

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

██████████ 2017
Signature Confirmation

Client ID # ██████████
Request # 824205

NOTICE OF DECISION

PARTY

██████████
Re: ██████████
██████████
██████████

PROCEDURAL BACKGROUND

In ██████████ 2017, the Department of Social Services (the “Department”) sent ██████████, the Appellant and institutionalized spouse (the “Appellant” or the “IS”) a notice of action (“NOA”) denying her application for Long Term Care Medicaid because her assets exceeded the limit.

On ██████████ ██████████ 2017, the Appellant, by her daughter, ██████████ ██████████ requested an administrative hearing to contest the Department’s assessment of spousal assets, arguing that the Appellant’s spouse in the community, ██████████ (The “community spouse” or “CS”), should have been entitled to retain a greater share of the spousal assets to generate income to meet his minimum monthly needs.

On ██████████, 2017, the Department sent the Appellant a revised NOA, approving her application for Long Term Care Medicaid effective ██████████ 2017, but denying the month of ██████████ 2017 because her assets exceeded the limit in that month.

On ██████████ 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2017.

On ██████████, 2017, 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:

██████████, daughter of the Appellant, and daughter and power of attorney for the CS
██████████ representing ██████████ for the Appellant
Linda Gonzalez, Department's Representative
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

1. The issue is whether the CS required an increase to his protected share of the spousal assets (the "community spouse protected amount" or "CSPA") to include all of the couple's assets, so that additional income could be generated to help meet a shortfall in his minimum monthly needs allowance ("MMNA"), and if, as a consequence of protecting all of the assets for the CS, the IS's Medicaid application should be reopened and granted retroactively.

FINDINGS OF FACT

1. On ██████████, 2017, the Appellant applied for Long Term Care Medicaid. (Department's Hearing Summary)
2. On ██████████ 2017, the Appellant began a continuous period of institutionalization (her "date of institutionalization" or "DOI"). (Ex. 1: Department's Spousal Assessment Worksheet)
3. Subsequently, the Department, as part of the spousal assessment, determined that the total assets owned by the couple as of the DOI equaled \$45,408.77; the Appellant does not contest this determination. (Ex. 1, Community Spouse's Summary)
4. The Department also determined that the CS's CSPA was set at the minimum amount of \$24,180.00, because a spousal share equaling one-half of the total assets was \$22,704.39, which was less than the minimum; the Appellant does not contest this initial determination. (Ex. 1, Community Spouse's Summary)
5. Subsequently, the Department denied the Appellant's application for long term care Medicaid for ██████████ 2017 because the IS's remaining share of the spousal assets, exclusive of the CSPA, exceeded the \$1,600.00 Medicaid asset limit in that month. (Ex. C: ██████████/17 Notice of Approval for the Appellant, Hearing Record)
6. The Appellant is seeking Medicaid eligibility beginning ██████████ 2017 (to cover nursing facility charges from ██████████/17 ongoing). (Community Spouse's Summary)
7. As of ██████████, 2017, the CS had monthly income of \$1,794.56; \$1,253.00 from Social Security, plus \$541.56 from private pension. (Ex. 2: Department's Community Spouse Allowance Calculation)

8. As of [REDACTED] 2017, the CS had shelter expenses that included property taxes of \$334.10 per month, and homeowners insurance of \$156.25 per month. (Ex. 2, Community Spouse's Summary)
9. As of [REDACTED], 2017, the IS had monthly income of \$653.00 from Social Security. (Ex. F: 2016 Social Security Benefit Statement for [REDACTED], Ex. G: Cost-of-Living Adjustment (COLA) Information for 2017)
10. As of [REDACTED] 2017 (date of the administrative hearing), the average rate for the three highest yielding 12 month Certificates of Deposit for the New Haven, CT area was 0.74% (Patriot Bank 1.01% + Liberty Bank 0.75% + United Bank 0.45% = 2.21% / 3 = 0.74%). (*Bankrate.com* CD Rates - New Haven, CT, as of [REDACTED], 2017)
11. None of the assets owned by the couple as of the DOI were capable of generating income in excess of the 0.74% average 12 month CD rate. (Stipulated)
12. As of [REDACTED] 2017, the income that was able to be generated by the CS's \$24,180.00 CSPA (as initially calculated by the Department) at the 0.74% average 12-month CD rate of return, was \$14.91 per month. (\$24,180.00, multiplied by .0074, divided by 12 months) (Facts #4 and #10)
13. As of [REDACTED] 2017, the income that was able to be generated by the couple's \$45,408.77 in total assets owned as of the DOI, at the 0.74% average 12-month CD rate of return, was \$28.00. (\$45,408.77, multiplied by .0074, divided by 12 months) (Facts #3 and #10)

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. Uniform Policy Manual ("UPM") § 4000.01 provides that an Institutionalized Spouse is defined as a spouse who resides in a medical facility or long term care facility, or who receives home and community based services (CBS) under a Medicaid waiver, and who is legally married to someone who does not reside in such facilities or who does not receive such services; and provides that a Community Spouse is defined as an individual who resides in the community, who does not receive home and community based services under a Medicaid waiver, who is married to an individual who resides in a medical facility or long term care facility or who receives home and community based services (CBS) under a Medicaid waiver.

