

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

██████████ 2020  
Signature confirmation

Case ██████████  
Client: ██████████  
Request: 157802

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2020, the Department of Social Services (the "Department") issued a *Notice of Action* granting the ██████████ 2019 Medicaid long-term care application of ██████████ (the "Applicant") effective ██████████ 2020. In the same *Notice*, the Department denied the Applicant Medicaid long-term care coverage for the period from ██████████ 2019 through ██████████ 2020.

On ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received a ██████████ 2020 postmarked hearing request from ██████████ (the "Appellant"), the Applicant's surviving spouse.

On ██████████ 2020, the OLCRAH issued a notice scheduling an administrative hearing for ██████████ 2020.

On ██████████, 2020, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing by telephone conferencing. The following individuals participated:

██████████, Appellant  
██████████, Appellant's Witness  
██████████, Appellant's Witness  
Shannon Bennett, Department's Representative  
Eva Tar, Hearing Officer

The hearing record closed for evidence on ██████████, 2020 and closed for written comment on ██████████ 2020. The Appellant did not submit written comment.

### STATEMENT OF ISSUE

The issue is whether the Department correctly determined that the Applicant was ineligible to receive Medicaid long-term care coverage from [REDACTED] 2019 through [REDACTED] 2020.

### FINDINGS OF FACT

1. The Appellant is the Applicant's surviving spouse. (Appellant Testimony)
2. On [REDACTED] 2004, the Applicant purchased [REDACTED] (- [REDACTED]) (the "IRA") for \$17,765.57. (Department Exhibits 8 and 9)
3. The IRA's contract language permitted for the full surrender of the cash value of the IRA upon receipt [REDACTED] of the Applicant's written request. (Department Exhibit 12)
4. On [REDACTED] 2013, the Applicant received her first scheduled annual Required Minimum Distribution from the IRA. (Department Exhibit 8)
5. On [REDACTED], 2019, the Applicant was admitted to [REDACTED] (the "Facility"). ([REDACTED] Testimony)
6. On [REDACTED] 2019, the Applicant's and the Appellant's assets as distributed between two joint [REDACTED] accounts ([REDACTED] and [REDACTED]) (the "joint accounts") and the Applicant's IRA equaled \$64,665.88. (Department Exhibit 7)
7. On [REDACTED] 2019, the Department received the Applicant's Medicaid application for long-term care coverage. (Department Exhibit 2)
8. On [REDACTED] 2019, the Department notified the Appellant that the Applicant would not be eligible for Medicaid long-term care benefits in any month in which the Applicant's counted assets exceeded \$1,600.00. (Department Exhibit 16)
9. On [REDACTED] 2019, the Department notified the Appellant that the couple's total assets as of the date of the Applicant's institutionalization equaled \$64,665.88 and that the couple's total allowable assets could not exceed \$33,932.94 as a condition of the Applicant's Medicaid long-term care eligibility. (Department Exhibit 4)
10. On [REDACTED] 2020, Allianz issued the Applicant \$5,184.31 to close out the IRA and reported the full surrender of the IRA to the IRS on Form 1099-R as \$6,245.39, the difference in amounts due to the withholding of federal and state income taxes. (Department Exhibit 5)
11. From [REDACTED] 2019 through [REDACTED] 2020, the Applicant's and the Appellant's assets as distributed between the two joint accounts and the IRA exceeded \$33,932.94. (Department Exhibit 7)
12. On [REDACTED] 2020, the Applicant's and the Appellant's assets as distributed between the joint accounts equaled \$32,754.82. (Department Exhibit 8)

13. The Applicant died on [REDACTED] 2020. (Appellant Testimony)
14. On [REDACTED] 2020, the Department granted the Applicant's Medicaid long-term care application effective [REDACTED] 2020; the Department denied Applicant's Medicaid long-term care application for the service months of [REDACTED] 2019 through [REDACTED] 2020. (Department Exhibit 3)
15. The Facility is seeking Medicaid payment of the Appellant's long-term care services effective [REDACTED] 2019. ([REDACTED] Testimony)
16. Connecticut General Statutes § 17b-61 (a), as amended on passage by Section 309 of *Public Act No. 19-117 (January Session)*, provides the deadline for the rendering of a hearing decision.

Executive Order 7M, Section 3, dated March 25, 2020, extends the period for rendering a hearing decision. Executive Order 7DDD, Section 2, dated June 29, 2020 in part authorizes a further extension to the time frames provided by Executive Order 7M, Section 3, dated March 25, 2020 that would have lapsed on June 28, 2020.

ORDER, (Commissioner Deidre S. Gifford, 4/13/2020) provides in part: "Section 17b-61(a)'s timeframe for the commissioner or commissioner's designated hearing officer to render a final decision is extended from 90 to 'not later than 120 days' after the date the commissioner receives a request for a fair hearing pursuant to Section 17b-60...."

