

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 # 548736

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") sent ██████████ ██████████ (the "Appellant") an Assessment of Spousal Assets, Notification of Results denying his application for Long Term Care Medicaid benefits. This notice sets forth the spousal share of assets for the Appellant and his community spouse.

On ██████████ 2013, the Appellant's Power of Attorney and daughter, ██████████, through the law office, requested an administrative hearing to contest the Department's decision to deny her father's application and claiming that the Community Spouse has exceptional circumstances which precludes a spend down of assets.

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

On ██████████ 2013, the Attorney's office requested a rescheduled hearing date and this request was granted.

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

On ██████████ 2013, the Attorney requested a rescheduled hearing date due to injuries sustained to the Community Spouse and Power of Attorney resulting from a car accident.

On [REDACTED] 2013 OLCRAH issued a notice scheduling the administrative hearing to [REDACTED] 2014.

On [REDACTED] 2014, 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 Daughter and Power of Attorney for both [REDACTED]  
[REDACTED]  
[REDACTED] Community Spouse  
[REDACTED], Appellant's and Community Spouse's Attorney  
Elizabeth Clark, Department's Representative (By telephone)  
Robyn LeTourneau, Department's Representative  
Andrea Boardman, Hearing Officer

### **STATEMENTS OF THE ISSUES**

1. The first issue is whether, [REDACTED], (the "Community Spouse") needs additional assets protected, from [REDACTED] 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. The Appellant has been institutionalized continuously since [REDACTED] 2013. (Exhibit 2: Page 1 of Application for Determination of Spousal Assets, Department's and Attorney's Testimony).
2. On [REDACTED] 2013, the Appellant applied for Long Term Care ("LTC") Medicaid. (Exhibit 1: Application Part 1: Assistance Request Form, Department's and Attorney's Testimony)
3. The Appellant's spouse resides in the community at [REDACTED] [REDACTED] (Exhibit A: Attorney's exhibit pages 1 – 228, page 174 Real Estate Tax Bill, Attorney's Statement and Power of Attorney's Testimony)
4. The combined total of the Appellant's and the Community Spouse's non-exempt assets was \$90,962.74 as of the DOI. (Exhibit: 3: W1SA-N Assessment of

Spousal Assets Notification of Results, Department's Testimony and Attorney's Stipulation)

5. The spousal share of the assets as of DOI was \$45,481.37 for the institutionalized spouse and \$45,481.37 for the community spouse. (Exhibit 3).
6. The Community Spouse Protected Amount ("CSPA") was \$45,481.37 as of the DOI. (Exhibit 3 and Hearing Summary)
7. The Appellant is seeking Medicaid eligibility effective [REDACTED] 2013. (Hearing Record)
8. Effective in [REDACTED] of 2013, the Community Spouse had monthly property taxes of \$129.06 and monthly homeowners insurance of \$84.75 and was entitled to the Standard Utility Allowance of \$668.00 for total monthly shelter costs of \$881.81. (Exhibit A page 174: Meriden Tax Collector Records, Exhibit A page 176a, Exhibit A: page 64 revision 2, Attorney's calculation of excess shelter costs)
9. Effective in [REDACTED] of 2013, the Community Spouse had monthly gross unearned income of \$828.90 from Social Security. (Exhibit 6: Department's Community Spouse Allowance Calculation Worksheet, Social Security income verification via SVES Title II interface)
10. Effective in [REDACTED] of 2013, the Appellant had \$1,658.90 in Social Security benefits and \$327.88 in a Prudential pension for a total of \$1,986.78. (Exhibit A – Copies of Social Security checks of [REDACTED] 2013 for both spouses, page 59 and A-61 – Copy of Prudential check statement fixed annuity payment)
11. As of [REDACTED] of 2013, the Certificate of Deposit bank rate was 0.42%. (Exhibit A – 58 CD Rates in Hartford, CT by Bankrate.com)
12. As of [REDACTED] 2013, the actual income generated from the couple's assets totaled \$10.53. (Exhibit A – 69 through A - 172)
13. The Community Spouse is 82 years old and suffers from the effects of a stroke, aortic aneurysm, celiac sprue, hypertension, hypothyroidism, macular degeneration and is hard of hearing. (Exhibit A pages 181 – 212)
14. The Community Spouse requires some in-home care. (Exhibits and Attorney's and POA's Testimony)
15. The Community Spouse uses Depend undergarments. (Attorney and Power of Attorney's Testimony)

16. The Community Spouse has a special gene mutation that will not allow her to metabolize B-12 and she requires bi-monthly in home injections that must be compounded by a pharmacy. The monthly cost of these injections is \$400.00 and is an expense paid by the Community Spouse. (Exhibit A- page 220 and Power of Attorney's Testimony)
17. On [REDACTED], 2013, the Community Spouse and her daughter were involved in a car accident and the Community Spouse suffered head injuries. (Attorney's Testimony)
18. The Community Spouse takes 17 different medications. (Exhibit A page 202 and 203 – List of medications by MidState Healthcare)
19. The Community Spouse's adjusted MMNA of \$2,605.68 minus her income of \$828.90 + \$15.90 in  $\frac{1}{2}$  of the interest income equals a \$1,760.88 monthly income deficit. (Hearing Record)
20. Effective [REDACTED] 2013, after taking deductions for the personal needs allowance and Supplemental Medical Insurance Premium Blue Cross/Blue Shield from the Appellant's income, the Appellant has income in the amount of \$1,485.93 to divert to the Community Spouse to meet her adjusted MMNA of \$2,605.68. (Hearing Record)

### **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") § 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.

3. The Department correctly determined that the community spouse's share of the total assets was \$45,481.37. The Department correctly determined that the CSPA was \$45,481.37.

