

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

Client ID # ██████████
Case # ██████████
Request # 157783

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████, 2020, the Department of Social Services (the “Department”) sent ██████████ ██████████ (the “Applicant”), and his daughter ██████████ as his former Power of Attorney and current Executrix of Estate (the “Appellant”) a Notice of Action (“NOA”) upholding its previous determination denying Medicaid benefits for ██████████ 2019, through ██████████ 2019 for exceeding the asset limit.

On ██████████ 2020, the Appellant 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 ██████████ 2020, OLCRAH issued a Notice rescheduling the administrative hearing for ██████████ 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 by telephone. The following individuals participated in the hearing:

[REDACTED], Appellant, Applicant's Executrix of Estate
 [REDACTED], Appellant's Attorney
 [REDACTED], Applicant's Attorney, Appellant's witness
 [REDACTED], Appellant's witness
 Julie Risko, Department's Representative
 Marci Ostroski, Hearing Officer

The Applicant, [REDACTED], and his spouse are deceased and were not present at the administrative hearing.

STATEMENT OF THE ISSUE

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

FINDINGS OF FACT

1. On [REDACTED] 2018, the Applicant was admitted to [REDACTED], a skilled nursing facility ("SNF"). This was the Applicant's Date of Institutionalization ("DOI"). (Ex. A: Long Term Care Application; statement of the Appellant's Attorney)
2. The Applicant, the Institutionalized Spouse ("IS"), was married to [REDACTED], also referred to as the Community Spouse ("CS"). (Ex. A: Long Term Care Application; Hearing Record)
3. On the DOI, [REDACTED] 2018, the Applicant and his spouse had a total of \$296,859.51 in countable assets. The assets consisted of two [REDACTED] accounts, two [REDACTED] accounts, [REDACTED] accounts, two accounts with [REDACTED], and US Savings bonds. In addition to the countable assets, the Applicant and his spouse owned a home property located at [REDACTED], CT, two funeral contracts through [REDACTED], and a life insurance policy through [REDACTED] (Ex. B: Spousal Assessment)
4. On [REDACTED] 2019, the Department received from the CS, an application for Long Term Care Services and Supports ("LTSS") Medicaid for the Applicant. (Ex. 1: Long Term Care Application, Hearing Summary)
5. In [REDACTED] of 2019, [REDACTED] contacted the Applicant's attorney to notify him that the CS had not paid the Applicant's SNF bill in six months. (Applicant's Attorney's testimony)

6. The Applicant's attorney met with the CS regarding the unpaid SNF bill. She reported to him that the money was owed to ██████████ for the Applicant's medical bill however she had been ill and unable to manage the bill. (Applicant's Attorney's testimony)
7. On ██████████, 2019, the CS withdrew \$48,747.58 from one of their ██████████ accounts and \$11,252.42 from one of their ██████████ accounts. The checks were given to the Applicant's attorney so he could negotiate the Applicant's rate with ██████████. The Applicant's Attorney deposited the funds totaling \$60,000 into a client funds escrow account. (Ex. E: ██████████ cashier's check; Ex. F: ██████████ official check; Applicant's Attorney's testimony)
8. There was not a written agreement in place regarding the escrowed funds but the CS, the Applicant's Attorney, the Appellant, and ██████████ were all in agreement that they understood the \$60,000 in funds would not be returned to the CS and would be held in escrow to pay the Applicant's SNF bill to ██████████. (Applicant's Attorney's testimony; Ex. 9: Hearing Memorandum; Hearing Record)
9. The Applicant's Attorney initiated negotiations with ██████████ to reduce the rate of the Applicant's stay to the Medicaid rate rather than the private rate and to accept the \$60,000.00 payment in place of the actual balance due. (Applicant's Attorney's testimony)
10. As of ██████████ 2019, the Department calculated the Applicant's and CS's countable assets as totaling \$167,066.94 based on the \$60,000 in escrow, \$144.22, and \$22,662.72 in ██████████, \$41,110.88 in ██████████, and \$43,149.12 in US savings bonds. (Ex. B: Spousal Assessment Worksheet)
11. As of ██████████ 2019, the Department calculated the Applicant's and CS's countable assets as totaling \$170,987.79 based on the \$60,000 in escrow, \$163.29, and \$26,282.17 in ██████████, \$41,393.21 in ██████████, and \$43,149.12 in US savings bonds. (Ex. B: Spousal Assessment Worksheet)
12. As of ██████████, 2019, the Department calculated the Applicant's and CS's countable assets as totaling \$216,068.33 based on the \$60,000 in escrow, \$242.35, and \$71,302.22 in ██████████, \$41,374.63 in ██████████, and \$43,149.12 in US savings bonds. (Ex. B: Spousal Assessment Worksheet)
13. As of ██████████, 2019, the Department calculated the Applicant's and CS's countable assets as totaling \$179,571.69 based on the \$60,000 in escrow, \$321.43, and \$78,525.41 in ██████████, and \$41,591.74 in ██████████. (Ex. B: Spousal Assessment Worksheet)
14. In ██████████ 2019, the Applicant's Attorney sent the \$60,000 from the client escrow account to ██████████ to apply toward the Applicant's outstanding bill. ██████████ accepted the payment. (Applicant's Attorney's testimony)

