

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

[REDACTED] 2024
Signature confirmation

Case: [REDACTED]
Client: [REDACTED]
Request: 214656

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 [REDACTED] (the "Applicant") [REDACTED] 2021 HUSKY-C/Medicaid application (the "Application").

On [REDACTED] 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received the hearing request of [REDACTED] (the "Appellant"), the widower of the deceased Applicant.

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

On [REDACTED], 2023, the OLCRAH scheduled an administrative hearing for [REDACTED] 2023.

On [REDACTED] 2023, the Department filed a Motion for Advice. On [REDACTED] 2023, the Department withdrew the Motion for Advice.

On [REDACTED] 2023, the Department and the Appellant disclosed to the undersigned hearing officer a proceeding pending before the [REDACTED] Probate Court for [REDACTED] 2023 to appoint an administrator for the Estate of [REDACTED]. The Department and the Appellant requested a postponement of the hearing to permit the administrator's participation; the Hearing Officer granted the request.

On [REDACTED] 2023, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the undersigned hearing officer held an administrative hearing at the Department's Bridgeport regional office. The following individuals participated:

[REDACTED], Appellant

[REDACTED], Appellant Counsel

[REDACTED], Temporary Administrator of the Estate of [REDACTED]

Debra Hirth, Department Representative

Megan Finlayson, Department Representative

Graham Shaffer, Department Counsel

Rebecca Rigdon, Department Counsel

Jennifer Zakrewski, Department Paralegal

Eva Tar, Hearing Officer

The hearing record closed for evidence on [REDACTED] 2023, with Appellant's brief due by [REDACTED] 2023 and the Department's reply brief by [REDACTED] 2023.

The Hearing Officer asked the Department and the Appellant to submit by [REDACTED] 2024 four spreadsheets listing the Appellant's and Applicant's assets, owned individually and jointly, and their businesses as of [REDACTED] 2018, [REDACTED], 2021, and [REDACTED] 2022, owned individually and jointly, to ensure that sufficient information to clarify, simplify, and decide the matter was part of the hearing record.¹ The Appellant submitted spreadsheets for two of the three dates; the Department provided spreadsheets for all three dates.

On [REDACTED], 2024, the Hearing Officer issued a Ruling denying the Department's [REDACTED] 2024 request to reopen the hearing record for the inclusion of miscellaneous documents pre-marked by the submitter as Exhibits 40 through 53, inclusive. The Department did not object to the Ruling.

STATEMENT OF ISSUE

The issue is whether the Department's [REDACTED] 2023 denial of the Application is supported by State statute and regulation.

FINDINGS OF FACT

1. The Applicant's date of birth was [REDACTED]. (Stipulated)
2. The Applicant was the Appellant's wife at the time of her death. (Stipulated)
3. The Appellant is the owner, president, and CEO of [REDACTED], a company registered in [REDACTED] in [REDACTED]. (Department Exhibit 2)

¹ See Uniform Policy Manual, Section 1570.25 C.2.h. and C.2.i. for authority.

4. [REDACTED] is in current operation with seven employees and two locations; the business has gross revenue of \$275,000 per month and is not undergoing bankruptcy proceedings. (Appellant Testimony)
5. The Applicant's initial date of 30 days of continuous institutionalization was [REDACTED] 2018, the date the Applicant was admitted to [REDACTED], an assisted living facility with memory care. (Stipulated)
6. Prior to her admittance to [REDACTED], the Applicant resided with the Appellant at [REDACTED] [REDACTED] New York (the [REDACTED] property"). (Appellant Testimony)
7. The Appellant and the Applicant placed the [REDACTED] property into [REDACTED], which was 100% owned by [REDACTED], a Florida limited liability limited partnership derived from the Appellant and Applicant's ownership as 99% [REDACTED] and by 1% held by [REDACTED]. [REDACTED] LLC was a [REDACTED] Limited Liability Company owned by the Appellant and Applicant as 50% - 50% members. (Appellant Exhibit A)
8. The Appellant took a series of loans on the [REDACTED] property but by [REDACTED] 2018 had defaulted on his loan payments. (Appellant Exhibit A)
9. The Applicant was the owner and operator of [REDACTED] (the "School") in [REDACTED] which she sold on [REDACTED] 2019. (Appellant Testimony) (Appellant Exhibit A)
10. The Applicant authored several books which she sold the royalty rights to [REDACTED] on [REDACTED] 2018 for \$480,000 and to [REDACTED] for \$50,000 on [REDACTED] 2020. (Appellant Exhibit A)
11. On [REDACTED] 2021, [REDACTED] (the "Facility"), a skilled nursing facility, admitted the Applicant from [REDACTED]. (Department Representative Testimony) (Dept. Exhibit 2)
12. From [REDACTED] 2021 through [REDACTED] 2022, the Applicant resided at the Facility. (Stipulated)
13. The Facility is seeking Medicaid payment for the Applicant's care as of [REDACTED] 2021. (Finlayson Testimony)
14. On [REDACTED] 2021, the Appellant signed a HUSKY-C/Medicaid application (the "Application") as the Appellant's attorney in fact. (Dept. Exhibit 1)
15. On [REDACTED] 2021, the Department received the Application. (Stipulated)

