

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 # 653601 Reconsidered Decision
620412 Decision

NOTICE OF RECONSIDERED DECISION

PARTIES

██████████ (Deceased)

C/o ██████████

██████████

██████████

██████████

██████████

██████████

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") granted Medicaid Long Term Care coverage for ██████████ ("the Appellant") effective ██████████ 2014, and denied coverage for the months of ██████████ 2013 through ██████████ of 2014.

On ██████████ 2014, the Appellant requested an administrative hearing to contest the Department's decision to deny such benefits. This request was forwarded to the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") by Attorney ██████████

On ██████████ 2014, OLCRAH issued a Notice scheduling the administrative hearing for ██████████ 2014.

On ██████████, 2014, the Appellant's Attorney requested a rescheduled hearing date and this request was granted.

On ██████████ 2014, OLCRAH issued a Notice rescheduling 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
Attorney ██████████, Appellant's Representative
██████████, Witness, Appellant's Daughter
██████████, Witness, Appellant's Son
Enkelejda Trifoni, Department's Representative
Andrea Boardman, Hearing Officer

On ██████████ 2014, a hearing decision was rendered denying in part, the Appellant's appeal.

On ██████████, 2014 the OLCRAH granted the Appellant's request for reconsideration to determine whether additional assets could be protected for the community spouse. A letter was sent asking that specific items of verification be provided by ██████████ 2014.

On ██████████ 2014, the Appellant responded to OLCRAH's request for information.

On ██████████ 2014, OLCRAH sent a request for additional information asking for compliance by ██████████, 2014.

On ██████████, 2014, the Appellant responded to OLCRAH's information request and asked for an extension of the deadline by which to comply.

On ██████████, 2014, OLCRAH issued a written request for specific items of verification and extended the compliance deadline to ██████████, 2015.

On ██████████ 2015, the Appellant responded in writing to OLCRAH's request for information.

On ██████████, 2015, OLCRAH requested written verification of pension income.

On ██████████, 2015, the Appellant provided the requested written verification of pension income.

On ██████████ 2015, OLCRAH requested clarification of the pension verification that was submitted on ██████████ 2015.

On ██████████ 2015, the Appellant clarified the verification of pension income.

STATEMENT OF THE ISSUES

The first issue is whether to protect additional assets for the Community Spouse, to produce income with which she may meet her Minimum Monthly Needs Allowance

("MMNA").

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

FINDINGS OF FACT

1. The Appellant's date of institutionalization ("DOI") for spousal assessment of asset purposes is [REDACTED] 2013. (Hearing Record)
2. On [REDACTED] 2013, the Appellant applied for Medicaid long term care benefits. (Exhibit 1: W-1 LTC Application and Department's Testimony)
3. At the time of the Appellant's application, his spouse resided in the community. (Exhibit 1)
4. The Appellant passed away on [REDACTED] 2014. (Hearing Record)
5. The combined total of the Appellant and Community Spouse's non-exempt assets was \$30,059.81 as of the DOI. (Exhibit 4: Assessment of Spousal Assets Notification of Results dated [REDACTED] 2014)
6. The spousal share of the assets was \$23,448.00 as of DOI (minimum allowed). (Exhibit 4)
7. The Community Spouse Protected Amount (CSPA) was \$23,448.00 as of DOI. (Exhibit 4)
8. As of the date of application, the Appellant and his community spouse held combined assets in the amount of \$30,235.17. (Exhibit 5: Spousal Assessment Worksheet)
9. Based upon its assessment of spousal assets, the Department found that the Appellant and his community spouse could retain assets in the combined amount of \$25,048.00 without hindering Medicaid long-term care eligibility. [\$23,448.00 CSPA + \$1,600.00 Appellant's allowable limit] (Exhibit 4)
10. On [REDACTED], 2014, the Department granted the Appellant's application effective [REDACTED] [REDACTED] 2014 and denied his request for long-term care Medicaid for the months of [REDACTED] 2013 – [REDACTED] 2014 due to assets in excess of the allowable limit. (Exhibit 6: AI Grant Letter, Hearing Record)
11. The community spouse pays monthly shelter costs in the amount of \$743.44. (Wells Fargo Statement dated [REDACTED]/14 – Appellant's exhibit Recon-a.)

12. As of the date of application, the Community Spouse had monthly gross unearned income of \$891.00 from the Social Security Administration (SSA) and \$292.19 from a pension. (Exhibit 8: Bank of America statement)
13. The average rate of return on a 12 month certificate of deposit for Hartford, Connecticut exclusive of banks outside of Connecticut was .12% on [REDACTED]/14. (Bankrate.com screen print – Hearing record)
14. As of the date of application, based on the average rate of return on a 12 month CD in Hartford, the combined total of the Appellant and Community Spouse's non-exempt assets earned \$3.02 per month. (Exhibit 5, www.bankrate.com)
15. As of the date of application, the Appellant had gross Social Security income in the amount of \$1,662.90 per month and a monthly pension of \$124.77. (Exhibit 1 – Copies of check stubs Appellant's exhibit Recon c.)
16. As of the date of application, the Appellant was paying \$241.67 per month for private medical insurance or \$483.34/2. (Exhibit 1, Exhibit 8, 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) 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. Based on the assets held as of DOI of \$30,059.81, the Department correctly set the CSPA at \$23,448.00.

