

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT06105

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

Client ID # ██████████
Request # 688905

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████ ██████████ (the "Appellant") a notice of denial of Medicaid for Long Term Care for her husband, ██████████ (the "Applicant").

On ██████████ 2015, the Appellant requested an administrative hearing to contest the Department's determination.

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

On ██████████ 2015, the Appellant requested a continuance of the hearing.

On ██████████ 2015, OLCRAH issued a notice rescheduling 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:

██████████ Attorney for the Appellant
██████████, Appellant, the Community Spouse
Trish Gethers, Eligibility Services Specialist, Department's Representative

Adessa Williams, CCT, Department's Representative
Maureen Foley-Roy, Hearing Officer

STATEMENTS OF THE ISSUE

The first issue is whether, [REDACTED], (the "Community Spouse") needs additional assets protected to produce additional income to 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. On [REDACTED] 2012, (the date of institutionalization ["DOI"]) the Applicant was institutionalized at a long term care facility and has been continuously since that date. (Appellant's testimony)
2. The Applicant is married to, [REDACTED], the Appellant/Community Spouse. (Hearing Record)
3. On [REDACTED] 2012, the DOI, the Applicant and his spouse had a total of \$76.20 in countable assets, in addition to their home, their primary residence. (Exhibits 2 and 3: Notification of Results and Appellant's testimony)
4. The Applicant had Long Term Care Insurance, which paid for his stay at the facility through [REDACTED] of 2015. (Appellant's testimony)
5. The Applicant's Long Term Care insurance policies were not qualified under the Connecticut Partnership for Long Term Care. (Appellant's exhibit J: Appellant's counsel memo of [REDACTED] 2015)
6. The Appellant/Community Spouse is 62 years old and has no income other than the interest income from her assets. (Appellant's testimony)
7. On [REDACTED] 2012, the Appellant/Community Spouse sold her home for \$540,000. (Exhibit 10: Statement of Sale)
8. After selling the home, the Appellant/Community Spouse purchased a condominium for which she pays \$396 per month in payments and fees, along with annual property taxes of \$4111.42 (\$367.62 per month) and \$23 per month in homeowner's insurance. (Exhibit 9: Appellant's shelter expenses)
9. The Appellant/Community Spouse put the remaining funds in a Charles Schwab account. (Appellant's testimony)

10. On [REDACTED] 2015, the Department received an application for Medicaid for Long term Care for the Applicant. (Exhibit 4: Notice of Denial)
11. As of [REDACTED] 2015, the couple's combined assets equaled \$84,554.11, which included the Charles Schwab account and a PUB account ending in # [REDACTED]. (Exhibit 7: Spousal Assessment Worksheet)
12. On [REDACTED] 2015, the Department completed the spousal assessment and notified the Appellant/Community Spouse that the amount of assets that the Appellant/Community Spouse could retain without affecting the Applicant's eligibility was \$23,844.00. (Exhibits 2 and 3)
13. As of the hearing date, [REDACTED] 2015, the average rate of return generated by a 12-month Certificate of Deposit in the State of Connecticut was .13%. (Hearing Officer Exhibit: [REDACTED] 2015 BankRate.com printout)
14. The Appellant/Community Spouse realized an average of \$101.36 per month in interest income, for the period from January through [REDACTED] of 2015, from the Charles Schwab account. (Appellant's Exhibit H: Interest Income Statement)
15. The interest earned from the investment account exceeds the Bankrate.com interest of .13%. of \$88.56 at the highest value per month (\$81,751.93, [REDACTED] value x .013/12=\$88.56 per month) (See Facts # 17 & 18)
16. On [REDACTED] 2015, the Department denied the Applicant's application for Medicaid for Long Term Care because the amount of his countable assets exceeded the allowable limit. (Exhibit J: Notice issued [REDACTED] 2014)

