

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

██████████ 2020
Signature confirmation

Case: ██████████
Client: ██████████
Request: 149688

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the “Department”) issued ██████████ (the “Appellant”) a *Notice of Action* denying his ██████████ 2019 *Long-term Care/Waiver* application for home care.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received the Appellant’s administrative hearing request. The Appellant petitioned for an increase to the Community Spouse Protected Amount (“CSPA”).

On ██████████ 2019, the OLCRAH issued a notice scheduling the administrative hearing for ██████████, 2019.

Immediately prior to the start of the ██████████ 2019 proceeding, Attorney ██████████ advised the undersigned hearing officer that the Appellant and ██████████, the Appellant’s son and holder of the Appellant’s power of attorney, were unable to participate in the ██████████ 2019 proceeding due to an unanticipated hospitalization. Counsel also represented that ██████████, the Appellant’s wife, was unavailable to participate.

The undersigned hearing officer offered Counsel the option of a postponement. Counsel declined a postponement and represented the Appellant’s interests at the hearing.

Therefore, on ██████████ 2019, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held the administrative hearing. The following individuals attended:

██████████, Appellant’s counsel

Anthony Gulino, Department's representative
Pam Corbin-Riddick, Department's observer
Eva Tar, Hearing Officer

Subsequent to the [REDACTED] 2019 administrative hearing, the Appellant was admitted for in-patient treatment at a skilled nursing facility. On [REDACTED] 2020, the administrative hearing record closed.

STATEMENT OF ISSUE

The issue is whether the CSPA must be increased so as to generate sufficient income to meet the wife's Minimum Monthly Needs Allowance ("MMNA").

FINDINGS OF FACT

1. The Appellant is married to [REDACTED] (the "wife"). (Department Exhibits B and G)
2. The couple owns [REDACTED], Connecticut (the "residence") that is comprised of a single building on one lot having frontage on [REDACTED] [REDACTED] and two adjacent parcels. The adjacent parcels form the property's side yard and backyard. (Department Exhibit H)(Appellant Exhibit B)
3. On [REDACTED] 2019, a skilled nursing facility admitted the Appellant for in-patient treatment. (Department Exhibit I)
4. On [REDACTED] 2019, the skilled nursing facility discharged the Appellant to his residence. (Department Exhibit I)
5. On [REDACTED] 2019, the couple's liquid assets equaled \$96,145.25, as distributed between three [REDACTED] financial instruments [REDACTED], [REDACTED] [REDACTED] a [REDACTED] [REDACTED] financial instrument [REDACTED] and three [REDACTED] accounts ([REDACTED]), ([REDACTED], and [REDACTED]). (Department Exhibit D)
6. On [REDACTED] [REDACTED] 2019, the Department received the Appellant's *Long-term Care/Waiver Application* (the [REDACTED] application") applying for home care, signed by the holder of the Appellant's power of attorney on [REDACTED] 2019. (Department Exhibits B and G)
7. On [REDACTED] 2019, the couple lived at the residence. (Department Exhibit B)
8. In 2019, the couple's real estate taxes as associated with the residence and the real property's side yard and backyard equaled \$4,095.50. (Appellant Exhibit A)(Department Exhibit H)
9. Effective [REDACTED] 2019, the homeowner's insurance associated with the residence had a premium of \$613.00 per year. (Appellant's Exhibit B)
10. In 2019, the Appellant's wife grossed \$796.00 per month in Social Security benefits. (Appellant Exhibit A)(Department Exhibit H)

11. In 2019, the Appellant grossed \$1,513.00 in monthly Social Security benefits. (Appellant Exhibit A)(Department Exhibit H)
12. In 2019, the Appellant grossed \$424.50 per month in a pension administered by [REDACTED] (Appellant Exhibit A)(Department Exhibit H)
13. As of [REDACTED] 2019, the couple no longer had equity in the three [REDACTED] financial instruments and the [REDACTED] financial instrument. (Department Exhibit D)
14. On or after [REDACTED] 2019, the Department calculated the Community Spouse Protected Amount ("CSPA") to equal \$48,072.63. (Department Exhibit D)
15. On [REDACTED] 2019, the Department denied the [REDACTED] 2019 application, issuing a *Notice of Action* citing assets in excess of the program's limits. (Department Exhibit A)
16. As of [REDACTED] 2019, the couple's equity in the three [REDACTED] accounts equaled \$66,650.07. (Appellant Exhibit B)
17. On [REDACTED] 2019, the couple's equity in the three [REDACTED] accounts generated .02 percent in annual percentage yield. (Appellant Exhibit A)
18. As of [REDACTED] 2019, the date of this hearing, the three highest annual percentage yields on 12-month, \$1,000.00 certificates of deposit for banks with a physical presence in Connecticut equaled 2.00 percent ([REDACTED]); 1.80 percent ([REDACTED]); and 1.65 percent ([REDACTED])
19. Connecticut General Statutes § 17b-61 (a), as amended on passage by Section 309 of *Public Act No. 19-117 (January Session)*, provides that a final decision shall be rendered not later than 90 days from the date the Commissioner receives a request for a fair hearing, provided in part that the time for rendering a final decision shall be extended whenever the aggrieved person requests or agrees to an extension.

