

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

██████████ 2021
Signature Confirmation

Client ID # ██████████
Case ID # ██████████
Request # 169086

NOTICE OF DECISION

PARTY

██████████
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PROCEDURAL BACKGROUND

On ██████████, 2020, the Department of Social Services (the “Department”) sent ██████████ ██████████ (the “Applicant”), care of his spouse ██████████ (the “Spouse”) a Notice of Action (“NOA”) denying Medicaid benefits.

On ██████████ 2020, the Applicant’s son ██████████ (the “Appellant”), via his attorney ██████████ requested an administrative hearing to contest the denial 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 ██████████ ██████████ 2021.

On ██████████ 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a Notice rescheduling the administrative hearing for ██████████, 2021.

On ██████████ 2021, 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 son
 [REDACTED], Appellant's attorney, Witness for the Appellant
 [REDACTED], Representing the creditors of the Applicant
 Nancy Sciascia, Department's Representative
 Marci Ostroski, Hearing Officer

The Applicant, [REDACTED] expired on [REDACTED], 2020, and was not present at the administrative hearing.

The Hearing record remained open at the request of the Appellant's attorney for the submission of additional information. Exhibits were received from the Appellant. The Department provided additional exhibits and the record closed on [REDACTED] 2021.

STATEMENT OF THE ISSUE

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

FINDINGS OF FACT

1. On [REDACTED], 2001, the Applicant and his spouse established a [REDACTED] (the "Trust") between themselves as grantors and [REDACTED] and [REDACTED] as co-trustees. The Trust consisted of property located at [REDACTED], [REDACTED] CT, and the Applicant and Spouse's home property located at [REDACTED], [REDACTED], CT. (Ex. 6: Trust; Ex. 11: Land Records Town of [REDACTED]; Schedule A; Ex. 10: Land Records Town of [REDACTED])
2. Section 11 of the Trust provides in relevant part for Revocation and Amendment: "The following rights shall be retained by the grantors during the joint lifetimes of the grantors: a. the right to withdraw all or any part of the trust property and to revoke this agreement entirely and the trust hereby created. b. the right and power to amend, change, and supplement this agreement executed in the same manner as this agreement. c. the right and power to remove and appoint co-trustees and successor trustees. The rights reserved by the grantors may only be executed as follows: a. if both grantors are alive and competent, severally, only with respect to each grantor's separate share. B. if one grantor is dead or incapacitated by the grantor surviving and competent as to that surviving grantor's separate share only. C. in the event of the incapacity of one or both of the grantors this trust may not be revoked by any legal or personal representative of an incapable grantor."
3. On [REDACTED], 2012, the Applicant and Spouse established a [REDACTED] (the "Living Trust"). The intent of this trust was to protect liquid assets however the revocable living trust was never funded. (Ex. 7: Living Trust Agreement; Appellant's Attorney's Testimony)
4. On [REDACTED] 2019, the Applicant was admitted to [REDACTED]. The Applicant's earliest Date of Institutionalization ("DOI") was [REDACTED] 2019. (Ex. 1: Long Term

Care Application, Hearing Summary; Ex. 3: Spousal Assessment; Department's Testimony)

