

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

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Signature Confirmation

Client ID # █
Request # 149676

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On █ 2019, the Department of Social Services (the “Department”) sent █ (the “Applicant” who is deceased) a Notice of Action (“NOA”) denying Long Term Care Facility Medicaid benefits.

On █ 2019, █, wife of the Applicant, (the “Appellant” and “Spouse”) requested an administrative hearing through her attorney, █, to contest the denial of the Long Term Care Medicaid benefits as determined by the Department.

On █ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for █ 2019.

On █ 2019, the Appellant’s Counsel requested a continuance of the hearing because he was unavailable on █ 2019.

On █ 2019, OLCRAH issued a notice rescheduling the administrative hearing for █ 2020.

On █ 2019, the Appellant’s Counsel once again requested a continuance.

On █ 2020, OLCRAH issued a notice rescheduling the 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. The following individuals were present at the hearing:

[REDACTED], the Appellant and Spouse of the Applicant
 [REDACTED], Counsel for the Appellant,
 Amelia Duarte, Department's representative
 Maureen Foley-Roy, Hearing Officer

The hearing officer held the hearing record open at the request of the Appellant and her Counsel as Counsel brought documents on the day of the hearing that they wished to be considered. On [REDACTED] 2020, Counsel provided additional evidence that he had not brought to the hearing. On [REDACTED] 2020, the hearing officer requested and received clarifying information from the Department and provided it to the Appellant and her Counsel on [REDACTED], 2020. The Appellant's Counsel responded and the record closed on [REDACTED], 2020.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny Long Term Care benefits was correct.

FINDINGS OF FACT

1. On [REDACTED], 2016, the Applicant, who was born on [REDACTED], was admitted to the [REDACTED] and he resided there since that admission until the time of his death. (Exhibit 1: Application)
2. The Applicant had a spouse (the Appellant) who was employed and lived in their home in the community. (Exhibit 1)
3. The Applicant's stay at the facility had been covered by private insurance through his wife's employer and Medicaid. (Appellant's testimony)
4. The Medicaid coverage group (referred to the Department as a "N01") which had been paying for the Applicant's stay is for individuals who are institutionalized and are under 65 years of age. There is no asset limit and therefore no asset look back period for this coverage group. The Applicant became ineligible for this coverage group when he turned 65 years old on [REDACTED]. (Department representative's testimony)
5. On [REDACTED] 2018, the Department initiated an application for Medicaid for Long Term Care, a program which does have an asset limit and does require an asset look back period. The Department's file contained some information regarding the Applicant's assets, but it was not complete. (Exhibit 3a: W1348a

Verification We Need form issued [REDACTED] [REDACTED] 2018 and Department representative's testimony)

6. On [REDACTED] 2018, the Department issued a W1348 Verification We Need form requesting proof of gross social security income, proof that the Appellant did not own three stated properties and bank statements for the past 5 years for the Applicant and his spouse. The form requested verification of all deposits and withdrawals, which exceeded \$500. The form also stated that the total assets must not exceed \$1600 and that Title 19 eligibility would not be met until all counted assets were less than \$1600 and all other eligibility factors met. (Exhibit 3a)
7. In addition to a motor vehicle, checking account, savings account, burial account, retirement account, stocks/and or bonds, the Applicant and/or his spouse owned three properties. The properties consisted of their home property in [REDACTED], a home in [REDACTED] and 1/10th of an interest in land in [REDACTED]. (Exhibit 1)
8. The property in [REDACTED] was the home property of the Applicant and his spouse and they owned it jointly. The property in [REDACTED] was a family home that the Applicant's spouse had inherited. Her intention was to return to live in that home with other members of her family. The third property was a piece of land which the Appellant/Spouse owned with nine other individuals. (Appellant's testimony)
9. On [REDACTED], 2018, the Department issued a 1348 Verification We Need form requesting a completed application form, other completed forms, verification of transactions from specific bank accounts and a written statement regarding the properties defining which was the home property and if there was rental income realized from any of the properties.(Exhibit 3b: W1348 Verification We Need form sent [REDACTED] 2018)
10. On [REDACTED] 2018, the Department made a handwritten note on the W1348A form indicating that Appellant "can submit what you have and continue to work on the rest." (Appellant's Exhibit D: W1348 Verification We Need form sent [REDACTED] [REDACTED], 2018 with handwritten note included)
11. On [REDACTED], 2018, the Appellant sent documents in response to the W1348A request which included the Assessor and Land Records printout for the [REDACTED] [REDACTED] property. (Appellant's Exhibit A2: letter sent [REDACTED] 2018)
12. On [REDACTED] 2018, the Department issued a 1348 Verification We Need form emphasizing the need for a completed application form and written statement regarding the properties defining which property was considered the Appellant's home and if there was rental income realized from any of the properties. The form also requested additional information regarding other income and assets. (Exhibit 3c: W1348 Verification We Need form issued [REDACTED] 2018)
13. On [REDACTED] 2018, the Department received the completed application form with the complete list of assets. (Exhibit 1)

