

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

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

Client ID # ██████████
Request # 140976

NOTICE OF DECISION

PARTY

██████████

PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") granting Long Term Care ("LTC") Medicaid benefits, effective ██████████ 2018, with a Community Spouse Allowance ("CSA") for 2018 in the amount of \$1180.14 and for 2019 in the amount of \$1139.64.

On ██████████ 2019, the Appellant requested an administrative hearing to contest the Department's determination of the CSA.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2019.

On ██████████ 2019, the Appellant requested a continuance of the hearing, which OLCRAH granted.

On ██████████ 2019, OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2019.

On ██████████ 2019, 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:

Attorney [REDACTED] Representative for the Appellant
 [REDACTED] Co-conservator for the Appellant and the Appellant's
 Community Spouse ("CS")

[REDACTED] Co-conservator for the Appellant
 Attorney Daniel Butler, Department's Principal Attorney.
 Noel Lord, Department's Representative, Stamford Regional Office
 Michael Briggs, Department's Representative, Bridgeport Regional Office

The Appellant did not attend the hearing because he is institutionalized and physically unable to attend the hearing in person.

STATEMENT OF THE ISSUE

The issue is whether the Department was correct to calculate the Appellant's CSA without consideration of the probate court decrees.

FINDINGS OF FACT

1. On [REDACTED] 2013, the court appointed, [REDACTED] and the CS, [REDACTED] as the Appellant's Co-Conservators. (Exhibit 4: Fiduciary's Probate Certificate/Conservatorship, Court of Probate)
2. On [REDACTED] 2013, the [REDACTED] Probate Court issued a Notice of Hearing for [REDACTED] 2013 for an application by the CS for spousal support allowance to be heard and determined at the court of probate. The Probate Court did not mail the Notice of Hearing to the Department. (Exhibit 5: Notice of Hearing)
3. There is no evidence in the hearing record that the CS sent the Department a copy of the Notice of the Hearing for [REDACTED] 2013. (Hearing record)
4. On [REDACTED] 2013, the [REDACTED] Probate Court issued a decree authorizing the Co-conservators to expend up to \$3,800.00 per month for the benefit of the CS, for the purpose of paying the mortgage, real estate taxes, common charges, utilities and other expenses (Exhibit 6: Probate Court Decree)
5. The [REDACTED] Probate Court did not send a copy of the [REDACTED] 2013 decree to the Department. (Hearing record)
6. There is no evidence in the hearing record that the CS sent a copy of the [REDACTED] 2013 decree to the Department. (Hearing record).

7. On [REDACTED] 2017, the Probate Court issued a second decree reducing the CSA from \$3,800.00 to \$2,917.25 per month, effective [REDACTED] 2016, due to the Probate Court having previously authorized the Co-conservators, on [REDACTED] 2016, to pay the balance of the marital home, thus eliminating the monthly mortgage payment. (Exhibit 7: Second Probate Decree)
8. The [REDACTED] Probate Court did not send the Department notice of the hearing that took place prior to the decree issued by the Probate Court on [REDACTED] 2017. (Hearing record; Department's Testimony)
9. The Probate Court did not send a copy of the [REDACTED] 2017 decree to the Department. (Testimony; Exhibit 7).
10. There is no evidence in the hearing that the CS provided a copy of the [REDACTED] 2017 decree to the Department. (Hearing record)
11. On [REDACTED] 2018, the [REDACTED] a skilled nursing facility, admitted the Appellant. (Exhibit 1: W-1LTC application)
12. On [REDACTED] 2018, the Appellant applied for LTC Medicaid benefits for nursing home services. (Exhibit 1)
13. On [REDACTED] 2019, the Department granted the Appellant LTC Medicaid benefits, effective [REDACTED] 2018, with a pick up date of [REDACTED] 2018. (Exhibit 2: NOA)
14. The Department calculated the Appellant's CSA without regard to the decrees issued by the Stamford Probate Court on [REDACTED] 2013 and [REDACTED] 2017 because the Department was not notified of the hearings prior to these Probate Court decrees, nor did the Probate Court notify the Department that the decrees had been issued. (Hearing Summary)
15. The Department calculated the CSA amount for [REDACTED] 2018 in the amount of \$1,180.14 and, effective [REDACTED] 2019, in the amount of \$1,139.64. (Exhibits 13 and 14: CSA calculations).
16. The issuance of this decision is timely under section 17b-61(a) of the Connecticut General Statutes, which provides that a decision "shall ordinarily be rendered not later than ninety days after the request for a hearing . . . provided the time for rendering the final decision shall be extended whether the aggrieved person requests or agrees to an extension." The Appellant requested an administrative hearing on [REDACTED] 2019, and the Appellant's attorney requested a 20-day extension. Because of the 20 day delay, this final decision is not due until [REDACTED] 2019, and is, therefore, timely.