16. In [REDACTED] 2021, the minimum Community Spouse Protected Amount equaled \$26,076; the maximum equaled \$130,380. (Dept. Exhibit 33)
17. Completion of the Application's SECTION I-ASSETS requires a complete list of all assets owned by the Applicant or spouse individually, jointly, or with other persons. (Dept. Exhibit 1)
18. The Appellant listed only one asset owned by the Applicant under SECTION I on the Application: \$84.95 in [REDACTED] checking account [REDACTED]. The Appellant identified no other assets owned by the Applicant individually or jointly, under SECTION I. (Dept. Exhibit 1)
19. Under SECTION I, the Appellant marked an "X" to designate "No" in the category of Ownership in a Company. (Dept. Exhibit 1)
20. Under SECTION O-SPOUSE BENEFITS AND OTHER INCOME, the Appellant listed his sole source of income as \$2,016.80 in Social Security benefits. (Dept. Exhibit 1)
21. Completion of the Application's SECTION R-SPOUSAL NEEDS requires a complete list of all assets owned by the Applicant individually and jointly as well as those assets owned individually and jointly by the Applicant's spouse in the month the Applicant entered a hospital or long-term care facility and had a continuous stay of 30 days or more. (Dept. Exhibit 1)
22. Under SECTION R, the Appellant listed his total assets as: \$121,017 in [REDACTED] checking account [REDACTED]. The Appellant listed no other assets owned by the Appellant individually or jointly under SECTION R. (Dept. Exhibit 1)
23. Under SECTION R, the Appellant marked an "X" to designate "No" in the category of Ownership in a Company. (Dept. Exhibit 1)
24. In the past and/or currently, the Applicant and the Appellant, individually or jointly, had ownership or an investment interest in the following businesses: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (collectively, "the Companies"). (Hearing record)
25. The Appellant failed to disclose on the Application that he and the Applicant, individually or jointly, were the owners of or had an investment interest in the Companies. (Dept. Exhibit 1)

