

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

██████████ 2016
Signature Confirmation

Client ID # ██████████
Request # 733644

NOTICE OF DECISION

PARTY

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██████████████████
██████████████████

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying his application for Medicaid benefits under the Medically Needy for the Aged, Blind, and Disabled ("MAABD") program effective ██████████ 2015.

On ██████████ 2015, the Appellant requested an administrative hearing to contest the Department's decision to deny such benefits.

On ██████████ ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2015.

On ██████████ 2015, 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:

██████████████████
██████████ Spouse
Denise Hills, Department Representative
Lisa Nyren, Hearing Officer

The record remained open for the submission of additional evidence. On [REDACTED] 2015, the record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny the Appellant's application for Medicaid under the MAABD Program was correct.

FINDINGS OF FACT

1. On [REDACTED] 2015, the Department received an application for Medicaid under the MAABD program. (Exhibit 1: Online Application and Exhibit 6: Notice of Action [REDACTED] 15)
2. The Appellant is married and resides with his spouse, [REDACTED] [REDACTED] ("Spouse"). (Exhibit 1: Online Application and Appellant's Testimony)
3. The Appellant is a self-employed land developer and contractor. The Appellant owns [REDACTED] (Business 1) in which he purchases land under this company. The Appellant owns [REDACTED] (Business 2) in which he builds homes on the properties purchased under Business 1. (Appellant's Testimony and Exhibit 13: 2014 Tax Return)
4. The Appellant owns two additional businesses: [REDACTED] (Business 3) and [REDACTED] (Business 4). (Appellant's Testimony and Exhibit 13: 2014 Tax Return)
5. The Appellant owns property in [REDACTED] Connecticut for development. (Appellant's Testimony)
6. In 2002, the Appellant purchased a [REDACTED] project but loan for purchase remains in default owing \$400,000.00. (Appellant's Testimony)
7. The Appellant has [REDACTED] homes under construction currently. (Appellant's Testimony)
8. The Appellant borrows money from Business 1 and Business 2 to pay his bills and personal expenses. (Appellant's Testimony and Exhibit D: Bank Statement)
9. The Appellant has not earned a profit from his businesses since 2007. (Appellant's Testimony)

10. The Spouse is a self-employed [REDACTED]. (Spouse's Testimony)
11. The Appellant and his Spouse own their home where they reside. (Exhibit 1: Online Application and Appellant's Testimony)
12. Business 2 holds a business checking account # [REDACTED] with First Niagara Bank (the "bank") with an ending balance of \$32,340.80 as of [REDACTED] 2015. (Appellant's Testimony, Exhibit 3: Bank Statement and Exhibit 10: Bank Statement)
13. Business 1 holds a business checking account # [REDACTED] with the bank with an ending balance of \$1,382.19 as of [REDACTED] 2015. (Exhibit 12: Bank Statement)
14. As of [REDACTED] 2015, the Appellant and his spouse hold a joint checking account # [REDACTED] with the bank with an ending balance of \$5,307.64. Income deposits made to this account from checking account # [REDACTED] as follows: [REDACTED] 2015 \$200.00, [REDACTED] 2015 \$4,400.00, [REDACTED] 2015 \$175.00, [REDACTED] 2015 \$150.00, [REDACTED] 2015 \$100.00 and [REDACTED] 2015 \$4,800.00. Total income deposits equal \$9,825.00. (Exhibit 2: Bank Statement, Exhibit 11: Bank Statement, and Exhibit D: Bank Statement)
15. As of [REDACTED] 2015, the Spouse holds a checking account # [REDACTED] with the bank with an ending balance of \$217.71. (Spouse's Testimony and Exhibit E: Bank Statement)
16. Business 2 owns a [REDACTED] Ford F150 truck used for business by the Appellant. (Exhibit 1: Online Application, Exhibit 13: 2014 Tax Return and Appellant's Testimony)
17. The Appellant and Spouse own a [REDACTED] Lincoln MKS ("MKS") used for employment by the Spouse. (Exhibit 1: Online Application, Exhibit 9: DMV Inquiry Printout and Spouse's Testimony)
18. The Appellant owns a [REDACTED] Chevrolet Camaro ("Camaro"). (Exhibit 9: DMV Inquiry)
19. The Appellant and Spouse own a [REDACTED] Chevrolet Corvette ("Corvette"). (Exhibit 9: DMV Inquiry)
20. The Medicaid asset limit is \$2,400.00 for a married couple. (Department Representative's Testimony)

