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

[REDACTED], 2019
SIGNATURE CONFIRMATION

Client ID # [REDACTED]
Request # [REDACTED]

NOTICE OF DECISION

PARTY

[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2019, the Department of Social Services (the "Department") sent [REDACTED] (the "Appellant") a notice of action denying her application for Long Term Care Medicaid benefits.

On [REDACTED] 2019, the Appellant requested an administrative hearing to contest the Department's decision to deny her application for Medicaid assistance.

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

On [REDACTED] 2019, the Appellant requested to reschedule the administrative hearing.

On [REDACTED] 2019, the OLCRAH issued a notice scheduling the administrative hearing for [REDACTED], 2019.

On [REDACTED] 2019, 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], the Appellant
Tasha Jackson, Ombudsman
[REDACTED], Appellant's authorized representative ("AREP")
[REDACTED], Appellant's granddaughter

Attorney [redacted] Facility's representative
Lorraine Peck, Director of Finance [redacted]. Ctr
Shaun Powell, Chief Financial Officer [redacted]. Ctr
Marissa Luciani, Eligibility Services Specialist, Department's Representative
Roberta Gould, Hearing Officer

At the Department's request, the hearing record remained open for the submission of additional evidence. On [redacted], 2019, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny the Appellant's application for Long Term Care Medicaid assistance due to failure to provide information needed to establish eligibility was correct.

FINDINGS OF FACT

1. In May of [redacted], the Appellant and [redacted] married. (Exhibit 10: Appeal documents with case summary and Appellant's testimony)

2. On [redacted], the Appellant and her spouse appeared in [redacted] court to file for a divorce. (Exhibit 10 and Exhibit 11: Documentation and Docket sheet from office of the [redacted], [redacted] and Docket sheet)

3. A divorce judgement was not filed for the Appellant and her spouse because the Appellant's spouse did not pay his attorney. Therefore, a dissolution of their marriage did not occur. (Exhibit 10 and Exhibit 11)

4. On [redacted], the Appellant signed a Waiver and Release of Right of Election and Rights as Surviving Spouse in the State of New York. (Hearing summary)

5. On [redacted] 2019, the Appellant was admitted to [redacted] Center. (Hearing summary)

6. On [redacted], 2019, the Appellant applied for Long Term Care Medicaid assistance for herself. (Exhibit 1: W-1LTC Application Form and Hearing summary)

7. On her application for assistance the Appellant indicated that her marital status is separated. (Exhibit 1 and Hearing summary)

8. On [redacted], 2019, the Department sent a *W-1348 Verification We Need* form to the Appellant's AREP requesting documentation of the Appellant's assets, income, and proof of her spouse's income and identification. The due date for this information was [redacted], 2019. (Exhibit 2: W-1348 form dated [redacted] and Hearing summary)
9. On [redacted], 2019, the Department contacted the Appellant's AREP to inquire

about her marital status. The AREP informed the Department that the Appellant does not have a legal separation from her spouse, but has maintained separate households for 40 years. (Hearing summary)

10. On , 2019, the Department received communication that the Appellant's AREP had spoken with the community spouse, who refuses to provide any financial information to the Department. (Exhibit 3: Email dated and Hearing summary)

11. On 2019, the Department's Office of Legal Counsel indicated that the Appellant cannot assign her rights in the State of Connecticut because assignment is allowed only if the institutionalized individual cannot locate the community spouse or the community spouse is unable to provide information regarding his or her own assets. (Exhibit 4: Email dated and Hearing summary)

12. On 2019, the Department sent the Appellant and her AREP a *W-1348 Verification We Need* form requesting tax returns from 2014 to the present for herself and her spouse as well as verification of the spouse's date of birth and social security number. The due date for this information was 2019. (Exhibit 5: W-1348 form dated and Hearing summary)

13. On 2019, the Department sent the Appellant a notice of denial for HUSKY C Long Term Care Medicaid assistance for failure to provide the required proofs by the due date. (Exhibit 6: Notice of action dated and Hearing summary)

14. 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 , 2019. Therefore, this decision is not due later than 2019. However, the close of the hearing record was further extended through , 2019, to allow for the submission of additional evidence by the Appellant. Because the delay in the close of the hearing record arose from the Appellant's request, this final decision was not due until 2019, and is therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2 and § 17b-260 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. The Department's Uniform Policy Manual ("UPM") is the equivalent of a state regulation and, as such, carries the force of law. (*Bucchere v. Rowe, 43 Connecticut Supp. 175, 178 (1994) (citing Connecticut General Statutes § 17b-10; Richard v. Commissioner of Income Maintenance, 214 Connecticut 601, 573 A.2d 712 (1990)).*

3. UPM § 4000.01 defines Community Spouse ("CS") 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 the community or long-term care facility or who receives home and community based services (CBS) under a Medicaid waiver."

   The Department correctly determined that the Appellant's spouse is the CS.

4. UPM § 4000.01 defines Institutionalized Spouse ("IS") as "a spouse who resides in a medical facility or long-term care facility, or who received 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."

   The Department correctly determined that the Appellant is the IS.

5. UPM § 4000.01 defines "MCCA (Medicare Catastrophic Coverage Act of 1988) 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 Department correctly determined the Appellant and the CS as MCCA Spouses.

6. Connecticut General Statute § 17b-261(c) provides in part that "for the purposes of determining eligibility for the Medicaid program, an available asset is one that is actually available to the applicant or one that the applicant has the legal right, authority or power to obtain or to have applied for the applicant's general or medical support."

7. UPM § 4000.01 defines "asset limit as 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. 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. A counted asset is an asset which is not excluded and either available or deemed available to the assistance unit."