26. Under SECTION B-CURRENT ADDRESS, the Appellant identified the couple's home as the [REDACTED] property. (Dept. Exhibit 1)
27. On [REDACTED] 2021, the Appellant's personal tax returns for tax years 2019 and 2020 were in an extension. (Dept. Exhibit 28)
28. On [REDACTED] 2021, [REDACTED] tax returns for tax years 2018, 2019, and 2020 were in an extension; the company had not filed a tax return for those tax years. (Dept. Exhibit 28)
29. On [REDACTED] 2022, [REDACTED] filed for Chapter 11 bankruptcy with the United States Bankruptcy Court [REDACTED]. (Appellant Exhibits A and L)
30. On [REDACTED] 2022, [REDACTED] submitted a Second Amended Chapter 11 Plan of Liquidation (the "Plan") to the United States Bankruptcy Court [REDACTED]. The Plan identified [REDACTED] as the Lender, a creditor holding a secured claim against the [REDACTED] property. (Appellant Exhibit M)
31. The Plan provided for the marketing of the [REDACTED] property and stated that in the event the [REDACTED] property was transferred to the Lender, the Appellant will vacate the [REDACTED] property no later than 30 days following the conclusion of the Marketing Period, or by [REDACTED] 2022, should the lender retain the property by way of credit bid. (Appellant Exhibit M)
32. Article II, section (a) of the Plan provides that in the event of a sale of the [REDACTED] property for \$28,000,000 or less (net of sale expenses and secured real estate tax claims), title to the [REDACTED] property shall be transferred to the lender or its designee by way of credit bid or to the actual cash bidder in the sole and absolute discretion of the Lender. (Appellant Exhibit M)
33. On [REDACTED] 2022, the Appellant entered into a personal loan agreement with [REDACTED] [REDACTED] for \$250,000; the terms of the agreement provided a security interest in [REDACTED] (the "[REDACTED] property"). (Dept. Exhibit 21)
34. On [REDACTED] 2022, the Appellant filed a loan application with [REDACTED] for \$647,200 to purchase the [REDACTED] property. The loan application in part listed the following: the net monthly income of [REDACTED] as \$116,962 per month; the Appellant's personal assets as \$339,426.04 in [REDACTED] checking ([REDACTED]); and "Earnest Money" of \$30,000. (Dept. Exhibit 22)
35. [REDACTED] (the "Assistant") is the Appellant's assistant and director of [REDACTED] [REDACTED] (Appellant Testimony) (Appellant Exhibit B)

36. On [REDACTED] 2022, the United States Bankruptcy Court [REDACTED] signed an order confirming the [REDACTED] 2022 Chapter 11 Plan of Reorganization; the Court authorized [REDACTED] "to take all steps necessary to effectuate consummation of the Plan and the payments and distributions therein set forth, all in conformity with the terms of the Plan." (Appellant Exhibit L)
37. On [REDACTED] 2022, the Appellant closed on the [REDACTED] property for a purchase price of \$809,000, with \$647,200 financed by a mortgage through [REDACTED]. The Appellant provided \$30,000 as a deposit and \$156,143.36 "cash to close." (Dept. Exhibits 22 and 23)
38. The "cash to close" and earnest money was funded through the personal loan agreement with [REDACTED] for \$250,000. (Appellant Testimony)
39. The Appellant lives at the [REDACTED] property. (Appellant Testimony)
40. On [REDACTED], 2022, the Applicant passed away at the Facility. (Stipulated)
41. From [REDACTED], 2021 through [REDACTED] 2022, the Department issued 16 written requests for proof to the Appellant and provided deadlines for the submission of the proof. (Dept. Exhibits 5 through 20)
42. The Assistant was the individual who has been responding to the Department's request for proofs and responded by email to the Department during the pendency of the Application. (Appellant Exhibit B) (Hirth Testimony)
43. On [REDACTED] 2022, the Department issued a final W-1348LTC: *Verification We Need* asking for the submission by [REDACTED] 2023 of the following: 1) a list of the Appellant's personal and business assets from [REDACTED] 2021 to [REDACTED] 2022; 2) the Appellant's personal tax returns for 2020 and 2021; and 3) business tax returns for all current active businesses, quarterly taxes as well as "S" Corporation taxes, and whatever other taxes are required for [REDACTED] 2nd quarter 2021 to 3rd quarter of 2022. The request asked for current proof of the extensions for each of the returns if the tax returns were on an extension, and if the tax returns were on an extension to provide the official Profit/Loss statements for the 2nd, 3rd, and 4th quarters of 2021 and the 1st, 2nd, and 3rd quarters of 2022. (Dept. Exhibit 20)
44. On [REDACTED], 2023, the Assistant emailed the following documents to the Department Representative (Hirth) at her state email account: summary of [REDACTED] 2017 transactions greater than \$5,000 ("2017-Transaction Report.pdf") report of personal and business assets from [REDACTED] 2021 to [REDACTED] 2022 ("Assets-[REDACTED] 2022"), personal tax return extensions for 2020 and 2021 [REDACTED] Tax Extensions.pdf", [REDACTED] business tax return extensions for the 2020-21 and 2021-2022 tax years [REDACTED] TAX EXTENSIONS"), and the [REDACTED]. business quarterly sales tax filings for 2nd quarter 2021 to 3rd quarter 2022 ("Sales Tax Returns.pdf"). The Assistant advised the Department Representative that the [REDACTED]

accountant does not prepare official Profit/Loss statements for the company. (Appellant Exhibit C)

