

On [REDACTED] 2017, in accordance with sections 17b-60, 17b-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:

Attorney [REDACTED]
 Attorney [REDACTED]
 [REDACTED], POA
 [REDACTED], Spouse of POA
 Laynette Serrano, Department Representative
 Shelley Starr, Hearing Officer

STATEMENTS OF THE ISSUES

1. The first issue is whether, [REDACTED] (the "Community Spouse") needs additional assets protected, from the Appellant's share of assets, to produce additional income to meet the Community Spouse's Minimum Monthly Needs Allowance ("MMNA").
2. The second issue is whether the Appellant's assets exceed the Medicaid asset limit.

FINDINGS OF FACT

1. On [REDACTED] 2015, the Appellant was admitted to Hamden Health care and has been institutionalized continuously since his [REDACTED], 2015 admission, (the date of institutionalization ["DOI"]). (Hearing Summary; Exhibit 2: Spousal Assessment Worksheet)
2. On [REDACTED] 2016, the Appellant applied for Long Term Care ("LTC") Medicaid. (Exhibit 1: W-1LTC application; Hearing Summary)
3. The Appellant is married to [REDACTED], the Community Spouse ("CS") who resides in the community at [REDACTED] (Counsel's Testimony; Exhibit 1: W-1LTC dated [REDACTED] 2016)
4. A Community Spousal Assessment was completed to determine the total value of the assets as of the date of institutionalization. (Exhibit 3: W-1SAN Assessment of Spousal Assets)
5. The combined total of the Appellant and the Community Spouse's non-exempt assets was \$377,906.96 as of the DOI. (Exhibit 2: Spousal Assessment Worksheet; Exhibit 3: W-1SA-N)

6. The spousal share of the assets was \$188,953.48 as of the DOI (½ of the couple's combined non-exempt assets). (Exhibit 6: Spousal Assessment Worksheet)
7. The Community Spouse Protected Amount ("CSPA") was set at the maximum amount allowed of \$119,220.00. (Exhibit 2: Spousal Assessment Worksheet; Hearing Record)
8. The Appellant's is seeking Medicaid eligibility effective [REDACTED] 2016. (Counsel's Testimony; Hearing Record)
9. The Community Spouse is seeking an increase in her MMNA to pay the monthly cost of living in the community effective [REDACTED] 2016. No exceptional circumstances have been claimed. (Counsel's Testimony; Hearing Record)
10. Effective [REDACTED] 2016, the Community Spouse had monthly shelter costs totaling \$409.63 including \$278.11 condo fees, \$24.75, condo insurance and \$106.77 real estate taxes. She is responsible for her own utilities. (Exhibit D: Counsel's Addendum dated [REDACTED] 2017)
11. Effective [REDACTED] 2016, the Community Spouse had monthly gross Social Security income of \$497.90. (Exhibit D: Counsel's Addendum dated [REDACTED] 2017)
12. Effective [REDACTED] 2016, the Appellant had monthly gross Social Security income of \$1,059.80. (Counsel's Addendum dated [REDACTED] 2017)
13. The Community Spouse has a monthly Medicare Part B premium of \$105.80, a Medicare Part D premium of \$55.40, and an AARP supplemental health insurance of \$222.77. (Counsel's brief dated [REDACTED] 2017, Social Security income verification, AARP RX verification, AARP Supplemental insurance verification)
14. The following assets of the couple generated the following annual rates of return:

ASSET	VALUE-[REDACTED]/16	INTEREST RATE
Allianz # [REDACTED]	\$2,500.66	3.00%
Allianz # [REDACTED]	\$2,500.47	3.00%
Allianz # [REDACTED]	\$48,346.44	3.50%
NSS # [REDACTED]	\$11,984.60	2.00%
NSS# [REDACTED]	\$44,833.71	3.50%
NSS# [REDACTED]	\$44,833.71	3.50%
NSS# [REDACTED]	\$12,124.54	3.50%
Wells Fargo # [REDACTED]	\$ 454.46	0.01%
Wells Fargo# [REDACTED]	\$ 2,662.16	0.01%
Webster # [REDACTED]	\$45,545.31	0.01%

Webster# [REDACTED]	\$29,019.43	0.00%
Everbank# [REDACTED]	\$5,067.23	0.61%

(Counsel's Addendum; Spousal Assessment)

15. Effective [REDACTED] 2016, the Appellant and his community spouse held combined assets in the amount of \$249,872.72. (Counsel's Addendum; Hearing Record)
16. The average rate of return on a 12 month certificate of deposit for New Haven, Connecticut was 1.25% on [REDACTED] 2017, the day of this hearing. (Hearing Officer Exhibit 1: Bankrate.com screen print; Hearing Record)
17. Effective [REDACTED] 2016, the combined total of the Appellant and Community Spouse's non-exempt assets earned interest income of \$569.63 per month when computed using the actual interest yield. (Counsel's Exhibit D: Addendum dated [REDACTED] 2017)
18. Based upon its assessment of spousal assets, the Department found that the Appellant and his community spouse could retain assets in the combined amount of \$120,820.00 without hindering Medicaid long-term care eligibility. [\$119,220.00 maximum CSPA + \$1,600.00 Appellant's allowable limit] (Department's Exhibit 2: Spousal Assessment Worksheet; Department's Exhibit 3: W1SA-N)
19. On [REDACTED] 2017, the Department denied the Appellant's application for Long Term Care Medicaid assistance due to excess assets. (Exhibit 6: Notice of Denial; dated [REDACTED] 2017)

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. UPM § 4000.01 defines a Continuous Period of Institutionalization as 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.

