

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 # 651987

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 of action (“NOA”) that his application for Long Term Care Medicaid was denied for the months of ██████████ 2013 through ██████████, 2014, inclusive, because his assets exceeded the limit in each month.

On ██████████ 2014, the Appellant requested an administrative hearing to contest the Department’s assessment of spousal assets, and its determination of the amount of the couple’s assets ██████████, the community spouse (the “CS”), is allowed to retain.

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:

██████████, Counsel for the Appellant
██████████ Appellant’s Spouse

██████████, Appellant's son
Michael Briggs, Department's Representative
James Hinckley, Hearing Officer

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 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 as of the ██████████ 2014 date he is seeking Medicaid eligibility.

FINDINGS OF FACT

1. On ██████████ 2013, the Department sent the Appellant a form W-18 Functional Eligibility Outcome notifying him that based upon a review of his medical information, he has been determined to meet nursing home level of care, and that his DOI for the purpose of assessment of spousal assets is ██████████7, 2013. (Ex. N: Functional Eligibility Outcome)
2. On ██████████, 2013, the Appellant applied to the Department for Long Term Care Medicaid. (Summary)
3. On ██████████, 2014, the Department notified the Appellant that it determined that the Community Spouse Protected Amount (CSPA) for the CS is \$61,134.10 and that the Appellant's Medicaid eligibility may not begin until the total spousal assets are reduced to \$62,734.10 or less (\$1600.00 for the Appellant plus \$61,134.10 for the CS). (Ex. 9: W-1-SAN, Assessment of Spousal Assets Notification of Results)
4. The ██████████ 2014 Assessment of Spousal Assets Notification of Results was incorrect because the assessment was based on a DOI of ██████████, 2013, whereas the DOI was already established as ██████████ 2013 based on the Appellant's Functional Eligibility Outcome. (Ex. 10, p.1: Spousal Assessment Worksheet for DOI ██████████ 2013, Summary)
5. On ██████████ 2014, the Department sent the Appellant a NOA advising him that his application for Medicaid has been denied for the months of ██████████ 2013 through ██████ 2014, inclusive, because his assets exceeded the Medicaid asset limit in each month. (Ex. 13, pp. 1-24: NOA dated ██████████ 2014)
6. On ██████████, 2014, the Department sent the Appellant a Notice of Approval for Long Term Medicaid advising him that he was eligible for Medicaid beginning

██████████ 2014 and that the amount he must contribute toward his cost of care (the “Applied Income”) is \$0.00, in part because of a deduction of \$1,678.53 allowed for a Community Spouse Allowance (“CSA”). (Ex. 12, pp.1-2, ██████████ 2014 Notice of Approval for Long Term Medicaid)

7. On ██████████ 2014, the Appellant’s former attorney notified the Department that the Appellant’s correct DOI was ██████████ 2013, and that the Department’s assessment was based on an incorrect DOI. (Summary, Ex. 11: ██████████ 2014 fax from Attorney ██████████)
8. After being notified by the Appellant’s former attorney, the Department recalculated the spousal assets and spousal shares based on the correct DOI of ██████████ 2013; the combined spousal assets were found to be \$124,826.80 and the CSPA was found to be \$62,413.40. (Summary, Ex. 10, p.2.)
9. Both parties are in agreement that the Department’s assessment of assets as of the correct DOI is accurate in regard to total assets and composition of assets. (Stipulated)
10. The recalculation of spousal assets based on the corrected DOI had no effect on the Department’s determination of the Appellant’s Medicaid eligibility date. (Summary)
11. On ██████████ 2014, the Department sent the Appellant a NOA advising him that his Applied Income will change effective ██████████, 2014, from \$0.00 to \$183.08. (Ex. 13, pp. 25-32)
12. On ██████████, 2014, the Department sent the Appellant a Notice of Approval for Long Term Medicaid advising him that he was eligible for Medicaid beginning ██████████ 2014 and that his Applied Income for ██████████ 2014 through ██████████ 2014 is \$183.08, based on a change in the CSA, from \$1,678.53 to \$1,296.58. (Ex. 12, pp.3-4: ██████████, 2014 Notice of Approval for Long Term Medicaid)
13. The Department recalculated the CSA, allowing the CS only a 50% share of her condominium fee as a housing expense in the new calculation. (Summary, Ex. 14: Community Spouse Allowance Calculation worksheet)
14. The Appellant is seeking Medicaid eligibility for himself beginning ██████████ 2014. (Appellant testimony)
15. As of ██████████ 2014, the CS resides at a condominium unit known as Unit ██████████ (the “Property”).
16. The Appellant and the CS purchased a 50% share of the Property in 2010, together with their son and daughter-in-law, and the Appellant and the CS

