

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

██████████ 2015
Signature Confirmation

Client ID # ██████████
Request # 637476

NOTICE OF DECISION

PARTY

██████████
Re: ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying his application for Long Term Care Medicaid benefits from ██████████ 2013 through ██████████ 2014.

On ██████████ 2014, the Appellant's spouse requested an administrative hearing to contest the Department's decision to deny his application.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2014.

On ██████████ 2014, 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 son
Angela Meade, Apple Rehab, for the Appellant
Casey Sawyers, Department's Representative
Janet Giunti, Department's Representative
Thomas Monahan, Hearing Officer

STATEMENT OF THE ISSUE

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).

The second issue is whether the Appellant’s assets exceed the Medicaid asset limit.

FINDINGS OF FACT

1. On [REDACTED] [REDACTED] 2013, the Appellant began a continuous period of institutionalization which is his DOI at Apple Rehab. (Hearing record)
2. The Appellant’s spouse lives in the community. (Exhibit 7: Long Term Care Application, [REDACTED]/13)
3. On [REDACTED] 2013, the Department received the Appellant’s application for Long Term Care (“LTC) Medicaid. (Hearing Record)
4. The Appellant is seeking Medicaid eligibility effective [REDACTED] 2013. (Hearing record)
5. As of the [REDACTED] 2013, DOI, the Appellant and the Community Spouse (“CS”) had total countable assets of \$27, 687.50. (Stipulated)
6. One half of the Appellant’s and CS’s total assets is \$13,843.75. ($\$27,687.50 / 2$)
7. In [REDACTED] of 2014, the Department determined that the CS’s share of the assets was \$23,448.00 as of the DOI (the minimum allowed). (Department’s testimony, Exhibit 3: Results of assessment of spousal assets)
8. In [REDACTED] of 2014 the Department determined that the Appellant’s share of assets was \$1,600.00 (Medicaid asset limit). (Department’s testimony, Exhibit 3: Results of assessment of spousal assets)
9. In [REDACTED] of 2014, the Department notified the Appellant that it determined that the Community Spouse Protected Amount (CSPA) for the Community Spouse was \$23,448.00 and that the Appellant’s Medicaid eligibility may not begin until the total spousal assets were reduced to \$25,048 or less (\$1,600.00 for the Appellant plus \$23,448 for the CS). (Ex. 3: Results of assessment of spousal assets)
10. On [REDACTED] [REDACTED] 2014, the Department notified the Appellant that his application for Medicaid had been denied for the months of [REDACTED] 2013 through

██████████ 2014, inclusive, for failure to verify that the assets were reduced to the Medicaid asset limit. (Ex. 5: Notice of Denial, ██████████/14)

11. The Appellant passed away on ██████████ 2014. (Appellant's son's testimony)
12. As of ██████████ 2013, the CS has a rent expense of \$1,030.00. (Hearing record)
13. As of the DOI, the Appellant's and the CS's non-exempt assets consisted of the individual assets listed in the chart below.

Asset	Asset Value As of DOI-██████████/13
Bank of America-Joint acct. Acct# xxx██████████	\$941.84
Bank of America-Joint acct. Acct# xxx██████████	\$8,852.11
██████████-Pioneer stock	\$11,390.01
██████████ Global Life Insurance	\$2,188.00
██████████ SBLI insurance	\$4,315.54
Total Assets	\$27,687.50

(Ex. 3: Spousal Assessment and Worksheet, valuations stipulated)

14. The couples assets from ██████████ 2013 through ██████████ 2014 were as follows

Asset	██████████/13	██████████/13	██████████/13	██████████/14	██████████/14
Bank of America-Joint Acct# xxx██████████	\$543.97	\$1,903.13	\$0.00	\$502.60	1,649.98
Bank of America-Joint Acct# xxx██████████	\$8,852.27	\$8,852.41	\$8,852.72	\$8,852.72	8,852.86
██████████ ██████████- Pioneer stock	\$11,390.01	\$11,390.01	\$11,898.73	11,898.73	11,898.73
██████████ Global Life Insurance	\$2,188.00	\$2,188.00	\$2,188.00	\$2,188.00	\$2,188.00