45. In [REDACTED] 2023, the Department Representative (Hirth) was out on leave. (Hirth Testimony)
46. On [REDACTED] 2023, the Assistant emailed Department Representative (Hirth) an attachment titled "[REDACTED] Letter re Business Accounts-1-23-2023." (Appellant Exhibit C) (Dept. Exhibit 27)
47. On [REDACTED] 2023, the Department Representative (Finlayson) emailed the Assistant to inquire as to what documents had been provided to Department Representative (Hirth) and when they were sent. (Dept. Exhibit 27)
48. On [REDACTED] 2023, the Assistant emailed the Department Representative (Finlayson) a list of the documents he had emailed to Department Representative (Hirth) on [REDACTED] 2023 and on [REDACTED] 2023. (Dept. Exhibit 27)
49. From [REDACTED] 2023 through [REDACTED] 2023, the Department did not issue an updated and/or amended request for proof to the Appellant. (Hearing record)
50. The Department did not complete a spousal assessment. (Hirth Testimony)
51. On [REDACTED] 2023, the Department denied the Applicant's HUSKY-C/Medicaid application. (Stipulated)
52. The Department's [REDACTED] 2023 *Notice of Action* cited the following reasons for the Application's denial: the Applicant's home equity is greater than the amount the program allows; the value of the Applicant's assets is more than the amount allowed by this program; and the Applicant did not return all of the required proofs by the Department's deadline. (Dept. Exhibit 31)
53. As of [REDACTED] 2023, the [REDACTED] property was listed [REDACTED] for \$25,900,000. (Dept. Hearing Summary)
54. On [REDACTED] 2023, the [REDACTED] Probate Court appointed [REDACTED] [REDACTED] Temporary Administrator of the Estate of [REDACTED]. (Fiduciary's Probate Certificate)
55. As of [REDACTED] 2023, the Temporary Administrator had not completed a probate inventory with the [REDACTED] Probate Court as the Temporary Administrator was investigating the disposition of 10 of the Applicant's businesses across multiple state jurisdictions including New York, Connecticut, and Florida. Several businesses and LLCs were dissolved or had name changes where the Applicant's name was no longer on the business(es). ([REDACTED] Testimony)

56. 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....”

On [REDACTED] 2023, the OLCRAH received the Appellant’s hearing request. The OLCRAH granted the Appellant several postponements, which delayed the proceeding by 181 days, from the initially scheduled hearing date of [REDACTED] 2023 to [REDACTED] 2023. The hearing record was extended an additional 76 days for evidence, briefs, and spreadsheets. The hearing decision would have become due by [REDACTED] 2024. This final decision is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes designates the Department as the state agency for the administration of the identified state and federal programs.

“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 has the authority to administer the Medicaid program in Connecticut and to make regulation for the same.

2. Section 1500.01 of the Department’s Uniform Policy Manual (“UPM”) provides in part the following definitions: Adequate Notice, Application Process, Assessment of Spousal Assets, Community Spouse, Community Spouse Disregard (CSD), Community Spouse Protected Amount, Continuous Period of Institutionalization, Institutionalized Spouse, MCCA² Spouses, Notice, Spousal Share, and Verification.

For the purposes of the HUSKY-C/Medicaid program, the Appellant and the Applicant were MCCA Spouses during the pendency of the Applicant’s [REDACTED] 2021 HUSKY-C/Medicaid application through [REDACTED] 2022, the date of the Applicant’s death.

² Medicare Catastrophic Coverage Act of 1988, *Public Law 100-105*.

3. “The commissioner, ..., shall in determining need, take into consideration any available income and resources of the individual claiming assistance. The commissioner shall make periodic investigations to determine eligibility....” Conn. Gen. Stat. § 17b-80 (a).

“Prior to making an eligibility determination the Department conducts a thorough investigation of all circumstances relating to eligibility and the amount of benefits.” UPM § 1505.40 A.1.

“The verification of information pertinent to an eligibility determination or a calculation of benefits is provided by the assistance unit or obtained through the direct efforts of the Department.” UPM § 1540.10.

