

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

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

Client ID # ██████████
Request # 758868

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the “Department”) sent ██████████ the Appellant (the “Appellant”) a notice of action (“NOA”) advising her that she must meet a spend-down before her Medical Assistance for the Aged, Blind and Disabled (“MAABD”) can be activated.

On ██████████ 2016, the Appellant requested an administrative hearing to contest the Department’s action.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2016.

On ██████████ 2016, due to a scheduling conflict, OLCRAH issued a notice rescheduling the hearing for ██████████ 2016.

On ██████████ 2016, 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:

- ██████████ Appellant
- ██████████ Appellant’s son
- ██████████ Appellant’s daughter-in-law
- Jacqueline Taft, Department’s Representative

Antoneta Avila, Interpreter-Clerk for the Department
James Hinckley, Hearing Officer

The hearing record was held open until [REDACTED] 2016 for additional information from the Department. On [REDACTED] 2016, the hearing record was reopened to accept information from the Department that it was unable to provide by the original closing date. On [REDACTED] 2016, the hearing record closed.

Por favor vea la copia incluida de esta decision en espanol.

STATEMENT OF THE ISSUE

1. The issue to be decided is whether the Department was correct when it deemed income to the Appellant from her estranged spouse.

The Appellant is not contesting any other aspect of the Department's determination of her eligibility except its decision to deem income from her spouse.

FINDINGS OF FACT

1. The Appellant is 85 years old. (Hearing Record)
2. The Appellant was born in Mexico. (Appellant testimony, hearing record)
3. The Appellant entered the U.S. illegally, approximately 21 years ago. (Appellant testimony)
4. Approximately 5 years after entering the U.S., the Appellant married [REDACTED], who is a U.S. citizen. (Appellant testimony)
5. The Appellant became a legal permanent resident of the U.S. sometime after marrying [REDACTED]. (Appellant testimony)
6. The Appellant and [REDACTED] separated many years ago, but remain legally married. (Appellant testimony)
7. After their separation, [REDACTED] never provided the Appellant with any support. (Appellant testimony)
8. The Appellant has no contact with [REDACTED] and does not currently know his whereabouts. (Appellant testimony)
9. In 2007, the Appellant reported to the Department that she did not know her husband's whereabouts. (Ex. 5: [REDACTED] narrative screens)

10. In 2007, the Appellant reported to the Department that she did not know who her sponsor was. (Ex. 5)
11. On [REDACTED] 2007, the Department noted on the Appellant's narrative screen that, "It appears that her sponsor is her husband of which she does not know where he is". (Ex. 5)
12. The Department has been treating the Appellant as a sponsored non-citizen since it made the determination in 2007 that she was sponsored by her husband (Ex. 5, Hearing Record)
13. The Appellant does not know whether she was sponsored by her husband, or whether her husband signed an affidavit of support. (Appellant testimony)
14. The Appellant does not understand the difference between an affidavit of support and a marriage certificate. (Appellant testimony)
15. On [REDACTED] 2016, the Department began counting [REDACTED] income as being deemed to the Appellant. (Ex. 5)
16. On [REDACTED] 2016 the Department sent the Appellant a NOA advising her that her income was too high for her to receive medical assistance for the period from [REDACTED] 2016 to [REDACTED] 2016, and that she must have medical bills that she owes or has recently paid totaling \$3,409.26 before her eligibility for medical assistance will begin. (Ex. 1: NOA dated [REDACTED] 2016)
17. The Appellant has no income of her own, and if not for the income deemed to her from her husband, would qualify for medical assistance under the S03 coverage group. (Hearing Record, Department testimony)
18. The Appellant's date of entry as a permanent resident into the U.S. is [REDACTED] 2006. (Ex. 8: Department of Homeland Security, Systematic Alien Verification for Entitlements (SAVE) system report prepared [REDACTED] 2016)
19. As of [REDACTED] 2016, no Affidavit of Support data was found for (the Appellant) as a result of the Department's query to the Department of Homeland Security's SAVE system. (Ex. 8)
20. There is no evidence in the hearing record that the Appellant's husband signed a Revised Affidavit of Support (I-864) or Contract Between Sponsor and Household Member (I-864A) for the Appellant. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Chapter 5020 of the Uniform Policy Manual (“UPM”) provides for the treatment of deemed income for all Department programs.

UPM § 5020.75(B)(1)(a) provides that in the Medical Assistance for the Aged, Blind and Disabled program, the Department does not deem income from spouses who are living apart.

UPM § 5020.75(B)(2)(a) provides that spouses are considered to be living apart when one spouse has left the home and does not return.

No income is deemed from ██████████ to the Appellant as a result of him being the Appellant’s spouse, because the Appellant and her husband are living apart.

UPM § 5020.60 discusses the deeming of income in the medical assistance program to non-citizens who entered the U.S. on or after August 22, 1996 by sponsors who executed the Revised Affidavit of Support (I-864) or the Contract Between Sponsor and Household Member (I-864A)

UPM § 5020.60 does not provide for any income to be deemed to a non-citizen by any person who has not signed such legally binding agreement to support the non-citizen.

There is no evidence that the Appellant’s spouse signed an affidavit of support for the Appellant.

No income is deemed from ██████████ to the Appellant as a result of him being the Appellant’s sponsor, who signed a legally binding agreement to support the Appellant, because there is no evidence that ██████████ signed such a document.

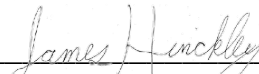
An ██████████ 2016 query to the SAVE system reported back that “No Affidavit of Support data was found”.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. Retroactive to [REDACTED] 2016, the Department shall remove [REDACTED] as a deemor on the Appellant's case, and shall restore Medical Assistance benefits to the Appellant.
2. The Department shall submit proof of compliance with this order to the undersigned no later than [REDACTED] 2016.



James Hinckley
Hearing Officer

cc: Lisa Wells, SSOM, New Haven
Brian Sexton, SSOM, 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 06105-3725.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue Hartford, CT 06105-3725. 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.