4. UPM § 5035.30(B) 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
5. The Standard Utility Allowance ("SUA") used in the Supplemental Nutrition Assistance ("SNAP") program is used for the community spouse.

5. Effective [REDACTED] 2013, subtracting 30% of 150% of the Poverty Level for 2 of \$567.38 results in \$314.43 in excess shelter costs. Adding \$1,891.25, the figure for 150% of the Poverty Level for 2 results in a MMNA of \$2,205.68.

6. UPM 1570.25 (D) (3) (a) (b) (c) 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 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, furnace or appliance; (7) medical expenses reflecting the normal frailties of old age.

7. The Community Spouse's special gene mutation is an exceptional circumstance.

8. The only expense **directly related** to the Community Spouse's exceptional circumstance is the out of pocket cost of the B-12 injections at \$400.00 monthly.

9. Effective [REDACTED] 2013, the MMNA of \$2,205.68 plus the cost related to exceptional circumstances of \$400.00 per month resulting from the exceptional circumstance equals \$2,605.68.

10. Effective [REDACTED] 2013, the Community Spouse's MMNA was as shown in the table below.

	AMOUNT
Shelter Costs: Property Tax \$129.06, Homeowners Ins. \$84.75	\$213.81
Standard Utility Allowance	\$668.00
<b>Total shelter costs:</b>	<b>\$881.81</b>
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>\$567.38</u>

<b>Excess shelter costs:</b>	\$314.43
Plus 150% of the FPL for two:	\$1,891.25
<b>Equals the MMNA</b>	\$2,205.68
<b>Exceptional Expenses</b>	\$400.00
<b>Adjusted MMNA</b>	\$2,605.68

11. As of [REDACTED] of 2013, the Certificate of Deposit bank rate was 0.42%.
12. As of [REDACTED] 2013, the income generated from the couple's assets of \$90,962.74 based on the average of the three highest one-year CD rates of .42 % totals \$31.83.
13. The couples total assets of \$90,962.74 would generate monthly interest income of \$31.83 based on the average of the three highest CD rates in Hartford derived from Bankrate.com of .42% as of [REDACTED] 2013. The actual rate of return on the couple's assets totals \$10.09 effective [REDACTED], 2013.
14. Effective in [REDACTED] of 2013, the Community Spouse had gross monthly income of \$828.90 in gross monthly Social Security.
15. Effective [REDACTED] 2013, based on a CSPA of \$45,481.37, the deficit between the Community Spouse's income and the MMNA was \$1,744.95, as shown in the table below:

<b>COMMUNITY SPOUSE DEFICT</b>	
Community Spouse's Social Security	\$828.90
<b>Interest Income</b>	<u>\$15.91 (CS ½)</u> \$844.81
<b>MMNA</b>	\$2,605.68
Less Total Income	<u>\$ 844.81</u>
<b>Monthly Deficit</b>	\$1,760.87

16. UPM § 5035.25 provides in part that for residents 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. 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.
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;

17. The institutionalized spouse is allowed a personal needs allowance deduction of \$60.00 and a \$335.95 Blue Cross/Blue Shield Medical Insurance Premium deduction from his total gross monthly income of \$1,986.78, resulting in an available income of \$1,590.83.

18. The Community Spouse needs the Appellant's available income of \$1,590.83 as a Community Spouse Allowance diversion in order to help meet her MMNA.

19. The Appellant's available income of \$1,590.83 shall be diverted to the Community Spouse to help meet her MMNA.

20. The Community Spouse still has a monthly income deficit of \$154.12.

21. The Community Spouse does need the total spousal assets diverted to meet her MMNA.

22. The Community Spouse needs the total of the couple's assets in the amount of \$90,962.74 to produce additional interest income in the amount of \$31.83. ( $\$90,962.74 \times .42$  (Average CD rate) = \$31.83.



23. Effective [REDACTED] 2013, the Community Spouse's CSPA is increased to \$90,962.74 to generate the interest income needed to better meet her \$2,605.68 MMNA. (\$828.90 in Social Security income + \$1,590.83 in a Community Spouse Allowance + \$31.83 in interest income = \$2,451.56.)
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] 2013, the Appellant's assets did 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] 2013 application for Medicaid.
2. Effective [REDACTED] 2013, the CSPA is increased to \$90,962.74 the value of the couple's countable assets as of the date of institutionalization.
3. The Department will compute the CSA in accordance with this decision.
4. No later than [REDACTED], 2014, the Department will submit to the undersigned verification of compliance with this order.

*Andrea Boardman* \_\_\_\_\_

Andrea Boardman  
Hearing Officer

### **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.