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 #
Request # 158108

NOTICE OF DECISION

PARTY

PROCEDURAL BACKGROUND

On 2020, the Department of Social Services (the "Department") issued a notice of action ("NOA") to , (the "Appellant" or the "institutionalized spouse" or "IS") denying his application for Medicaid for Long Term Facility Residents, because his assets exceeded the limit.

On 2020, , the Appellant's spouse (his "community spouse" or "CS") requested an administrative hearing to contest the Department's denial of eligibility for benefits for the Appellant.

On 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for 2020. The hearing was scheduled to be held telephonically due to the COVID-19 pandemic.

On 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. None of the parties objected to the hearing being held telephonically.

The following individuals were present at the hearing:

the Appellant's community spouse, via telephone
Esq., Counsel for the Appellant, via telephone
Nedra Pierce, Department's Representative, via telephone
James Hinckley, Hearing Officer

The Appellant's CS appeared, but did not wish to testify at the hearing, and authorized the couple's attorney to represent their interests at the proceeding.

STATEMENT OF THE ISSUE

1. Whether the Department was correct when it denied the Appellant's Medicaid application because his assets exceeded the limit.

FINDINGS OF FACT

1. As of [redacted] 2019, the Appellant was married and living with his spouse in the community. (Hearing Record)

2. On [redacted] 2019, the Appellant entered an institution, beginning a continuous period of institutionalization that defined [redacted] 2019 as the Appellant's "date of institutionalization" or "DOI", a date significant to the determination of Medicaid eligibility. (Hearing Record)

3. On [redacted] 2019, after being discharged from a general hospital, the Appellant entered a long term care facility. (Hearing Record)

4. On [redacted] 2019, the Appellant applied for Medicaid. (Hearing Record)

5. On [redacted] 2019, the Department requested certain items of verification and information from the Appellant via a W-1348LTC *Verification We Need* form. Throughout the application process, the Department issued to the Appellant ten such requests for information, the last one on [redacted] 2020. (Exhibits 4-A to 4-J: W-1348 *Verification We Need forms*)

6. As of [redacted] 2019, the Appellant's DOI, the Appellant and his wife owned various assets that included checking and passbook accounts, life insurance policies, two IRAs and an annuity. The Department's final determination of the total value of all of the couple's assets as of [redacted] 2019 was $63,105.34. The figure is not in dispute by the parties. (Ex. 3: Spousal Assessment Worksheet, Hearing Record)

7. The Department determined, according to its spousal assessment procedures, that the "spousal shares" amounted to equal one-half shares of the total assets for each spouse. Further, the Department determined that Medicaid rules permitted the CS to keep her entire share and the Appellant to keep $1,600.00, which was the Medicaid asset limit. (Hearing Record. Ms. Pierce's testimony)

8. As of [redacted] 2020, the Department still did not have all of the information it needed to make a final determination on the Appellant's application. It sent a new W-1348LTC *Verification We Need* form to the Appellant on that date asking for

information that included certain bank statements, proof of the [redacted] life insurance, a copy of the funeral contract and a copy of the annuity contract. (Ex. 4-F)

9. The Department's request sent on [redacted] 2020, included the following information: "Client and spouse are allowed to keep $31,620.68 that does not include the [redacted] life insurance. As of DOI they had $60,041.36….***Without these documents the DOI amount you and your spouse are allowed to keep can not be determined….There is no eligibility for Title 19 Long Term Care benefits in any month in which counted assets exceed $1,600.00….You must prove that your total assets are below $1,600…Any client that is married will need a CSPA calculation done to determine the allowable assets to be kept by community spouse." (Ex. 4-F)

10. As of [redacted] 2020, the Department had most of the verification it needed to verify the couple's DOI assets, but the verification was inadequate to determine the exact final amount because the value of one of the life insurance policies had not been provided by the Appellant and was still unknown. The information provided by the Department in the body of its [redacted] 2020 request included figures based on best estimates that used all of the information that was available at the time. (Hearing Record)

11. The requests for information sent by the Department on [redacted] 2020, [redacted] 2020, [redacted] 2020 and [redacted] 2020, contained similar statements to those on the [redacted] 2020 request, that approximated the total assets the couple could retain in order for the Appellant to qualify for Medicaid. (Ex. 4-G, 4-H, 4-I, 4-J)

12. After all the couple's assets were verified, the Department's final determination found the total assets as of the DOI to be $63,105.34. The spousal shares were $31,552.67 each ($63,105.34 divided by 2). The CS was allowed to keep her spousal share of $31,552.67, and the Appellant was allowed to keep $1,600.00, the Medicaid asset limit. The couple was allowed to keep a total of $33,152.67 between them without losing Medicaid eligibility. (Ex. 3, Hearing Record)

13. On [redacted] 2020, the Department sent a request for information and verification to the Appellant asking for recent bank records showing that the couple's assets had been reduced to below the allowable limit. The deadline to provide the information was [redacted] 2020. (Ex. 4-J)

