

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

██████████ 2020  
Signature Confirmation

Case ID # ██████████  
Client ID ██████████  
Request ID # 150954

**NOTICE OF DECISION**

**PARTY**

██████████ ██████████ ██████████	██████████ ██████████ ██████████
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**PROCEDURAL BACKGROUND**

On ██████████ 2019, the Department of Social Services (the "Department") sent ██████████ (the "Appellant"), a Notice of Action ("NOA") granting Medicaid benefits effective ██████████ 2019, and denying Medicaid benefits under Long Term care Facility Residents for ██████████ 2019.

On ██████████ 2020, the Appellant's Attorney requested an administrative hearing to contest the effective date of Medicaid benefits as determined by the Department.

On ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████ 2020.

On ██████████ 2020, the Appellant's attorney requested a reschedule.

On [REDACTED], 2020, OLCRAH issued a Notice rescheduling the administrative hearing for [REDACTED], 2020.

On [REDACTED], 2020, 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 participated in the hearing:

[REDACTED] Appellant's daughter and Executive of the Estate  
 [REDACTED] Appellant's Attorney  
 [REDACTED] Appellant's Attorney  
 Julie Risko, Department's Representative  
 Swati Sehgal, Hearing Officer

The Appellant' is institutionalized and therefore was not present at the administrative hearing.

The Hearing record remained open at the request of the Appellant's attorney for the submission of briefs. Briefs were submitted to the Department. The Department provided the information submitted by the Appellant's Attorney and the record closed on [REDACTED] 2020.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department's decision to deny Medicaid benefits for [REDACTED] 2019 for exceeding the asset limit, was correct.

### **FINDINGS OF FACT**

1. On [REDACTED] 2018, the Appellant was admitted to [REDACTED]. This was the Appellant's Date of Institutionalization ("DOI"). (Exhibit 2: Spousal Assessment, Hearing Summary)
2. The Appellant was married to the Community Spouse ("CS"). (Hearing Record)
3. On [REDACTED], 2018, the Appellant and his spouse had a total of \$296,859.51 in countable assets. The assets consisted of two [REDACTED] accounts, two accounts through [REDACTED] Bank, [REDACTED] Bank accounts, two accounts with [REDACTED], and US Savings Bonds. (Exhibit. 2: Spousal Assessment)
4. On [REDACTED] 2019, the Department received an application for Long Term Care Assistance ("LTSS") Medicaid for the Applicant. The application listed assets including two [REDACTED] Bank accounts, two [REDACTED] Bank accounts, [REDACTED] Bank accounts, two [REDACTED] Accounts, and US Savings Bonds. (Exhibit 1: Long Term Care Application, Hearing Summary)