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") § 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 [REDACTED] 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 § 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.
4. The Department correctly determined that the Applicant's initial period of institutionalization began on [REDACTED] 2012.
5. UPM § 4022.05(B)(2) provides that every [REDACTED] 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.
6. 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.
7. The Department correctly determined that the CSPA was \$23,844.00.
8. UPM § 5035.25B provides that the following monthly deductions are allowed from the income of assistance units in Long Term Care Facilities:
1. a personal needs allowance of \$50.00, which, effective July 1, 1999 and annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration;
 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 Department or any other third party;
 5. Costs for medical treatment approved by a physician which are incurred subsequent to the effective date of eligibility and which are not covered by Medicaid
 6. Expenses for services provided by a licensed medical provider in the six month period immediately preceding the first month of eligibility providing that the following conditions are met:
 - a. The expense are not for LTCF services, services provided a medical institution equivalent to those provided in a long term care facility, or home and community based services when any of these services were incurred during a penalty period resulting from an improper transfer of assets; and

- b. The recipient is currently liable for the expense; and
- c. The services are not covered by Medicaid in a prior period of eligibility.

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 Appellant/Community Spouse’s MMNA was \$2,886.99 as shown in the table below:

Shelter Costs	AMOUNT
Taxes	\$367.62
Condo Fees	\$396.00

Homeowner's Insurance	\$23.00
Standard Utility Allowance	<u>+\$724.00</u>
Total shelter costs:	\$ 1510.62
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$589.88</u>
Excess shelter costs:	\$920.74
Plus 150% of the FPL for two:	<u>+\$1,966.25</u>
Equals the MMNA (MMNA max. \$2,931.00)	\$2,886.99

11. Effective [REDACTED] 2015, the deficit between the Appellant/Community Spouse's income and her MMNA was \$2,785.63, as shown in the table below:

COMMUNITY SPOUSE DEFICIT	
Social Security	\$0.00
Interest Income	<u>\$101.36</u>
Total Income	\$101.36
MMNA	\$2,886.99
Less Total Income	<u>-\$101.36</u>
Monthly Deficit	\$2,785.63

12. As of [REDACTED] 2015, the Applicant has \$1921.00 per month in available income (\$1981.00, SSA - \$60.00, Personal Needs Allowance).
13. Effective [REDACTED] 2015, after a diversion of the Applicant's income of \$1921.00, the Appellant/Community Spouse still has a monthly income deficit of \$864.63 (\$2785.63 - \$1921.00).
14. Effective [REDACTED] 2015, the remaining assets of \$60,701.11 (\$84,554.11 - \$23,844.00 CSPA) would need to generate monthly income at an interest rate in excess of 17% to meet the Appellant/Community Spouse's monthly deficit of \$864.63.
15. Since the additional interest income from the remaining assets is still insufficient to meet the Appellant/Community Spouse's MMNA, effective [REDACTED] 2015, the CSPA is increased to \$84,554.11.

16. After the diversion of additional assets of \$84,554.11, effective [REDACTED] 2015, for the benefit of the Appellant/Community Spouse, the value of the Applicant's countable assets is \$0.00.
17. UPM § 4005.10(A)(2)(a) provides the asset limit for Medicaid for a needs group of one is \$1,600.00.
18. Effective [REDACTED] 2015, the value of the Applicant's assets does not exceed the Medicaid asset limit of \$1,600.00.

DISCUSSION

The Department acted correctly in its determination of the CSPA. However, the regulations of the Department allow the hearing officer to protect additional assets from the Applicant/Institutionalized Spouse to meet the needs of the Appellant/Community Spouse.

DECISION

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

ORDER

1. The Department will re-open the Applicant's application dated [REDACTED] 2015 and continue the eligibility process.
2. Effective [REDACTED] 2015, the CSPA is increased to \$84,554.11.
3. No later than [REDACTED] 2015, the Department will submit to the undersigned verification of compliance with this order.

Maureen Foley-Roy

Maureen Foley-Roy,
Hearing Officer

C: Poonam Sharma, Fred Presnick, Social Service Operations Managers, DSS R.O.#30, Bridgeport
Yecenia Acosta, Cheryl Stuart, Social Service Program Managers, DSS R. O. #30 Bridgeport
Trish Gethers, ESS, Bridgeport

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.