

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

[REDACTED] 2020  
**SIGNATURE CONFIRMATION**

Client ID # [REDACTED]  
Request # [REDACTED]

**NOTICE OF DECISION**

**PARTY**

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

**PROCEDURAL BACKGROUND**

On [REDACTED] 2019, the Department of Social Services (the "Department") sent [REDACTED] (the "Appellant") a Notice of Action ("NOA") granting his application for Long Term Care ("LTC") Medicaid assistance effective [REDACTED].

On [REDACTED] 2019, the Appellant's Attorney, [REDACTED], requested an administrative hearing to contest the Department's decision to grant LTC assistance effective [REDACTED].

On [REDACTED] 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [REDACTED] [REDACTED] 2020.

On [REDACTED] 2020, Attorney [REDACTED] requested to reschedule the administrative hearing.

On [REDACTED] 2020, the OLCRAH issued a notice scheduling the administrative hearing for [REDACTED] 2020.

On [REDACTED] 2020, 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 spouse
- [REDACTED], Appellant's stepdaughter
- Attorney [REDACTED], Appellant's authorized representative ("AREP")

██████████, Accounts Manager, ██████████  
Abdaleh Mohamoud, Eligibility Services worker, Department's Representative  
Roberta Gould, Hearing Officer

### **STATEMENTS OF THE ISSUE**

The issue is whether the Department's decision to deny Medicaid benefits for the period of ██████████, is correct.

### **FINDINGS OF FACT**

1. On ██████████ 2016, the Appellant began receiving long-term care services at home. This was the Appellant's Date of Institutionalization ("DOI"). (Hearing summary)
2. On ██████████ 2017, the Appellant applied for CT Home Care Program for Elders Medicaid Waiver. (Exhibit 3: Case notes and Hearing summary)
3. The Appellant was married to ██████████, the Community Spouse. (Hearing record)
4. On ██████████ 2017, the Appellant and his spouse had a total of \$444,800.03 in countable assets. (Exhibit 6: Spousal assessment worksheet and Hearing summary)
5. The spousal share of the assets was \$222,400.01 of the DOI (1/2 of the couple's combined non-exempt assets). (Exhibit 6: Spousal assessment worksheet and Hearing summary)
6. The maximum Community Spouse Protected Amount ("CSPA") was \$120,900.00 as of the DOI. (Hearing summary)
7. Throughout the Appellant's institutionalization, the Community Spouse has been independent with activities of daily living (ADL's"), does not possess medical needs which threaten her ability to remain in the community and was not responsible for the care of a disabled child, sibling or other family member and did not have any other exceptional circumstances. (██████████ testimony)
8. The Appellant reported ownership of non-home property located at ██████████ ██████████, as well other non-home property located in ██████████ ██████████ that could not be located. The Appellant's AREP listed the property located at ██████████ as inaccessible. (Exhibit 6 and Hearing summary)
9. The Department's Resource Division determined that property located at ██████████ ██████████ had a value of \$33,000.00 and the property located in ██████████ had a value of \$0.00. The value of property located at ██████████ ██████████ was included in the assessment of assets, but

was initially listed as being inaccessible. (Exhibit 6, Exhibit C: First schedule of asset values for DSS and Department's testimony)

10. On [REDACTED], 2017, the Department sent a *W-1348 Verification We Need* form to the Appellant's stepdaughter, [REDACTED], requesting verification of vital records, medical insurance information, bank account information, property deeds or other documents for properties in [REDACTED] (if any), a deed for the Appellant's primary residence in [REDACTED] CT, and a quit claim deed for property sold to [REDACTED] for \$0.00 in [REDACTED] 2016. (Exhibit 4: W-1348's, Exhibit D: W-1348 form dated [REDACTED] and Hearing summary)
11. On [REDACTED], 2017, the Appellant retained Attorney [REDACTED] to complete his application for LTC Medicaid assistance. (Attorney's statement)
12. On [REDACTED], 2017, some of the requested information was received. A new *W-1348 Verification We Need* form was sent to [REDACTED], requesting outstanding verifications. (Exhibit E: W-1348 dated [REDACTED])
13. On [REDACTED], 2017, the Department received a *W-298 Authorization for Disclosure of Information* form signed by Attorney [REDACTED] [REDACTED], indicating that all correspondence should go through him. (Exhibit: 3)
14. From [REDACTED] 2017, through [REDACTED] 2019, the Department sent twenty-one *W-1348 Verification We Need* forms to Attorney [REDACTED] requesting outstanding documentations. None of these forms included any request for a listing agreement of the Appellant's property located at [REDACTED]. (Exhibit 3, Exhibits F – Z: W-1348's and Attorney's statement)
15. On [REDACTED] 2018, the Department's Resource Division determined that the Appellant sold property located at [REDACTED] to [REDACTED] [REDACTED] for \$1.00, that this property had a fair market value of \$138,200.00 at the time of transfer, and that this transfer would impose a penalty on the Appellant. (Exhibit 3)
16. On [REDACTED], 2018, the Appellant moved from his home to [REDACTED] [REDACTED] in [REDACTED] CT. (Attorney's statement)
17. On [REDACTED], 2019, the Appellant's AREP, Attorney [REDACTED], reported to the Department that property located at [REDACTED] had been listed for sale. (Exhibit 3)
18. On [REDACTED] 2019, the Department sent a *W-1348 Verification We Need* form to Attorney [REDACTED] requesting verification of when the property located as [REDACTED] [REDACTED] was listed for sale. (Exhibit AA: W-1348 dated [REDACTED] and Exhibit 3)