   The Department correctly determined that assets owned by the CS are available assets.

8. UPM § 4000.01 defines Assessment of Spousal Assets as "a determination of the total value of all-non-excluded available assets owned by both MCCA spouses which is done upon the request of an institutionalized spouse or a community spouse and is used to calculate the Community Spouse Protected Amount.

UPM § 4000.01 defines Community Spouse Protected Amount ("CSPA") as "the amount of the total available non-excluded 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."

UPM § 4000.01 defines spousal share as "one-half of the total value of assets which results from the assessment of spousal assets."

UPM § 1507 provides for the chapter on assessment of spousal assets and the special processing requirements associated with the evaluation of assets of an institutionalized spouse and community spouse.

UPM § 1507.05(A)(1) provides that "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 if made."

UPM § 1507(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."

UPM § 1507.05(A)(2)(b) provides that "the beginning date of a continuous period of institutionalization is 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."

UPM § 1507.05(A)(4) provides that "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."

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."

The Department correctly determined that a spousal assessment is a condition of eligibility under Medicaid for Long Term Care.

9. Uniform Policy Manual ("UPM") § 1010.05(A)(1) provides that "the assistance unit must supply the Department in an accurate and timely manner as defined by the Department, all pertinent information and verification which the Department requires to determine eligibility and calculate the amount of benefits."

10. UPM § 1015.10(A) provides that "the Department must inform the assistance unit regarding the eligibility requirements of the programs administered by the Department, and regarding the unit's rights and responsibilities."

The Department correctly sent the Appellant's AREP W-1348 requests for documentation of her spouse's income and identification needed to establish eligibility for Long Term Care Medicaid assistance.

11.UPM § 1505.35(D)(2) provides that

> The Department determines eligibility within the standard of promptness for the AFDC, AABD, and MA programs except when verification needed to establish eligibility is delayed and one of the following is true:
>
> a. the client has good cause for not submitting verification by the deadline; or
>
> b. the client has been granted a 10 day extension to submit verification which has not elapsed.; or
>
> c. the Department has assumed responsibility for obtaining verification and has had less than 10 days; or
>
> d. the Department has assumed responsibility for obtaining verification and is waiting for material from a third party.

6. UPM § 1505.40(B)(5)(a) provides that "for delays due to insufficient verification, regardless of the standard of promptness, no eligibility determination is made when there is insufficient verification to determine eligibility when the following has occurred:

   (1) the Department has requested verification; and

   (2) at least one item of verification has been submitted by the assistance unit within a time period designated by the Department but more is needed."

7. UPM § 1505.40(B)(5)(b) provides that "additional 10 day extensions for submitting verification shall be granted as long as after each subsequent request for verification at least one item of verification is submitted by the assistance unit within each extension period."

The Department correctly delayed an eligibility determination and provided the Appellant with a 10 day extension for her Medicaid application when it received some of the requested verifications as well as communication from the Appellant's AREP that she had spoken with the community spouse regarding the Department's request for information.

8. UPM § P-1505.40(9) provides that "the Department should consider making a follow-up contact to check on the applicant's progress and offer assistance if any of the following conditions exist:

    - the applicant has expressed difficulty in obtaining verification and has indicated that the information may be provided late; or
    - the applicant is having difficulty complying because of age or disability; or
    - the missing information is reasonably available through some other means."

The Appellant's AREP did show that she was having difficulty obtaining the requested verification within the required time frame because she was unable to acquire information from the Appellant's spouse, who refused to provide any financial information to the Department.

The Department correctly assisted the Appellant in obtaining documentation of her marital status so that a determination of eligibility could be made for her application for Long Term Care Medicaid assistance.

9. Connecticut General Statutes § 17b-285 provides for assignment of spousal support of an institutionalized person or person in need of institutional care:

    > Not withstanding any provision of the general statutes, an institutionalized person or persons in need of institutional care who applies for Medicaid may assign to the Commissioner of Social Services the right of support derived from the assets of the Community spouse of such person but only if (1) the assets of the institutionalized person or person in need of institutional care do not exceed the Medicaid program asset limit; and (2) the institutionalized person or person in need of institutional care cannot locate the community spouse; or the community spouse is unable to provide information regarding his or her own assets. If such assignment is made or if the institutionalized person or person in need of institutional care lacks the ability to execute such an assignment due to physical or mental impairment, the commissioner may seek recovery of any medical assistance paid on behalf of the institutionalized person or person in need of institutional care up to the amount of the community spouse's assets that are in excess of the community spouse protected amount as of the initial month of Medicaid eligibility.

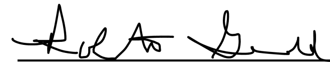
The Department correctly determined that the Appellant is still married and cannot assign her spousal support rights under Connecticut State law because

assignment is allowed only when the institutionalized person cannot locate the community spouse or the community spouse is unable to provide information regarding his own assets. The Appellant's community spouse is aware of the Department's request for his financial information, but refuses to provide any financial information to the Department.

On ██████████, 2019, the Department correctly denied the Appellant's application for failure to submit information needed to establish eligibility because the Appellant's community spouse refused to provide his financial information to the Department in order to conduct a spousal assessment, which is a condition of eligibility under Medicaid for Long Term Care and is required by State law.

DECISION

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



Roberta Gould
Hearing Officer

Pc Alejandro Arbelaez, Social Services Operations Manager, DSS Torrington
Marissa Luciani, Eligibility Services Specialist, DSS Bridgeport
██████████████, AREP

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 Legal Counsel, Regulations and Administrative Hearings, 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. 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 his/her 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.