CONCLUSIONS OF LAW

1. "The Department of Social Services is designated as the state agency for the administration of... the Medicaid program pursuant to Title XIX of the Social Security Act." Conn.Gen. Stat. § 17b-2(6)
2. "The Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department." Conn. Gen. Stat. § 17b-261b(a)

"Any person filing an application with a probate court for spousal support, in accordance with section 45a-655, shall certify to that court that a copy of the application and accompanying attachments have been sent by regular mail, postage prepaid, to the Commissioner of Social Services. The probate court shall provide a notice of hearing to the commissioner at least fifteen business days prior to the hearing. The commissioner or a designee shall have the right to appear at such hearing and may present the commissioner's position as to the application in person or in writing. Any final order by the court on such application for spousal support shall be sent to the commissioner within seven business days of the order." Conn. Gen. Stat. § 17b-261b(b)

"No probate court shall approve an application for spousal support of a community spouse unless (1) notice is provided in accordance with subsection (b) of this section, and (2) the order is consistent with state and federal law." Conn. Gen. Stat. § 17b-261b(c) (emphasis added)

"Any conservator of the estate of a married person may apply such portion of the property of the conserved person to the support, maintenance and medical treatment of the conserved person's spouse which the Probate Court, upon hearing after notice, decides to be proper under the circumstances of the case." Conn. Gen. Stat. § 45a-655(b) (emphasis added)

Because the CS did not send notice of the hearings to the Department prior to the issuance of its spousal support decrees, and did not send copies of such decrees to the Department, the Department is not bound by the Probate Court's spousal support orders when calculating the Appellant's CSA.

DISCUSSION

The issue of this hearing is whether the Department was correct to calculate the CSA based on the relevant statutes and regulations instead of honoring the [REDACTED] Probate Court decrees establishing spousal support orders.

The Department argued that, because the Probate Court did not notify it, of the hearings, as required by statute, the Department was not bound by the spousal support orders established by the [REDACTED] Probate Court. The Department argued that it was correct to calculate the CSA using only the relevant statutes and regulations to calculate the CSA.

Counsel for the Appellant acknowledged that the [REDACTED] Probate Court did not provide the Department with a notice of hearing in connections with the application for spousal support but argued that the Appellant should not be held responsible for the failure of the [REDACTED] Probate Court to follow the mandate established by section 17b-261b(b) of the Connecticut General Statutes. In addition, he argued that because the Appellant was not on assistance, nor had he applied for assistance at the time the Probate Court issued its spousal support decrees, the Department was required to respect the Probate Court orders.

Both the Department and counsel for the Appellant rely on *Valliere v. Commissioner of Social Services*, 328 Conn. 294 (2018) for their positions. Yet the Appellant's reliance on *Valliere*, however, is misplaced.

In *Valliere*, although the Court concluded that where an institutionalized individual had not applied for nor was receiving medical assistance, the Department must respect a previously issued probate court support order for the community spouse, the facts in that case differ significantly from those in the instant case. In *Valliere*, (1) the applicant for spousal support provided notice of the application to the Commissioner of Social Services; (2) the Probate Court provided notice of the hearing on the application to the Commissioner; and (3) the Probate Court provided a copy of the decree to the Commissioner. There was full compliance with the provisions of section 17b-261(b). *Valliere* at 299-300.

The Court noted the importance of compliance with these notice provisions, stating that section 17b-261b of the Connecticut General Statutes "limits the authority of the Probate Court to approve an application for an order of community spousal support, providing 'No probate court shall approve an application for spousal support of a community spouse unless (1) notice is provided in accordance with subsection (b) of this section, and (2) the order is consistent with state and federal law.'" *Id.* at 317.

The Court stressed the role of the Probate Court to "provide notice of the application, the hearing on the application and the court's order to the commissioner," which specifically "affords the 'commissioner or a designee' the right to 'appear at such hearing and [to] present the commissioner's position as to the application in person or in writing.'" *Id.* at 318.

In response to the Department's concern that requiring the Department to be bound by the Probate Court's spousal support order would favor individuals with adequate resources to hire estate planning professionals to assist with obtaining

a spousal support order from the Probate Court prior to filing a Medicaid application, the court noted:

The department is not . . . powerless to protect the public fisc from such estate planning maneuvers. We emphasize that the department has statutory standing to appear in the Probate Court under § 17b-261b (b) in response to any application for spousal support under § 45a-655, and may advocate for the issuance of a spousal support order that reflects the potential for the future issuance of Medicaid benefits, consistent with the 'circumstances of the case. . . . Accordingly, insofar as the department failed to take advantage of its opportunity to seek appropriate relief in the Probate Court before an application was filed, we conclude that the Probate Court's spousal order . . . was binding on the department.

Id. at 326.

In this case, the Probate Court did not notify the Department about the hearing on the Appellant's application for spousal support, nor did the Probate Court inform the Department of its decrees. The Department, therefore, was deprived of the opportunity to appear in Probate Court to assert its position prior to the issuance of the decrees. Accordingly, the Department cannot be bound by the Probate Court spousal support order in this case.

DECISION

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


Almelinda McLeod
Hearing Officer

CC: Yecenia Acosta, SSOM, Stamford

Esq,

Dan Butler, Principal Attorney, DSS, OLCRAH, CO, Hartford, CT 06105
Noel Lord, Fair Hearing Liaison, DSS Stamford
Michael Briggs, Fair Hearing Liaison, DSS 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.