

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
25 SIGOURNEY STREET  
HARTFORD, CT 06106

██████████ 2013  
Signature confirmation

Client: ██████████  
Request: 536979

**NOTICE OF DECISION**

**PARTY**

████████████████████  
██  
██  
████████████████████

**PROCEDURAL BACKGROUND**

On ██████████ 2013, the Department of Social Services (the “Department” or “Agency”) issued ██████████ (the “Appellant” or “institutionalized spouse”) through ██████████ her conservator of estate, an *Assessment of Spousal Assets/Notification of Results* that the Department had determined that the Appellant and her husband had countable assets in excess of \$24,328.00, rendering the Appellant ineligible for Medicaid payment for her long-term care services.

On ██████████ 2013, the Department issued the Appellant a *Notice to the Institutionalized Spouse of Eligibility for Medicaid*, stating that the Agency had determined that she was eligible for Medicaid as an institutionalized individual effective ██████████ 2013.

On ██████████, 2013, the Department issued to the Appellant a notice stating that the Agency had denied her Medicaid application for the months from ██████████ 2012 through ██████████ 2013, for the reason that the Appellant’s assets exceeded the Medicaid program’s limits.

On ██████████ 2013, the Appellant filed a request for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) to request that the agency allow ██████████ (the “husband” or the “community spouse”), the Appellant’s husband, to retain additional funds from the couple’s assets as part of his spousal share.

On ██████████ 2013, the OLCRAH issued a notice scheduling an administrative hearing for ██████████, 2013.

On [REDACTED] 2013, 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 the administrative hearing:

[REDACTED], Appellant's conservator  
Alan Mallory, Department's representative  
Eva Tar, Hearing Officer  
Carla Hardy, Hearing Officer (Observer)  
Marci Ostroski, Hearing Officer (Observer)

The hearing record remained open for the submission of additional evidence. On [REDACTED] [REDACTED] 2013, the hearing record closed.

### **STATEMENT OF ISSUE**

The issue of this administrative hearing is whether the value of the Appellant's and the community spouse's counted assets rendered the Appellant ineligible for Medicaid payment for her long-term care services.

### **FINDINGS OF FACT**

1. The Appellant's date of birth is [REDACTED] 1933. (Department's Exhibit A: *Application Part 2: Special Eligibility Determination Document*, signed [REDACTED]/13)
2. The Appellant's husband's date of birth is [REDACTED] [REDACTED]. (Department's Exhibit A)
3. The Appellant and her husband own [REDACTED] (the "home property"). (Appellant's Exhibit 1: Fax, [REDACTED] 13)
4. On [REDACTED] 2012, the Appellant was admitted to [REDACTED] Hospital. (Department's representative's testimony)
5. On [REDACTED] 2012, [REDACTED] hospital discharged the Appellant to Pope John Paul II Healthcare Center, a skilled nursing facility. (Department's representative's testimony)(Department's Exhibit J: Fax, [REDACTED]/13)
6. In the period from [REDACTED] 2012 through [REDACTED] 2013, the Appellant's husband resided at the home property. (Appellant's conservator's testimony)
7. In [REDACTED] 2012, the Appellant and/or her husband were the owners of the following: the home property, Wells Fargo account [REDACTED], Wells Fargo account [REDACTED], Fidelity Rollover IRA [REDACTED], and three term life insurance policies. (Department's Exhibit D: Financial statements, varying dates)(Department's Exhibit J)(Department's Exhibit C: *Spousal Assessment Worksheet*, undated)
8. On [REDACTED] 2012, the Appellant and/or her community spouse's financial accounts had the following values: \$1,260.56 (Wells Fargo [REDACTED]), \$2,751.75 (Wells Fargo [REDACTED]) and \$25,104.85 (Fidelity Rollover IRA ([REDACTED])). (Department's Exhibit D)