14. On [REDACTED] 2018, the Department issued a W1348 Verification We Need form requesting information on the properties as well as other information. The Department asked which property was the residence of the Applicant's spouse and advised the Appellant that the other two properties were required to be listed for sale. (Exhibit 3d: W1348 Verification We Need form issued [REDACTED] 2018)
15. On [REDACTED] 2018, the Appellant responded to the [REDACTED] 2018 request for verification. The Appellant stated that no rental income was received from any of the properties and that the Spouse's primary residence was at the [REDACTED] address. There was no response regarding putting the properties up for sale. (Appellant's Exhibit A4: letter of [REDACTED] 2018)
16. On [REDACTED] [REDACTED], 2018, [REDACTED] [REDACTED] 2019 and [REDACTED] [REDACTED] 2019, the Department sent additional W1348 Verification We Need forms requesting additional information. Each of those forms advised the Appellant that the community spouse would be allowed to live in one of the properties but it was a requirement that the other two properties be listed for sale. Each form also advised the Appellant that proof that the property had been listed for sale was required. (Exhibits 3e: W1348 Verification form sent [REDACTED] 2018, 3f: W1348 Verification We Need form sent [REDACTED] 2019 and 3g: W1348 Verification We Need form sent [REDACTED] 2019)
17. On [REDACTED] 2019, the Appellant advised the Department that the [REDACTED] property would be listed for sale. (Appellant's Exhibit A5: Letter of [REDACTED] [REDACTED])
18. On [REDACTED], 2019, the Appellant advised the Department that the [REDACTED] property was being listed for sale. No documentation was provided. (Appellant's Exhibit A6: letter of [REDACTED] 2019)
19. On [REDACTED], 2019, the Appellant advised the Department that the spouse would be moving to the [REDACTED], [REDACTED] property and listing the [REDACTED] property for sale. They advised they would be sending the listing agreement as soon as possible. (Appellant's Exhibit A7: letter of [REDACTED] 2019)
20. On [REDACTED], 2019, [REDACTED], 2019, [REDACTED] 2019, [REDACTED], 2019 and [REDACTED] 2019, the Department sent additional W1348 Verification We Need forms requesting proof that the [REDACTED] [REDACTED] property was listed for sale. (Exhibits 3h: W1348 Verification We Need form sent [REDACTED], 2019, 3i: Verification We Need form issued [REDACTED], 2019, 3j: W1348 Verification We Need form issued [REDACTED], 2019, 3k: W138 Verification We Need form issued [REDACTED] 2019 and 3l: W1348 Verification We Need form issued [REDACTED] 2019)
21. On [REDACTED], 2019, Appellant's Counsel advised the Department that the Appellant was in the process of filing for conservatorship for her husband which would allow her to execute documents to facilitate the sale of the couple's home

in [REDACTED]. (Exhibit A10: Letter dated [REDACTED], 2019 and Appellant's Exhibit B: undated and unsigned probate court petition for involuntary appointment of conservator)

22. On [REDACTED] 2019, the Department issued a W1348 Verification We Need form requesting proof that the [REDACTED] property was listed for sale. (Exhibit 3L)
23. None of the properties were ever listed for sale. (Appellant's testimony)
24. In determining the couple's assets, the Department excluded the value of [REDACTED] [REDACTED] in [REDACTED] as the Spouse's home property and counted the value of the Spouse's other two properties, the lot in [REDACTED] (\$176) and the home in [REDACTED] [REDACTED] (\$251,900.00) (Department representative's testimony and Exhibit 2: Spousal Assessment Worksheet)
25. On [REDACTED] 2019, the Applicant passed away. (Hearing Summary and Appellant's testimony)
26. On [REDACTED] [REDACTED] 2019 the Department issued a spousal assessment worksheet advising of their determination that the Applicant and his spouse had \$283,536.52 in total assets on the date he was institutionalized and \$264,271.04 in assets on [REDACTED] 2018. The Department determined that the spousal share of the assets was the maximum of \$123,600 and that the total allowable assets for the couple were \$125,200. (\$123,600 + \$1600) (Exhibit 2 and Exhibit 6: Email of [REDACTED], 2020)
27. On [REDACTED] 2019, the Department denied the application for Medicaid for Long Term Care Services because the value of the assets exceeded the allowable limit. (Exhibit 4: Notice of Action dated [REDACTED] 2019)
28. 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 requested an administrative hearing on [REDACTED] 2019 and the decision was due on [REDACTED] 2020. The Appellant requested two continuances of the hearing resulting in a delay of 36 days. The Appellant also requested that the hearing record be held open for the submission of additional evidence. The hearing record was held open for an additional eight days at the request of the Appellant and another seven days to provide the parties with an opportunity to review evidence submitted for the record. Therefore, this decision was due not later than [REDACTED] 2020 and is therefore timely.

