

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

██████████
SIGNATURE CONFIRMATION

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

NOTICE OF DECISION

PARTY

██████████ for ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2018, the Department of Social Services (the "Department") sent, ██████████ (the "Appellant") a Notice of Action ("NOA") denying his application for Long Term Care ("LTC") Medicaid assistance.

On ██████████ 2018, the Appellant requested an administrative hearing to contest the Department's decision to deny his application.

On ██████████, 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2018.

On ██████████ 2018, the Conservator's attorney requested to reschedule the administrative hearing.

On ██████████ 2018, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2018.

On ██████████ 2018, 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:

- ██████████, Appellant's daughter and conservator
- Attorney ██████████, Representative for the Appellant's conservator
- ██████████, Eligibility Services Specialist, Department's Representative
- ██████████, Medicaid Coordinator Long-Term Care Facility
- ██████████, Community spouse
- Roberta Gould, Hearing Officer

STATEMENTS OF THE ISSUE

The issue is whether, [REDACTED], (the “Community Spouse”) requires an increase to her protected share of the spousal assets (the “community spouse protected amount” or “CSPA”) so that additional income could be generated in order to meet the Community Spouse’s Minimum Monthly Needs Allowance (“MMNA”), and if, as a consequence of protecting the assets for the Community Spouse, the Appellant’s Medicaid application should be granted.

FINDINGS OF FACT

1. The Appellant has been institutionalized continuously since [REDACTED], 2018 (the date of institutionalization [“DOI”]). (Hearing summary)
2. On [REDACTED], 2018, the Appellant applied for LTC Medicaid. (Hearing summary)
3. The Appellant is married to [REDACTED], the Community Spouse. (Hearing record)
4. The Community Spouse is 61 years old. (Exhibit 1: W-1LTC Application for assistance)
5. The combined total of the Appellant and Community Spouse’s non-exempt assets was \$65,568.21 as of the DOI. (Exhibit 6: Assessment of spousal assets and Hearing summary)
6. The spousal share of the assets was \$32,784.11 as of DOI (½ of the couple’s combined non-exempt assets). (Exhibit 6: and Hearing summary)
7. The maximum Community Spouse Protected Amount (CSPA) was \$123,600.00 as of DOI. (Hearing record)
8. The Appellant is seeking Medicaid eligibility effective [REDACTED] 2018. (Hearing record)
9. The Conservator is claiming that the Community Spouse has expenses arising from exceptional circumstances such as medical health insurance payments and the health issues of diabetes, asthma, osteoporosis, hypertension, thyroid nodules, and a heart condition. (Exhibit 13: Appeal statement and Attorney’s testimony)
10. As of [REDACTED] 2018, the Community Spouse incurs monthly home property taxes of \$567.53 and homeowner’s insurance of \$136.17. (Exhibit 8: Real estate tax bill and Exhibit 9: Homeowner’s insurance bill)
11. As of the hearing date, [REDACTED], 2018, the average rate of return generated by a 12 month Certificate of Deposit for banks in the [REDACTED] CT area was 1.975%. (Exhibit 14: BankRate.com CD rate in [REDACTED] 2018)

12. The \$65,568.21 in assets the couple owned as of the DOI, if the money earned the 1.975% average rate of return of the three highest yielding CDs available in the couple's area, are capable of generating \$1,294.97 per year or \$107.91 monthly in interest income. (\$65,568.21 multiplied by .01975). (Fact #11)
13. As of [REDACTED] 2018, the Appellant had monthly gross unearned income of \$1,084.00 from SSA benefits. (Exhibit 10: SSA benefit statement)
14. Effective [REDACTED] 2018, the Community Spouse has monthly gross earned income of \$3,236.48 from [REDACTED] [REDACTED] [REDACTED] [REDACTED] (\$752.67 average gross earnings/week x 4.3 = \$3,236.48). (Exhibit 11 and Department's testimony)
15. On [REDACTED], 2018, the Department sent the Appellant a W-1-SAN Notification of Results informing him of the assessment of assets for him and his spouse and that they are over the maximum amount of assets for Medicaid eligibility. (Exhibit 6 and Hearing summary)
16. On [REDACTED], 2018, the Department denied the Appellant's application for Long-Term Care Medicaid assistance due to excess assets. (Exhibit 5: Notice of denial dated [REDACTED]/2018 and Hearing summary)
17. The Appellant is seeking an adjustment to the CSPA to have all of the couple's assets protected for the Community Spouse in order to generate additional income to supplement a shortfall in the Community Spouse's income in meeting her Minimum Monthly Needs Allowance ("MMNA"). (Attorney's testimony, Hearing Request)

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 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.
3. The Department correctly determined that the Appellant's initial period of institutionalization began on [REDACTED], 2018.
4. 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.

