

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 # 684114

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the “Department”) sent ██████████ ██████████ the Appellant and institutionalized spouse (the “Appellant” or the “IS”) a notice of action (“NOA”) advising her that her application for Long Term Care Medicaid was denied for the months of ██████████ 2014 through ██████████ 2015, inclusive, because her assets exceeded the limit in each month.

On ██████████ 2015, ██████████, the community spouse (the “CS”), requested an administrative hearing on behalf of the Appellant to contest the Department’s assessment of spousal assets, because he claims that his share of the spousal assets must be increased to generate income to meet his minimum monthly needs, and because his needs must be adjusted because of financial duress due to exceptional circumstances..

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:

██████████ CS, representing the Appellant
██████████ Counsel for the Appellant
Ni'ta Freeman, Department's Representative
James Hinckley, Hearing Officer

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

STATEMENT OF THE ISSUE

1. The first issue to be decided is whether the CS required an increase to his minimum monthly needs allowance ("MMNA") because of financial duress resulting from exceptional circumstances.
2. The second issue to be decided is whether the CS required an increase to his spousal share of the couple's assets to produce additional income to meet his MMNA.

FINDINGS OF FACT

1. On ██████████ ██████████ 2014, the Appellant began a continuous period of institutionalization (her "date of institutionalization" or "DOI"). (Record, stipulated)
2. On ██████████ 2014, 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 couple's total assets as of the DOI were equal to \$123,905.65, that the Community Spouse Protected Amount (CSPA) for the CS is \$62,952.83 and that the Appellant's Medicaid eligibility may not begin until the total spousal assets are reduced to \$63,552.83 or less (\$1600.00 for the Appellant plus \$62,952.83 for the CS). (Ex. 12: W-1-SAN, Assessment of Spousal Assets Notification of Results)
4. The Appellant stipulates to the accuracy of the Department's ██████████ 2014 W-1-SAN as it pertains to the total assets owned by the couple as of the DOI, and to the composition of the assets owned, but is requesting that the hearing official adjust the CSPA determined by the Department on the W-1-SAN. (Appellant testimony)
5. 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 # [REDACTED]	\$1,137.77
Bank of America # [REDACTED]	\$13,006.77
Bank of America # [REDACTED]	\$8,608.33
Bank of America # [REDACTED]	\$1,751.42
Lincoln Life Insurance	\$21,395.59
Wells Fargo IRA	\$31,479.57
AXA IRA	\$46,526.20
Total Assets	\$123,905.65

(Ex. 2: Spousal Assessment Worksheet)

6. On [REDACTED] 2015, the Appellant passed away. (Summary)
7. On [REDACTED] 2015, the Department sent the Appellant a NOA denying her application for Medicaid for the months of [REDACTED] 2014 through [REDACTED] 2015, inclusive, because her assets exceeded the Medicaid asset limit in each of the denied months; the Appellant was found eligible for Medicaid effective [REDACTED] [REDACTED] 2015 through [REDACTED] 2015, the date she passed away. (Ex. 9: NOA dated [REDACTED] 2015)
8. The CS is seeking Medicaid eligibility for the Appellant beginning [REDACTED] 2014. (Appellant testimony)
9. The CS is 81 years old and has been permanently disabled by severe rheumatoid arthritis for over twenty years. (Ex. A: Appellant's Memorandum)
10. The CS has advanced rheumatoid arthritis, kidney disease, and anemia. He has advanced inflammatory arthritis in his hands, fingers, elbows, shoulders, back, hips, knees, ankles and feet. He has had multiple joints replaced, his mobility is extremely impaired, and he needs help in order to live independently. (Ex. A, p.5: [REDACTED] 2014 letter from Susanna Thomas, M.D.)
11. The CS' ankles are fused and he is unable to ascend stairs without a stair lift. He is unable to lift anything at all, even a piece of paper, because his hands are unable to grasp. (Appellant testimony)

12. In ██████████ 2015, the CS fell at home, and after a one day hospital stay, he had to spend two weeks at a rehabilitation center, which he paid at his own expense. (Appellant testimony)
13. The CS' infirmities impair his ability to perform activities of daily living and directly threaten his ability to remain in the community. (Facts #8 through #12)
14. As a result of his infirmities, the CS incurs expenses for home health aides who assist him with performing activities of daily living, and incurs expenses for homemaker and housekeeping services to perform shopping and cooking and cleaning and yard work that he is unable to perform, and incurs expenses for a MedicAlert device because he is a fall risk. (Testimony, Record)
15. As of ██████████ 2014, the CS had an expense of \$285.35 per month for home health services from Golden Horizons. (Ex. C: Appellant's addendum to Ex. A)
16. As of ██████████ 2014, the CS had an expense of \$260.00 per month for housekeeping and homemaker services (\$20.00 per hour, times 3 hours per week, times 52 weeks, divided by 12 months). (Ex. C, Ex. B: Letter from ██████████ ██████████)
17. As of ██████████ 2014, the CS had an expense of \$44.95 per month for his MedicAlert device. (Ex. A)
18. As of ██████████ 2014, the CS had an expense of \$24.67 per month for yard maintenance (\$37.00 per month times 8 months, divided by 12 months). (Ex. A, Appellant testimony)
19. As of ██████████ 2014, the CS had a mortgage expense of \$71.00 per month. (Ex. A, Appellant testimony)
20. As of ██████████ 2014, the CS had a Homeowners Insurance expense of \$27.50 per month. (Ex. A, Appellant testimony)
21. As of ██████████ 2014, the CS had a property tax expense of \$308.00 per month. (Ex. A, Appellant testimony)
22. As of ██████████ 2014, the CS had condominium fee expense of \$221.00 per month. (Ex. A, Appellant testimony)
23. As of ██████████ 2014, the CS had a medical insurance expense of \$192.80 per month. (Ex. C, Appellant testimony)

