

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
25 SIGOURNEY STREET
HARTFORD, CT06106-5033

██████████ 2013
Signature Confirmation

Client ID # ██████████
Request # 516222

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA) denying his request for Long Term Care ("LTC") benefits under the Medicaid program.

On ██████████ 2013, the Appellant requested an administrative hearing to contest the Department's decision to deny such benefits.

On ██████████ 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2013.

On ██████████, 2013, 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's Spouse
██████████, Appellant's Caregiver
██████████, Appellant's Attorney
Michael Carone, Department's Representative
Christopher Turner, Hearing Officer

STATEMENT OF THE ISSUES

1. The first issue is whether the Community Spouse (“CS”) needs income diverted from the Institutionalized Spouse’s (“IS”) income to help meet the Community Spouse Allowance (“CSA”).
2. The second issue is whether the CS needs additional assets protected, from the Appellant’s share of assets, to produce additional income to meet the CS’s Minimum Monthly Needs Allowance (“MMNA”).
3. The final issue is whether the Appellant’s assets exceed the Medicaid asset limit.

FINDINGS OF FACT

1. On [REDACTED] 2012, the Appellant applied for LTC benefits under the Medicaid Program. (Exhibit 5: Notice content dated [REDACTED]/13; Hearing summary)
2. The Appellant is married to [REDACTED], (the “CS”). (Hearing summary)
3. The CS resides at [REDACTED]. (Page 83 of Appellant’s Fair Hearing Package (“FHP”))
4. The CS incurs \$325.46 per month for real estate property tax. (FHP Page 83)
5. The CS incurs \$56.17 per month for homeowners insurance. (FHP Page 84)
6. The CS is seventy eight years old. She suffers from blindness, has a history of Marfans syndrome, neuropathy, congestive heart failure, diabetes, thyroid disease and hearing loss. She needs assistance with activities of daily living (ADL’s). The CS would not be able to live independently at this time without assistance from her caregivers. (FHP pages 86, 87 and 88)
7. The CS is blind. She employs companion services daily for eight hours. She uses a walker and needs assistance in order to safely ambulate. She needs support with meal preparation, housekeeping, shopping, and transportation. (FHP page 86)
8. As a result of her illnesses, the CS incurs \$3,660.00, per month for Home Health Care. (Testimony)
9. The IS’s monthly unearned income from Social Security is \$1,692.00. (FHP page 58)

10. The CS's monthly income from Social Security is \$891.00. (FHP page 56)
11. The IS's gross monthly [REDACTED] pension equals \$1,020.13. (Includes \$199.80 med part b premium for IS and CS. (FHP page 58)
12. The IS's gross monthly private pension equals \$152.62. (FHP page 57)
13. The Appellant's date of institutionalization ("DOI") is [REDACTED] 2012. (Hearing summary)
14. The combined total of the Appellant and Community Spouse's non-exempt assets was \$168,941.32 as of the DOI. (FHP page 58)
15. The spousal share of the assets was \$84,070.66 as of the DOI. (Hearing summary; FHP page 58)
16. The Appellant is seeking a [REDACTED] 2012, Medicaid eligibility date. (Record)
17. The resulting assets generated the following annual rates of return:

Asset	Balance	Rate of Return As of 11/2012
First Niagara [REDACTED]	\$ 1,734.98	.41%
SEI [REDACTED]	\$125,522.52	4.31 %
SEI [REDACTED]	\$ 10,002.16	.41%

18. The Appellant has \$140,926.49 in total assets as of the date of application. (FHP page 59)
19. On [REDACTED] 2013, the Department denied the Appellant's application due to excess assets. (Exhibit 5: Notice dated [REDACTED] 2013)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Medicaid program.
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] 2012.
4. 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 1570); or
 - d. the amount established pursuant to a court order for the purpose of providing necessary spousal support.
5. 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. Conn. Gen. Stat. § 17b-261k.
6. The Department correctly determined that the CSPA was \$84,070.66.
7. As of [REDACTED] 2013, the 12 month Certificate of Deposit bank rate was .41%. (.94 Ally + .20 People’s + .10 Webster = 1.24%. $1.24/3 = .41\%$)
8. Effective [REDACTED] 2012, the CS’s assets of \$84,070.66 would have generated monthly interest income of \$454.83. See table below for calculations:

Asset	Balance	Interest Rate	Interest per Month
First Niagara Bank [REDACTED]	\$ 1,734.98	0.41%	\$ 0.59
SEI [REDACTED]	\$125,522.52	4.31%	\$450.83

SEI ██████████	\$ 10,002.16	0.41%	\$ 3.41
Total	\$137,259.66		\$454.83

9. UPM § 1570.25(D)(3) 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.

10. The CS had gross monthly income of \$990.90 excluding the interest income.

11. The CS's total gross monthly income equals \$1,292.85.

12. UPM § 5035.30(B) provides for the calculation of the 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.. Standard Utility Allowance ("SUA") used in the Supplemental Nutrition Assistance ("SNAP") program for the community spouse.

