

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

██████████ 2015
SIGNATURE CONFIRMATION

Client ID # ██████████
Request # 681894

NOTICE OF DECISION

PARTY

██████████
C/O ██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2015, the Department of Social Services (the "Department") sent, ██████████ ██████████ (the "Appellant") a Notice of Action ("NOA") denying her application for Long Term Care ("LTC") Medicaid assistance.

On ██████████ 2015, the Appellant's representative, requested an administrative hearing to contest the Department's decision to deny her application.

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

On ██████████ 2015, in accordance with sections 17b-60, 17b-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 and Power of Attorney
██████████, Appellant's Attorney
Tashna Morris-Daley, Department's Representative
Scott Zuckerman, Hearing Officer

The hearing record remained open for the submission of additional evidence. On [REDACTED] 2015, the hearing record closed.

STATEMENTS 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. The Appellant has been institutionalized continuously since [REDACTED] 2012, the date of institutionalization ("DOI"). (Appellant's Exhibit A: W-18 Functional Eligibility Outcome dated [REDACTED]/14, pages 3 - 4)
2. On [REDACTED] 2015, the Appellant applied for the Medicaid Waiver of the Connecticut Home Care Program for Elders. (Hearing summary)
3. The Appellant is married to [REDACTED], the Community Spouse. (Hearing record)
4. The combined total of the Appellant and Community Spouse's non-exempt assets was \$119,265.37 as of the DOI. (Appellant's Exhibit A: Spousal Assessment Worksheet, page 38)
5. The spousal share of the assets was \$59,632.69 as of DOI (½ of the couple's combined non-exempt assets). (Appellant's Exhibit A: Spousal Assessment Worksheet, page 38)
6. The Community Spouse Protected Amounts ("CSPA") were \$22,728.00 (minimum CSPA) and \$113,640.00 (maximum CSPA as of DOI). (Hearing record)
7. The Appellant is seeking Medicaid eligibility effective [REDACTED] 2015. (Hearing Record)
8. Effective [REDACTED] 2015, the Community Spouse incurs monthly real estate taxes of \$349.95 (\$4199.43yr / 12) and homeowners insurance of \$73.83 (\$886 yr / 12). (Appellant's Exhibit A: Real estate tax bill, [REDACTED]/15 and homeowners insurance policy, pages 91 to 93)

9. Effective [REDACTED] 2015, the Community Spouse had monthly gross unearned income of \$1231.90 from the Social Security Administration. (Appellant's Exhibit A: Social Security Letter, page 31)
10. Effective [REDACTED] 2015, the Community Spouse had monthly gross unearned income of \$68.63 from his [REDACTED] pension. (Appellant's Exhibit A: [REDACTED] 2014, form 1099-R, page 32)
11. Effective [REDACTED] 2015, the Community Spouse had monthly gross unearned income of \$59.40 from his [REDACTED] pension. (Appellant's Exhibit A: [REDACTED] pension form 1099-R 2014, page 33)
12. As of the hearing date, [REDACTED], 2015, the average rate of return generated by a 12 month Certificate of Deposit was .12%.
13. The following assets generated the following annual rates of return:

Asset	Balance	Rate of Return As of 3/2015
Webster Bank [REDACTED]	\$2506.17	N/A
Webster Bank [REDACTED]	\$4680.53	0.87%
Charles Schwab [REDACTED]	\$847.90	.01%
Charles Schwab [REDACTED]	\$11,596.59	.01%
Charles Schwab [REDACTED]	\$116,861.27	.01%
Prudential Life Insurance [REDACTED]	\$14,423.04	.18%
1992 Dodge Caravan	\$2200.00	none

(Appellant's Exhibit A: Webster Bank statements, [REDACTED] 2015 – [REDACTED] 2015, pages 51 – 55, Charles Schwab Statements [REDACTED] 2015 to [REDACTED], 2015 pages 56 to 83, Prudential Life letter dated [REDACTED] 2015, page 84 and 1992 Dodge Caravan Title and NADA vehicle values, pages 86-87)

14. As of [REDACTED] 2015, the Appellant had monthly gross unearned income of \$753.90 from SSA benefits. (Appellant's Exhibit A: Social Security Letter for Appellant, pg. 30)
15. As of [REDACTED] 2015, the Appellant has a monthly Medicare Part B premium of \$104.90. (Appellant's Exhibit A: Social Security Letter for Appellant, pg. 30)

16. Effective [REDACTED] 2015, the Appellant has a monthly United Healthcare supplemental medical insurance premium of \$222.25. (Appellant's Exhibit A: United Healthcare Summary of account, pg. 94)
17. Effective [REDACTED] 2015, the Appellant has a monthly Silverscript supplemental medical insurance premium of \$23.30. (Appellant's Exhibit A: Silverscript premium notice, pg. 95)
18. Effective [REDACTED] 2015, the couple's assets were \$153,115.50. (Appellants Exhibit A: Spousal Assessment Worksheet, pg. 38)
19. [REDACTED], 2015, the Department denied the Appellant's application for Long-Term Care Medicaid assistance due to excess assets. (Exhibit 5: W-1SAN, Assessment of Spousal Assets, Notification of results and Hearing summary)