resided there together until the Appellant became institutionalized. (Appellant testimony)

17. In 2013, the Appellant transferred his interest in the 50% share to the CS, who now owns the full 50% share. (testimony, record)
18. The Appellant and the CS have always maintained sole use and possession of the Property since its purchase, and since the time of the Appellant's institutionalization, the CS has had sole use and possession. (testimony)
19. The Appellant and the CS have always paid, in lieu of rent, the full condominium fee, plus one half of the property tax. (Appellant testimony, Ex. B, pp. 2-8: Bank of America statements [REDACTED] 2014 through [REDACTED] 2014, Ex. 19: Bank of America statements [REDACTED] 2013 through [REDACTED] 2013)
20. As of [REDACTED] 2014, the CS had a condominium fee expense of \$564.37. (Ex. B, p.1: Stillman Management Invoice dated [REDACTED], 2014; Ex. B, p.2: Bank of America statement for [REDACTED], 2014)
21. As of [REDACTED] 2014, the CS had a real estate tax expense of \$119.02 (\$1428.21 six-month installment due [REDACTED] 2014, divided by six months, times fifty percent). (Ex. A: City of [REDACTED] Real Property Tax Bill, Appellant's Memorandum of Law)
22. 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
Bank of America Acct# xxx [REDACTED]	\$49,586.84
Bank of America Acct# xxx [REDACTED]	\$38,177.92
Bank of America Acct# xxx [REDACTED]	\$0
Vanguard IRA Acct#	\$25,290.81
Lincoln Financial Annuity Acct#	\$9,539.05
Global Life Policy# xxx [REDACTED]	\$1,341.34
Global Life Policy# xxx [REDACTED]	\$890.84
Total Assets	\$124,826.80

(Stipulated)

23. As of [REDACTED], 2014, the average 12 month Certificate of Deposit bank rate for [REDACTED], CT is 0.15% (0.20% + 0.20% + 0.05% = 0.45% / 3 = 0.15%). (Bankrate.com CD Rates : [REDACTED] CT)
24. As of [REDACTED] 2014, two of the Appellant's and the CS's assets produce income at a higher rate than the rate that would be generated by a 12 month certificate of deposit; the Lincoln Financial Annuity generates a one year rate of return of 3.50%, and the Vanguard LifeStrategy Conservative Growth Fund component of the Vanguard IRA generates a one year rate of return of 2.52%. (Ex. 22, p.4: Lincoln Financial Account Summary, "Your Personal Rate of Return (As of [REDACTED]/2013)"; Ex. 21, pp. 12-14: Vanguard Traditional IRA Account, Account Overview as of [REDACTED] 2013)
25. As of [REDACTED] 2014, the Appellant has monthly gross income from Social Security of \$1,495.00. (Ex. D, p.1: Social Security Benefit Statement, Ex. 12)
26. As of [REDACTED], 2014, the Appellant has monthly gross income from Pension of \$74.44. (Ex. D, p.2: Citizens Bank Deposit Confirmation, Ex. 12)
27. As of [REDACTED] 2014, the Appellant has an expense for health insurance premium of \$29.78. (Ex. 8: Anthem policy information, Ex. 12)
28. As of [REDACTED] 2014, the CS has monthly gross income from Social Security of \$1,175.00. (Ex. C: Social Security Benefit Statement)

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. 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).
3. 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.

