

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

██████████ 2014
Signature Confirmation

Client ID # ██████████
Request # 520575

NOTICE OF DECISION

PARTY

██████████
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PROCEDURAL BACKGROUND

The Department of Social Services (the "Department") sent ██████████ the Attorney for ██████████ (the "Appellant") a Notice of Action ("NOA") denying his application for Long Term Care Medicaid benefits from ██████████ 2012 through ██████████ 2013.

On ██████████ 2012, the Appellant's attorney requested an administrative hearing to contest the Department's decision to deny his application.

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

The Appellant's attorney requested a continuance which OLCRAH granted.

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, 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:

[REDACTED] Appellant's Power of Attorney ("POA")
 [REDACTED], for the Appellant
 Marilyn Phillips, Department's Representative
 Jan Kopchick, Department's Representative
 Thomas Monahan, Hearing Officer

STATEMENTS OF THE ISSUES

1. The first issue is whether, [REDACTED], (the "Community Spouse") needs additional assets protected, from the Appellant's share of assets, to produce additional income to meet the Community Spouse's Minimum Monthly Needs Allowance ("MMNA").
2. The second issue is whether the Appellant's assets exceed the Medicaid asset limit.

FINDINGS OF FACT

1. Since [REDACTED] 2012, the Appellant had been institutionalized continuously (the date of institutionalization ["DOI"]). (Exhibit 1: Application For Determination of Spousal Assets)
2. On [REDACTED] 2012, the Appellant applied for Long Term Care ("LTC") Medicaid. (Ex. 1: Attorney's letter and Application For Determination of Spousal Assets)
3. The Community Spouse is [REDACTED] years old and her medical conditions include hypertension, hypothyroid, atherosclerotic heart disease, hyperlipidemia, depression, unsteady gait, recurrent urinary tract infections and stress/bowel incontinence. (Attorney's brief Ex. F: Statement from Dr. Heliotis, M.D., [REDACTED]/13)
4. The Community Spouse has lived at Brookdale Senior Living, an assisted living facility since 2010. She lived in the assisted living facility with her spouse, the Appellant, until he entered Notre Dame Convalescent Home on [REDACTED] 2012. (Hearing record)
5. In 2009, the Community Spouse underwent open heart surgery for valvular heart disease and atrial fibrillation. (Attorney's brief Ex. F: Statement from Dr. Heliotis, M.D.)
6. In 2009, the Community Spouse had a stroke involving her left side and has residual weakness. (Attorney's brief Ex. F: Statement from Dr. Heliotis, M.D.)
7. The Community spouse needs assistance with medication management, assistance with showering, and daily monitoring for bruising and bleeding. Without staff

assistance her ability to care for herself is limited. (Attorney's brief Ex. F: Statement from Dr. Heliotis, M.D., Brookdale Assessment records)

8. The Community Spouse exhibits evidence of early dementia. Her condition will continue to deteriorate. (Attorney's brief Ex. F: Statement from Dr. Heliotis, M.D.)
9. The Community Spouse is unable to prepare her own meals. The assisted living facility provides the Community Spouse's Meals, (POA's testimony)
10. The Community Spouse is unable to live independently in the community. (Facts # 3-9)
11. The basic service rate paid by the Community Spouse at the assisted living facility is \$4,694.00 per month. The Community Spouse also pays a monthly personal service rate of \$666.00 for the assistance with medication management and showering. (Attorney's brief, Ex. B: Brookdale account history)
12. The Department determined that the combined total of the Appellant and the Community Spouse's non-exempt assets was \$377,329.86 as of the DOI. (Ex. 5: Results of assessment of spousal assets, [REDACTED]/13)
13. The Department determined that the spousal share of the assets was \$188,664.93 as of the DOI ($\frac{1}{2}$ of the couple's combined non-exempt assets). (Ex. 5: Results of assessment of spousal assets, [REDACTED]/13)
14. The Appellant's share of assets was \$1,600.00 (Medicaid asset limit). (Ex. 5: Results of assessment of spousal assets, [REDACTED]/13)
15. The Department determined that the Community Spouse Protected Amount ("CSPA") was \$113,640.00 as of the DOI. (Maximum Community Spouse Protected amount in [REDACTED] 2012)
16. The Appellant is seeking Medicaid eligibility effective [REDACTED] 2012. (Hearing Record)
17. The Appellant passed away on [REDACTED] 2013. (Hearing record)
18. The Community Spouse is seeking an increase in her MMNA to pay the monthly cost of living in the community effective [REDACTED] 2012. (Record)
19. Effective [REDACTED] 2012, the Appellant had monthly gross Social Security income of \$1,261.80, and two gross pension benefits of \$316.31 and \$124.24. (Ex. 6: Appellant's income verifications)

