

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 # 663507

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”), a notice of action (“NOA”) advising him that the application he filed for Long Term Care Medicaid for his wife, ██████████ (the “Institutionalized Spouse” or “IS”), was denied because countable assets exceeded the Medicaid limit for each application month.

On ██████████ 2015, the Appellant requested an administrative hearing to contest the Department’s decision to deny Medicaid for the IS.

On ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2015.

On ██████████ ██████████ 2015, at the Appellant’s request, OLCRAH issued a notice rescheduling the hearing for ██████████ 2015.

On ██████████ 2015, 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
██████████ counsel for the Appellant

Kim Smith, Office Manager, Westside Care Center
Martin Acevedo, Esq., Attorney for Westside Care Center
Michael Stebe, Department's Representative
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

1. The first issue to be decided is whether the Department's decision to deny Medicaid for the IS because her countable assets exceeded the Medicaid asset limit for each application month, was correct.
2. The second issue to be decided is whether the Appellant (Or the "Community Spouse" or "CS") had insufficient income to meet his needs in the community (his "Minimum Monthly Needs Allowance" or "MMNA"), and required additional spousal assets to be protected to generate income necessary to raise his income to the MMNA.

FINDINGS OF FACT

1. On [REDACTED] 2013, the IS began a continuous period of institutionalization which is her Date of Institutionalization ("DOI"). (Record)
2. On [REDACTED] 2013, the Appellant applied to the Department for Long Term Care Medicaid for his spouse, the IS. (Summary, Ex. 1: W-1LTC Application Form)
3. When a married individual applies for Long Term Care Medicaid, the Department examines the couple's assets both to determine the total assets as of the DOI, and to evaluate any asset transfers that occurred during a 60 month look-back period. (Record)
4. Between [REDACTED] 2013 and [REDACTED] 2014, the Department sent three W-1348LTC "We Need Information from You" requests for information directly to the Appellant, and the Appellant provided partial responses to each request. One of the items on each of the three requests was for the Appellant to complete and return form W-SA "Application for Determination of Spousal Assets", a form used to report spousal assets owned as of the DOI. (Summary, Ex. 2: W-1348LTC Addendum sent [REDACTED] 2013, Ex. 3: W-1348LTC Addendum sent [REDACTED] 2014, Ex. 4: W-1348LTC dated [REDACTED]/14)
5. On [REDACTED] 2014, the Department was notified that the Appellant had engaged an attorney to assist him in the Medicaid application process. (Summary)
6. On [REDACTED] 2014, the IS died. (Summary)

7. After [REDACTED] [REDACTED] 2014, the Department continued to process the Medicaid application for the IS, now with the assistance of the Appellant's legal counsel. The Appellant cooperated with the Medicaid application throughout, but the Department needed to send several additional requests for information in order to obtain all of the information that it needed to complete the processing of the application. (Record, Exhibits 6 through 10: W-1348LTC "We Need Information from You" requests dated [REDACTED] 2014, [REDACTED] 2014, [REDACTED] 2014, [REDACTED] 2014, and [REDACTED] 2014)
8. On [REDACTED] [REDACTED] 2014, the Department sent the Appellant a W-1-SAN "Assessment of Spousal Assets – Notification of Results" form notifying him that the Department determined that as of the [REDACTED] 2013 DOI, the couple owned \$82,392.40 in total counted assets, that the Appellant's (Community Spouse's) share was \$41,796.20, that the IS's share was \$1,600.00, and that the maximum assets that the couple may retain without causing Medicaid ineligibility is \$42,796.20 (\$41,196.20 Community Spouse share, plus \$1,600.00 applicant share). (Ex. 12: W-1-SAN dated [REDACTED] 2014)
9. On [REDACTED] 2014, the Department sent the Appellant a NOA advising him that the IS was ineligible for Medicaid for the months of [REDACTED] 2013 through [REDACTED] 2014, inclusive, because the couple's assets exceeded the \$42,796.20 that the couple was allowed to retain without causing Medicaid ineligibility, for each application month. (Record)
10. The Appellant does not disagree with the findings contained in the Department's [REDACTED] 2014 W-1-SAN, that the couple's total counted assets as of the [REDACTED] 2013 DOI were \$82,392.40. (Appellant testimony)
11. The Appellant does not disagree that in each Medicaid application month, [REDACTED] 2013 through [REDACTED] 2014, inclusive, the couple's assets exceeded the \$42,796.20 figure that the Department determined was the maximum that the couple could retain without causing Medicaid ineligibility. (Appellant testimony)
12. The Appellant made no payments to Westside Care Center for the cost of the IS's room and board for the entire time that she resided at the facility, because he was waiting for the results of the Medicaid application. (Testimony)
13. As of [REDACTED] 2014, the Appellant owed \$96,271.20 to Westside Care Center for the cost of room and board provided to the IS between [REDACTED] 2013 and [REDACTED] 2014. (Ex. A: [REDACTED] 2014 Invoice from Westside Care Center)
14. The Appellant is requesting Medicaid eligibility for the IS as of [REDACTED] 2013. (Appellant testimony)