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. 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.
4. 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.
5. 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 the Applicant was an institutionalized spouse and his wife, who was living in the community, was a community spouse.

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);
 - c. or the institutionalized spouse cannot execute the assignment because of a physical or mental
8. UPM § 4025.67(D)(3)a and b provides that every January 1, the CSPA shall be equal to the greatest of the following amounts: the minimum CSPA or the lesser of the spousal share calculated in the assessment of spousal asset (Cross Reference 1507.05); or the maximum CSPA.
9. Effective [REDACTED] 2019, the minimum CSPA was \$123,600.
10. UPM § 4030.65 D 2 provides for the treatment of non-home property in determining assets for applicants of Medicaid for Long term care and states **that all other non-home property is excluded for as long as the individual is making a bona fide effort to sell it. The exclusion period begins with the first month in which all of the following conditions are met: the assistance unit is otherwise eligible for assistance; the assistance unit owns the property; the property is available to the assistance unit; and the assistance unit is making a bona fide effort to sell the property.** (Emphasis added)

The Department was correct when it counted the value of the [REDACTED] real estate in [REDACTED] because it was non home property that the Appellant never made a bona fide effort to sell.

11. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.

The Department was correct when it determined that the Community Spouse was entitled to the maximum CSPA of \$123,600 and that the couple's total assets could not exceed \$125,200 (\$123,600 + \$1,600) in order to be eligible for Medicaid for Long Term Care.

12. UPM § 4005.05 (D) (1) provides that the Department compares the assistance unit's equity in counted assets with the program asset limit when determining whether the unit is eligible for benefits.

The Department was correct when it determined that the couple's countable assets exceeded the allowable limit of \$125,200.00.

The denial of the application for Title 19- Medicaid for Long Term Care was correct because the Applicant's assets exceeded the allowable limit from the time of the application through the time of his death.

DISCUSSION

The Department was correct when it determined that the Applicant could not continue on the N01 coverage group once he turned 65 years of age. Turning 65 and becoming Medicare eligible is a determining factor in medical coverage, both in Medicaid and even in the private insurance the Applicant had through his wife's employer.

When an individual proves to be ineligible for a coverage group, the Department has an obligation to see if there are others for which the individual may qualify. The Department correctly determined the Medicaid for Long Term Care coverage as appropriate for the Applicant. The Department was correct that this coverage group has an asset limit and a look back requirement. The Department correctly advised the Appellant of the asset limits. Beginning in November, the Department began to advise the Appellant that she must list the property for sale.

The Department's responsibility is to determine eligibility for public assistance based upon the regulations. For long term care cases, the regulations require assessments of assets of the applicant and spouse, if the applicant has a spouse. For single individuals, the asset limit is \$1600. In cases where there is a spouse, a spousal assessment is required to determine the asset limit, as spouses are entitled to keep half of the assets to certain limits as established by the regulations.

The regulations also govern which assets count towards the asset limit. Home property in which a spouse lives is excluded and **NOT** counted towards the couple's asset limit. **Non home property is also excluded for as long as bona fide effort is being made to sell it.** There is no provision in the policy for excluding the property while a conservator is appointed, or for any other reason. Neither property was ever listed for sale. Throughout the pendency of the application, the spouse's home property (and therefore excluded) was the [REDACTED] property. She stated to the Department that she would be listing the [REDACTED] property for sale. At some point, she decided to make the [REDACTED] property her home property (it is unclear if she ever actually moved), making the [REDACTED] real estate the non-home property. At the end of the day, the Appellant did not make a bona fide effort to sell either property. The Department correctly excluded the value of the home that she was living in and counted the value of the other property in full. The value of the property alone exceeded the allowable asset limit.

The policy regarding excluding the value of non-home property specifically states that the exclusion begins with the first month in which the assistance unit is making a bona fide effort to sell the property. Even if the Appellant had put one of the properties up for sale, the property would only have been excluded for the month in which she did so and going forward. As the Applicant passed away, the assets exceeded the limit for as long as he was alive, resulting in no eligibility.

The Department was correct in counting the value of the non-home property and denying the application as the Applicant's assets exceeded the limit for as long as the application pended.

The notation on the form W1348 to "send what you have and the rest later" refers only to the gathering & returning of the many documents requested. The intention is to communicate that if all the information is not readily available, an applicant is to send what is available and continue to work on information or documents that are not readily available, to ease anxiety about the deadline listed on the form. There was no suggestion that there could be a delay in the listing of the property for sale.

The Department was incorrect when it sent a W1348 on [REDACTED] asking for proof that the property had been put up for sale. There would have been no point in putting property up for sale at that point as the Applicant had died and there was no need for eligibility going forward.

DECISION

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



Maureen Foley-Roy,
Hearing Officer

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.