20. Effective [REDACTED] 2012, the Community Spouse had monthly gross Social Security income of \$2,168.50, and an individual IRA annuity monthly benefit of \$908.14. (Ex. 7: Community Spouse Income Verifications)

21. The following assets of the couple generated the following annual rates of return:

ASSET	VALUE	INTEREST RATE
Bank of America checking Acct # [REDACTED]	\$89,391.70	0.01%
Bank of America money mkt Acct # [REDACTED]	\$10,195.20	0.06%
Bank of America savings Acct # [REDACTED]	\$1,657.08	0.05%
Patriot Bank CD Acct # [REDACTED]	\$70,000.00	4.110%
Patriot Bank money mkt. Acct # [REDACTED]	\$80,964.98	.1%
Chase IRA Acct # [REDACTED]	\$6,073.07	.75%
Chase IRA Acct # [REDACTED]	\$7,229.66	.75%
MetLife Acct # [REDACTED]	\$8,035.10	0.00%
MetLife Acct # [REDACTED]	\$4,057.01	0.00%
MetLife Acct # [REDACTED]	\$39,058.23	0.00%
American Mutual indiv. IRA Acct # [REDACTED]	\$60,667.83	n/a

(Attorney's brief, Ex. 5: Spousal Assessment)

22. On [REDACTED] 2013, the Department denied the Appellant's application because the assets were not reduced below the asset limit prior to the Appellant's date of death. (Ex. 4: Notice of Denial, [REDACTED]/13)

23. As of [REDACTED] 2013, the Certificate of Deposit bank rate was .45%. (Hearing Officer Exhibit 1: Bank Rate.com print out)

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 ██████████ 2012.
4. MCAA 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. UPM § 0500
5. A community spouse protected amount (“CSPA”) 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. UPM § 0500
6. Regulation provides that every January 1, the Community Spouse Protected Amount (“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.

UPM § 4022.05(B)(2)
7. 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.
8. UPM § 1570.25(D)(4) 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.

9. The Department correctly calculated the CSPA of \$113,640.00 (maximum allowed) in accordance with regulations.
10. Effective [REDACTED] 2012, the Community Spouse's share of the assets would generate monthly interest income of \$361.83 as shown in the table below.

ASSET	VALUE	INTEREST RATE	Amount of Interest
Patriot Bank CD Acct # [REDACTED]	\$70,000.00	4.110%	\$239.75
Chase IRA Acct # [REDACTED]	\$6,073.07	.75%	\$3.80
Chase IRA Acct # [REDACTED]	\$7,229.66	.75%	\$4.52
Bank of America checking Acct # [REDACTED]	\$30,337.27	.45%	\$113.76
Totals	\$113,640.00		\$361.83

11. Effective [REDACTED] 2012, the Community Spouse had gross monthly income of \$3,437.97 (\$2,168.50 SSA + \$908.14 pension + \$361.83, interest).
12. Regulation provides for the calculation of the Community Spouse Allowance ("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. The Standard Utility Allowance ("SUA") used in the Supplemental Nutrition Assistance ("SNAP") program is used for the community spouse.

UPM § 5035.30 (B)

13. Effective [REDACTED] 2012, the Community Spouse's MMNA was \$2,841.00 as shown in the table below.

	AMOUNT
Shelter Costs:	
Assisted living basic rate	\$4,694.00
Utility Allowance	\$668.00
Total shelter costs:	\$5,362.00
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>\$567.38</u>
Excess shelter costs:	\$4,794.62
Plus 150% of the FPL for two:	<u>\$1,891.25</u>
Equals the MMNA	\$6,685.87

Maximum MMNA	\$2,841.00
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14. Effective [REDACTED] 2012, based on a CSPA of \$113,640.00, the Community Spouse's income exceeds her MMNA, as shown in the table below:

COMMUNITY SPOUSE DEFICT	
SSA	\$2,168.50
Pension	\$908.14
Interest Income	\$361.83
Total Income	\$3,437.97
MMNA	\$2,841.00
Less Total Income	<u>\$3,437.97</u>
Monthly Excess	\$596.97

15. Regulation provides that the official increases the community spouse's Monthly Minimum Needs Allowance ("MMNA") previously determined by the Department if either MCAA 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 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 the institutionalized spouse).