The Department correctly determined the Appellant's initial period of institutionalization "DOI" date began on [REDACTED], 2015.

3. UPM § 4000.01 defines 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.

The Appellant and his wife are MCCA spouses as defined by the Medicaid program; The Appellant is an Institutionalized Spouse ("IS") and his wife is a Community Spouse ("CS").

4. UPM § 1500.01 provides a community spouse protected amount (“CSPA”) is the amount of the total available non-excluded assets owned by both MCAA spouses which is protected for the community spouse and is not counted in determining the institutionalized spouse’s eligibility for Medicaid.
5. UPM § 4022.05 (B)(2) provides that every January 1, the Community Spouse Protected Amount (“CSPA”) shall be equal to the greatest of the following amounts:
 - a. the minimum CSPA; or
 - b. the lesser amount 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 1507); or
 - d. the amount established pursuant to a court order for the purpose of providing necessary spousal support.
6. UPM § 1570.25(D)(4) provides 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).
 - b. 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.
 - c. In determining the amount of assets needed to raise the community spouse's income to the MMNA, the Fair Hearing official computes the amount of assets that would generate the required income, assuming the asset is producing income at the higher of the following rates: the current average rate of return generated by a 12 month certificate of deposit as determined by the Department as of the date of the Fair Hearing; or the rate that is actually being generated by the asset.

Based upon the assets held as of the date of institutionalization, the Department correctly set the CSPA at the maximum amount of \$119,220.00

7. Effective [REDACTED] 2016, the couple’s combined assets produced monthly interest income of \$569.63 as shown in the table below. The Community Spouse’s share of the total assets would generate interest income of \$284.81 (½ of \$569.63)

ASSET	VALUE	INTEREST RATE	Amount of Interest
Allianz# ██████████	\$2,500.66	3.00%	\$6.25
Allianz # ██████████	\$2,500.47	3.00%	\$6.25
Allianz # ██████████	\$48,346.44	3.50%	\$141.01
NSS # ██████████	\$11,984.60	3.50%	\$33.84
NSS # ██████████	\$44,833.71	3.50%	\$126.59
NSS # ██████████	\$44,833.71	3.50%	\$126.59
NSS # ██████████	\$12,124.54	3.50%	\$33.94
Wells Fargo # ██████████	\$454.46	0.01%	\$0.52
Wells Fargo # ██████████	\$2,662.16	0.01%	\$3.06
Webster # ██████████	\$45,545.31	0.01%	\$52.38
Webster # ██████████	\$29,019.43	0.00%	\$33.37
Everbank	\$5,067.23	0.64%	\$5.83
Total	\$249,872.72		\$569.63

8. Effective ██████████ 2016, the Community Spouse had gross monthly income of \$782.71 (\$497.90 SSA + \$284.81 interest).
9. UPM § 5035.30 (B) provides for the calculation of the Community Spouse Allowance ("CSA") and MMNA and states:

B. Calculation of CSA

1. The CSA is equal to the greater of the following:
 - a. the difference between MMNA and the community spouse gross monthly income; or
 - b. the amount established pursuant to court order for the purpose of providing necessary spousal support.
2. The MMNA 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.
3. 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.
4. 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. The Standard Utility Allowance (“SUA”) used in the Supplemental Nutrition Assistance (“SNAP”) program is used for the community spouse.

10. Effective [REDACTED] 2016, the Community Spouse’s MMNA was \$2,509.38 as shown in the table below.

	AMOUNT
Shelter Costs:	
Property Taxes	\$106.77
Condo Insurance	\$24.75
Condo Fee	\$278.11
Standard Utility Allowance	\$698.00
Total Shelter Costs:	\$1,107.63
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two] 10/1/16	<u>\$-600.75</u>
Excess shelter costs:	\$506.88
Plus 150% of the FPL for two:	<u>\$2,002.50</u>
Equals the MMNA	\$2,509.38
Maximum MMNA	\$2,980.50

11. Effective [REDACTED], 2016, the deficit between the Community Spouse’s income and her MMNA was \$1,442.75, as shown in the table below:

COMMUNITY SPOUSE DEFICT	
Social Security	\$497.90
Interest Income	\$284.81

Total Income	\$782.71
MMNA	\$2,509.38
Less Total Income	<u>-\$782.71</u>
Monthly Deficit	\$ 1,726.67

12. UPM § 1570.25 (D)(3) provides that the official increases the community spouse's Monthly Minimum Needs Allowance ("MMNA") previously determined by the Department if either MCAA spouse establishes that the community spouse has exceptional circumstances resulting in 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.