15. The Appellant is not disputing the Department's calculation of the Applicant's available assets other than the \$60,000 escrowed amount. (Statement from Appellant's Attorney)
16. As of [REDACTED] 2019, the Department calculated the Applicant's and CS's countable assets as totaling \$121,133.48 based on \$400.50 and \$78,525.41 in [REDACTED], and \$42,207.57 in [REDACTED] (Ex. B: Spousal Assessment Worksheet)
17. The Department determined that the total assets owned by the couple as of the DOI were \$296,859.51, that the Community Spouse Protected Amount (CSPA) for the Community Spouse ("CS") is \$123,600.00, and that the Applicant'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). (Ex. B: Spousal Assessment, Hearing Summary)
18. The Appellant is seeking Medicaid coverage effective [REDACTED], 2019. (Statement from Appellant's Attorney)
19. On [REDACTED], 2019, the Department granted the Applicant's application for HUSKY C Medicaid for Long Term Care effective [REDACTED], 2019, and denied the months of [REDACTED] 2019 through [REDACTED] 2019. (Ex. G: Notice of Action, [REDACTED]/19)
20. On [REDACTED], 2019, the Department issued a Notice of Action to the Applicant which stated that the HUSKY C Medicaid for Long Term Care was granted effective [REDACTED] 2019. The Notice further stated that [REDACTED] 2019 through [REDACTED] 2019 were denied because "the value of your assets is more than the amount we allow you to have". (Ex. G: Notice of Action [REDACTED]/19)
21. On [REDACTED] 2020, the Appellant's Attorney requested an Administrative Hearing to contest the Department's determination of the effective date of eligibility. (Ex. I: Notice of Decision, [REDACTED], 2020)
22. On [REDACTED], 2020, OLCRAH conducted the Administrative Hearing. (Ex. I: Notice of Decision, [REDACTED], 2020)
23. On [REDACTED], 2020, OLCRAH remanded the decision back to the Department. OLCRAH ordered the Department to seek guidance from its Legal Department to determine if the \$60,000.00 in the escrow account was accessible and to redetermine eligibility for [REDACTED] 2019 through [REDACTED] 2019 based on the guidance provided. (Ex. I: Notice of Decision, [REDACTED], 2020)
24. On [REDACTED] 2020, The Department issued a Notice of Action to the Applicant upholding its original determination that the \$60,000.00 that was placed in escrow in [REDACTED] 2019 was an available asset and placed the Applicant over the HUSKY C Medicaid Long Term Care asset limit through [REDACTED] 2019. The Department upheld its grant of the HUSKY C effective [REDACTED] 2019. (Ex. K: Notification from Department of Social Services, [REDACTED]/20)

25. 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] 2019, was rescheduled for [REDACTED] 2020, at the request of the Appellant, which caused a 19-day delay. Because this 19-day delay resulted from the Appellant's request, this decision was not due until [REDACTED], 2020, and is therefore timely. (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. "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 Conn Supp. 175 178 (194) (citing Conn. Gen. Stat. § 17b-10; *Richard V. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d712 (1990)).
3. 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.
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.
5. 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 spouse was a Community Spouse (CS).
6. 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.
7. 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).
7. UPM § 4025.67(D)(3) provides that every January 1, the CSPA shall be equal to the greatest of the following amounts:
- a. The minimum CSPA; or
 - b. The lesser of:
 - i. The spousal share calculated in the assessment of spousal assets (Cross Reference 1507.05); or
 - ii. The maximum CSPA; or
 - c. The amount established through a Fair Hearing decision (Cross Reference 1570); or
 - d. The amount established pursuant to a court order for the purpose of providing necessary spousal support.

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 and the total is compared to the Medicaid asset limit for the IS (the Medicaid asset limit for one adult)
9. The Department correctly determined the of the CSPA for the CS is equal to \$123,600.00, or the spousal share calculated in the assessment of spousal assets, which is equal to the maximum CSPA as it is less than one-half of the total countable assets owned by the couple as of the [REDACTED] 2018, DOI.
10. 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.
11. Section 17b-261(c) of the Connecticut General Statutes 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.
12. 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.
13. 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.
14. UPM § 4015.05 (B) provides that the burden is on the assistance to demonstrate that an asset is inaccessible. 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.
15. The Department correctly determined that the \$60,000 placed in the client funds escrow account was an available asset as the Applicant had the right to have the asset applied to his general medical support by way of his SNF bill.