14. On [redacted] 2020, the Appellant died. (Hearing Record)

15. As of [redacted] 2020, the couple's total assets were $61,088.81. (Ex. 3, Hearing Record)

16. As of ██████ 2020, the Appellant owed in excess of $50,000.00 in medical bills. (Testimony)

17. On ███████ 2020, the Department issued a NOA to the Appellant denying his application for HUSKY C medical assistance for Long Term Care Residents for all application months, because his assets exceeded the limit for the program in all months. (Ex. 1)

18. The CS had housing costs at the time that included a mortgage payment of $0.00, annual property taxes of $3,122.26, annual homeowner's insurance premiums of $1,900.00, and responsibility for all utility expenses. (Testimony)

19. The CS had $960.00 in monthly Social Security income and $129.00 in monthly pension income. (Testimony)

20. The Appellant had $1,796.50 in monthly Social Security income, $373.69 in monthly state pension income and $207.73 in monthly private pension income. (Testimony)

21. As of ██████ 2020, the date of the hearing, the average of the three highest interest rates for a 12 month Certificate of Deposit in Connecticut was 1.05% (First County Bank .0115 + Connecticut Community Bank .01 + The First Bank of Greenwich .01 = .0315 / 3 = .0105 or 1.05%). (DepositAccounts.com)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes ("Conn. Gen. Stat.") authorizes the Commissioner 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, 177 (1994) (citing Conn. Gen. Stat. 17-3f(c) [now 17b-10]; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A. 2d 712(1990)).

3. "An Institutionalized Spouse is 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." UPM § 4000.01

4. "A Community Spouse is 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." UPM § 4000.01

5. "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." UPM § 4000.01

6. **Effective [redacted] 2019, the Appellant and his wife were MCCA Spouses pursuant to the Medicaid program; the Appellant was an Institutionalized Spouse (IS) and his wife was a Community Spouse (CS).**

7. "An Assessment of spousal assets is 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

8. "A spousal share is one-half of the total value of assets which results from the assessment of spousal assets." UPM § 4000.01

9. "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." UPM § 1500.01

10. UPM § 1507.05(A) provides as follows:

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).

11. **The IS began a continuous period of institutionalization upon his admission to an institution on ████████ ██ 2019, which date was established to be his DOI. The couple owned a total of $63,105.34 in assets as of the IS's DOI. The spousal shares were $31,552.67 each.**

12. "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)

13. "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)

14. "For every program administered by the Department, there is a definite asset limit." UPM § 4005.05(A)

15. "The Department does not count the assistance unit's equity in an asset toward the asset limit if the asset is either: 1. Excluded by state or federal law; or 2. Not available to the unit." UPM § 4005.05(C)

16. UPM § 4025.67(A) provides as follows:

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 4025.67D., 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 is compared to the Medicaid asset limit for the IS (the Medicaid asset limit for one adult).

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

18. 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.

19. **Notwithstanding the potential for an adjustment of the CSPA through a Fair Hearing decision, the Department-determined CSPA for the CS had to be $31,552.67, which was her spousal share calculated in the assessment of spousal assets.**

20. **Of the $63,105.34 in total assets that the couple owned, $31,552.67 was available to the Appellant, because it was the remainder after subtracting from the total the $31,552.67 protected as the CS's CSPA.**

21. **The existence of medical bills for the Appellant in excess of $50,000.00 as of the date of his death had no bearing on the determination of his countable assets as of that date. The Appellant maintained the legal authority to obtain, or have applied for his medical support, the entirety of his assets, thus his entire share of the assets was countable pursuant to a determination of Medicaid eligibility.**

22. **The $29,536.14 in assets owned by the Appellant at the time of his death ($61,088.81 minus $31,552.67 CSPA) exceeded the Medicaid asset limit for one person of $1,600.00.**

23. UPM § 5035.30(B) provides for the calculation of the Community Spouse Allowance ("CSA") and MMNA as follows:

    B. Calculation of CSA

    1. The CSA is equal to the greater of the following:

        a. the difference between the Minimum Monthly Needs Allowance (MMNA) and the community spouse gross monthly income; or

        b. the amount established pursuant to court order for the purpose of providing necessary spousal support.

    2. The MMNA is that amount which is equal to the sum of:

        a. the amount of the community spouse's excess shelter cost as calculated in section 5035.30 B.3.; and

        b. 150 percent of the monthly poverty level for a unit of two persons.

    3. The community spouse's excess shelter cost is equal to the difference between his or her shelter cost as described in section 5035.30 B.4. and 30% of 150 percent of the monthly poverty level for a unit of two persons.

    4. The community spouse's monthly shelter cost includes:

        a. rental costs or mortgage payments, including principle and interest; and
        b. real estate taxes; and
        c. real estate insurance; and
        d. required maintenance fees charged by condominiums or cooperatives except those amounts for utilities; and

    5. The Standard Utility Allowance ("SUA") used in the Supplemental Nutrition Assistance program ("SNAP") is used for the community spouse.