5. The Applicant, the Institutionalized Spouse ("IS") was married to [REDACTED], the Spouse, also referred to as the Community Spouse ("CS"). (Hearing Record)
6. On January 12, 2019, the Applicant and his spouse had assets which consisted of two [REDACTED] accounts, two [REDACTED] accounts, a [REDACTED] policy, a [REDACTED] and non-home property located at [REDACTED]. The Applicant and his spouse also owned exempt home property located at [REDACTED], and an exempt [REDACTED]. (Ex. 3: Spousal Assessment)
7. On [REDACTED] 2019, the Department received an application for Long Term Care Assistance ("LTSS") Medicaid for the Applicant. The application listed [REDACTED] from [REDACTED] as the Authorized Representative ("AREP"). (Ex. 1: Long Term Care Application, Hearing Summary)
8. The Department worked directly with the AREP regarding the Applicant's Medicaid application. (Hearing Summary; Department's testimony)
9. Throughout the application process, the Department determined the values of the Applicant and Spouse's assets. (Hearing Record).
10. The Department determined the value of the Applicant's [REDACTED] vehicle as \$3078.00 through Kelley Blue Book. Nothing was provided from the Applicant's AREP during the application process to dispute this amount. The Department's determination of the car's value is credible (Hearing Record, Department's testimony; Ex.14: Kelley Blue Book printout)
11. The Department contacted the town of [REDACTED] to inquire about the property located at [REDACTED] and the town representatives confirmed that the property is listed as owned by the [REDACTED]. (Department's testimony)
12. The Department determined the value of the property located at [REDACTED] based on the town assessor's website with the appraised value of \$260,700.00. The Applicant's representatives did not have the property appraised. The Department's valuation is credible. (Ex. 13: [REDACTED] printout; Appellant's testimony)
13. The Applicant's [REDACTED] reflected a date of [REDACTED], and a face value of \$1000. The Department verified the current face value through a telephone call to the life insurance company was \$3500. (Ex. D: Life Insurance document; Department's testimony; Ex. 3: Spousal Assessment worksheet)
14. On [REDACTED], 2020, the Applicant expired while residing at [REDACTED]. (Hearing Summary; Appellant's Hearing Request)

15. On [REDACTED] 2020, the Department sent the two trust documents to the Office of Legal Counsel for review. The Department determined that based on the Trust, the Applicant and spouse established and are beneficiaries of the Trust and therefore the trust assets which consist of the property located at [REDACTED] and the home property are available assets for Medicaid purposes. The Department further determined that the Living Trust is revocable and any assets in that trust would also be available for Medicaid eligibility purposes. (Ex. 8: Email response from Office of Legal Counsel; Department's testimony)
16. On [REDACTED], 2020, the Department notified the Appellant that it determined that the total assets owned by the couple as of the DOI was \$440,419.80, that the Community Spouse Protected Amount (CSPA) for the Community Spouse ("CS") is \$220,209.90 and that the Applicant's Medicaid eligibility may not begin until the total spousal assets are reduced to \$128,020.00 or less (\$1600.00 for the Applicant plus \$126,420.00 (Maximum Community Spouse Protected Amount ("CSPA") for the CS). (Ex. 2: Assessment of Spousal Assets Notification of Results; Ex. 3: Spousal Assessment)
17. As the property located at [REDACTED] is appraised at \$260,700.00 this property alone places the Applicant over the total allowable spousal assets of \$128,020.00. (Hearing Record)
18. On [REDACTED], 2020, the AREP contacted the Appellant and informed him that the Department was considering the Trust assets, specifically the property located at [REDACTED] as an available asset for the Applicant's Medicaid application. (Ex. 4: Copy of email to AREP)
19. On [REDACTED], 2020, the Department sent the AREP a W-1348LTC We Need Verification From You form which stated in part "RE: non-home property in [REDACTED] CT-the Department has determined that this property is owned by [REDACTED]. If you do not agree with this please provide verification of ownership. Also please provide verifications for any of the bank accounts if you feel that the Department used the wrong figures in the spousal assessment". The due date for the information was [REDACTED], 2020. (Ex. 5: W1348LTC)
20. Neither the AREP nor the Appellant provided any verifications disputing the ownership of the property. No information was provided to the Department reporting that the Applicant lacked mental capacity. There were no medical records provided regarding the Applicant's mental capacity. Neither the AREP nor the Appellant provided any third-party documentation regarding the Applicant's mental capacity. (Hearing Record; Appellant's Attorney's testimony)
21. In [REDACTED] 2020, the Department determined for the application period of [REDACTED] 2020 that the Applicant exceeded the Medicaid asset limit. (Department's testimony)