9. On [REDACTED] 2012, the Department received the Appellant's application for Medicaid payment for her long-term care services. (Department's Exhibit A)(Department's Exhibit I: Assistance Status-STAT, [REDACTED] 13)
10. The Appellant grosses \$718.00 per month in Social Security benefits. (Department's representative's testimony)
11. The Appellant grosses \$267.73 per month in [REDACTED] pension benefits. (Department's representative's testimony)
12. The Appellant's husband grosses \$1,815.90 per month in Social Security benefits. (Department's representative's testimony)
13. The Appellant's husband grosses \$1,118.10 per month in a [REDACTED] pension. (Department's representative's testimony)
14. The annual real estate taxes on the home property equal \$2,630.50. (Appellant's Exhibit 1)
15. The Appellant and her husband do not carry a mortgage on the home property. (Appellant's Exhibit 2: Fax, [REDACTED]/13)(Appellant's Exhibit 1)
16. The Appellant and her husband do not carry property insurance on the home property. (Appellant's Exhibit 2)
17. On [REDACTED] 2013, the Department issued an *Assessment of Spousal Assets/Notification of Results* to the Appellant, stating that the agency had determined that the total value of all of the counted assets of the Appellant and her husband equaled \$29,117.16. (Department's Exhibit G: *Assessment of Spousal Assets/Notification of Results*, [REDACTED]/13)
18. The [REDACTED] 2013 *Assessment of Spousal Asset/Notification of Results* stated that the maximum amount of assets that the Appellant and her husband could retain without causing ineligibility for Medicaid was \$24,328.00, or, \$1,600.00 for the Appellant and \$22,728.00 for the community spouse. (Department's Exhibit G)
19. The [REDACTED] 2013 *Assessment of Spousal Assets* stated that the Appellant was not currently eligible for Medicaid. (Department's Exhibit G)
20. On [REDACTED] 2013, Pope John Paul II Healthcare Center discharged the Appellant to the home property. (Appellant's conservator's testimony)
21. On [REDACTED] 2013, the Department issued a *Notice to the Institutionalized Spouse of Eligibility for Medicaid* that stated that the Agency had determined that the Appellant was eligible for Medicaid effective [REDACTED] 2013. (Department's Exhibit H: *Notice to the Institutionalized Spouse of Eligibility for Medicaid*, [REDACTED]/13)

22. On [REDACTED] 2013, the Department issued to the Appellant a notice stating that the Agency had denied her Medicaid application for the months from [REDACTED] 2012 through [REDACTED] 2013, for the reason that the Appellant's assets exceeded the Medicaid program's limits. (Department's Exhibit E: Notice Content-NCON, [REDACTED]/13)

### **CONCLUSIONS OF LAW**

1. The Department is the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act. The Commissioner may make such regulations as are necessary to administer the medical assistance program. Conn. Gen. Stat. §§ 17b-2, 17b-260, and 17b-262.
2. The Department of Social Services 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).
3. For the purposes of determining eligibility for the Medicaid program, an available asset is one that is actually available to the applicant or one that the applicant has the legal right, authority or power to obtain or to have applied for the applicant's general or medical support. If the terms of a trust provide for the support of an applicant, the refusal of a trustee to make a distribution from the trust does not render the trust an unavailable asset. Notwithstanding the provisions of this subsection, the availability of funds in a trust or similar instrument funded in whole or in part by the applicant or the applicant's spouse shall be determined pursuant to the Omnibus Budget Reconciliation Act of 1993, 42 USC 1396p. The provisions of this subsection shall not apply to a special needs trust, as defined in 42 USC 1396p(d)(4)(A). For purposes of determining whether a beneficiary under a special needs trust, who has not received a disability determination from the Social Security Administration, is disabled, as defined in 42 USC 1382c(a)(3), the Commissioner of Social Services, or the commissioner's designee, shall independently make such determination. The commissioner shall not require such beneficiary to apply for Social Security disability benefits or obtain a disability determination from the Social Security Administration for purposes of determining whether the beneficiary is disabled. Conn. Gen. Stat. § 17b-261 (c).
4. Section 4000.01 of the Uniform Policy Manual ("UPM") provides in part the following definitions:
  - Asset Limit: The asset limit is the maximum amount of equity in counted assets which an assistance unit may have and still be eligible for a particular program administered by the Department.
  - Available Asset: An available asset is cash or any item of value which is actually available to the individual or which the individual has the legal right, authority or power to obtain, or to have applied for, his or her general or medical support.
  - Community Spouse: A community spouse is 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.
  - Community Spouse Protected Amount (CSPA): A community spouse protected amount is the amount of the total available non-excluded 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.

Continuous Period of Institutionalization: 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.

Counted Asset: A counted asset is an asset which is not excluded and either available or deemed available to the assistance unit.

Institutionalized Spouse: An institutionalized spouse is 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.

MCCA<sup>1</sup> Spouses: 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.

Spousal Share: A spousal share is one-half of the total value of assets which results from the assessment of spousal assets.