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 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.

5. Effective [REDACTED] 2014, the CS's MMNA is \$2,734.51 as shown in the calculation below:

Condominium Fee	\$564.37
One-half Property Tax	\$119.02

Standard Utility Allowance	+ \$694.00
Total Shelter Costs	= \$1,377.39
30% of 150% of FPL for 2	-\$581.63
Excess Shelter Costs	= \$795.76
150% FPL for 2	+\$1,938.75
MMNA	=\$2,734.51

The Department’s calculation of the MMNA was incorrect, because it allowed the CS only fifty percent of the condominium fee toward her shelter expense. Although the CS owns only a 50% share of the condominium unit, she has sole use and possession of the property and pays, and has historically paid, the full condominium fee as part of her shelter expense.

6. Effective [REDACTED] 2014, the deficit between the CS’s income and her MMNA is \$1,559.51 as shown in the calculation below:

MMNA	\$2,734.51
CS’s income	- \$1,175.00
Equals Deficit	= \$ 1,559.51

7. 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 January 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.
8. The Appellant has income in the amount of \$1,479.66 available to be diverted to the CS to help bring her income to the level of the MMNA (\$1,495.00 SSA, plus \$74.44 pension, minus \$60.00 personal needs allowance, minus \$29.78 health insurance premium).
9. After diverting all available income from the Appellant, the Community Spouse still has a deficit of \$79.85. (\$1,559.51 original deficit - \$1,479.66 income available from Appellant Spouse)

The CS is eligible to have all of the Appellant’s available income diverted to her to help raise her income to the MMNA, reducing the Appellant’s Applied Income to zero. The Department was incorrect when it notified the Appellant that his Applied Income was \$183.08, because the determination was based on an incorrect calculation of the MMNA

10. \$29,129.55 of the couple's assets generates income in excess of that which would be earned at the average rate of return by a 12 month certificate of deposit; the couple's \$19,847.98 investment in Vanguard LifeStrategy Conservative Growth Fund generates \$40.30 monthly, and their \$9,281.57 investment in the Lincoln Financial annuity generates \$27.07 monthly.
11. The \$95,697.25 remainder of the couple's total assets (\$124,826.80 minus \$29,129.55) would generate monthly interest income of \$11.96 at the 0.15% current average rate of return generated by a 12 month certificate of deposit. ($\$95,697.25 \times .0015 = \$143.55 / 12 = \$11.96$ monthly interest income)
12. The total of the couple's combined assets has the ability to generate \$79.33 in monthly income (\$40.30, plus \$27.07, plus \$11.96).
13. Effective [REDACTED] 2014, the CS's CSPA is increased to \$124,826.80 to generate additional income needed to help raise her income to the MMNA.
14. Effective [REDACTED] 2014, the Appellant has zero assets.
15. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.
16. Effective [REDACTED] 2014, the Appellant's assets do not exceed the Medicaid asset limit of \$1,600.00.

DISCUSSION

The Department correctly determined the spousal assets and CSPA in its revised assessment of spousal assets. However, the regulations of the Department allow the Hearing Officer to protect additional assets from the Appellant/Institutionalized spouse to meet the needs of the Community Spouse.

The Department incorrectly calculated the Community Spouse's Minimum Monthly Needs Allowance, however, because it failed to credit her with the proper shelter expense in the calculation.

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 MMNA to \$2,734.51, and the CSPA to \$124,826.80.
2. Effective [REDACTED] 2014 through [REDACTED] 2014 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: Poonam Sharma, SSOM, Bridgeport
Fred Presnick, SSOM, Bridgeport
Brian Sexton, SSPM, Bridgeport
[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.