“The Department considers all evidence submitted by the assistance unit or received from other sources.” UPM § 1540.10 D.

The Department did not exceed the scope of authority under Conn. Gen. Stat. § 17b-80 (a) by the Department investigating the Appellant’s and Applicant’s undisclosed business interests.

4. Section 17b-261 (a) of the Connecticut General Statutes, as codified in the 2024 Supplement to the General Statutes of Connecticut, revised to January 1, 2024 provides:

Medical assistance shall be provided for any otherwise eligible person (1) whose income, including any available support from legally liable relatives and the income of the person's spouse or dependent child, is not more than one hundred forty-three per cent, pending approval of a federal waiver applied for pursuant to subsection (e) of this section, of the benefit amount paid to a person with no income under the temporary family assistance program, and (2) if such person is an institutionalized individual as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3), and has not made an assignment or transfer or other disposition of property for less than fair market value for the purpose of establishing eligibility for benefits or assistance under this section. Any such disposition shall be treated in accordance with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). Any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, person authorized to make such disposition pursuant to a power of attorney or other person so authorized by law shall be attributed to such applicant, recipient, or spouse....

Conn. Gen. Stat. § 17b-261 (a)

With respect to the Medicaid program for the Categorically and Medically Needy, the asset limit is \$1,600 for a needs group of one. UPM § 4005.10 A.2.a.

As a condition of participation in the HUSKY-C/Medicaid program, the Applicant’s counted assets could not exceed the \$1,600 HUSKY-C/Medicaid asset limit for an individual residing in a skilled nursing facility.

5. “For an individual who applies on or after January 1, 2006, with an equity interest in his or her home of greater than \$750,000, the individual is ineligible for the payment of nursing facility and other long-term care services *unless any of the following persons is lawfully residing in the home: 1. The individual’s spouse....*” UPM § 4030.65 D.1.d. (emphasis added)

“Beginning in the year 2011, the home equity limit will increase each year. The increase will be based on the percentage increase in the consumer price index for all urban consumers, rounded to the nearest \$1,000.” UPM § 4030.65 D.1.e.

In 2021 in Connecticut, the excess home equity limit for an institutionalized individual equaled \$906,000.³

The Applicant and the Appellant, through a series of companies culminating in [REDACTED] were the owners of the [REDACTED] property until title to the [REDACTED] property was surrendered to the Lender pursuant to the Plan affirmed by the United States Bankruptcy Court [REDACTED] on [REDACTED], 2022.

For the purposes of the HUSKY-C/Medicaid program, the [REDACTED] property retained its status as an excluded asset until the Appellant vacated the [REDACTED] property and/or [REDACTED] relinquished title to the [REDACTED] property to the Lender.

The Department’s [REDACTED] 2023 determination that the Applicant’s home equity exceeded the HUSKY-C/Medicaid program limits is unsupported by the hearing record.

6. “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;” UPM § 1507.05 A.2.

For the purposes of the HUSKY-C/Medicaid program, the Applicant’s beginning date of continuous institutionalization was [REDACTED] 2018.

7. “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.

³ <Field Operations Communication> to all Department staff, by Elizabeth Thomas: 12/7/2020.

“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 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.” UPM § 1507.05 A.5.

Section 4025.67 D.3. of the Uniform Policy Manual provides:

Every January 1, the CSPA [Community Spouse Protected Amount] 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.

The language of UPM § 1507.05 A.1. is mandatory rather than elective, requiring the Department to complete a spousal assessment “at the time of application for Medicaid whether or not a request is made.”

By not completing a spousal assessment, the Department did not determine the spousal share.

By not determining the spousal share, the Department did not calculate the Appellant’s Community Spouse Protected Amount in accordance with UPM § 4025.67 D.3.

8. Section 4025.67 of the Uniform Policy Manual addresses MCCA Spouses and Deemed Assets. Subsection A of this Section provides:

Circumstances in Which Assets are Deemed

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

UPM § 4025.67 A. (emphasis added)

“The Department calculates the amount of assets deemed to the institutionalized spouse from the community spouse by subtracting the Community Spouse Protected Amount (CSPA) from the community spouse’s total available non-excluded assets.” UPM § 4025.67 D.1.