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

- i. directly arises from exceptional circumstances described in subparagraph a above; and
- ii. is not already factored into the MMNA; and
- iii. cannot be reasonably be expected 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 :
- i. shelter costs such as rent or mortgage payments;
 - ii. utility costs;
 - iii. condominium fees
 - iv. real estate and personal property taxes;
 - v. real estate, life and medical insurance;
 - vi. expenses for upkeep of a home such as lawn maintenance, snow removal, replacement of a roof, furnace or appliance;
 - vii. 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.

UPM § 1570.25(D)(3)

16. The Community Spouse's medical conditions and deteriorating health prevent her from taking care of her activities of daily living, and threaten her ability to remain in the community. Her condition requires assisted living and personal care services on a daily basis. The Community Spouse's medical conditions and her need for assisted living and personal care services are exceptional circumstances.
17. The excess cost associated with the Community Spouse's need for assisted services in the amount of \$3,844.87 (\$6,685.87, actual MMNA, minus \$2,841.00 max MMNA without exceptional circumstances) per month and the personal care services of \$666.00 per month are expenses that directly arise from the Community Spouse's exceptional circumstances. This cost in the amount of \$4,510.87 results in significant financial duress.
18. Based on Conclusion of Law #17, the Community spouse's MMNA may be increased to \$7,350.87 (\$4,510.87 additional monthly assisted living and personal care services costs + original MMNA of \$2,841.00)
19. Effective [REDACTED] 2012, based on the increased MMNA, the deficit between the Community Spouse's income and her MMNA was \$3,912.90 as shown in the table below:

COMMUNITY SPOUSE DEFICIT	
SSA	\$2,168.50
Pension	\$908.14
Interest Income	\$361.83

Total Income	\$3,437.97
MMNA	\$7350.87
Less Total Income	<u>\$3,437.97</u>
Monthly Deficit	\$3,912.90

20. Regulation 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.

B. Deductions For LTCF Units

The following monthly deductions are allowed from the income of assistance units in LTCF's:

1. a personal needs allowance of \$50.00, which, effective July 1, 1999 and annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration. (Effective July 2012= \$60.00)
2. a Community Spouse Allowance (CSA), when appropriate; (Cross Reference 5035.35)
3. a Community Family Allowance (CFA), when appropriate; (Cross Reference 5035.35)
4. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for by the Department or any other third party;
5. Costs for medical treatment approved by a physician which are incurred subsequent to the effective date of eligibility and which are incurred subsequent to the effective date of eligibility and which are not covered by Medicaid;
6. Expenses for services provided by a licensed medical provider in the six month period immediately preceding the first month of eligibility providing the following conditions are met:
 - a. the expenses were not for LTCF services, services provided by a medical institution equivalent to those provided in a long term care facility, or home and community based services, when any of these services were incurred during a penalty period resulting from an improper transfer of assets; and
 - b. the recipient is currently liable for the expenses; and

c. The services are not covered by Medicaid in a prior period of eligibility.

21. After taking deductions for the personal needs allowance from the Appellant's income, the Appellant has income in the amount of \$1,642.35 (\$1,261.80 SSA + \$316.31 pension + \$124.24 pension - \$60.00 PNA = \$1,642.35) to be diverted to the Community Spouse to help meet her MMNA.
22. After a diversion of the Appellant's income of \$1,642.35 to the Community Spouse, the Community Spouse still has a monthly income deficit of \$2,270.55 (\$3,912.90 - \$1,642.35 = \$2,270.55).
23. Effective [REDACTED] 2012, the remaining assets of \$263,689.86 would generate interest income of \$98.88 monthly based on the bank rate of .45%.