19. On [REDACTED] 2019, the Department received a copy of the Exclusive Brokerage listing for property located [REDACTED]. The Brokerage Listing agreement ran from [REDACTED] 2019, through [REDACTED] 2020. (Exhibit HH: Brokerage agreement, Exhibit 3 and Hearing summary)
20. On [REDACTED] 2019, the Department sent Attorney [REDACTED] a *W-1348 Verification We Need* form requested outstanding documentations and indicating that the property located at [REDACTED] would be excluded from the spousal assessment as of [REDACTED] 2019, the effective date of the brokerage agreement. (Exhibit BB: W-1348 dated [REDACTED], Exhibit 3 and Hearing summary)
21. On [REDACTED] 2019, the Department issued a *Notice of Assessment of Spousal Assets* to the Appellant's stepdaughter, [REDACTED]. (Exhibit B: Notice dated [REDACTED])
22. On [REDACTED] 2019, the Department received correspondence from the Appellant's AREP, Attorney [REDACTED], indicating that the Appellant and spouse knew that the property located at [REDACTED] would need to be listed for sale, but was not listed until such a request was made. (Exhibit 3)
23. On [REDACTED] 2019, the Department sent Attorney [REDACTED] a *W-1348 Verification We Need* form requesting outstanding documentations. (Exhibit CC: W-1348 dated [REDACTED])
24. On [REDACTED] 2019, the Department sent Attorney [REDACTED] a *W-1348 Verification We Need* form requesting outstanding documentations. (Exhibit DD: W-1348 dated [REDACTED])
25. On [REDACTED] 2019, the Department sent Attorney [REDACTED] a *W-1348 Verification We Need* form requesting outstanding documentations. (Exhibit EE: W-1348 dated [REDACTED])
26. On [REDACTED], 2019, the Department sent Attorney [REDACTED] a *W-1348 Verification We Need* form requesting outstanding documentations. (Exhibit EE: W-1348 dated [REDACTED])
27. On [REDACTED], 2019, the Department sent Attorney [REDACTED] a *W-1348 Verification We Need* form requesting outstanding documentations. (Exhibit FF: W-1348 dated [REDACTED])
28. On [REDACTED], 2019, the Department sent Attorney [REDACTED] a *W-1348 Verification We Need* form requesting outstanding documentations and indicating that based on the values recently provided and excluding the [REDACTED] property, the Appellant was asset eligible as of [REDACTED] 2019. (Exhibit GG: W-1348 dated [REDACTED])
29. On [REDACTED] 2019, the Department sent Attorney [REDACTED] a *Notice of*

*Approval for Long Term Care Medicaid* indicating that the Appellant was eligible for LTC Medicaid as of [REDACTED] 2019. (Exhibit II: Notice of approval dated [REDACTED] Exhibit 5: Notice of action dated [REDACTED] and Exhibit 3)

30. The Appellant's AREP is seeking Medicaid eligibility effective [REDACTED] 2018. (Attorney [REDACTED] testimony)
31. As of [REDACTED] 2018, the maximum Community Spouse Protected Amount ("CSPA") was \$123,600.00. (Hearing record)
32. 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's representative requested an administrative hearing on [REDACTED] 2019. Therefore, this decision is due not later than [REDACTED] 2020.

### **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. "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 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.
4. 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."

**The Department correctly determined that on [REDACTED] 2016, the Appellant and his wife were MCCA Spouses as defined by the Medicaid program; the Appellant was an Institutionalized Spouse ("IS") and his spouse was a Community Spouse ("CS").**

5. 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).

**The Department correctly conducted an assessment of the Appellant and Community Spouse's combined assets from the date of institutionalization.**

6. UPM § P-1507.10(4) provides for the assessment process and that the Department must "complete the evaluation of the assessment within 45 days of the receipt of all the required documentation."

**On [REDACTED] 2019, the Department correctly completed the evaluation of the assessment of assets using the assets which existed as of the date of the beginning of the initial continuous period of institutionalization, computing the total value of all non-excluded available assets owned by both spouses within 45 days of the receipt of all required documentation.**

7. UPM § 1570.25(D)(3) provides for Duties of Fair Hearing Official's:

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 the 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.

