

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

[REDACTED] 2023
Signature confirmation

Case: [REDACTED]
Client: [REDACTED]
Request: 215036

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2023, the Department of Social Services (the “Department”) issued a *Notice of Action* denying the [REDACTED] 2022 HUSKY-C/Medicaid long-term care application of [REDACTED] (the “Applicant”).

The Applicant had passed away during the pendency of her application on [REDACTED] 2023.

On [REDACTED] 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received an [REDACTED], 2023 postmarked hearing request from [REDACTED] (the “Appellant”), the Applicant’s son.¹

On [REDACTED] 2023, the OLCRAH scheduled an administrative hearing for [REDACTED] 2023. The OLCRAH granted the Appellant’s requests for postponements.

On [REDACTED], 2023, 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:

[REDACTED], Appellant
Felicia Andrews, Department’s Representative

¹ Section 1570.05 D.2. of the Department’s Uniform Policy Manual permits the child of a deceased individual to request an administrative hearing on the decedent’s behalf.

Eva Tar, Hearing Officer

The hearing record initially closed [REDACTED], 2023.

On [REDACTED] 2023, the hearing officer discovered omissions to the record and reopened the record. The hearing officer asked the Department and the Appellant to submit: 1) the face values of the life insurance policies and 2) the Applicant's and her spouse's bank statements from [REDACTED] 2022 through [REDACTED] 2023 for two of the couple's accounts.

The life insurance policies' face values and associated cash values were submitted for the hearing record. Neither the Department nor the Appellant submitted the requested bank statements.

On [REDACTED], 2023, the hearing record closed.

STATEMENT OF ISSUE

The issue is whether the Department correctly determined that the Applicant was ineligible to receive HUSKY-C/Medicaid long-term care coverage.

FINDINGS OF FACT

1. The Appellant is the Applicant's son and held her power of attorney prior to her death. (Appellant Testimony)
2. [REDACTED] (the "spouse") is the Applicant's surviving spouse. (Department Representative Testimony)
3. [REDACTED] 2022 is the Applicant's initial date of institutionalization. (Department Representative Testimony)
4. On [REDACTED] 2022, the Department received the Applicant's HUSKY-C/Medicaid application for long-term care coverage. (Dept. Exhibits 1 through 4, inclusive)
5. On [REDACTED] 2022, [REDACTED] 2022, [REDACTED] 2022, and [REDACTED] 2023, the Department notified the Appellant in writing that the Applicant would not be eligible for HUSKY-C/Medicaid long-term care benefits in any month in which the Applicant's counted assets exceeded \$1,600.00, the HUSKY-C/Medicaid asset limit for long-term care benefits. (Dept. Exhibits 1 through 4, inclusive)
6. The value of the couple's total counted assets as of [REDACTED], 2022 equaled \$53,086.64, as distributed between the couple's [REDACTED] accounts [REDACTED] and [REDACTED] and the cash value of three [REDACTED] life insurance policies numbered [REDACTED] [REDACTED] (the "life insurance policies"). (Department Representative Testimony) (Dept. Exhibits 5 and 7)

7. The Appellant does not dispute the Department's figures as to the value of the couple's assets. (Appellant Testimony)
8. The face values of the three life insurance policies were \$4,185.00, \$10,129.00, and \$1,452.00; the cash values of the three life insurance policies respectively were \$1,333.89, \$3,194.30, and \$409.40. (Dept. Exhibit 7)
9. The couple did not attempt to cash out the three life insurance policies during the pendency of the Applicant's HUSKY-C/Medicaid application. (Appellant Exhibit D)
10. The spouse lives alone in his home in the community. (Appellant Testimony)
11. The spouse does not have a mortgage on his home. (Appellant Testimony)
12. The spouse's home is in disrepair; his yard requires cleaning. (Appellant Testimony)
13. The spouse's 2022 taxes on his home in the community equaled \$3,124.70. (Appellant Testimony)
14. In 2022, the spouse grossed \$2,019.10 per month in Social Security benefits. (Appellant Testimony)
15. In 2022, the spouse grossed \$1,697.83 per month in a pension. (Appellant Testimony)
16. In 2022, the spouse grossed \$522.39 per month in a VACP Treasury 310 [VA disability compensation or pension] benefit. (Appellant Exhibit B)
17. The spouse does not have circumstances that directly prevent him from taking care of his personal activities of daily living² in his home. (Appellant Testimony)
18. The Department determined that in order for the Applicant to be eligible for HUSKY-C/Medicaid long-term care coverage in an institution, the couple's counted assets could not exceed \$51,600.00, or \$50,000.00 (minimum Community Spouse Protected Amount) plus \$1,600.00 (HUSKY-C/Medicaid asset limit for an individual). (Department Representative Testimony) (Dept. Exhibit 5)
19. The skilled nursing facility in which the Applicant had resided seeks HUSKY-C/Medicaid payment of her long-term care services starting in [REDACTED] 2022. (Department Representative Testimony)
20. On [REDACTED] 2023, the Department notified the Appellant that the couple's total allowable assets based on the spousal assessment equaled \$51,600.00 and requested verification that the couple's total assets fell within that amount. (Dept. Exhibit 3)

² Activities of daily living incorporate the physical tasks of bathing or showering, dressing, getting in and out of bed or a chair, ambulating, using the toilet, and eating unassisted.