3. UPM § 1500.01 provides that MCCA Spouses are spouses who are members of a married couple one of whom becomes an institutionalized spouse on or after [REDACTED], 1989, and the other spouse becomes a community spouse.
4. Effective [REDACTED] 2017, the Appellant and her husband were MCCA Spouses as defined by the Medicaid program; the Appellant was an Institutionalized Spouse (IS) and her husband was a Community Spouse (CS).
5. UPM § 1500.01 provides that a Community Spouse Protected Amount (CSPA) is the amount of the total available assets owned by both MCCA spouses which is protected for the community spouse and is not counted in determining the institutionalized spouse's eligibility for Medicaid.
6. UPM § 1507.05(A) discusses the Assessment of Spousal Assets for MCCA spouses and provides that:

Assessment Process

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. Initial eligibility is determined using an assessment of spousal assets except when:
 - a. undue hardship exists (Cross Reference 4025.68); or
 - b. the institutionalized spouse has assigned his or her support rights from the community spouse to the department (Cross Reference: 4025.69); or
 - c. the institutionalized spouse cannot execute the assignment because of a physical or mental impairment. (Cross Reference: 4025.69).

7. UPM § 4025.67(D)(3) provides that every January 1, the CSPA shall be equal to the greatest of the following amounts:
 - a. The minimum CSPA; or
 - b. The lesser of:
 - i. The spousal share calculated in the assessment of spousal assets (Cross Reference 1507.05); or
 - ii. 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.

8. UPM § 1570.25(D)(4) provides that 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 Minimum Monthly Needs Allowance ("MMNA") (Cross References § 4022.05 and 4025.67)

UPM § 5035.30(B)(2)(a),(b) provides that the MMNA is the amount which is equal to the sum of the amount of the community spouse's excess shelter costs as calculated in section 5035.30 B. 3. and 150 percent of the monthly poverty level for a unit of two persons.

UPM § 5035.30(B);(3),(4)(a through e) provides that the community spouse's shelter 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. The community spouse's shelter costs includes: rental cost or mortgage payments, including principle and interest; real estate taxes; real estate insurance; required maintenance fees charged by condominiums and cooperatives except those amounts for utilities; and the Standard Utility Allowance ("SUA") used in the Supplemental Nutrition Assistance Program for the community spouse.

The 2017 Poverty Guidelines are listed in the Federal Register, Vol. 82, No. 19, pp. 8831-8832, Tuesday, January 31, 2017,

Effective [REDACTED], 2017, the CS's MMNA is \$2,609.00 as shown in the calculation below:

Property Tax	\$334.10
Homeowner's Insurance	+ \$156.25
Standard Utility Allowance	+ \$698.00
Total Shelter Costs	= \$1,188.35
30% of 150% of FPL for 2	Minus \$608.85

Excess Shelter Costs	= \$579.50
150% FPL for 2	+ \$2,029.50
Equals MMNA	= \$2,609.00

Effective [REDACTED], 2017, the deficit between the CS's income and his MMNA is \$814.44 as shown in the calculation below:

MMNA	\$2,609.00
CS's income	- \$1,794.56
Equals Deficit	= \$814.44

- UPM § 1570.25(D)(4) b. provides that 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 § 5035.25 provides that for residents 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. Allowable monthly deductions from the income of assistance units in LTCFs include a personal needs allowance of \$50.00, increased annually by a cost of living adjustment (equals \$60.00 effective March 2017), and the cost of Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid by the Department or any third party.

As of [REDACTED] 2017, the IS had \$593.00 in income able to be diverted to the CS toward meeting his monthly needs (\$653.00 Social Security, minus \$60.00 personal needs allowance)

After diverting all available income from the IS, the CS' income is still short of his required MMNA by a monthly deficit of \$221.44 (\$814.44 original deficit, minus \$593.00 income diverted from spouse, equals \$221.44).

UPM § 1570.25(D)(4)(c) provides that 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.

The income able to be generated by all \$45,408.77 of the couple's assets owned as of the DOI is \$28.00 per month, which is still insufficient to make up the CS's \$221.44 income shortfall in meeting his MMNA.

Effective [REDACTED], 2017, the CS must have all \$45,408.77 of the couple's DOI assets protected as his CSPA, in order to generate income to help meet his MMNA.

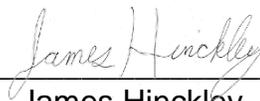
The Department must reopen the IS's Medicaid application retroactive to [REDACTED] 2017 and grant the case based on the IS having \$0.00 assets, because the protected assets are not counted in determining the IS's eligibility for Medicaid.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. Effective [REDACTED] 2017, the CS's CSPA is raised to \$45,408.77.
2. The Department must reopen the Appellant's application for Medicaid effective [REDACTED], 2017 and grant the case based on \$0.00 assets for the Appellant.
3. The Department must submit proof of compliance with this order to the undersigned hearing officer by no later than [REDACTED] 2017.



James Hinckley
Hearing Officer

cc:

[REDACTED]

[REDACTED]

Linda Gonzalez

Lisa Wells, SSOM, New Haven

Brian Sexton, SSOM, New Haven

Cheryl Stuart, SSPM, 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 Legal Counsel, Regulations, and Administrative Hearings, 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 his 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.