4. As of [REDACTED] 2014, the average Certificate of Deposit bank rate for Hartford, Connecticut was .12%. www.bankrate.com.
5. Effective the date of application, [REDACTED] 2013, the CSPA of assets of \$23,488.00 were generating less monthly interest income than they would if calculated using the average rate of return on a 12 month CD in Hartford. (.0% interest on Met Life proceeds of \$25,712.66, 0.01% on Bank of America account ending in # [REDACTED] of \$1,329.13, 0% on Bank of America account ending in # [REDACTED])
6. Effective the date of application, [REDACTED], 2013, the CSPA of assets of \$23,488.00 would generate monthly interest income of \$2.44, based on the average rate of return on a 12 month CD in Hartford at the average rate of .12%.
7. Effective [REDACTED] 2013, the Community Spouse has gross monthly income, including interest income of \$1,185.63 (\$891.00, SSA; \$292.14 pension plus \$2.44 interest income).
8. UPM § 5035.30(B) provides for the calculation of the Community Spouse Allowance ("CSA") and Minimum Monthly Needs Allowance ("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.

9. Effective [REDACTED], 2013, the Community Spouse’s MMNA was \$2,814.56, as show in the table below.

	AMOUNT
Mortgage, property and city taxes, home owners insurance	\$763.44
Standard Utility Allowance	<u>+\$694.00</u>
Total shelter costs:	\$1,457.44
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$581.63</u>
Excess shelter costs:	\$875.81
Plus 150% of the FPL for two:	<u>+\$1,938.75</u>
Equals the MMNA	\$2,814.56 limited to \$2,841.00

10. As of [REDACTED] 2013, based on a CSPA of \$23,448.00, the difference between the Community Spouse’s income and her MMNA was \$1,628.93 as shown in the table below:

<u>COMMUNITY SPOUSE DEFICIT</u>	
Social Security	\$891.00
Pension	\$292.19
Interest Income	<u>+\$2.44</u>
Total Income	\$1,185.63
MMNA	\$2,814.56
Less Total Income	<u>-\$1,185.63</u>
Monthly Deficit	\$1,628.93

11. 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.

C. Deductions For CBS Units

The following monthly deductions are allowed from the income of assistance units receiving Community Based Services:

1. an amount to meet the basic community maintenance needs of the individual to the extent that it is equivalent to:
 - a. the MNIL for one person for those who are eligible under the model waiver; or
 - b. 200% of the Federal Poverty Level for those eligible under the PAS or DMR waiver;
 2. a Community Spouse Allowance (CSA) when appropriate; (Cross Reference 5035.30)
 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 the Medicaid or any other third party;
 5. expenses recognized as medical costs for which the recipient is currently liable, and which are not covered by Medicaid.
12. After allowing a deduction for the cost of his personal needs and medical insurance premium, the Appellant has \$1,509.53 available to be diverted to the Community Spouse to help meet her MMNA. (\$1,811.20 - \$60.00 - \$241.67)
 13. Effective [REDACTED] 2013, \$1,509.53 shall be diverted from the Appellant to his Community Spouse to help her to meet her MMNA.
 14. After a diversion of the Appellant's income of \$1,509.53 to the Community Spouse, the Community Spouse still has a monthly income deficit of \$119.40. (\$2,814.56 - \$1,185.63 - \$1,509.53).
 15. Effective [REDACTED], 2013, the remaining assets of \$6,787.17 generate monthly interest income of \$.67, based on the interest rate of .12%.
 16. Effective [REDACTED], 2013, the Community Spouse's CSPA is increased to \$30,235.17, the total amount of assets held as of date of application.

17. Effective [REDACTED] 2013, the Appellant has zero assets.
18. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.
19. Effective [REDACTED], 2013, the Appellant's assets do not exceed the Medicaid asset limit of \$1,600.00.
20. Effective [REDACTED], 2013, the Appellant is eligible for Medicaid long-term care assistance, provided that all other eligibility factors are met.

DISCUSSION

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

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. A portion of the Appellant's income shall be diverted to his community spouse and the CSPA shall be increased to provide additional needed income (interest).

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 \$30, 235.17.
3. Verification of compliance with this order is due by [REDACTED], 2015.



Pamela J. Gonzalez
Hearing Officer

Copy: Judy Williams, Operations Manager, R.O. #60, Waterbury
Karen Main, Operations Manager, R.O. #60, Waterbury
Attorney [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 Administrative Hearings and Appeals, 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 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.