5. 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. UPM § 1507.05 (A)(2).
6. For the purposes of the Medicaid program, the Appellant's beginning date of a continuous period of institutionalization was [REDACTED] 2012.
7. For the purposes of the Medicaid program, the Appellant and her husband are MCCA spouses in the months in which the Appellant was institutionalized.
8. For the purposes of the Medicaid program, the Appellant's husband is a community spouse in the months in which the Appellant was institutionalized.
9. The Department counts the assistance unit's equity in an asset toward the asset limit if the asset is not excluded by state or federal law and is either: available to the unit; or deemed available to the unit. Under all programs except [the Supplemental Nutrition Assistance Program], the Department considers an asset available when actually available to the individual or when the individual has the legal right, authority or power to obtain the asset, or to have it applied for, his or her general or medical support. UPM § 4005.05 (B)(1) and (2).
10. The Department compares the assistance unit's equity in counted assets with the program asset limit when determining whether the unit is eligible for benefits. An assistance unit is not eligible for benefits under a particular program if the unit's equity in counted assets exceeds the asset limit for the particular program, unless the assistance

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<sup>1</sup> MCCA – Medicare Catastrophic Coverage Act of 1988, Public Law 100-105.

unit is categorically eligible for the program and the asset limit requirement does not apply. UPM § 4005.05 (D).

11. AABD and MAABD - Categorically and Medically Needy: (Except Qualified Medicare Beneficiaries, Specified Low Income Medicare Beneficiaries, Additional Low Income Medicare Beneficiaries, Qualified Disabled and Working Individuals, Working Individuals with Disabilities and Women Diagnosed with Breast or Cervical Cancer): a. The asset limit is \$1,600 for a needs group of one. b. The asset limit is \$2,400 for a needs group of two.
12. For the purposes of the Medicaid program, the Appellant was a needs group of one in the months of the Appellant's institutionalization.
13. The Appellant was subject to the \$1,600.00 Medicaid program's asset limit in the months of her institutionalization.
14. 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).
15. 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. 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)(3) and (4).
16. 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. UPM § 1507.05 (A)(5).
17. The Department provides a notification of the results of the assessment to each spouse. The notification contains the following information: the result of the assessment; and the documents used for the assessment; and the amount of the spousal share; and the maximum amount of assets which may be retained by the spouses at the time of the results of the assessment which would not adversely affect eligibility; and the Department's determination of the assistance unit's current eligibility in regard to assets; and the right of each spouse to request a fair hearing. UPM § 1507.05 (C).
18. 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).
19. The calculation of assets counted in determining the assistance unit's eligibility is calculated in the following manner: The Department determines the amount of the assistance unit's available non-excluded assets by subtracting the value of the following

assets owned by the assistance unit: 1. those assets considered to be inaccessible to the assistance unit at the time of determining eligibility; and 2. Assets which are excluded from consideration. UPM § 4026.05 (A).

20. For the purposes of the Medicaid program, the Wells Fargo [REDACTED] account, the Wells Fargo [REDACTED] account, and Fidelity Rollover IRA [REDACTED]) are accessible, non-excluded assets.
21. For the purposes of the Medicaid program, the Wells Fargo [REDACTED] account, the Wells Fargo [REDACTED] account, and Fidelity Rollover IRA [REDACTED] are available assets.
22. The Appellant had the legal right, authority or power to obtain, or to have applied for her general or medical support, the assets in the Wells Fargo [REDACTED]) account and the Fidelity Rollover IRA [REDACTED] accounts.
23. The Appellant's spouse had the legal right, authority or power to obtain, or to have applied for his general or medical support, the assets in the Wells Fargo [REDACTED]) account and the Wells Fargo [REDACTED]) account.
24. For the purposes of the Medicaid program, the Wells Fargo ([REDACTED] account, the Wells Fargo [REDACTED] account, and Fidelity Rollover IRA ([REDACTED] are counted assets.
25. For the purposes of the Medicaid program, the Appellant and the community spouse had counted assets totaling \$29,104.85 on [REDACTED] 2013.
26. 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).
27. In [REDACTED] 2012, the minimum CSPA was \$22,728.00; the maximum was \$113,640.00. UPM § P-4027.67.
28. 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).
29. The standard utility allowance was \$683.00, effective [REDACTED] 2011. UPM § P-5035.18.
30. For the purposes of the Medicaid program, the community spouse has monthly shelter costs in the community of \$902.21. [\$219.21, real estate taxes; plus \$683.00, standard utility allowance]