21. The Department determined the Appellant's assets of \$5,307.64 exceed the Medicaid asset limit of \$2,400.00. (Department Representative's Testimony and Exhibit 6: Notice of Action [REDACTED]/15)
22. On [REDACTED] 2015, the Department denied the Appellant's application for Medicaid because the value of your assets is more than the amount we allow you to have. The Department issued a notice of denial to the Appellant. (Exhibit 6: Notice of Action [REDACTED]/15)

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. UPM § 2540.96(C) provides that the Department uses the MAABD medically needy income and asset criteria to determine eligibility under this coverage group, including:
 1. Medically needy deeming rules;
 2. The medically needy income limit ("MNIL")
 3. The income spenddown-process;
 4. The medically needy asset limits
3. UPM § 4025.65(C) provides that a spouse who is living with the MAABD unit member is a member of the needs group for the purpose of setting the asset limit.

UPM § 4005.05(A) provides that for every program administered by the Department there is a definite asset limit.

4. UPM § 4005.10(A)(2) provides that the assets limits for the Department's programs are as follows except as noted under B: AABD and MAABD – Categorically and Medically Needy.
 - a. The asset limit of \$1,600 for a needs group of one.
 - b. The asset limit of \$2,400 for a needs group of two.

UPM 4000.01 defines asset limit is the maximum amount of equity in counted assets which an assistance unit may have and still be eligible for a particular program administered by the Department.

5. The Department correctly determined the asset limit as \$2,400.00.

6. UPM § 4005.05(B)(1) 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:
 - a. Available to the unit; or
 - b. Deemed available to the unit.

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.

UPM § 4000.01 defines an available asset as cash or any item of value which is actually available to the individual or which the individual has the legal right, authority or power to obtain, or to have applied for, his or her general or medical support.

UPM § 4000.01 defines a deemed asset as an asset owned by someone who is not a member of the assistance unit but which is considered available to the unit.

UPM § 4000.01 defines a counted asset as an asset which is not excluded and either available or deemed available to the assistance unit.

7. UPM § 4025.65(A)(1) provides that the Department deems assets from the individual's spouse to the individual when they are considered to be living together.
8. The Department correctly determined the Spouse as a deemor.
9. UPM § 4020.10(A)(1) provides that real property used as principal residence by the assistance unit is excluded.

UPM § 4000.01 defines in part that home property is real property, which someone owns and is using as principal residence.

UPM § 4030.20(A)(1) provides in part that home property owned by a member of the assistance unit is not counted in the determination of the unit's eligibility for assistance as long as the unit uses the property as its principal residence.

UPM § 4020.10(A)(1) provides that home property consists of the home itself which the assistance unit used as its principal residency, the surrounding property which is not separated from the home by intervening

property owned by others, and any related outbuildings used in the operation of the home.

UPM § 4030.20(A)(2)(a) provides that home property consists of the home itself which the assistance unit uses as principal residence, the surrounding property which is not separated from the home by intervening property owned by others, and any related outbuildings used in the operation of the home.

10. The Department correctly excluded the Appellant's home property in the calculation of countable assets under the MAABD program.

11. UPM § 4020.10(E)(1) provides that tangible business assets such as equipment and supplies, inventory, cash on hand, accounts receivable are excluded if the business produces income sufficient to justify possession of the business assets.

UPM § 4020.10(E)(2) provides that land and buildings are not excluded under this provision.

12. The Department failed to consider business assets owned by the Appellant's businesses since the businesses have not been profitable since 2007, including the equity value of the Appellant's truck.

13. The Department failed to consider the equity value of land and buildings owned by the Appellant's businesses.

14. UPM § 4030.55 provides that the Department evaluates each motor vehicle owned by every member of the assistance unit in terms of the vehicle's status as an excluded, inaccessible, or counted asset.

UPM § 4000.01 defines motor vehicle as a passenger car or other vehicle which a person owns for the purpose of providing transportation of individuals or goods.

UPM § 4020.10(K)(1) provides that for all assistance units except units consisting of MCCA spouses, one motor vehicle is totally excluded if the assistance unit or spouse:

- a. Needs the motor vehicle for employment; or
- b. Needs the motor vehicle for the medical treatment of a specific or ongoing medical problem;
- c. Has modified the motor vehicle for operation by or transportation of a handicapped person.

UPM § 4030.55(D)(1) provides that for an individual and spouse if any, living together one motor vehicle is excluded if it:

- a. Is needed for employment; or
- b. Is needed for the medical treatment of a specific or ongoing medical problem; or
- c. Has been modified for operation by or transportation of a handicapped person.