16. UPM § 4005.05 (D) provides that an assistance unit is not eligible for benefits under a particular program if the unit's equity in counted assets exceeds the asset limit for the particular program.
17. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
18. The Department correctly determined that the Applicant's assets of \$167,066.94 in [REDACTED] 2019, exceeded the \$125,200.00 (\$1600.00 + \$123,600.00 CSPA) asset limit.
19. The Department correctly determined that the Applicant's assets of \$170,987.79 in [REDACTED] 2019, exceeded the \$125,200.00 (\$1600.00 + \$123,600.00 CSPA) asset limit.
20. The Department correctly determined that the Applicant's assets of \$216,068.33 in [REDACTED] 2019, exceeded the \$125,200.00 (\$1600.00 + \$123,600.00 CSPA) asset limit.
21. The Department correctly determined that the Applicant's assets of \$179,571.69 in [REDACTED] 2019, exceeded the \$125,200.00 (\$1600.00 + \$123,600.00 CSPA) asset limit.
22. The Department correctly determined that the Applicant was ineligible for benefits from [REDACTED] 2019 through [REDACTED] 2019, and correctly granted benefits effective [REDACTED] 2019.

DISCUSSION

Regulations provide that eligibility for the Medicaid program begins the first day of the month in which the assistance unit reduces its equity in counted assets to within the asset limit. The Appellant's position is that once the CS gave the \$60,000 to the Applicant's attorney who placed it into a client funds escrow account in [REDACTED] of 2019 the \$60,000 was no longer an available asset to the Applicant for Medicaid purposes. As the Appellant's attorney stated that they are disputing the denial of [REDACTED] 2019 through [REDACTED] 2019, I did not address in this decision the denial of [REDACTED] and [REDACTED] 2019.

In its second Notice of Action of this application, which this hearing is based upon, the Department provided, in part, the following rationalization for its determination;

The general rule is that funds in an attorney's escrow account are accessible to the client, and therefore available for the purposes of determining Medicaid eligibility, because the client can, at any time, request that the attorney return the funds to the client and the attorney is

obligated to return the funds to the client. An exception to the general rule may apply where there is an escrow agreement in place in which the client agrees to give up any legal right to the funds. See POMS SI 01120.020 C 2

The Appellant's attorney argued that the Department's rationalization of "the general rule" was inappropriate because they provided no case law, state or federal statute, or regulation that supports this position. I agree with the Appellant's Attorney on this point. There was no basis given for this general rule. The Appellant's Attorney further argued that the Department's citation of the POMS, which stands for the Social Security Program Operations Manual System, was inappropriate as it refers to the Social Security program, not Medicaid. I also agree that the POMS is not an appropriate reference. While the POMS is a form of internal guidance for the Social Security Administration, the Department argued via Binder & Binder v. Bainhart, 481 F. 3d 141, 151 (2d Cir. 2007) that as the POMS was not adopted through the Administrative Procedure Act that it does "not constitute properly enacted policy or have the force of law".

While there was not a written escrow agreement outlining the purpose and status of the \$60,000, the testimony credibly supports that there was a verbal understanding of the placement of the funds in escrow was solely to pay ██████████ for the benefit the Applicant. At the administrative hearing, the Applicant's Attorney testified "everybody knew it".

The Appellant's Attorney provided the Connecticut General Statutes Practice Book regarding the rules of professional responsibility for the safeguarding of clients' property. The Applicant's Attorney testified to rule 1.15 of the Rules of Professional Conduct. He explained that as the Applicant's attorney he had an ethical and professional duty to safeguard the funds placed in the escrow account to pay ██████████ ██████████ for the Applicant.

The Appellant's attorney provided case law in his Hearing Memorandum and Attorney ██████████ provided testimony as an expert witness supporting the use of escrow accounts to hold funds under dispute. Oge v. People's Bank 1994 W.L. 248127, does speak to the common practice of holding funds in escrow, the opinion states in part "Where an escrow agreement exists, the escrow agent is required to act in accordance with the terms of the escrow agreement, even though he may have a special relationship to one of the parties to the escrow...." Although again, there was not a written escrow agreement in place, the testimony supports that there was a verbal agreement that the funds would be used to pay the Applicants SNF bill.

While the Applicant and his spouse did not have physical custody of the \$60,000 in the escrow account, it is clear from the testimony of the Appellant and the Applicant's Attorney that the intention was to apply the funds to provide for the Applicant's "general or medical support" as outlined in both CT General Statutes 17b-261(C) and UPM 4005(B)(2). As the Applicant had the right to have these funds applied for his general or medical support, the statute and regulation support that the \$60,000 was an available asset while held in the escrow account.

After reviewing the evidence and testimony presented, I find the Department correctly determined the effective date of the Applicant's Medicaid assistance, [REDACTED] 2019.

DECISION

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

Marci Ostroski
Marci Ostroski
Hearing Officer

CC: Jamel Hilliard, Operations Manager, Waterbury Regional Office
Julie Risko, Eligibility Services Worker, Waterbury Regional Office
Attorney [REDACTED]

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.