24. As of [REDACTED] 2014, the CS had monthly income of \$1,681.00 from Social Security. (Ex. C, Appellant testimony)
25. As of [REDACTED] 2014, the CS had monthly income of \$342.34 from U.K. pension. (Ex. C, Appellant testimony)
26. As of [REDACTED] 2014, the CS had monthly income of \$35.11 from Canadian pension. (Ex. C, Appellant testimony)
27. As of [REDACTED] 2014, the IS had monthly income of \$840.50 from Social Security. (Ex. C, Appellant testimony)
28. As of [REDACTED] 2014, the IS had monthly income of \$461.20 from U.K. pension (Ex. C, Appellant testimony)
29. As of [REDACTED] 2014, the IS had a medical insurance expense of \$192.80 per month. (Ex. C, Appellant testimony)
30. As of [REDACTED] 2015, the average 12 month Certificate of Deposit 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)
31. As of [REDACTED] 2014, two of the Appellant's and the CS's assets produced income at a higher rate than the rate that would be generated by a 12 month certificate of deposit; the Wells Fargo IRA produced \$60.17 monthly (\$722.00 annual return, divided by 12 months) and the AXA IRA produced \$297.28 monthly (\$3,567.39 annual IRS minimum required distribution, divided by twelve months). (Ex. 6: Wells Fargo Snapshot Statement, Ex. 5: Axa Quarterly Account Review Statement, Appellant testimony)

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 September 30, 1989, and the other spouse becomes a community spouse.
4. Effective [REDACTED] 2014, the Appellant and her husband are MCCA Spouses as defined by the Medicaid program; the Appellant is an Institutionalized Spouse (IS) and her husband is a Community Spouse (CS).
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 § 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).
- 7. UPM § 4025.67(D)(3) 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 of:
 - i. The spousal share calculated in the assessment of spousal assets (Cross Reference 1507.05); or
 - ii. 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.
- 8. 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 § 5035.30(B)(2)(a),(b) provides that the MMNA is the amount which is equal to the sum of the amount of the community spouse's excess shelter costs as calculated in section 5035.30 B. 3. and 150 percent of the monthly poverty level for a unit of two persons.

UPM § 5035.30(B);(3),(4)(a),(b),(c),(d),(e) provides that the community spouse's shelter 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. The community spouse's shelter costs includes: rental cost or mortgage payments, including principle and interest; real estate taxes; real estate insurance; required maintenance fees charged by condominiums and cooperatives except those amounts for utilities; and the Standard Utility Allowance ("SUA") used in the Supplemental Nutrition Assistance Program for the community spouse.

UPM § 1570.25(D)(3) provides that the hearing official increases the community spouse's MMNA previously determined by the Department if either MCCA spouse establishes that the community spouse has exceptional circumstances resulting in significant financial duress, and the MMNA previously calculated by the Department is not sufficient to meet the community spouse's monthly needs as determined by the hearing official.

UPM § 1570.25(D)(3)(a) provides that exceptional circumstances are those that are severe and unusual and that: (1) prevent the community spouse from taking

care of his or her activities of daily living; or (2) directly threaten the community spouse's ability to remain in the community; or (3) involve the community spouse's providing constant and essential care for his or her disabled child, sibling or other immediate relative (other than institutionalized spouse).

UPM § 1570.25(D)(3)(b) provides that significant financial duress is an expense or set of expenses that: (1) directly arises from the exceptional circumstances described in subparagraph (a) above; and (2) is not already factored into the MMNA; and (3) cannot reasonably be expected to be met by the community spouse's own income and assets.

UPM § 1570.25(D)(3)(c) provides that expenses that are factored into the MMNA, and thus do not generally qualify as causing significant financial duress, include, but are not limited to: (1) shelter costs such as rent or mortgage payments; (2) utility costs; (3) condominium fees; (4) real estate and personal property taxes; (5) real estate, life and medical insurance; (6) expenses for the upkeep of a home such as lawn maintenance, snow removal, replacement of a roof, furnace or appliance; (7) medical expenses reflecting the normal frailties of old age.

UPM § 1570.25(D)(3)(d) provides that in order to increase the MMNA, the Fair Hearing official must find that the community spouse's financial duress is a direct result of the exceptional circumstances that affect him or her.