5. 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 September 30, 1989, and the other spouse becomes a community spouse.
6. **Effective [REDACTED] 2018, the Applicant and his wife were MCCA Spouses as defined by the Medicaid program; the Applicant was an Institutionalized Spouse (IS) and his wife was a Community Spouse (CS).**
7. 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.
8. 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).

9. UPM § 4022.05(B)(2) 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 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.

Connecticut General Statutes § 17b-261k provides that notwithstanding any provision of subsection (g) of section 17b-261, the Commissioner of Social Services shall amend the Medicaid state plan to require that the spouse of an institutionalized person who is applying for Medicaid receives the maximum [CSPA], as determined pursuant to 42 USC 1396r-5. The commissioner shall adopt regulations, in accordance with chapter 54, to implement the provisions of this section.

10. 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 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.

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.

Effective February 2018 the Medicaid program as administered by the Department used the 2017 Poverty Guidelines published in the Federal Register, Vol. 82, No. 19, pp. 8831-8832, Tuesday, January 31, 2017.

Effective [REDACTED] 2018, the CS's MMNA was \$3,039.67 as shown in the calculation below:

Rent	\$0
Property Tax	+ 567.53
Home Insurance	+ \$136.17
Standard Utility Allowance	+ \$728.00
Total Shelter Costs	= \$1431.70
30% of 150% of FPL for 2	Minus \$609.00
Excess Shelter Costs	= \$ 822.70
150% FPL for 2	+ \$2,030.00
Total actual expenses	= \$2852.70
MMNA capped at \$3,090.00	\$3,039.67

11. UPM § 5025.05(B)(2)(b) provides that if income is received on other than a monthly basis, the estimate of income is calculated by multiplying 4.3 by a representative weekly amount that is determined as follows: b. if income varies from week to week, a representative period of at least four consecutive weeks is averaged to determine the representative weekly amount.

12. The Department correctly determined that effective [REDACTED] 2018, the Community Spouse had gross monthly earned income of \$3,236.48.

13. Effective [REDACTED] 2018, the deficit between the Community Spouse's income and her MMNA was \$0 as shown in the calculation below:

MMNA	\$3,039.67
CS's income	- \$3,236.48
Equals Deficit	= -\$ 196.81

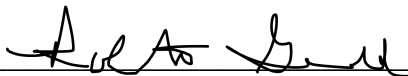
14. UPM § 1570.25(D)(4) provides that the Fair Hearing official increases the Community Spouse Protected Amount (CSPA) if either MCCA spouse establishes that the CSPA previously determined by the Department is not enough to raise the community spouse's income to the MMNA.
15. UPM § 1570.25(D)(4)(b) provides 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.
16. 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.
- 17. As of [REDACTED] 2018, the Community spouse does not have a monthly income deficit and her needs are met without diverting any of the Appellant's income.**
18. UPM § 1570.26P provides for the adjustment of the MMNA because of exceptional expenses/significant financial duress and states that one must consider whether the circumstances are unusual and extreme; whether or not they prevent the community spouse from taking care of his or her activities of daily living (bathing, dressing, transferring, toileting, feeding, preparing meals, administering medication, ambulating, controlling bladder and bowel); whether or not they threaten the community spouse's ability to remain in the community, or if they involve the community spouse's providing constant and essential care for a disabled child, sibling, or other immediate relative (other than the institutionalized spouse).
19. UPM § 1570.26P(5) provides that one does not consider the normal frailties of old age, or the need for increased costs relating to medical insurance to be an exceptional circumstance.
- 20. The Department correctly determined that the Community Spouse's expenses arising from her medical conditions and medical health insurance payments are not considered to be exceptional circumstances.**
19. UPM § 4005.10(A)(2)(a) provides the asset limit for Medicaid for a needs group of one is \$1,600.00.
- 20. Effective [REDACTED] 2018, the value of the Appellant's assets exceeds the**

Medicaid asset limit of \$1,600.00.

21. On [REDACTED] 2018, the Department correctly determined that the Appellant exceeded the asset limit for Medicaid for LTC assistance.

DECISION

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



Roberta Gould
Hearing Officer

Pc: Fred Presnick, Social Services Operations Manager, DSS Bridgeport
Yecenia Acosta, Social Services Operations Manager, DSS Bridgeport
Michael Briggs, Eligibility Services Specialist, DSS Bridgeport

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, 25 Sigourney Street, Hartford, CT 06106-5033.

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, 25 Sigourney Street, Hartford, CT06106. 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.