15. As of [REDACTED] 2013, the Appellant had monthly gross income from Social Security of \$1,592.00. (Ex. B, p. 2: Summary of Appellant's monthly expenses and monthly income, and explanation of circumstances)
16. As of [REDACTED] 2013, the Appellant had monthly gross income from [REDACTED] Pension of \$1,086.04. (Ex. B, p. 2)
17. As of [REDACTED] 2013, the Appellant had a monthly home property tax expense of \$626.48. (Ex. B, p. 2)
18. As of [REDACTED] 2013, the Appellant had a monthly homeowner's insurance premium expense of \$97.50. (Ex. B, p. 2)
19. As of [REDACTED] 2013, the Appellant had a monthly Home Equity Line of Credit expense of \$200.00. (Ex. B, p. 2)
20. As of [REDACTED] 2013, the Appellant had a monthly medical insurance premium of \$225.00. (Ex. B, p. 3)
21. As of [REDACTED] 2013, the IS had monthly gross income from Social Security of \$602.40. (Record, Testimony)
22. The Appellant makes no claim that as of [REDACTED] [REDACTED] 2013, he was experiencing financial duress as a result of exceptional circumstances. (Testimony, Ex. B, p. 3)

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. UPM § 1500.01 provides that MCCA Spouses are spouses who are members of a married couple one of whom becomes an institutionalized spouse on or after [REDACTED], 1989, and the other spouse becomes a community spouse.
4. Effective [REDACTED] 2013, the Appellant and his wife are MCCA Spouses as defined by the Medicaid program; the Appellant is a Community Spouse (CS) and his wife is an Institutionalized Spouse (IS).
5. UPM § 1500.01 provides that a Community Spouse Protected Amount (CSPA) is the amount of the total available assets owned by both MCCA spouses which is protected for the community spouse and is not counted in determining the institutionalized spouse's eligibility for Medicaid.
6. UPM § 1500.01 provides that Exceptional Circumstances are conditions that are unusual or extreme for a community spouse, and which either directly threaten the community spouse's ability to remain in the community, or pose some other type of unusual or extreme hardship for the community spouse, such as caring for a disabled child, sibling or other immediate relative.
7. UPM § 1500.01 provides that Significant Financial Duress is a severe expense or set of expenses to be paid by the community spouse as a direct result of exceptional circumstances, and are those for which the community spouse could not reasonably be expected to pay from his or her monthly income or assets.
8. 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).
9. UPM § 4025.67(D)(3) provides that every ██████████ 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.
10. UPM § 4025.67(A) provides that when the applicant or recipient who is a MCCA spouse begins a continuous period 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).
 1. As described in section 4025.67 D., the CS' assets are deemed to the IS to the extent that such assets exceed the Community Spouse Protected Amount.
 2. Any assets deemed from the CS are added to the assets of the IS and the total assets and the total is compared to the Medicaid asset limit for the IS (the Medicaid asset limit for one adult)
11. The Department correctly determined that the CSPA for the Appellant is equal to \$41,196.20, or the spousal share calculated in the assessment of spousal assets, which is equal to one-half of the total countable assets owned by the couple as of the ██████████ 2013 DOI.
12. Connecticut General Statutes § 17b-261 (c) provides that for the purposes of determining eligibility for the Medicaid program, an available asset is one that is actually available to the applicant or one that the applicant has the legal right, authority or power to obtain or to have applied for the applicant's general or medical support.

UPM § 4000.01 provides the following definition of available asset: An available asset is cash or any item of value which is actually available to the individual or which the individual has the legal right, authority or power to obtain, or to have applied for, his or her general or medical support.

13. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.
14. The Department correctly determined that, because any assets in excess of the CSPA must be deemed to the IS, and because the couple's assets exceeded \$42,796.20 (\$41,196.20 CSPA plus \$1,600.00 Medicaid asset limit for one adult) in each of the Medicaid application months, ██████████ 2013 through ██████████ 2014, inclusive, the IS' assets exceeded the Medicaid asset limit in each of the application months. The assets in question are considered available assets as defined by the Medicaid program, and were properly counted by the Department in determining the IS' eligibility for Medicaid.
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)

UPM § 1570.25(D)(4)(b) provides that 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.

UPM § 1570.25(D)(4)(c) provides that 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 § 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.

17. Effective [REDACTED] 2013, the CS's MMNA is \$2,898.00 as shown in the calculation below:

Mortgage (Equity Loan)	\$200.00
Property Taxes	+ \$626.48
Homeowners Insurance	+ \$97.50
Standard Utility Allowance	+ \$694.00
Total Shelter Costs	= \$1,617.98
30% of 150% of FPL for 2	- \$581.63
Excess Shelter Costs	= \$1,036.35
150% FPL for 2	+ \$1,938.75
Exceeds Cap for MMNA	= \$2,975.10
Maximum MMNA	= \$2,898.00

18. Effective [REDACTED] 2013, the deficit between the CS's income (exclusive of income generated by his spousal share of assets) and his MMNA is \$219.96 as shown in the calculation below:

MMNA	\$2,898.00
Minus CS's SSA plus Pension	- \$2,678.04
Equals Deficit	= \$219.96

19. 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] 2013), and the cost of Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid by the Department or any third party.

20. Effective [REDACTED] 2013, the IS had income in the amount of \$542.40 available to be diverted to the CS to help meet his MMNA (\$602.40 SSA, minus \$60.00 personal needs allowance).
21. Effective [REDACTED] 2013, the Appellant had sufficient income available to be diverted from the IS's income to bring his own income to the level of the MMNA. (CS has a \$219.96 income deficit, and IS has \$542.40 in income that can be diverted to the CS)
22. The Appellant does not require any protection of additional assets in order to raise his income to the level of the MMNA.
23. The Appellant's CSPA is \$41,196.20; no adjustment by the Fair Hearing Official of the CSPA previously determined by the Department is necessary.
24. The Department was correct to find that the IS was ineligible for Medicaid for the months of [REDACTED] 2013 through [REDACTED] 2014, inclusive, because her assets exceeded the \$1,600.00 Medicaid asset limit for one person (the couple's assets exceeded the \$41,196.20 CSPA, plus \$1,600.00 limit, equals \$42,796.20) in each month.

DISCUSSION

The Appellant argues that the Department should act in the interest of fairness with regard to establishing Medicaid eligibility for the IS. The Appellant is an elderly gentleman, unfamiliar with the complexities of the Medicaid application process, who handled the duties himself as best he could until he engaged counsel in [REDACTED] 2014. From the time the Appellant's spouse entered the facility in [REDACTED] 2013, until she passed away in [REDACTED] 2014, the Appellant did not make any payments to the facility for her room and board. The reason for the Appellant's failure to make any payments to the facility was not due to any willful intent to not pay his obligations, but simply because he was unsure of the proper course of action at that time. The Appellant now owes the nursing home \$96,271.20, which exceeds the \$82,392.40 in total assets that the couple owned as of the date his wife became institutionalized, and argues that the Department

should find the IS eligible for Medicaid as of the date that her share of assets was exceeded by the accumulated debt for her ongoing cost of care.

While I am sympathetic to the Appellant's position, the Department is required to follow Medicaid rules in establishing Medicaid eligibility. Even if the Appellant had no intent to use the assets for any other purpose than to pay the IS' cost of care, the Department must still count all of the assets that were owned by the couple in each month that they were owned, because the assets were legally available in each month to be used for any purpose.

The Appellant did not require any protection of additional assets by the Fair Hearing Official in order to raise his income to the MMNA, therefore the Department's original determination that the IS is ineligible for Medicaid for the months of [REDACTED] 2013, through [REDACTED] 2014, inclusive, because her countable assets exceeded the Medicaid asset limit in each month, was correct.

DECISION

The Appellant's appeal is DENIED.


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.