On [REDACTED] 2019, the OLCRAH received the Appellant's hearing request. The hearing was held on [REDACTED] 2019. At the request of counsel, the hearing officer extended the close of the record through [REDACTED] 2020.

This final decision initially would have been due [REDACTED] 2019, but the seven-day delay to the close of the hearing record extended that deadline. The deadline for this decision therefore was [REDACTED] 2020. This final decision is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes in part designates the Department as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

The Department shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department. Conn. Gen. Stat. § 17b-261b (a).

“The department’s uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law.” *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990)).

The Department has the authority to review the Appellant’s ██████████ 2019 application for home care to determine whether the Appellant met the eligibility requirements of the Medicaid program.

2. Section 4000.01 of the Uniform Policy Manual (“UPM”) provides definitions of the following relevant terms: Assessment of Spousal Assets, Community Spouse, Community Spouse Protected Amount (CSPA), Continuous Period of Institutionalization, Institutionalized Spouse, MCCA [Medicare Catastrophic Coverage Act of 1988, *Public Law 100-105*] Spouses, and Spousal Share.

With respect to the ██████████ ██████████ 2019 application, the Appellant is the “institutionalized spouse,” and his wife is the “community spouse.”

3. “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.” Uniform Policy Manual (“UPM”) § 1507.05 A.2.

“A continuous period of institutionalization is 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.” UPM § 4000.01.

The Appellant’s initial date of a continuous period of institutionalization of 30 days or more was ██████████ 2019.

4. “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.” UPM § 1507.05 A.1.

“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.” UPM § 1507.05 A.3.

“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.” UPM § 1507.05 A.4.

In accordance with Section 1507.05 A. of the Uniform Policy Manual, the Department completed a computation of the total value of the couple's non-excluded available assets as of ██████████ 2019 and a computation of the spousal share of those assets.

5. The Fair Hearing official "modifies the results of the assessment of spousal assets when: a. either MCCA spouse requests a hearing regarding the assessment; and b. the Fair Hearing official determines the results of the assessment were incorrectly determined (Cross Reference 1507)." UPM § 1570.25 D.2.

"Every January 1, the CSPA shall be equal to the greatest of the following amounts: a. the minimum CSPA; or b. the lesser 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 1570); or d. the amount established pursuant to a court order for the purpose of providing necessary spousal support." UPM § 4025.67 D.3.

In ██████████ 2019, the minimum CSPA equaled \$25,284.00; the maximum CSPA equaled \$126,420.00.

The Department's computation of the wife's CSPA to equal \$48,072.63 falls within the range of the minimum and maximum CSPA in effect in ██████████ 2019.

6. "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. Standard Utility Allowance (SUA) used in the FS program for the community spouse." UPM § 5035.30 B.4.

In ██████████ 2019, the Supplemental Nutrition Assistance Program's (formerly the Food Stamps program) standard utility allowance in Connecticut equaled \$736.00.

The monthly shelter costs of the Appellant's wife in the community equaled \$1,128.37. [\$341.29 (pro-rated real estate taxes per month) plus \$51.08 (pro-rated 2019 homeowner's insurance per month) plus \$736.00, standard utility allowance]

7. "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." UPM § 5035.30 B.3.

In ██████████ 2019, 150 percent of the Federal Poverty Level for two per month equaled \$2,113.75.

In ██████████ 2019, 30 percent of 150 percent of the Federal Poverty Level for two per month equaled \$634.13.

With respect to the ██████████ 2019 application, the Appellant's wife had excess monthly shelter costs of \$494.24 in ██████████ 2019. [\$1,128.37 (allowable shelter costs) minus \$634.13 (30 percent of 150 percent of the Federal Poverty Level for two)]

8. "The Minimum Monthly Needs Allowance ("MMNA") is that amount which is equal to the sum of the amount of the community spouse's excess shelter cost 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.2.

In ██████████ 2019, the minimum MMNA equaled \$2,113.75; the maximum MMNA equaled \$3,160.50.