5. The Department determined that the total assets owned by the couple as of the DOI were \$296,859.51. The Department also determined that the Community Spouse Protected Amount (CSPA) for the Community Spouse ("CS") is \$123,600.00 and that the Appellant's Medicaid eligibility may not begin until the total spousal assets are reduced to \$125,200.00 or less (\$1600.00 for the Applicant plus \$123,600.00 for the CS). (Exhibit 2: Spousal Assessment, Hearing Summary)
6. The Department continued to work with the Appellant's Attorney to complete the application for assistance. The assets were reduced to \$131,806.10 in [REDACTED] 2019. (Exhibit 2: Spousal Assessment)
7. On [REDACTED] 2019, the CS closed [REDACTED] bank account ending with [REDACTED] with a closing balance of \$48,747.58 and made a withdrawal from [REDACTED] bank account ending with [REDACTED] for \$11,252.42. (Exhibit 11: Copy of Bank Check from [REDACTED] Bank, Exhibit 12: Copy of Bank Check from [REDACTED] Bank)
8. On [REDACTED] 2019, the above-stated funds in a total of \$60,000.00 (\$48,747.58 + \$11,252.42) were placed into [REDACTED] Client Fund held in escrow to pay towards the [REDACTED]. The Appellant's Attorney was negotiating the unpaid balance at [REDACTED] and kept the funds in escrow until the resolution was reached. (Exhibit 10: Letter from Attorney [REDACTED], Hearing Summary, Attorney [REDACTED] Testimony)
9. The Appellant or his attorney did not provide any signed agreement between the Appellant, his spouse, and their attorney regarding the escrow account and funds not being available to the Appellant or his spouse. (Hearing Record)
10. On [REDACTED] 2019, the \$60,000.00 was paid to the [REDACTED]. (Hearing Summary)
11. The Department determined that after the \$60,000.00 payment to [REDACTED] total assets were reduced to a retainable asset amount of \$125,200.00. (Hearing Record)
12. The Department treated the \$60,000.00 placed in an escrow account as an accessible asset. (Department's Testimony)
13. The Department failed to provide any evidence as to how it was determined accessible assets. (Hearing Record)
14. The Department failed to contact its Legal Department to receive advice on if the \$60,000.00 in the escrow fund was an accessible asset to the Appellant or his spouse. (Hearing Record)
15. On [REDACTED] 2019, the Department denied Medicaid under Husky C-Long Term Care Facility Residents for the excess asset from [REDACTED] 2019, through [REDACTED] 2019, and granted effective [REDACTED] 2019. (Exhibit 13: Notice of Action, [REDACTED] 19, Hearing Summary)

16. On [REDACTED], 2019, the Department mailed a Notice of Action to the Appellant informing him that Medicaid under Husky C- Long Term Care Facility Residents was denied due to excess assets from [REDACTED] 2019, through [REDACTED] r 2019 and granted effective [REDACTED] 2019. (Exhibit 13)
17. The issuance of this decision is timely under section 17b-61(a) of Connecticut General Statutes, 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] 2020. This decision, therefore, was due no later than [REDACTED] 2020. The hearing, however, which was originally scheduled for [REDACTED], 2020, was rescheduled for [REDACTED] 2020, at the request of the Appellant's Attorney, which caused a 14-day delay. Because this 14-day delay resulted from the Appellant's request, this decision was not due until [REDACTED], 2020. (Hearing Record)

### **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") § 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.
3. 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.
4. 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 her spouse was a Community Spouse (CS).
5. 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.
6. Section 17b-261(c) of the Connecticut General Statutes provides in part that to determine 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 § 4005.05 (A) provides that the Department counts the assistance unit's equity in an asset toward the asset limit if the asset is not excluded by state or federal law and is either available to the unit or deemed available to the unit.
8. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
9. There is not enough evidence for this hearing officer to determine if the Department was correct to deny Medicaid under Husky C- Long Term Care from [REDACTED] 2019 through [REDACTED] 2019 due to excess assets.

### **DISCUSSION**

After reviewing the evidence and testimony presented, I find that sufficient information was not provided for this hearing officer to establish that funds in question were accessible. The Department's representative claimed that the Department's Public Assistance Consultant was contacted and the Department's representative was informed to treat those funds as accessible; however no evidence was provided.

### **DECISION**

The Appellant's appeal is **REMANDED** to the Department.

### **ORDER**

1. The Department shall seek guidance from its Legal Department to determine if the \$60,000.00 in the escrow account was accessible. Based on the guidance provided from the Legal Department the Department will determine eligibility from [REDACTED] 2019 through [REDACTED] 2019.
2. The Department shall issue a new Notice informing the Appellant of the outcome of the reassessment providing the Appellant an opportunity to request for a hearing if he disagrees with the Department's new action.
3. Compliance with this order should be forwarded to undersigned no later than [REDACTED], 2020.

  
Swati Sehgal  
Hearing Officer

cc: Musa Mohamud, Operations Manager, Hartford Regional Office  
Judy Williams, Operations Manager, Hartford Regional office  
Jessica Carroll, Operations Manager, Hartford Regional office  
Julie Risko, Eligibility Services Worker, Waterbury Regional Office

### **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 060105-3725.

### **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 06105-3725. 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.