22. On [REDACTED] 2020, the Department denied Medicaid for long-term care for exceeding the asset limit. (Hearing Summary, Ex. 9: Notice of Action dated [REDACTED]/20)
23. At the administrative hearing, on [REDACTED] 2021, the Appellant's attorney provided an affidavit dated [REDACTED] 2021, which read in part that she has been the personal attorney for the Applicant and his spouse since 1995. It further stated that in her opinion, the Applicant was not able to understand, direct, transact, or process any business matters since 2013. This document had not been previously provided to the Department. (Ex A: Affidavit of [REDACTED])

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 January 12, 2019, 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).
8. 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.

9. 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)
10. The Department correctly determined that the initial calculation of the CSPA for the CS is equal to \$126,420.00, or the spousal share calculated in the assessment of spousal assets, which is equal to the maximum CSPA owned by the couple as of the [REDACTED] 2019, DOI.
11. 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.
12. 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.
13. 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.
14. 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.
15. UPM § 4000.01 defines a trust as an oral or written agreement in which someone (the trustee) holds the legal title to an asset for the benefit of another person (the beneficiary).
16. The Applicant and his spouse are the beneficiaries of the Trust.

17. Regulations of Connecticut State Agencies Section 17b-198-8 (l)(2) provides: The corpus of a trust shall be treated as a counted asset of a person and the needs group to which he or she belongs if the terms of the trust permit such person to revoke the trust and receive the corpus of the trust upon revocation
18. UPM § 4000.01 defines an inter-vivos Trust as a trust established during the lifetime of the settler by means other than a will.
19. The Trust, in this case, is an inter-vivos trust because it was self-settled by the Applicant during his lifetime by means other than a will
20. UPM § 4030.80 (D)(1) provides for inter vivos trusts established on or after August 11, 1993, in the Medicaid program The Department considers an individual to have established a trust if the individual's assets were used to form all or part of the corpus of the trust and if any of the following individuals established the trust by means other than a will:
- a. the individual; or
 - b. the individual's spouse; or
21. UPM § 4030.80 (D)(2)(3) provides for inter vivos trusts established on or after August 11, 1993, in the Medicaid program: For a trust whose corpus includes assets of an individual described in paragraph 1 and of any other person, the Department evaluates only that portion of the trust attributable to the assets of the individual. The Department evaluates trusts described in paragraph D regardless of:
- a. why the trust was established; or
 - b. whether the trustees have or exercise any discretion under the trust; or
 - c. any restrictions on when or whether distributions may be made from the trust; or
 - d. any restrictions on the use of distributions from the trust.
22. 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.
23. The Assistance unit failed to demonstrate that the Trust was inaccessible due to the Applicant's incapacity during the application process.
24. The Department correctly determined that the Trust was an available asset as the Appellant had the legal right, authority or power to obtain the asset or have it applied for the Applicant's general medical support.

25. The Department correctly determined that the appraised value of the non-home property in the Trust was counted as the asset was accessible.
26. 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.
27. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
28. The Department correctly determined that the Applicant's assets of \$349,492.12 in the month of [REDACTED] 2019 exceeded the \$128,020.00 (\$1600.00 + \$126,420.00 CSPA) asset limit.
29. The Department correctly determined that the Applicant's assets of \$348,757.36 in the month of [REDACTED] 2020 exceeded the \$128,020.00 (\$1600.00 + \$126,420.00 CSPA) asset limit.
30. The Department correctly determined that the Applicant's assets of \$351,289.03 in the month of [REDACTED] 2020 exceeded the \$128,020.00 (\$1600.00 + \$126,420.00 CSPA) asset limit.
31. The Department correctly determined that the Applicant's assets of \$336,597.83 in the month of [REDACTED] 2020 exceeded the \$128,020.00 (\$1600.00 + \$126,420.00 CSPA) asset limit.
32. The Department correctly determined that the Applicant's assets of \$353,349.62 in the month of [REDACTED] 2020 exceeded the \$128,020.00 (\$1600.00 + \$126,420.00 CSPA) asset limit.
33. The Department correctly determined that the Applicant's assets of \$355,976.23 in the month of [REDACTED] 2020 exceeded the \$128,020.00 (\$1600.00 + \$126,420.00 CSPA) asset limit.
34. The Department correctly determined that the value of the non-home property located at [REDACTED] placed the Applicant over the asset limit for the long-term care Medicaid program.
35. The Department correctly denied the long-term care Medicaid application for exceeding the asset limit.