The Department was required by UPM § 4025.67 A. to determine how much of the couple’s assets in excess of the Community Spouse Protected Amount are deemed to the Applicant.

The Department’s ██████████, 2023 denial for assets exceeding the HUSKY-C/Medicaid program limits was precipitous, as the Department did not first determine a Community Spouse Protected Amount and did not calculate the excess assets to be deemed to the Applicant.

9. “The assistance unit must supply the Department, in an accurate and timely manner as defined by the Department, all pertinent information and verification which the Department requires to determine eligibility and calculate the amount of benefits (cross reference: 1555).” UPM § 1010.05 A.1.

“The Department requires verification of information: a. when specifically required by federal or State law or regulations; and b. when the Department considers it necessary to corroborate an assistance unit’s statements pertaining to an essential factor of eligibility.” UPM § 1540.05 C.1.

Section 1540.05 D.1. of the Uniform Policy Manual provides:

The penalty for failure to provide required verification depends upon the nature of the factor or circumstance for which verification is required:

1. If the eligibility of the assistance unit depends directly upon a factor or circumstance for which verification is required, failure to provide verification results in ineligibility for the assistance unit. Factors on which unit eligibility directly include, but are not limited to:
 - a. income amounts;
 - b. asset amounts.

UPM § 1540.05 D.1.

The Appellant was responsible to submit verification requested in the Department’s ██████████ 2022 W-1348LTC: *Request for Verification* to the Department by its ██████████ 2023 deadline.

Based on a preponderance of the evidence, the Appellant, through his Assistant, timely provided documents responsive to the Department’s ██████████, 2022 W-1348LTC: *Request for Verification*.

10. “The Department must inform the assistance unit regarding the eligibility requirements of the programs administered by the Department, and regarding the unit’s rights and responsibilities.” UPM § 1015.10 A.

Section 1505.40 B.5. of the Uniform Policy Manual provides:

Delays Due to Insufficient Verification (AFDC, AABD, MA Only)

- a. Regardless of the standard of promptness, no eligibility determination is made when there is insufficient verification to determine eligibility when the following has occurred:
 - (1) the Department has requested verification; and
 - (2) at least one item of verification has been submitted by the assistance unit within a time period designated by the Department, but more is needed.
- b. Additional 10-day extensions for submitting verification shall be granted, as long as after each subsequent request for verification at least one item of verification is submitted by the assistance unit within each extension period.

UPM § 1505.40 B.5.

The Department in error denied the Application on [REDACTED], 2023, as the Department had received at least one document requested on its [REDACTED] 2022 W-1348LTC: *Request for Verification* by the Department's [REDACTED] 2023 deadline.

11. "As a condition of eligibility, members of the assistance unit are required to cooperate in the initial application process and in reviews, including those generated by reported changes, redeterminations and Quality Control. (Cross reference: Eligibility Process 1500)." UPM § 3525.05.

"Applicants are responsible for cooperating with the Department in completing the application process by: a. fully completing and signing the application form; and b. responding to a scheduled appointment for an interview; and c. providing and verifying information as required." UPM § 3525.05 A.1.

"Noncompliance with Application Process. a. An application is denied when an applicant refuses to cooperate with the Department. b. *It must be clearly shown that the applicant failed to take the necessary steps to complete the application process without good cause before the application is denied for this reason.*" UPM § 3525.05 B.1. (emphasis added)

As of [REDACTED] 2023, the Department had not established that the Appellant had failed to take the necessary steps to complete the application process without good cause, as the Appellant had timely submitted requested documents by the Department's [REDACTED] 2023 deadline.

The Department's [REDACTED] 2023 denial of the Application for failure to provide requested documentation by the Department's deadline is not supported by State statute and regulation.

DISCUSSION

The Medicaid program, codified as Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., is a joint state and federal program enacted in 1965 that provides for the medical care

of individuals with insufficient income and resources to pay for their medical needs. *See Harris v. McRae*, 448 U.S. 297, 301 (1980). To be entitled to Medicaid, individuals must fulfill the criteria established by the state in which they live. *Schweiker v. Gray Panthers*, 453 U.S. 34, 36-37 (1981).