ASSET	VALUE	INTEREST RATE	Bankrate .com rate	Based on Highest Rate
Bank of America checking Acct # [REDACTED]	\$59,054.43	0.01%	<u>.45%</u>	\$22.15
Bank of America money mkt Acct # [REDACTED]	\$10,195.20	0.06%	<u>.45%</u>	\$3.82
Bank of America savings Acct # [REDACTED]	\$1,657.08	0.05%	<u>.45%</u>	\$0.62
Patriot Bank money mkt. Acct # [REDACTED]	\$80,964.98	.1%	<u>.45%</u>	\$30.36
MetLife Acct # [REDACTED]	\$8,035.10	0.00%	<u>.45%</u>	\$3.01
MetLife Acct # [REDACTED]	\$4,057.01	0.00%	<u>.45%</u>	\$1.52
MetLife Acct # [REDACTED]	\$39,058.23	0.00%	<u>.45%</u>	\$14.65
American Mutual indiv. IRA Acct # [REDACTED]	\$60,667.83	n/a	<u>.45%</u>	\$22.75
Total	\$263,689.86			\$98.88

24. Since the additional interest income of \$98.88 from the remaining assets is still insufficient to meet the Community Spouse's MMNA deficit of \$2270.55, effective

██████████ 2012, the Community Spouse's CSPA is increased to \$377,329.86 to generate the interest income needed to help meet her MMNA.

25. After the diversion of all the assets effective ██████████ 2012 for the benefit of the Community Spouse, the value of the Appellant's countable assets is \$0.00.
26. Regulation provides that the asset limit for Medicaid for a needs group of one is \$1,600.00. UPM § 4005.10(A)(2)(a)
27. Effective ██████████ 2012, the Appellant's assets did not exceed the Medicaid asset limit of \$1,600.00.
28. Regulation provides that the beginning date of assistance for Medicaid may be one of the following:
 - A. the first day of the first, second or third month immediately preceding the month in which the Department receives a signed application when all non-procedural eligibility requirements are met and covered medical services are received at any time during that particular month; or
 - B. the first day of the month of application when all non-procedural eligibility requirements are met during that month; or
 - C. the actual date in a spend-down period when all non-procedural eligibility requirements are met. For determination of income eligibility in spend-down, refer to Income Eligibility Section 5520; or
 - D. the first date of the calendar month following the month in which an individual is determined eligible when granted assistance as a Qualified Medicare Beneficiary (Cross Reference: 2540.94). The month of eligibility determination is considered to be the month that the Department receives all information and verification necessary to reach a decision regarding eligibility
UPM § 1560.10
29. The Appellant's first day of eligibility based on the Appellant's application date of ██████████ 2012 is ██████████ 2012.

DISCUSSION

The Department acted correctly in its determination of the Appellant's eligibility. However the Department's regulations allow the hearing officer to protect additional assets from the Appellant/Institutionalized Spouse to meet the needs of the Community Spouse.

The POA claimed that the Community Spouse has exceptional circumstances resulting in significant financial duress and that her calculated MMNA was not sufficient to meet her needs in the community. The Community Spouse needs help with her activities of daily living, including showering, and mobility. The Community Spouse also needs help with

medication administration. Her doctor stated that she has signs of early dementia and her condition is worsening. As the Community Spouse is no longer able to care for herself, she receives assistance with her care at her assisted living facility. The monthly cost of the facility is an expense directly related to her medical conditions and causes financial duress.

In this case, the community spouse has demonstrated a need for additional income and assets in order to meet her needs in the community, her MMNA, due to exceptional circumstances causing financial duress. The Community Spouse is eligible for a diversion of the Appellant's income minus the personal needs allowance and the CSPA is increased to provide additional needed income (interest income).

The eligibility begin date is [REDACTED] 2012 which is three months prior to the [REDACTED] 2012 application date, the maximum amount allowed by policy.

DECISION

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

ORDER

1. The Department will reopen the Appellant's [REDACTED] 2012 application for Medicaid.
2. Effective [REDACTED] 2012, the CSPA is increased to \$377,329.86.
3. No later than 15 days from the date of this decision, the Department will submit to the undersigned verification of compliance with this order.

Thomas Monahan _____

Thomas Monahan
Hearing Officer

Pc: Poonam Sharma, Operations Manager, Bridgeport Regional Office

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, 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 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.