13. The CS's MMNA was \$2,373.50 as shown in the table below.

	AMOUNT
Shelter Costs:	
Home Insurance	\$56.17
Utility Allowance	\$668.00
Property Taxes	\$325.46
Total shelter costs:	\$1,049.63
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>\$567.38</u>
Excess shelter costs:	\$482.25
Plus 150% of the FPL for two:	<u>\$1,891.25</u>
Equals	\$2,373.50

14. UPM §1570.25(D)(3) provides that 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 significant 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 institutionalized spouse).
- b. Significant financial duress is an expense or set of expenses that:
- (1) directly arises from the exceptional circumstances described in 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.
- 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:
- (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,
 - (7) 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.

15. The CS has exceptional circumstances that are severe and unusual and the CS has significant financial duress that directly arises from her exceptional circumstances. The MMNA may be increased to \$5,173.50, (\$2,800.00 additional costs + original MMNA of \$2,373.50)

16. The deficit between the CS's income and her MMNA is \$3,880.65, as shown in the table below:

COMMUNITY SPOUSE DEFICIT	
Income	\$1,292.85
MMNA	\$5,173.50
Monthly Deficit	\$3,880.65

17. 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.

18. UPM § 5035.25(B) provides that the following monthly deductions are allowed from the income of assistance units in LTCF's:

- a. a personal needs allowance ("PNA") 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;
- b. Community Spouse Allowance (CSA), when appropriate; (Cross Reference (5035.30))
- c. a Community Family Allowance (CFA), when appropriate; (Cross Reference (5035.35))
- d. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for the Department or any other third party;

19. The IS had total available monthly-earned income of \$2,864.75 (\$1,692.00 SSA + \$1,020.13 State of Conn. pension + \$152.62 Prudential pension).

20. A portion of the CS's needs are met by diverting \$2,804.75 of the IS's income (\$2,864.75, unearned income; minus \$60.00, PNA).

21. After a diversion of the IS's income of \$2,804.75 to the CS, the CS still has a monthly income deficit of \$1,075.90 (\$5,173.50, MMNA; minus \$1,292.85. CS' income; minus \$2,804.75, diverted income).

22. Effective [REDACTED] 2012, the CS's CSPA is increased by \$56,855.83, the total amount of the couple's assets needed in order to generate the interest income equal to \$154.06 needed to meet the Appellant's CSA based on her MMNA.

22B. \$154.14 is calculated as follows: $\$41,451.86 \text{ left from SEI account @ } 4.31\% = \$1,786.57/12 = \$148.88$. $\$15,403.97 * .41\% = \63.15 . $\$63.15/12 = \5.26 . $\$148.88 + 5.26 = \154.14 .

23. After the diversion of additional assets of \$56,855.83, effective [REDACTED] 2012, for the benefit of the Community Spouse, the Institutionalized Spouse has countable assets of \$0.00.

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

25. Effective [REDACTED] 2012, the value of Appellant/Institutionalized Spouse's assets does not exceed the Medicaid asset limit of \$1,600.00.

DECISION

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

ORDER

1. The Department will reopen the Appellant's [REDACTED] [REDACTED] 2012 application for Medicaid and continue the eligibility process.
2. Effective [REDACTED] 2012, the CSPA is increased to \$140,926.49.
3. Effective [REDACTED] 2012, the MMNA is increased to \$5,173.50.
4. No later than [REDACTED] 2013, the Department will submit to the undersigned verification that the Appellant's Medicaid application has been reopened.

Christopher Turner

Christopher Turner
Hearing Officer

CC: John Hesterberg, Operations Manager– Manchester, DSS R.O. #11.

[REDACTED]
Marc Shok, DSS

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, 25 Sigourney Street, Hartford, CT 06106.

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, CT 06106. 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.