DISCUSSION

After reviewing the evidence and testimony presented, I find the Department correctly determined that the Applicant exceeded the Medicaid asset limit and denied his application for LTC coverage.

At the administrative hearing, the Appellant and counsel did dispute the Department's valuation of some of the Applicant's other assets. Specifically, one of the vehicles and a life insurance policy. While the Appellant did not agree with those valuations, he did not provide for the Department during the application process or the hearing record a preponderance of evidence or testimony to overturn the methods used by the Department. Those values, however, are moot as the value of the property located at [REDACTED] alone placed the Applicant over the asset limit. The Department's valuation of the property was also credible.

The Appellant's main argument revolved around the Department's classification of the property held in trust as accessible. State regulations provide that the burden falls on the Assistance Unit, in this case, the Applicant, or his representatives, to prove that the trust was inaccessible. The Applicant's representatives failed at any point during the application process to demonstrate the inaccessibility of the trust.

At the administrative hearing, the Appellant's attorney provided an affidavit in which she reported as the Applicant's attorney, that the Applicant had dementia after 2012 and that by 2013 he was not competent to revoke the Trust and was not able to understand, direct, transact, or process any business or financial decisions. The Attorney's position was that the Trust was therefore inaccessible as outlined in Section 11. The Appellant and counsel did not provide any medical evidence of a dementia diagnosis or any third-party testimony or statements that support these claims. Further, these reports were not provided to the Department during the application process although an extension was granted by the Department to dispute the classification of the Trust's accessibility. The Department made the correct determination of the Trust's accessibility based on the information that was provided to them.

The Attorney cited Bassford v Bassford, 180 Conn App 331, 349. This case supports the position that the Applicant would require a higher level of capacity to revoke the Trust. I do agree that Bassford supports this claim however I found that this case differs. In Bassford, the decedent had been involuntarily conserved. The Probate court determined his capacity. Also, the court used the decedent's medical records and testimony of his personal attorney and spouse in their determination of his capacity. In this case, these were not provided for the record and the burden of that proof falls to the Applicant. A determination of capacity cannot be made without this documentation.

The Attorney further cites Kunz vs. Sylvain, 159 conn app 730. I find this case also differs from the present hearing. In Kunz, the plaintiff alleged that that decedent lacked the mental capacity to amend the inter vivos trust he had previously established. The court here upheld the trial court's decision that the decedent did not lack the capacity to make the amendments. Again, the court reviewed the decedent's medical records which

confirmed that although he was exhibiting signs of dementia, he was alert and aware, and able to process and understand information. In this case, no medical records were provided reflecting the Applicant's mental state.

I did not find the Attorney's affidavit sufficient verification to make a determination of his mental capacity and I recognize that the Department had not been made aware of any questions of his mental capacity during the application process. The hearing record supports that the Department correctly classified the Trust as an accessible asset for Medicaid purposes and the assets therein place the Applicant over the asset limit. The denial is upheld.

DECISION

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

Marci Ostroski

Marci Ostroski
Hearing Officer

cc: Judy Williams, Jessica Carroll, Musa Mohamud, Operations Managers, Hartford
Regional Office
Jamel Hilliard, Operations Manager, Waterbury Regional Office
Nancy Sciascia, Eligibility Services Worker, Waterbury Regional Office
[REDACTED], Applicant's spouse
[REDACTED], Attorney at Law

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.

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, 165 Capitol Avenue, 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.