██████████ SBLI insurance	\$4,315.54	\$4,315.54	\$4,315.54	\$4,315.54	\$4,315.54
Total Assets	\$27,289.79	28,649.09	27,254.99	\$27,757.59	\$8,905.11

Asset	█/14	█/14	█/14	█/14	█/14
Bank of America-Joint Acct# xxx██████████	\$1,618.82	\$5,034.82	\$6,301.20		
Bank of America-Joint Acct# xxx██████████	\$8,853.00	\$8,853.31	\$8,853.45		
██████████ - Pioneer stock	\$12,310.61	\$12,310.61	\$12,310.61	\$12,310.61	12,934.31
██████████ Global Life Insurance	\$2,188.00	\$2,188.00	\$2,188.00	\$2,188.00	\$2,188.00
██████████ SBLI insurance	\$4,315.54	\$4,315.54	\$4,315.54	\$4,315.54	\$4,315.54
Total Assets	\$292,285.97	\$32,702.28	\$33,968.80	\$18,814.15	\$19,437.85

(Ex. 3: Spousal Assessment and Worksheet, valuations stipulated)

15. As of ██████████ 2013, the Appellant had monthly gross income from Social Security of \$1,448.90 and a pension of \$145.04. (Hearing record)
16. As of ██████████ 2013, the CS has monthly gross income from Social Security of \$1,009.00. (Appellant's Ex. A: Bank account statements and wage verification)
17. The Community spouse is employed and earned \$22.38 per hour in 2013. (Community Spouse's testimony)

18. The Appellant's [REDACTED] 2013 submitted gross weekly earnings were as follows: [REDACTED]/13] 1\$537.12, [REDACTED]/13], \$525.93, [REDACTED]/13], \$626.66, and [REDACTED]/14], \$537.12. (Ex. 8: Wage stubs)
19. The Appellant's average monthly gross earnings as of [REDACTED] 2013 were \$2,393.84 ($537.12 + 525.93 + 626.66 + 537.12 / 4 = 556.70 \times 4.3 \text{ weeks} = 2,393.84$)
20. As of [REDACTED] 2014, the Appellant and the Community Spouse paid \$104.90 per month for Medicare Part B premiums. (Hearing record)
21. The Community Spouse pays \$99.00 per month for United Healthcare medical insurance. (Appellant's Ex. A: Bank account statements)
22. The Community Spouse is 78 years old. Her medical conditions include atrial fibrillation, arthritis, osteoporosis. (Community Spouse's testimony)
23. The Community spouse's out of pocket prescription costs in 2013 were \$5,637.91. (Appellant's Ex. B: Pharmacy list)

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 provides that an Institutionalized Spouse is defined as 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; and provides that a Community Spouse is defined as 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.
3. 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
4. Effective [REDACTED] 2013, the Appellant was an Institutionalized Spouse as defined by the Medicaid program.
5. Effective [REDACTED] 2013, the Appellant's spouse was a Community Spouse as defined by the Medicaid program.

6. UPM § 1507.05(A) discusses the Assessment of Spousal Assets for MCCA spouses and provides that:

Assessment Process

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. Initial eligibility is determined using an assessment of spousal assets except when:
 - a. undue hardship exists (Cross Reference 4025.68); or
 - b. the institutionalized spouse has assigned his or her support rights from the community spouse to the department (Cross Reference: 4025.69); or

- c. the institutionalized spouse cannot execute the assignment because of a physical or mental impairment.
(Cross Reference: 4025.69).
7. Regulation provides that the Fair Hearing 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. Exceptional circumstances are those that are severe and unusual and that: prevent the community spouse from taking care of his or her activities of daily living; or 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 institutionalized spouse). Significant financial duress is an expense or set of expenses that: directly arises from the exceptional circumstances described in subparagraph a above; and is not already factored into the MMNA; and cannot reasonably be expected to be met by the community spouse's own income and assets. UPM § 157025(D)(3)(a)(b)
 8. UPM § 1570.25 D (3) (c) (1) (2) (3) (4) (5) (6) (7) 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: shelter costs such as rent or mortgage payments; utility costs; condominium fees; real estate and personal property taxes; real estate, life and medical insurance; expenses for the upkeep of a home such as lawn maintenance, snow removal, replacement of a roof, furnace or appliance; medical expenses reflecting the normal frailties of old age. UPM § 1570.25
 9. UPM § 1570.25 D (3) (d) provides that 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.
 10. The CS's medical expenses reflect the normal fragilities of old age.
 11. There is no evidence of exceptional circumstances resulting in significant financial duress.
 12. UPM § 4025.67(A) provides that when the applicant or recipient who is a MCCA spouse begins a continuous stay of institutionalization, the assets of his or her community spouse (CS) are deemed through the institutionalized spouse's initial month of eligibility as an institutionalized spouse (IS). As described in 4025.67 D, the CS' assets are deemed to the IS to the extent that such assets exceed the Community Spouse Protected Amount. Any assets deemed by the CS are added to the assets of the IS and the total is compared to the asset limit for the IS (the Medicaid asset limit for one adult).
 13. UPM § 4025.67 (D) pertains to the deeming methodology for MCCA spouses and states in part:

Deeming Methodology

1. The Department calculates the amount of assets deemed to the institutionalized spouse from the community spouse by subtracting the Community

Spouse Protected Amount (CSPA) from the community spouse's total available non-excluded assets.

2. The Department calculates the community spouse's total available non- excluded assets by subtracting the value of the following assets from the total value of the assets owned by the community spouse:
 - a. inaccessible assets; and
 - b. excluded assets.
 3. 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.
14. The Department correctly determined that the CS's share of the total assets are \$23,448.00, which is the minimum CSPA.
15. UPM § 1570.25(D)(4) provides that 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 Minimum Monthly Needs Allowance ("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.
 - b. 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.

- 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.

16. 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.

17. The Department correctly calculated the CSPA at \$23,448.00 in accordance with regulation.

18. 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 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.

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 program ("SNAP") is used for the community spouse.
5. The MMNA may not exceed the greatest of either: a. the maximum MMNA; or b. an amount established through a Fair Hearing.

19. Effective [REDACTED] 2013, the CS's MMNA is \$3,081.13 as shown in the calculation below:

Rent		\$1030.00
Standard Utility Allowance	+	\$694.00
Total Shelter Costs	=	\$1724.00
30% of 150% of FPL for 2		<u>-\$581.63</u>
Excess Shelter Costs		\$1,142.37
150% FPL for 2	+	\$1,938.76
MMNA	=	\$3,081.13

20. Effective [REDACTED] 2013, the deficit between the CS's income and his MMNA is \$0.00 as shown in the calculation below:

MMNA		\$3,081.13
CS SSA +earnings	-	\$3,402.84
Equals Deficit	=	\$ 0.00

Maximum MMNA in [REDACTED] of 2013 = \$2,898.00

21. Effective [REDACTED] of 2013, the CS's income meets her MMNA and is therefore she is not eligible for a Community Spouse Allowance.
22. Effective [REDACTED] 2013, the undersigned can't protect additional assets beyond what the Department calculated.
23. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.
24. Effective [REDACTED] 2013 through [REDACTED] of 2014, the value of the Appellant's assets exceeded the asset limit of \$1,600.00.
25. The Department correctly denied the Appellant's Medicaid LTC application.

DISCUSSION

The Appellant's representatives argued that the Department's delay in processing the Appellant's application and spousal assessment deprived the Appellant of transferring assets to the CS so that the Appellant would be within the Medicaid asset limit. It is true that the Appellant did not receive the spousal assessment results until one year after he applied but there is no provision in policy to allow for eligibility in any month the Appellant's assets exceed the \$1,600.00 limit. The Appellant's Pioneer stock fund and life insurance policy remained solely in his name and the Bank of America accounts remained joint account with his spouse throughout the application process.

The CS's monthly gross income exceeded the MMNA and thus she did not qualify for diversion of income or assets to meet her needs in the community. There is no evidence of exceptional circumstances causing financial duress which would allow for an increase beyond the maximum MMNA and the Appellant's did not claim exceptional circumstances.

DECISION

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

Thomas Monahan

Thomas Monahan
Fair Hearing Officer

Pc: Lisa Wells, Operations Manager, New Haven Regional Office
Bonnie Shizume, Program Manager, New Haven Regional Office
Casey Sawyers, Hearing Liaison
Janet Giunti, Hearing Liaison

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 06105-3725.

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 06105-3725. 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.