**The Community Spouse did not have any exceptional circumstances.**

8. UPM § 4025.67(A) provides 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).

1. As described in section 4025.67 D., the CS' assets are deemed to the IS to the extent that such assets exceed the Community Spouse Protected Amount.
2. Any assets deemed from the CS are added to the assets of the IS and the total assets are compared to the Medicaid asset limit for the IS (the Medicaid asset limit for one adult).

9. UPM § 4005.10(A)(2) provides that the asset limit for AABD and MAABD – Categorically and Medically Needy coverage groups is \$1,600 for a needs group of one.

**The Department correctly determined that the maximum CSPA at DOI was \$120,900.00 (\$123,600.00 as of [REDACTED] 2018) and that, after deeming the Community Spouse's assets in excess of the CSPA, the Appellant exceeded the asset limit of \$1,600.00.**

10. 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.”

11. UPM § 4015.05 provides for the responsibilities of the assistance unit with regard to inaccessible assets:

A. Effect on Eligibility

1. Subject to the conditions described in this section, equity in an asset which is inaccessible to the assistance unit is not counted as long as the asset remains inaccessible.
2. In the Food Stamp program, if the asset is inaccessible for the entire certification period, the asset is excluded in the determination of eligibility.

B. Responsibilities of Assistance Unit

1. The burden is on the assistance unit to demonstrate that an asset is inaccessible.



2. For all programs except Food Stamps, in order for an asset to be considered inaccessible, the assistance unit must cooperate with the Department, as directed, in attempting to gain access to the asset.
  - a. If the unit does not cooperate as described above, the asset is considered available to the unit, and the unit's equity in the asset is counted toward the asset limit.
  - b. If the equity in the asset is unknown, the non-cooperative adult member of the unit is ineligible for assistance.

(Cross reference: Section 3525, Procedural Eligibility Requirements.)

12. UPM § 4020.10(J) provides that:

Non-home property which would render the assistance unit ineligible is excluded for as long as the assistance unit is making a bona fide effort to sell the property and;

1. Agrees in writing to dispose of the property;
2. Immediately lists the property for sale; and
3. Does not refuse any offer which approximates fair market value; and
4. In AABD, grants the Department a security mortgage on the property pending its sale.

13. UPM § 4030.65 provides for the treatment of Non-home Property in the Long-Term Care Medicaid programs:

- a. All other non-home property is excluded for as long as the individual is making a bona fide effort to sell it.
- b. The exclusion period begins with the first month in which all of the following conditions are met:
  - (1) the assistance unit is otherwise eligible for assistance;
  - (2) the assistance unit owns the property;
  - (3) the property is available to the assistance unit;
  - (4) the assistance unit is making a bona-fide effort to sell the property.

The Department correctly determined that the Appellant had the legal right, authority or power to obtain or to have it applied for, his general or medical support, the property located at [REDACTED]; that it should be counted in the assessment of assets for LTC Medicaid; and that it did not become excluded from consideration of the Appellant and Community Spouse's combined assets until [REDACTED] 2019, the first month in which the Appellant was making a bona fide effort to sell it.


On [REDACTED] 2019, the Department correctly determined that the Appellant was eligible for Long Term Care ("LTC") Medicaid assistance effective [REDACTED] 2019.

### DISCUSSION

After reviewing the evidence and testimony presented at this hearing, I find that the Department's determination of eligibility effective [REDACTED] 2019, was correct. The Appellant reported ownership of non-home property located at [REDACTED] when he initially applied for assistance. Although the Appellant listed this property as inaccessible, the Appellant's attorney indicated that he and his spouse knew that the property located at [REDACTED] would need to be listed for sale. The Appellant retained Attorney [REDACTED] to complete his application for LTC Medicaid assistance in [REDACTED] 2017, but the property was not listed for sale until [REDACTED] 2019. Departmental policy clearly states that the burden is on the assistance unit to demonstrate that an asset is inaccessible and that non-home property is excluded for as long as the individual is making a bona fide effort to sell it. It is evident that no eligibility exists for LTC Medicaid until [REDACTED] 2019, when the property was listed for sale and that the Department acted correctly when it denied assistance for the period of [REDACTED].

### DECISION

The Appellant's appeal is DENIED.

  
\_\_\_\_\_  
Roberta Gould  
Hearing Officer

Pc: Brian Sexton, Social Services Operations Manager, DSS Middletown  
Attorney [REDACTED], AREP  
Abdalah Mohamoud, Eligibility Services Worker, DSS Hartford

### **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, 25 Sigourney Street, Hartford, CT 06106-5033.

### **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, 25 Sigourney Street, Hartford, CT06106. 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.