The CS' medical conditions are severe and unusual and prevent him from taking care of his activities of daily living, and also directly threaten his ability to remain in the community, and they constitute exceptional circumstances.

The MMNA previously calculated by the Department is not sufficient to meet the CS' monthly needs because the CS has financial duress due to expenses arising directly from his exceptional circumstances.

The CS has a total of \$614.97 in monthly expenses which arise directly from his exceptional circumstances and his MMNA must be increased by \$614.97; the expenses are composed of: 1.) \$285.35 for home health services from Golden Horizons; 2.) \$260.00 for housekeeping and homemaker services from Jeany Palifka; 3.) \$44.95 for the MedicAlert device; and 4.) \$24.67 for yard maintenance.

The CS' monthly expense for his medical insurance premium cannot be considered as financial duress because that expense is already factored into the MMNA. [UPM § 1570.25(D)(3)(c)]

While yard maintenance is generally not considered an expense causing financial duress, the expense was allowed in this case because the CS

resides in a condominium unit and is required by his association to perform certain maintenance duties surrounding his own unit as a condition of living there. The CS is unable to perform even the most minimal amount of maintenance himself, thus his failure to perform the mandatory maintenance would threaten his ability to remain in the community as it could result in his eviction.

Effective [REDACTED] 2014, the CS's MMNA is \$3,342.84 as shown in the calculation below:

Mortgage	\$71.00
Property Tax	\$308.00
Homeowners Insurance	\$27.50
Condominium Fee	\$221.00
Standard Utility Allowance	+ \$724.00
Total Shelter Costs	= \$1,351.50
30% of 150% of FPL for 2	-\$589.88
Excess Shelter Costs	= \$761.62
150% FPL for 2	+ \$1,966.25
Unadjusted MMNA	= \$2,727.87
Plus Financial Duress expenses	+ \$614.97
Equals HO adjusted MMNA	= \$3,342.84

Effective [REDACTED] 2014, the deficit between the CS's income and his MMNA is \$1,284.39 as shown in the calculation below:

MMNA	\$3,342.84
CS's income	- \$2,058.45
Equals Deficit	= \$1,284.39

- 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 § 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.

As of [REDACTED] 2014, the IS had \$1,048.90 in income that could be diverted to the CS to meet his monthly needs (\$840.50 Social Security, plus \$461.20 U.K. pension, minus \$60.00 personal needs allowance, minus \$192.80 health insurance premium)

After diverting all available income from the IS, the CS still is still short of his MMNA by a monthly deficit of \$235.49 (\$1,284.39 original deficit, minus \$1,048.90 diverted from spouse, equals \$235.49).

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.

UPM § 5050.09 A. provides that payments received by the assistance unit from annuity plans, pensions and trusts are considered unearned income.

UPM § 5050.09 B. provides that when the payments are received less frequently than monthly, each payment is averaged forward over the number of months for which it was intended to obtain an amount of gross monthly income.

The annual minimum required distribution from the AXA IRA must be counted as unearned income. The \$3,567.39 yearly distribution, averaged over 12 months, produces income of \$297.28 per month.

The income produced by the highest yielding asset, the AXA IRA, exceeds the amount needed to raise the CS' monthly income to the MMNA (\$297.28 exceeds \$235.49)

The CS requires 79.22% of the income generated by the AXA IRA to raise his income to the MMNA (\$235.48 is 79.22% of \$297.28)

The CS must retain an additional \$36,858.06 from the AXA IRA to generate the income necessary to raise his income to the MMNA (79.22% of the \$46,526.20 value of the AXA IRA equals \$36,858.06)

Effective [REDACTED] 2014, the CS' CSPA is adjusted to \$99,858.89 (\$62,952.83 original CSPA, plus \$36,858.06 additional assets required to be protected)

UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.

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)

The Department must reconsider the Appellant's application for Long Term Medicaid effective [REDACTED] 2014, deeming assets to the IS only to the extent that they exceed the CS' CSPA of \$99,858.89 as adjusted by the Hearing Official.

DISCUSSION

The spousal assets could not be protected in their entirety as only a portion of the assets was required to be protected to raise the CS' income to the (newly adjusted) MMNA.

The Appellant provided documentation of the investment performance of the underlying assets held in the AXA IRA, however the annual IRS minimum required distribution from the AXA IRA must be treated as the income that is actually being generated by the asset.

DECISION

The Appellant's appeal is **GRANTED IN PART AND DENIED IN PART.**

ORDER

1. The Department shall increase the MMNA for the CS to \$3,342.84, and the CSPA to \$99,810.89.
2. The Department shall reopen the Appellant's application for Medicaid effective [REDACTED] 2014 and determine eligibility for the Appellant considering only those assets that exceed the CSPA of \$99,810.89.

3. The Department shall submit proof of compliance with this order to the undersigned no later than [REDACTED] 2015.


James Hinckley
Hearing Officer

cc: Tyler Nardine, SSOM, Middletown
[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.