

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 # 643041

NOTICE OF DECISION

PARTY

██████████
c/o ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the “Department”) sent ██████████, the Appellant and institutionalized spouse (the “Appellant”), a notice that the Department had determined that he and his spouse had countable assets of \$159,319.69 as of his date of institutionalization (the “DOI”), rendering him ineligible for Medicaid.

On ██████████ 2014, the Appellant requested an administrative hearing to request that the Department allow ██████████, the community spouse (the “CS”), to retain additional funds from the couple’s assets in excess of her spousal share of \$79,659.85.

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 community spouse
- ██████████, Appellant’s son
- ██████████, Attorney representing the Appellant
- Shawn Hardy, Department’s Representative

STATEMENT OF THE ISSUE

1. The first issue to be decided is whether the CS required an increase to her spousal share of the couple's countable assets to produce sufficient income to meet her Minimum Monthly Needs Allowance ("MMNA") in the community.
2. The second issue to be decided is whether the Assets of the Appellant exceeded the Medicaid asset limit of \$1600.00 as of [REDACTED] 2014, the date of his application for Medicaid, and in the two prior months for which he is seeking Medicaid eligibility.

FINDINGS OF FACT

1. On [REDACTED] [REDACTED] 2013, the Appellant began a continuous period of institutionalization which is his DOI. (Record)
2. As of the [REDACTED] 2013 DOI, the Appellant and the CS had total countable assets of \$159,319.69. (Ex. 6: Spousal Assessment Worksheet)
3. On [REDACTED] 2014, the Appellant applied to the Department for Long Term Care Medicaid. (Record)
4. On [REDACTED] 2014, the Department determined that the Appellant and the CS each had a \$79,659.85 share of the couple's assets as of the [REDACTED] 2013 DOI. (Ex. 7: W-1-SAN, Assessment of Spousal Assets Notification of Results)
5. On [REDACTED] 2014, the Department notified the Appellant that it determined that the Community Spouse Protected Amount (CSPA) for the CS is \$79,659.85 and that the Appellant's Medicaid eligibility may not begin until the total spousal assets are reduced to \$81,259.85 or less (\$1600.00 for the Appellant plus \$79,659.85 for the CS). (Ex. 7)
6. On [REDACTED] 2014, the Department notified the Appellant that his application for Medicaid has been denied for the months of [REDACTED] 2014 through [REDACTED] 2014, inclusive, due to assets that exceed the Medicaid asset limit. (Ex. A, pp. 33-36: [REDACTED] 2014 NOA)
7. The Appellant is seeking Medicaid eligibility for himself beginning [REDACTED] 2014. (Appellant testimony)
8. As of [REDACTED] 2014, the CS has a rent expense of \$714.00. (Appellant testimony, Ex. A, p.42)

9. As of [REDACTED] 2014, the Appellant has monthly gross income from Social Security of \$1,088.00. (Ex. A, pp. 52-53)
10. As of [REDACTED] 2014, the CS has monthly gross income from Social Security of \$542.00. (Ex. A, pp. 47-48)
11. 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 |
|---|----------------------------------|
| State Farm Insurance Policy # [REDACTED] | \$87,568.59 |
| Wells Fargo Account # [REDACTED] | \$70,700.85 |
| Wells Fargo Account # [REDACTED] | \$1,050.25 |
| Total Assets | \$159,319.59 |

(Ex. 6)

12. As of [REDACTED] 2014, the average 12 month Certificate of Deposit (CD) bank rate for Hartford County, CT is 0.12% ($0.20\% + 0.10\% + 0.05\% = 0.35\% / 3 = 0.12\%$). (Bankrate.com CD Rates : Hartford, CT)

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. Effective [REDACTED] 2013, the Appellant was an Institutionalized Spouse as defined by the Medicaid program.
4. Effective [REDACTED] 2013, the Appellant's spouse was a Community Spouse as defined by the Medicaid program.
5. 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).
6. 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.
 - 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.
7. 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
5. The Standard Utility Allowance ("SUA") used in the Supplemental Nutrition Assistance program ("SNAP") is used for the community spouse.

8. Effective [REDACTED] 2014, the CS's MMNA is \$2,784.37 as shown in the calculation below:

| | |
|----------------------------|-------------|
| Rent | \$714.00 |
| Standard Utility Allowance | + \$694.00 |
| Total Shelter Costs | = \$1408.00 |
| 30% of 150% of FPL for 2 | -\$589.88 |
| Excess Shelter Costs | = \$818.12 |
| 150% FPL for 2 | +\$1,966.25 |
| MMNA | =\$2,784.37 |

9. Effective [REDACTED] 2014, the deficit between the CS's income (exclusive of income generated by her spousal share of assets) and her MMNA is \$2,242.37 as shown in the calculation below:

| | |
|----------------------|---------------|
| MMNA | \$2,784.37 |
| Community Spouse SSA | - \$542.00 |
| Equals Deficit | = \$ 2,242.37 |

10. UPM § 5035.25 provides 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. Allowable monthly deductions from the income of assistance units in LTCFs include a personal needs allowance of \$50.00, increased annually by a cost of living adjustment (equals \$60.00 effective [REDACTED] 2014), and the cost of Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid by the Department or any third party.
11. The Appellant has income in the amount of \$1,028.00 available to be diverted to the CS to help meet her MMNA (\$1,088.00 SSA, minus \$60.00 personal needs allowance).

12. After diverting all available income from the Appellant, the CS still has a deficit of \$1,214.37. (\$2,242.37 original deficit - \$1,028.00 income available from Appellant/Institutionalized Spouse)
13. The \$159,319.59 total of the couple's combined assets has the ability to generate monthly interest income of \$15.93 at the 0.12% current average rate of return generated by a 12 month certificate of deposit. ($\$159,319.59 \times .0012 = \$191.18 / 12 = \$15.93$ monthly interest income)
14. All of the couple's assets are needed to produce income to help raise the CS's income to the MMNA.
15. Effective [REDACTED] 2014, the CS's CSPA is increased to \$159,319.59 to generate additional income needed to help meet her MMNA.
16. Effective [REDACTED] 2014, the Appellant has zero assets.
17. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.
18. Effective [REDACTED] 2014, the Appellant's assets do not exceed the Medicaid asset limit of \$1,600.00.

DISCUSSION

The Department acted correctly in its determination of the Appellant's eligibility. However, the regulations of the Department allow the Hearing Officer to protect an additional amount of the assets of the Appellant/Institutionalized spouse to meet the needs of the Community Spouse.

At the time of the Appellant's first need for Medicaid in [REDACTED] 2014, which is the second retroactive month prior to his [REDACTED] 2014 application date, his spouse residing in the community needed all of the available spousal assets to generate income necessary to help raise her income to the MMNA.

The Appellant's request for an order to divert the Appellant's Applied Income as part of a Community Spouse Allowance for the CS is not addressed in this decision; this step in the eligibility process should be undertaken by the Department when it reassesses the Appellant's eligibility based on no longer exceeding the Medicaid asset limit. Based on the undisputed facts presented for this hearing, it is clear that a diversion of the Applied Income will be required.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department shall reopen the Appellant's application for Medicaid effective [REDACTED] 2014 and increase the CSPA to \$159,319.59 for the application month and for any retroactive months.
2. Beginning with any retroactive months, and continuing as of the Appellant's [REDACTED] 2014 application date and forward, the Appellant has zero assets.
3. The Department shall submit proof of compliance with this order to the undersigned no later than [REDACTED] 2015.

James Hinckley
Hearing Officer

cc: John Hesterberg, SSOM Manchester
[REDACTED]

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.

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. 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.