- a. 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 the institutionalized spouse).
- b. Significant financial duress is an expense or set of expenses that:
 - i. directly arises from exceptional circumstances described in subparagraph a above; and
 - ii. is not already factored into the MMNA; and
 - iii. cannot be reasonably be expected by the community spouse's own income and assets
- c. Expenses that are factored into the MMNA, and thus do not generally qualify as causing significant financial duress, include, but are not limited to :
 - i. shelter costs such as rent or mortgage payments;
 - ii. utility costs;
 - iii. condominium fees
 - iv. real estate and personal property taxes;
 - v. real estate, life and medical insurance;
 - vi. expenses for upkeep of a home such as lawn maintenance, snow removal, replacement of a roof, furnace or appliance;
 - vii. Medical expenses reflecting the normal frailties of old age.

- d. 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.

There are no exceptional circumstances causing financial duress for the Community Spouse.

13. UPM § 5035.25 provides that for resident of long term care facilities ("LTCF") and those individuals receiving community-based services ("CBS") when the individual has a spouse living in community, total gross income is adjusted by certain deductions to calculate the amount of income which is to be applied to the monthly cost of care.

B. Deductions For LTCF Units

The following monthly deductions are allowed from the income of assistance units in LTCF's:

1. a personal needs allowance of \$60.00, which, effective July 1, 2009 and Annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration. (Effective July 1, 2013 = \$60.00)
2. a Community Spouse Allowance (CSA), when appropriate; (Cross Reference 5035.35)
3. a Community Family Allowance (CFA), when appropriate; (Cross Reference 5035.35)
4. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for by the Department or any other third party;
5. Costs for medical treatment approved by a physician which are incurred subsequent to the effective date of eligibility and which are not covered by Medicaid;
6. Expenses for services provided by a licensed medical provider in the six month period immediately preceding the first month of eligibility providing the following conditions are met:
 - a. the expenses were not for LTCF services, services provided by a medical institution equivalent to those provided in a long term care facility, or home and community based services, when any of these services were incurred during a penalty period resulting from an improper transfer of assets; and
 - b. the recipient is currently liable for the expenses; and
 - c. The services are not covered by Medicaid in a prior period of eligibility.

The Appellant has allowable deductions totaling \$443.97 that includes \$60.00 personal needs allowance, \$105.80 Medicare Part B premium, \$55.40 AARP medical supplement and \$222.77 AARP health insurance supplement.

After deducting the \$443.97 total of allowable deductions from the Appellant's gross income of \$1,059.80, the Appellant has income in the amount of \$615.83 (\$1,059.80 SSA - \$443.97) to be diverted to the Community Spouse to help meet her MMNA.

After a diversion of the Appellant's income of \$615.83 to the Community Spouse, the Community Spouse has a remaining monthly income deficit of \$1,110.84. ($\$2,509.38$ (MMNA) - $\$1,398.54$ (income) = $\$1,108.84$).

Since the additional income remains insufficient to meet the Community Spouse's MMNA deficit of \$1,108.84 effective [REDACTED] 2016, the Community Spouse's CSPA is increased to \$249,872.72 to generate the interest income needed to help meet her MMNA.

14. UPM § 4005.10 (A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.

After the diversion of all assets effective [REDACTED] 2016 for the benefit of the Community Spouse, the value of the Appellant's countable assets is \$0.00.

Effective [REDACTED] 2016, the Appellant's assets do not exceed the Medicaid asset limit of \$1,600.00.

15. UPM § 5045.20 provides that assistance units who are residents of Long Term Care Facilities or receiving Community Based Services are responsible for contributing a portion of their income toward the cost of their care. For LTCF cases only, the amount to be contributed is projected for a six-month period.
16. UPM § 5045.20 (A) provides that the amount of income to be contributed is calculated using the post-eligibility method starting with the month in which the 30th day of continuous LTCF care or receipt of community-based services occurs, and ending with the month in which the assistance unit member is discharged from the LTCF or community-based services are last received.

Total gross income is reduced by post eligibility deductions (Cross reference: 5035-Income deductions") to arrive at the amount of income to be contributed.

. The Institutional Spouse has no applied income after deducting his personal needs allowance, medical deductions and diverting the remainder of income to his Community Spouse.

Effective [REDACTED] 2016, the institutionalized spouse has zero applied income.

DECISION

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

ORDER

1. The Department shall reopen the Appellant's [REDACTED] 2016 application for Medicaid and process determining eligibility in accordance with this decision.
2. Effective [REDACTED] 2016, the CSPA is increased to \$249,872.72.
3. The Department shall divert from the effective date of grant, the Appellant's applied income to zero after allowing the applicable deductions and diversion of income to his community spouse.
4. No later than 15 days from the date of this decision, the Department will submit to the undersigned verification of compliance with this order.



Shelley Starr
Hearing Officer

cc: Lisa Wells, Operations Manager, New Haven DSS Regional Office
Cheryl Stuart, Program Manager, New Haven DSS Regional Office
Brian Sexton, Operations Manager, New Haven DSS Regional 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 06105-3725..

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. 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.