21. The Applicant expired on [REDACTED] 2023. (Appellant Testimony)
22. Neither the Department Representative nor the Appellant submitted copies of the couple's [REDACTED] statements from [REDACTED] 2022 through [REDACTED] 2022 and [REDACTED] statements from [REDACTED] 2022 through [REDACTED], 2023 for the hearing record.
23. It cannot be determined from the hearing record the value of the couple's counted assets as of [REDACTED] 2022, [REDACTED] 2022, [REDACTED] 2022, and as of [REDACTED] 2023.
24. It cannot be determined from the hearing record whether the couple's counted assets exceeded \$51,600.00 by [REDACTED] 2022, [REDACTED], 2022, [REDACTED] 2022, and as of [REDACTED] 2023. (Appellant Exhibits A, B, and C)
25. On [REDACTED] 2023, the Department issued a *Notice of Action* denying the Applicant's [REDACTED] 2022 HUSKY-C/Medicaid long-term care application. (Dept. Exhibit 6)
26. Connecticut General Statutes § 17b-61 (a) provides: "The Commissioner of Social Services or the commissioner's designated hearing officer shall ordinarily render a final decision not later than ninety days after the date the commissioner receives a request for a fair hearing pursuant to section 17b-60, ... , provided the time for rendering a final decision shall be extended whenever the aggrieved person requests or agrees to an extension, or when the commissioner documents an administrative or other extenuating circumstance beyond the commissioner's control...."

On [REDACTED] 2023, the OLCRAH received the Appellant's [REDACTED] 2023 postmarked hearing request. This hearing decision would have become due by [REDACTED], 2023, but for the 55-day postponement of the Appellant from the initial hearing date of [REDACTED] 2023 and a 15-day extension of the initial close of the hearing record. These delays extended the timeframe for the issuance of this decision a total of 70 days, through [REDACTED] 2023. 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] 2022 HUSKY-C/Medicaid application to determine whether the Applicant was eligible for 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] 2022 HUSKY-C/Medicaid application, the Applicant was the "institutionalized spouse," and her spouse 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] 2022 was the Applicant's beginning date of a continuous period of institutionalization of 30 days or more.

4. "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).

"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.

The Department correctly determined that the couple's [REDACTED] accounts and the cash value of the three life insurance policies were not excluded assets for the purposes of the HUSKY-C/Medicaid program.

5. "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 her spouse’s non-excluded assets to equal \$53,086.64 as of [REDACTED] 2022, the initial date of 30 continuous days of the Applicant’s institutionalization.

6. “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.

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 Applicant’s spousal share of the couple’s \$53,086.64 in non-excluded assets as of [REDACTED] 2022 equaled \$26,543.32. [\$53,086.64 divided by two]

The Applicant’s spousal share of \$26,543.32 is less than \$50,000.00, the minimum CSPA in effect in the month the Applicant filed her HUSKY-C/Medicaid application.

The Department correctly determined that the spouse’s CSPA equaled \$50,000.00, the minimum CSPA in effect in the month the Applicant filed her HUSKY-C/Medicaid application.

7. “The MMNA [Minimum Monthly Needs Allowance] 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.” UPM § 5035.30 B.2.

“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.” UPM § 5035.30 B.3.

“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 e. Standard Utility Allowance (SUA) used in the FS program for the community spouse.” UPM § 5035.30 B.4.

In November 2022, 150 percent of the Federal poverty level for two equaled \$2,288.75 per month; 30 percent of 150 percent of the monthly Federal poverty level for two equaled \$686.63.

In Connecticut, the SUA equaled \$921.00 per month.

With respect to the HUSKY-C/Medicaid program, the spouse’s monthly shelter costs equaled \$1,181.39. [\$260.39 (annual real estate taxes on home, pro-rated) plus \$921.00 (SUA)]

The spouse’s MMNA equaled \$2,783.51, which is his monthly shelter costs, minus \$686.63 (30% of 150% of the monthly FPL), plus \$2,288.75 (150% of the monthly FPL).

8. “The MMNA may not exceed the greatest of either: a. the maximum MMNA; or b. an amount established through a Fair Hearing.” UPM § 5035.30 B.5.

In November 2022, the minimum MMNA equaled \$2,288.75; the maximum MMNA equaled \$3,435.00.

The spouse’s MMNA of \$2,783.51 falls within the range of the minimum MMNA and the maximum MMNA.

9. “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 MMNA (Cross References 4022.05 and 4025.67).” UPM § 1570.25 D.4.

“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.

The spouse’s monthly income of \$4,239.32 from his Social Security, pension, and VA pension exceeds his \$2,783.51 MMNA.

The hearing official cannot increase the spouse’s \$50,000.00 CSPA previously determined by the Department under UPM § 1570.25 D.4., as the spouse’s income exceeds his MMNA.