On [REDACTED] 2020, the OLCRAH received the Appellant's [REDACTED] 2020 postmarked hearing request. This hearing decision would have become due with the extended deadlines on [REDACTED] 2020. This final decision is timely.

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes in part designates the Department as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

"The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program...." Conn. Gen. Stat. § 17b-262.

"The department's uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; [Richard v. Commissioner of Income Maintenance, 214 Conn. 601, 573 A.2d 712 \(1990\)](#)).

**The Department had the authority to review the Applicant's [REDACTED] 2019 Medicaid application to determine whether the Applicant was eligible for Medicaid coverage of her long-term care.**

2. Section 4000.01 of the Uniform Policy Manual ("UPM") provides definitions of the following relevant terms: Assessment of Spousal Assets, Community Spouse, Community Spouse Protected Amount (CSPA), Continuous Period of Institutionalization,

Institutionalized Spouse, MCCA [Medicare Catastrophic Coverage Act of 1988, *Public Law 100-105*] Spouses, and Spousal Share.

**With respect to the [REDACTED] 2019 Medicaid application, the Applicant was the “institutionalized spouse,” and the Appellant was the “community spouse.”**

3. “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.” UPM § 1507.05 A.2.

“A continuous period of institutionalization is a period of 30 or more consecutive days of residence in a medical institution or long-term care facility, or receipt of home- and community-based services (CBS) under a Medicaid waiver.” UPM § 4000.01.

**[REDACTED] 2019 was the Applicant’s initial date of a continuous period of institutionalization of 30 days or more.**

4. Section 4020.10 of the Uniform Policy Manual lists excluded assets with respect to the Medicaid program that provides coverage for elderly and/or disabled recipients.

**With respect to the Medicaid program, the Applicant’s IRA was not an excluded asset in the period from [REDACTED] 2019 through [REDACTED] 2020 as it did not meet the criteria identified at UPM § 4020.10.**

5. “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...” Conn. Gen. Stat. § 17b-261 (c).

“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.” UPM § 4005.05 B.2.

“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: a. available to the unit; or b. deemed available to the unit.” UPM § 4005.05 B.1.

**With respect to the Medicaid program, the Applicant’s IRA was an available asset to the Applicant from [REDACTED] 2019 through [REDACTED] 2020, as the Applicant was the owner of the asset and the plain language of the contract permitted the full surrender of the cash value of the asset to the Applicant.**

6. “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.” UPM § 1507.05 A.1.

“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.3.

“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.4.

**The Department acted in accordance with UPM § 1507.05 A. when it completed a computation of the total value of the Applicant’s and the Appellant’s non-excluded assets when it determined that the couple’s total assets equaled \$64,665.88 as of [REDACTED] 2019, the date of institutionalization.**

7. “Every January 1, the CSPA shall be equal to the greatest of the following amounts: a. the minimum CSPA; or b. the lesser of: (1) the spousal share calculated in the assessment of spousal assets (Cross Reference 1507.05); or (2) 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.” UPM § 4025.67 D.3.

In [REDACTED] 2019, the minimum CSPA equaled \$25,284.00; the maximum CSPA equaled \$126,420.00.

Section 4000.01 of the Uniform Policy Manual defines “spousal share” as “one-half of the total value of assets which results from the assessment of spousal assets.”

**The Appellant’s spousal share of the couple’s \$64,665.88 non-excluded assets as of [REDACTED] 2019 equaled \$32,332.94. [\$64,665.88 divided by two]**

**The Department’s computation of the Appellant’s spousal share to equal \$32,332.94 falls within the range of the minimum and maximum CSPA in effect in [REDACTED] 2019.**

8. As one of the conditions of eligibility, recipients of medical coverage through the Medicaid for the Aged, Blind, and Disabled-Categorically Needy (“MAABD-CN”) coverage group must comply with the program’s asset limit. UPM § 2540.88.

The MAABD-CN coverage group’s asset limit is \$1,600.00 for a needs group of one. UPM § 4005.10 A.2.a.

**With respect to the Medicaid program, the Applicant was a needs group of one when she was a patient at the Facility.**

**As a condition of eligibility to receive coverage for long-term care under the Medicaid program, the Applicant’s counted assets could not exceed \$1,600.00.**

9. "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, unless the assistance unit is categorically eligible for the program and the asset limit requirement does not apply...." UPM § 4005.05 D.2.

**The Department correctly determined that the Applicant was not eligible for Medicaid long-term care coverage until [REDACTED] 2020, the month in which the Applicant's and the Appellant's assets were reduced to \$33,932.94 or less, i.e., the value of the spousal share (\$32,332.94) plus the maximum amount of assets that the Applicant could retain (\$1,600.00) under that program.**

**DECISION**

The Appellant's appeal is DENIED.

*Eva Tar-electronic signature*  
Eva Tar  
Hearing Officer

Pc: Shannon Bennett, DSS-New Haven  
Rachel Anderson, DSS-New Haven  
Cheryl Stuart, DSS-New Haven  
Lisa Wells, DSS-New Haven

### **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, 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 his 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.