UPM § 4020.10(K)(3) provides that if no motor vehicle is totally excluded, up to \$4,500 if the fair market value of one motor vehicle is excluded.

UPM § 4030.55(D)(2) provides that up to \$4,500 of the fair market value of one motor vehicle is excluded, if no vehicle is otherwise totally excluded. The amount of the fair market value in excess of \$4,500 is counted toward the asset limit.

UPM § 4000.01 defines fair market value as the amount at which an asset can be sold on the open market in the geographic area involved at the time of the sale as a result of reasonable, bona fide efforts to gain the highest possible price in an arm's length transaction.

15. UPM § 4030.55(D)(3) provides that if there is more than one vehicle, the unit's equity in the second vehicle is counted toward the asset limit.

UPM § 4030.55(A) provides for the fair market value of a motor vehicle.

1. The fair market value of a motor vehicle is the "Average Trade-in Value" listed in the National Automobile Official Dealers (NADA) Used Car Guide, or, for older models, the Appraisal Guide unless the assistance unit proves otherwise.
2. The fair market value of a motor vehicle is not increased if the vehicle is specially equipped with apparatus for the handicapped.
3. The fair market value of a motor vehicle is not increased by adding the value of low mileage or other factors such as optional equipment.
4. The assistance unit may contest the value given by the Department by presenting documentation from a reliable source regarding the actual value of the motor vehicle. The Department adjusts its computation accordingly if appropriate.

16. The Department failed to consider the equity value of the Corvette and Camaro in the determination of the Appellant's countable assets.

17. Based on the hearing record, the fair market value of the Corvette and the Camaro cannot be determined.

18. Based on the hearing record, the equity value of the MKS cannot be determined.
19. Based on the hearing record, a determination of which vehicle qualifies for exclusion cannot be determined.
20. UPM § 4030.05(A) provides that bank accounts include the following. This list is not all inclusive.
 1. Savings account;
 2. Checking account;
 3. Credit union account;
 4. Certificate of deposit;
 5. Patient account at long-term care facility;
 6. Children's school account;
 7. Trustee account;
 8. Custodial account.
21. UPM § 4030.05(B) provides that part of a checking account to be considered as a counted asset during a given month is calculated by subtracting the actual amount of income the assistance unit deposits in the account that month from the highest balance in the account that month.

UPM § 4030.05(C) provides that money which is received as income during a month and deposited into an account during the month is not considered an asset for that month, unless the source of the money is:

 1. An income tax refund; or
 2. Cash received upon the transfer or sale of property; or
 3. A security deposit returned by the landlord.
22. The Department correctly determined checking account # [REDACTED] as a countable asset.
23. UPM § 4030.05(C) provides that money which is received as income during a month and deposited into an account during the month is not considered an asset for that month, unless the source of the money is:
 1. An income tax refund; or
 2. Cash received upon the transfer or sale of property;
 3. or a security deposit returned by the landlord.
24. The Department incorrectly determined the equity in the checking account # [REDACTED] as \$5,307.64. The correct amount of equity is \$00.00. (Highest

balance \$5,307.64 – total income deposits \$9,825.00 = \$00.00 counted asset)

25. The Department incorrectly excluded the Spouse's checking account # [REDACTED] as a countable asset. The Spouse's checking account # [REDACTED] is a countable asset and deemed available to the Appellant.
26. Based on the hearing record, the total countable deemed assets cannot be determined.
27. Based on the hearing record, the total countable Appellant assets cannot be determined.
28. Based on the hearing record, the total countable business assets cannot be determined.
29. Based on the hearing record the total countable assets cannot be determined. (Appellant's assets + deemed assets = total assets)
30. 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.
31. Based on the hearing record the assistance unit's eligibility for benefits cannot be determined because the assistance unit's countable assets cannot be determined.

DECISION

The Appellant's appeal is remanded back to the Department for further action.

ORDER

1. The Department must reopen the Appellant's application for Medicaid effective [REDACTED] 2015 and continue to process Medicaid eligibility.
2. The Department must issue a W1348 Request for Information to the Appellant for any outstanding information and verification necessary to process the Appellant's application for Medicaid. The Department must allow a minimum of ten days to the Appellant to submit any outstanding information.
3. Compliance is due [REDACTED] 2016.

Lisa A. Nyren

Lisa A. Nyren
Fair Hearing Officer

CC: Tanya Cook-Beckford, Social Services Operations Manager
Denise Hills, Eligibility Services Specialist

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, 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.