For an individual residing in a skilled nursing facility, the HUSKY-C/Medicaid asset limit is \$1,600.⁴ If that individual has a non-institutionalized spouse, the couple's assets exceeding the Department's calculated Community Spouse Protected Amount are deemed to the institutionalized spouse in accordance with UPM § 4025.67 and are compared to the HUSKY-C/Medicaid asset limit. If the deemed assets exceed the HUSKY-C/Medicaid asset limit, the Department denies the institutionalized individual's Medicaid application.

On [REDACTED] 2021, the Appellant filed a HUSKY-C/Medicaid application (the "Application") to request coverage for his wife's care at a skilled nursing facility. On the Application, the Appellant identified the couple's sole liquid asset as a checking account containing approximately \$121,000, and the Appellant denied that the couple owned business(es).

Contrary to his representations on the Application, the Appellant owns at least one business that generates revenue. The Appellant is the owner, president, and CEO of [REDACTED] [REDACTED] a framing company that has been in operation for several decades. The Appellant testified that the company has gross receipts or revenue of \$275,000 per month, with a net revenue of \$200,000 per month.

The Department's [REDACTED] 2023 *Notice of Action* cites the following reasons for its denial of the Application: the home equity is greater than the amount the program permits; the value of the Applicant's assets is more than the amount allowed by this program; and the Applicant did not return all of the required proofs by the requested date.⁵

As to the home equity matter, the multimillion-dollar [REDACTED] property—owned by the Appellant and the Applicant and transferred to [REDACTED] an entity administered by a series of companies also owned by the couple—was not subject to the home equity maximum of \$905,000 during the period that the Appellant, as the Applicant's spouse, was residing at the [REDACTED] property.⁶

The Department's reasoning that the value of the couple's assets exceeded \$131,980 (maximum CSPA at the time the Application was filed plus \$1,600 Medicaid asset limit) does not obviate the procedural requirement that the Department complete a spousal assessment and determine a Community Spouse Protected Amount to determine the amount of assets deemed to the institutionalized spouse. Skipping these procedural steps results in the Department inadvertently circumventing the requirement of notice to the Appellant of his right to petition for an increase in the Community Spouse Protected Amount through the administrative hearing process, should he file his request for a hearing timely.

⁴ UPM § 4005.10 A.2.a.

⁵ (Dept. Exhibit 31)

⁶ UPM § 4030.65 D.1.d.

As to the Department's final reason for denying the Application, the Department alleged that the Appellant failed to provide requested verification by its [REDACTED] 2023 deadline.

On [REDACTED] 2023, the Assistant emailed one of the Department Representatives' state email account five documents as attachments; each attachment has a title that addresses a line item on the Department's [REDACTED] 2022 W-1348LTC: *Request for Verification*. These documents were submitted to the Department prior to the expiration of the Department's [REDACTED] 2023 deadline.⁷

If the emailed documents were unresponsive to the Department's [REDACTED] 2022 request for verification, the Department had a responsibility under UPM § 1015.10 A. to apprise the Appellant as to why the submissions were unacceptable so as to permit the Appellant to cure the deficit by its deadline. If a single document submitted on [REDACTED] 2023 was responsive to the Department's request for proof, UPM § 1505.40 B.5. required the Department to provide the Appellant with an additional 10 days to provide the remaining documents. Instead of responding to the Assistant's [REDACTED] 2023 email with advice or an updated request for proof, the Department denied the Application.

The Department's action was not supported by its policy, which has the force and effect of regulation.

DECISION

The issue of this hearing is REMANDED to the Department.

ORDER

1. The Department will reopen the Applicant's [REDACTED] [REDACTED] 2021 HUSKY-C/Medicaid application.
2. Within 14 calendar days of the date of this Decision, or [REDACTED] 2024, documentation of compliance with this Order is due to the undersigned.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

Pc: Attorney [REDACTED]
Attorney [REDACTED]
Megan Finlayson, DSS-Bridgeport
Debra Hirth, DSS-Bridgeport
Annjerry Garcia, DSS-Bridgeport

⁷ (Appellant Exhibit C)

Robert Stewart, DSS-Bridgeport
Jamel Hilliard, DSS-Bridgeport
Attorney Graham Shaffer, DSS-Central Office
Attorney Rebecca Rigdon, DSS-Central Office

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.