For the purposes of the Medicaid program, the wife's MMNA equaled \$2,607.99 in ██████████ 2019. [\$494.24 plus \$2,113.75]

9. "An institutionalized spouse applying for Medicaid and having a spouse living in the community shall be required, to the maximum extent permitted by law, to divert income to such community spouse in order to raise the community spouse's income to the level of the minimum monthly needs allowance, as described in Section 1924 of the Social Security Act. *Such diversion of income shall occur before the community spouse is allowed to retain assets in excess of the community spouse protected amount described in Section 1924 of the Social Security Act....*" Conn. Gen. Stat. §17b-261 (g) (emphasis added).

"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)." UPM § 1570.25 D.4.

"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 § 1570.25 D.4.b. (emphasis added).

The hearing officer must first allow for a diversion of the institutionalized spouse to the community spouse in all cases prior to increasing the CSPA.

10. "The CSA [Community Spouse Allowance] is equal to the greater of the following: a. the difference between the Minimum Monthly Needs Allowance (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." UPM § 5035.30 B.1.

The wife's CSA equaled \$1,811.99, or the difference between the wife's MMNA and her gross monthly income. [\$2,607.99 minus \$796.00]

11. Section 1570.25 D. 3. a. of the Uniform Policy Manual provides:

The official increases the community spouse's MMNA previously determined by the Department if either MCCA 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 officer.

- 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*).

UPM § 1570.25 D.3.a. (emphasis added).

The Appellant has not established by substantial evidence that his wife has exceptional circumstances that are severe and unusual that prevent her from taking care of her activities of daily living.

The Appellant has not established by substantial evidence that his wife has exceptional circumstances that are severe and unusual that directly threaten her ability to remain in the community.

12. Section 1570.25 D.3.b. of the Uniform Policy Manual provides:

Significant financial duress is an expense or set of expenses that:

- (1) directly arises from the exceptional circumstances described in the subparagraph a. above; and
- (2) *is not already factored into the MMNA*; and
- (3) cannot reasonably be expected to be met by the community spouse's own income and assets.

UPM § 1570.25 D.3.b. (emphasis added)

Section 1570.25 D.3.c. of the Uniform Policy Manual provides:

Expenses that are factored into the MMNA, and thus do not generally qualify as causing significant financial duress, include, but are not limited to:

- (1) shelter costs such as rent or mortgage payments;
- (2) utility costs;
- (3) condominium fees;
- (4) real estate and personal property taxes;
- (5) real estate, life and medical insurance;
- (6) *expenses for the upkeep of a home such as lawn maintenance, snow removal, replacement of a roof, furnace or appliance*;
- (7) medical expenses reflecting the normal frailties of age.

UPM § 1570.25 D.3.c. (emphasis added)

The wife has not established by substantial evidence that she has "significant financial duress" directly arising from "exceptional circumstances," as those terms are defined by Section 1570.25 D.3. of the Uniform Policy Manual.

13. "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." UPM § 1570.25 D.3.d.

The hearing officer cannot increase the wife's \$2,607.99 MMNA, as the wife does not have exceptional circumstances that cause significant financial duress.

14. "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 § 1570.25 D.4.c.

The average rate of return generated by a 12 month certificate of deposit as of the date of the hearing is 1.81 percent, a figure that exceeds .02 percent, the actually generated rate of return of the couple's three [REDACTED] accounts.

The wife's spousal share of \$48,072.63 could potentially yield \$72.50 in monthly income. [\$48,072.63 multiplied by 1.81 percent divided by 12 months]

For the purposes of determining whether an increase to the CSPA is warranted, the wife's projected monthly income in 2019 equaled \$2,680.49. [\$796.00 (personal Social Security) plus \$1,811.99 (CSA) plus \$72.50 (potential investment income)]

The wife's projected monthly income in 2019 exceeded her MMNA. [\$2,680.49 > \$2,607.99 (MMNA)]

The wife, as community spouse, has sufficient income from all sources to meet her \$2,607.99 Minimum Monthly Needs Allowance ("MMNA").

The hearing officer affirms the Community Spouse Protected Amount ("CSPA") of \$48,072.63.

DISCUSSION

The Appellant petitions for an increase of his wife's CSPA of \$48,072.63. "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)." UPM § 1570.25 D.4.

The Appellant asks the hearing officer increase the MMNA of his wife by finding that the wife has exceptional circumstances causing significant financial distress by the wife's being able to physically care for the Appellant in the couple's residence. This argument is unsupported by the definition of "exceptional circumstances" found at Section 1570.25 D.3.a. of the Uniform Policy Manual.

"Exceptional circumstances" are those "that are severe and unusual" and "prevent *the community spouse* from taking care of *his or her* activities of daily living," "directly threaten *the community spouse's* ability to remain in the community," or "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*)." (emphasis added). The hearing record lacks substantial evidence that it is *the wife* who has exceptional circumstances that are severe and

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.