31. 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).
32. As of ██████ 2012, one hundred and fifty percent of the federal poverty level for two equaled \$1,891.25.
33. As of ██████ 2012, thirty percent of 150 percent of the federal poverty level for two equaled \$567.38.
34. For the purposes of the Medicaid program, the community spouse had excess monthly shelter costs of \$334.83 at the time of the Appellant's ██████ 2012 application. [\$902.21, monthly shelter costs; minus \$567.38 (thirty percent of one hundred and fifty percent of the federal poverty level for two)]
35. 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).
36. For the purposes of the Medicaid program, the Appellant's community spouse's MMNA equals \$2,226.08. [\$334.83, excess monthly shelter costs; plus \$1,891.25. 150 percent of the monthly poverty level for two as of ██████ 2012]
37. 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. UPM § 1570.25 (D)(3).
38. 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). UPM § 1570.25 (D)(3)(a).
39. 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. UPM § 1570.25 (D)(3)(b).
40. 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 old age. UPM § 1570.25 (D)(3)(c).

41. 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).
42. The Appellant's community spouse does not have exceptional circumstances that result in significant financial duress.
43. The Appellant's community spouse's gross monthly income of \$2,934.00 from all sources is sufficient to meet his monthly needs, as incorporated in his \$2,226.08 MMNA. [\$1,815.90, Social Security benefits; plus \$1,118.10, ██████████ pension]
44. The hearing officer finds that is unnecessary to increase the Appellant's community spouse's MMNA beyond \$2,226.08.
45. 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). 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).
46. The hearing officer upholds the Department's previously calculated CSPA of \$22,328.00, as the Appellant's community spouse's monthly income is sufficient to meet his MMNA.
47. The hearing officer finds that in any month in the period of the Appellant's institutionalization in which the total of the Appellant's and her husband's counted assets—the Wells Fargo ██████████) account, the Wells Fargo ██████████ account, and Fidelity Rollover IRA ██████████—exceeded \$24,328.00, or \$22,728.00 (CSPA) plus \$1,600.00 (Medicaid asset limit for an institutionalized individual) by the last day of the month, the Appellant is ineligible for Medicaid payment of her long-term care services.

### **DISCUSSION**

The Appellant argues that the Department should consider a portion of the Appellant's Fidelity Rollover IRA ██████████ account to be "unavailable" to her, as this account is an individual retirement account. She argues that withdrawals from the account are subject to taxation and states that it is reasonable to estimate that those taxes would equal at least 20 percent of the value of the account.

The Appellant opines that if only 80 percent of the value of this asset is "available" to her, then she would be eligible for Medicaid payment of her long-term care services, as the total of her assets and those of her community spouse would not exceed \$24,328.00, or \$22,728.00 (CSPA) plus \$1,600.00 (Medicaid asset limit for an institutionalized individual). The Appellant's argument is without merit.

The hearing officer thoroughly reviewed the relevant statutes and policy with respect to the administration of the Medicaid program, and was unable to discover a procedure by which the Department would discount a portion of an asset's value by deducting an estimate of an individual's potential exposure to tax liability for cashing out that asset.

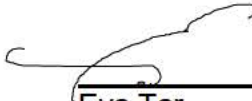
Regardless, the plain language of the section 17b-261 (c) of the Connecticut General Statutes provides in part, "For the purposes of determining eligibility for the Medicaid program, an available asset is one that is actually available to the applicant or one that the applicant has the legal right, authority or power to obtain or to have applied for the applicant's general or medical support. If the terms of a trust provide for the support of an applicant, the refusal of a trustee to make a distribution from the trust does not render the trust an unavailable asset."<sup>2</sup>

The Appellant has a legal right, authority or power to obtain the value of the Fidelity Rollover IRA or to have those funds applied toward her general or medical support. This asset is an available asset. Available assets are "counted assets" for the purposes of the Medicaid program.

The Appellant is not eligible for Medicaid payment of her long-term care services in any month of her institutionalization where the couple's counted assets exceeded \$24,328.00.

**DECISION**

The Appellant's appeal is DENIED.

  
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Eya Tar  
Hearing Officer

cc: Marc Shok, DSS-Central Office  
Alexis Kiss, Operations Manager, DSS-Danbury (31)

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<sup>2</sup> Emphasis added.

### **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.