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 defines a Continuous Period of Institutionalization as a period of 30 or more consecutive days of residence in a medical institution or long term care facility, or receipt of home and community based services (CBS) under a Medicaid Waiver.
3. The Department correctly determined that the Appellant's initial period of institutionalization began on June 5, 2012.
4. 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 1507); or
 - d. the amount established pursuant to a court order for the purpose of providing necessary spousal support.
5. 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 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.
6. The Department correctly determined that the CSPA was \$59,632.59 as of the DOI.
7. Effective [REDACTED] 2015, the Community Spouse's assets of \$76,557.75 would have generated monthly interest income of \$7.26. See table below for calculations:

Asset	Balance	Rate of Return As of 3/2015	Bankrate.com rate	Interest based on highest rate
Webster Bank [REDACTED]	\$2506.17	N/A	N/A	\$0.00
Webster Bank [REDACTED] 3	\$4680.53	.87%	.12%	\$3.39
Charles Schwab [REDACTED]	\$847.90	.01%	.12%	\$0.09
Charles Schwab [REDACTED]	\$11,596.59	.01%	.12%	\$1.16
Prudential Life	\$14,423.04	0.18%	.12%	\$2.16
Charles Schwab # [REDACTED]	\$40,303.52	.01%	.12%	\$4.03
1992 Dodge Caravan	\$2200.00	N/A	N/A	N/A
Totals	\$76557.75			\$10.83

8. Effective [REDACTED] 2015, the Community Spouse had gross monthly income of \$1370.76 (\$1231.90 SSA + \$68.63 [REDACTED] Pension + \$59.40 [REDACTED] pension + \$10.83 interest income).
9. 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
 5. The Standard Utility Allowance ("SUA") used in the Supplemental Nutrition Assistance ("SNAP") program is used for the community spouse.

10. Effective [REDACTED] 2015, the Community Spouse's MMNA was \$ as shown in the table below:

	AMOUNT
Shelter Costs:	
Real Estate taxes	\$349.95
Homeowners insurance	+\$73.83
Standard Utility Allowance	<u>+\$724.00</u>
Total shelter costs:	\$1147.78
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$589.88</u>
Excess shelter costs:	\$557.90
Plus 150% of the FPL for two:	<u>+\$1,966.25</u>

Equals the MMNA	\$2524.15
Maximum MMNA	\$2980.50

11. Effective [REDACTED] 2015, the deficit between the Community Spouse's income and her MMNA was \$1156.96, as shown in the table below:

COMMUNITY SPOUSE DEFICIT	
Social Security	\$1231.90
[REDACTED] pension	\$68.63
[REDACTED] pension	\$59.40
Interest Income	\$10.83
Total Income	\$1370.76
MMNA	\$2,524.15
Less Total Income	<u>-\$1370.76</u>
Monthly Deficit	\$ 1153.39

12. 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.

13. UPM § 5035.25(C) provides for 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 5035.35)
3. A Community Family Allowance (CFA), when appropriate; (Cross Reference 5035.35)
4. Medicare and other health insurance premiums, deductibles, and co-insurance costs when not paid for by 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.
14. After reducing the Appellant's income by 200% of the FPL, \$1962.00, the Appellant has zero income to be diverted to the community spouse. (\$753.90 SSA - \$104.90 Medicare B - \$245.55 Silver script and United insurance premiums = \$403.45 Appellant's total income - \$1962.00 200% FPL = \$0.00)
15. With no income to divert to the Community Spouse from the Appellant, the Community Spouse retains a deficit of \$1153.39.
16. Effective [REDACTED] 2015, the remaining assets of \$76,557.75 would generate interest income of \$7.66. See table below:

Asset	Balance	Rate of Return As of 3/2015	Bankrate.com rate	Interest based on highest rate
Charles Schwab # [REDACTED]	\$76557.75	.01%	.12%	\$7.66
Total	\$76,557.75			\$7.66

17. Since the additional interest income from the remaining assets is still insufficient to meet the Community spouse's MMNA, effective [REDACTED] 2015, the Community Spouse's CSPA is increased to \$153,115.50
18. After the diversion of additional assets of \$76,557.75 effective [REDACTED] 2013 for the benefit of the Community spouse, the value of the Appellant's countable assets is \$0.00
19. UPM § 4005.10(A)(2)(a) provides the asset limit for Medicaid for a needs group of one is \$1,600.00.
20. Effective [REDACTED] 2015, the value of the Appellant's assets does not exceed the Medicaid asset limit of \$1,600.00.

DISCUSSION

The Department acted correctly in its determination of the Appellant's spouse's CSPA. 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.

DECISION

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

ORDER

1. The Department shall reopen the Appellant's [REDACTED] 2015, application for Medicaid and continue the eligibility process.
2. Effective [REDACTED], the CSPA is increased to \$153,115.50.
3. No later than [REDACTED], 2015, the Department will submit to the undersigned verification of compliance with this order.



Scott Zuckerman
Hearing Officer

Pc: Musa Mohamud, Operations Manager, Hartford R.O.
Elizabeth Thomas, Operations Manager, Hartford R.O.
Tashna Morris-Daley, Fair Hearing Liaison, Hartford R.O.

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 06105-3725.

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. 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.