10. “In order to increase the MMNA, the Fair Hearing official must find that the community spouse's significant financial duress is a direct result of the exceptional circumstances that affect him or her.” UPM § 1570.25 D.3.d.

“The official increases the community spouse's MMNA [Minimum Monthly Needs Allowance] previously determined by the Department if either MCCA spouse establishes that the community spouse has exceptional circumstances resulting in significant financial duress, and the MMNA previously calculated by the Department is not sufficient to meet the community spouse's monthly needs as determined by the hearing official.” UPM § 1570.25 D.3.

“Exceptional circumstances are those that are severe and unusual and that: (1) prevent the community spouse from taking care of his or her activities of daily living; or (2) directly threaten the community spouse's ability to remain in the community; or (3) involve the community spouse's providing constant and essential care for his or her disabled child, sibling or other immediate relative (other than institutionalized spouse).” UPM § 1570.25 D.3.a.

“Significant financial duress is an expense or set of expenses that: (1) directly arises from the exceptional circumstances described in subparagraph a above; and (2) is not already factored into the MMNA; and (3) cannot reasonably be expected to be met by the community spouse's own income and assets.” UPM § 1570.25 D.3.b.

“Expenses that are factored into the MMNA, and thus do not generally qualify as causing significant financial duress, include, but are not limited to: (1) shelter costs such as rent or mortgage payments; (2) utility costs; (3) condominium fees; (4) real estate and personal property taxes; (5) real estate, life and medical insurance; (6) expenses for the upkeep of a home such as lawn maintenance, snow removal, replacement of a roof, furnace or appliance; (7) medical expenses reflecting the normal frailties of old age.” UPM § 1570.25 D.3.c.

The spouse's home requiring upkeep is an expense already factored into the MMNA in accordance with UPM § 1570.25 D.3.c. and cannot be used to otherwise increase the MMNA, as to do so would be to incorporate the same expense twice.

The spouse does not meet the criteria for having exceptional circumstances that are severe and unusual that prevent him from taking care of his activities of daily living and which cannot reasonably be expected to be met by his own income and assets.

The hearing officer cannot increase the spouse's MMNA under UPM § 1570.25 D.3.d., as the spouse does not have exceptional circumstances resulting in significant financial duress.

11. 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 HUSKY-C/Medicaid program, the Applicant was a needs group of one.

As a condition of eligibility to receive coverage for long-term care under the HUSKY-C/Medicaid program, the couple's counted assets by [REDACTED] 2022, [REDACTED], 2022, [REDACTED] 2022 and as of [REDACTED] 2023 could not exceed \$51,600.00. [\$50,000.00 (minimum CSPA amount) plus \$1,600.00 (maximum assets for an institutionalized individual)]

12. "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.

As it cannot be determined from the hearing record whether the couple's counted assets exceeded the HUSKY-C/Medicaid program's limits in the relevant service months of [REDACTED] 2022, [REDACTED] 2022, [REDACTED] 2022, and by [REDACTED] 2023, the Department must take further action regarding the Applicant's denied [REDACTED] 2022 HUSKY-C/Medicaid application.

DISCUSSION

The skilled nursing facility in which the Applicant resided is seeking HUSKY-C/Medicaid payment from [REDACTED] 2022 through [REDACTED] 2023.

In response to the hearing officer's requests to the Department and the Appellant for submission of the relevant 2022 bank statements, the Appellant twice emailed the hearing officer [REDACTED] statements for the incorrect year (2021). The Department also did not provide the relevant 2022 bank statements. The hearing record closed without the bank statements.

It is reasonable to conclude that the Department denied the Applicant's [REDACTED] 2022 HUSKY-C/Medicaid application by using the couple's 2021 bank statements to represent the couple's 2022 counted assets.

This matter is remanded to the Department to remedy its initial oversight and to give the Appellant a final opportunity to submit the correct (2022) bank statements.

DECISION

The issue of this hearing is REMANDED to the Department.

ORDER

1. The Department will reinstate the Applicant's [REDACTED] 2022 HUSKY-C/Medicaid application.

2. The Department will issue a *Proofs We Need* to the Appellant, requesting copies of the bank statements for the couple's [REDACTED] accounts [REDACTED] for [REDACTED] 2022 through [REDACTED] 2023. The Department will give a 10-day deadline for the submission of the requested documents, in accordance with its policy.
 - Should the Appellant **submit** the relevant bank statements by the Department's deadline, the Department will assess whether the couple's counted assets are within the HUSKY-C/Medicaid limits and will process the HUSKY-C/Medicaid application accordingly by either granting or denying the application.
 - Should the Appellant **fail to submit** the relevant bank statements by the Department's deadline, the Department will deny the HUSKY-C/Medicaid application for failure to provide verification necessary to establish eligibility.
3. Within 21 days of the date of this Decision, or [REDACTED] 2023, documentation of compliance with this Order is due to the undersigned.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

Pc: Felicia Andrews, DSS-New Haven
Sarah Chmielecki, DSS-New Haven
Tim Latifi, DSS-New Haven
Ralph Filek, 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 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.