [REDACTED], the Department denied HUSKY C-Medicaid for Long Term Care Facility residents for the Applicant for the months from [REDACTED] through [REDACTED] of 2018 because the value of his assets exceeded the allowable limit and granted Medicaid for LTC effective [REDACTED]. (Exhibit 8: Notice of Action dated [REDACTED])
36. 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]. Therefore, this decision was due not later than [REDACTED]. However, the hearing record, which had been anticipated to close on [REDACTED], did not close until [REDACTED] for the review of evidence that the Appellant submitted on the date of the hearing. Because of this 4 day delay in the close of the hearing record arose from the Appellant's time frame in submitting evidence she wished to be considered, the final decision is not due until [REDACTED], 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. 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. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.

4. UPM § 4000.01 provides that 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.** (Emphasis added)
5. 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.** (Emphasis added)

**The Department was correct when it determined that the Jackson National Annuity was an available asset for the Applicant and his spouse.**

6. 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.
7. 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.

**Effective [REDACTED] 2018, the Applicant and his wife were MCCA Spouses as defined by the Medicaid program; the Applicant was an Institutionalized Spouse (IS) and his wife was a Community Spouse (CS).**

8. UPM § 1507.05 provides in part that the Department provides an assessment of assets when one of the spouses begins his or her initial continuous period of institutionalization and at the time of application for Medicaid whether or not a request is made. 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. The assessment consists of: a computation of the total value of all non-excluded available assets owned by either or both spouses, and a computation of the spousal share of those assets. 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.

**The Department was correct when it provided a spousal assessment of assets and determined that the couple's assets totaled \$166,148.32 on the date that the Applicant was institutionalized.**

9. 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.

10. UPM § 4025.67 provides in part that 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 of eligibility as an institutionalized spouse (IS). 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). Every January 1, the Community Spouse Protected Amount ("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 assets or the maximum CSPA. The maximum CSPA was \$123,600.00.
11. UPM § 1507.05(A)1a(1) and b provides for the Assessment of Spousal Assets for MCCA spouses and states that: The Department provides an assessment of assets when one of the spouses begins his or her initial continuous period of institutionalization and at the time of application for Medicaid whether or not a request is made.
12. UPM § 1507.05(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 started on or after September 30, 1989.
13. UPM § 1507.05(A)4 provides that the assessment consists of a computation of the total value of all non-excluded available assets owned by either or both spouses and a computation of the spousal share of those assets.
14. 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.
15. UPM § 4025.67(D)(3) 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 assets ((Cross Reference 1507.05); or the minimum CSPA; or the lesser of : the spousal share calculated in the assessment assets or the maximum CSPA or the amount established through a Fair Hearing decision (Cross Reference 1570); or the amount established pursuant to a court order for the purpose of providing necessary spousal support.

**The Department was correct when it determined that the community spousal's share of the assets was \$83,074.16 and that the total allowable assets were \$84,674.16.**

The Department was correct when it determined that the couple's assets exceeded the allowable limit for the months of [REDACTED] 2018.

The Department was correct when it denied the Applicant's application for Medicaid for Long Term care for the months of [REDACTED] of 2018 because the assets exceeded the allowable limit.

### DISCUSSION

The Department's responsibility is to review the information and determine whether eligibility for Medicaid exists at a certain point in time per the policy and regulations. The Appellant does not dispute the Department's figures of total assets for herself and her spouse. The undisputed fact is that the couple's total assets exceeded the allowable limit until the Appellant reduced those assets in [REDACTED] of 2018.

Appellant's Counsel maintains that the value of the Jackson annuity should be deemed inaccessible considering the difficulty the Appellant had in obtaining information regarding that asset. The regulations do not contain a definition of inaccessible assets; only of available assets. The asset and information regarding the annuity were available, as evidenced by the fact that it was ultimately provided. The Appellant and her Counsel made several attempts to obtain the information and the delay lies with the annuity company. The regulations require a spousal assessment and verification of all assets must be provided to complete such an assessment. When the information was provided, the Department immediately completed the spousal assessment and the Appellant reduced the assets. But there are no provisions or exceptions in policy that permit the Department to grant benefits in a month when there is no eligibility due to excess assets.

It should be noted that if the value of Jackson Annuity were not considered as an available asset, the value of the couple's assets would still exceed the limit for the months in question. The total assets as of the date of the institutionalization and therefore the protected amount would have been lower. The total allowable assets would have been \$73,243.98. If the value of the Jackson Annuity (\$22,860.35) was subtracted from the asset balances in each month through [REDACTED] 2018, the value of the couple's total assets still exceeded the protected amount.

### DECISION

The Appellant's appeal is DENIED.



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Maureen Foley-Roy,  
Hearing Officer



Pc: Yecenia Acosta, Fred Presnick, Tim Latifi, Operations Managers, DSS R.O. #30,  
Bridgeport  
Marissa Luciani, ESW, 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.