24. **Effective [redacted] 2019, the CS's MMNA was $2,594.77, as shown in the calculation below:**

Mortgage	$0.00
Homeowner's Insurance	$158.33
Property Taxes	+ $260.19
Standard Utility Allowance	+ $736.00
Total Shelter Costs	= $1,154.52

30% of 150% of FPL for 2	- $617.25
Excess Shelter Costs	= $537.27
150% FPL for 2	+ $2,057.50
Equals MMNA	= $2,594.77

25. **Effective [redacted] 2019, the CS had $1,089.00 in income ($960.00 Social Security, plus $129.00 pension). The CS needed $1,505.77 in monthly income from other sources to meet her MMNA.**

26. "The Fair Hearing Official increases the Community Spouse Protected Amount (CSPA) if either MCCA spouse establishes that the CSPA previously determined by the Department is not enough to raise the community spouse's income to the Minimum Monthly Needs Allowance ("MMNA") (Cross References § 4022.05 and 4025.67)." UPM § 1570.25(D)(4)

27. "For applications filed on or after 10-1-03, in computing the amount of the community spouse's income, the Fair hearing official first allows for a diversion of the institutionalized spouse's income in all cases." UPM § 1570.25(D)(4)(b)

28. "For residents of long term care facilities ("LTCF") and those individuals receiving community-based services ("CBS") when the individual has a spouse living in the community, total gross income is adjusted by certain deductions to calculate the amount of income which is to be applied to the monthly cost of care." UPM § 5035.25

29. UPM § 5035.25(B) provides, in relevant part, as follows:

    The following monthly deductions are allowed from the income of assistance units in LTCF's:

    1. A personal needs allowance of $50.00, which, effective July 1, 1999 and annually thereafter, shall be increased to reflect the annual cost of living adjustments used by the Social Security Administration…

30. **The personal needs allowance in effect at the time of the Appellant's Medicaid determination, after increases required by regulation to reflect annual cost of living adjustments, was $60.00.**

31. **The Appellant had gross income of $2,377.42 monthly ($1,796.50 Social Security, plus $373.69 state pension, plus $207.73 private pension). After allowing a deduction of $60.00 from his gross income for a personal needs allowance, the Appellant had $2,317.42 available to deem to his CS.**

32. **Income that was available to be diverted from the Appellant to meet the needs of his CS was sufficient to raise the CS's income to the MMNA. The CS**

needed $1,505.77 in additional monthly income and the Appellant had $2,317.42 in income available to be deemed.

33. **There was no need for a Fair Hearing Official to increase the CS's CSPA. The CS did not need to protect additional assets to produce income to meet her MMNA.**

34. Under well-established law in Connecticut:

> any claim of estoppel is predicated on proof of two essential elements: the party against whom estoppel is made must do or say something calculated or intended to induce another party to believe that certain facts exist and to act on that belief; and the other party must change its position in reliance on those facts, thereby incurring some injury. . . . In addition, estoppel against a public agency is limited and may be invoked: (1) only with great caution; (2) only when the action in question has been induced by and agent having authority in such matters; and (3) only when special circumstances make it highly inequitable or oppressive not to estop the agency. . . . [T]his exception applies where the party claiming estoppel would be subjected to substantial loss if the public agency were permitted to negate the acts of its agents. . . . [I]t is the burden of the person claiming the estoppel to show that he exercised due diligence to ascertain the truth and that he not only lacked knowledge of the true state of things but had no convenient means of acquiring that knowledge.'

Kimberly-Clark Corp. v. Dubno, 204 Conn. 137, 148, 527 A.2d 679, 684 (1987) (citations and internal citations omitted). *Compare Bridges v, Wilson-Coker*, No. CV010509836S, 2002 WL 31235412 (Conn. Super Ct. Sept. 3, 2002) (no estoppel where plaintiff is represented by counsel and the department did not prevent counsel from ascertaining the true state of matters); and *Reynolds v. State Dep't of Soc. Servs*., CV990079927S,2000 WL 804699 (Conn. Super. Ct. June 9, 2000) (sending notices with incorrect amounts was not so misleading as to induce plaintiff to reasonably act to incur a substantial loss), *with Gross v. State*, 2999WL 410085 (Conn. Super. Ct. April 28, 1999 (estoppel applied where plaintiff exercised due diligence with application for benefits, the Department's inaccurate information induced her to change her position in reliance on it and there were special circumstances that made it highly inequitable or oppressive not to estop the agency).

35. **The Appellant did not establish a valid claim to invoke estoppel against the Department. The Appellant's failure to pay his outstanding medical bills, thereby reducing his assets, had nothing to do with relying on advice from the Department not to do so. On the contrary, the Department informed the Appellant in multiple written notices of the need to reduce his assets, and by**

what approximate amount. The inability of the Department to provide the exact amount the assets needed to be reduced by was caused by the Appellant's failure to provide complete verification as of the date the information was provided. The Department in no way induced the Appellant not to appropriately reduce his assets.

36. **The Department was correct when it denied the Appellant's Medicaid application for all months, because the Appellant never reduced his assets to below the Medicaid limit in any month.**

DECISION

The Appellant's appeal is DENIED.

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James Hinckley
Hearing Officer

cc: [redacted] Esq.
Cheryl Stuart
Nedra Pierce

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 06105-3725.

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. 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.