

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 # 690780

NOTICE OF DECISION

PARTIES

██████████ (Deceased)
██████████
██████████

██████████
██████████
██████████

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 Medicaid assistance.

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

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

On ██████████ 2015, OLCRAH issued a notice rescheduling the Appellant's hearing to ██████████ 2015.

On ██████████ 2015, in accordance with Connecticut General Statutes § 17b-60, 17b-61 and § 4-176e to § 4-189, inclusive, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

██████████, Appellant's Husband/Community Spouse
██████████, Appellant's Son/Power of Attorney
Connie Estanislau, Department's Representative
Pamela J. Gonzalez, Hearing Officer

The hearing record was held open to allow for the submission of additional items of verification. The record closed on [REDACTED] 2015.

STATEMENT OF THE ISSUES

The first issue is whether to protect additional assets for the Community Spouse, to produce income with which he may meet his 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] 2014. (Long-term Care Waiver Application – Department’s exhibit 1)
2. The Appellant’s spouse resides in the community. (Appellant’s Community Spouse’s testimony)
3. On [REDACTED] 2014, the Appellant’s Community Spouse purchased an annuity valued at \$91,342.12. (Annuity Contract – Department’s exhibit 10)
4. On [REDACTED] 2014, the Appellant applied for Medicaid long term care benefits. (Notice dated [REDACTED] 2015 – Department’s exhibit 8)
5. The combined total of the Appellant and Community Spouse’s non-exempt assets was \$127,309.59 as of the DOI. (Spousal Assessment Worksheet – Department’s exhibit 9, Stipulation)
6. The spousal share of the assets was \$63,654.80 as of DOI (½ of the couple’s combined non-exempt assets). (Department’s exhibit 9)
7. The Community Spouse Protected Amount (CSPA) was \$63,654.80 as of DOI. (Department’s exhibit 9)
8. Based upon its assessment of spousal assets, the Department found that the Appellant and her community spouse could retain assets in the combined amount of \$65,254.80 without hindering Medicaid long-term care eligibility. [\$63,654.80 CSPA + \$1,600.00 Appellant’s allowable limit] (Department’s exhibit 9)
9. As of the date of application, the Appellant and her community spouse held combined assets in the amount of \$137,772.07. (Department’s exhibit 9)

10. On [REDACTED] 2015, the Appellant passed away. (Eligibility Management System NARR screen print – Department’s exhibit 7)
11. On [REDACTED] 2015, the Department denied the Appellant’s application due to assets in excess of the allowable limit. (Department’s exhibit 8)
12. The Community Spouse is obligated to pay a monthly mortgage in the amount of \$651.52. (Chase Mortgage Loan Statement – Appellant’s exhibit G)
13. The Community Spouse is obligated to pay homeowners insurance in the monthly amount of \$140.41. (Travelers Homeowners Account Bill – Appellant’s exhibit E)
14. The average rate of return on a 12 month certificate of deposit for Hartford, Connecticut was .18% on [REDACTED]/15, the day of this hearing. (Bankrate.com screen print – Hearing record)
15. As of the date of application, the Community Spouse’s non-exempt assets of \$63,654.80 earned \$9.54 per month based on the average interest rate for Hartford, CT on a twelve month CD as found on www.bankrate.com. ($\$63,654.80 \times .18\% \div 12$ months, Department’s exhibit 9, www.bankrate.com)
16. As of the date of application, the Community Spouse had monthly gross unearned income of \$1,334.50 from the Social Security Administration, \$578.00 from a pension from the [REDACTED], and \$9.54 interest from his share of assets of \$63,654.80. His unearned income totaled \$1,922.04. (Social Security Award Letter – Appellant’s exhibit I, Copy of [REDACTED]’ Pension check – Department’s exhibit 16, Facts #14, 15)
17. As of the date of application, the Appellant had monthly gross unearned income of \$1,079.00 from the Social Security Administration, a pension of \$445.66 from [REDACTED] and interest of \$11.11 from her share of assets of \$74,117.27. Her unearned income totaled \$1,535.77. (W-1-LTC Long-term Care Waiver Application – Department’s exhibit 1, Copy of [REDACTED] Pension check – Department’s exhibit 17, Facts #13, 14)
18. Effective [REDACTED] 2014 the Appellant’s Community Spouse’s annuity payment of \$1,526.34 commences. His monthly gross unearned income totals \$3,448.38. (Social Security Award Letter – Appellant’s exhibit I, Copy of [REDACTED] Pension check – Department’s exhibit 16, Department’s exhibit 10, Facts #13, 14)

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 \$127,309.59, the CSPA totals \$63,654.80.

4. As of ██████████ 2015, the average Certificate of Deposit bank rate for Hartford, Connecticut was .18%.

5. Effective the date of application ██████████ 2014, the Community Spouse's assets of \$63,654.80 generate monthly interest income of \$9.54, based on the average rate of return on a 12 month CD in Hartford of .18%.

6. Effective ██████████ 2014, the Community Spouse has gross monthly unearned Income, including interest income in the amount of \$1,922.04.

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] 2014, the Community Spouse's adjusted MMNA was \$2,892.30, as show in the table below.

	AMOUNT
Mortgage	\$651.52
Homeowners insurance	\$140.41
Standard Utility Allowance	+\$724.00
Total shelter costs:	\$1515.93
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$589.88</u>
Excess shelter costs:	\$926.05
Plus 150% of the FPL for two:	<u>+\$1,966.25</u>
Equals the MMNA	\$2,892.30 limited to \$2,931.00

10. As of [REDACTED] 2014, based on a CSPA of \$63,654.80, the Community Spouse had insufficient income with which to meet his MMNA of \$2,892.30 as shown in the table below.

COMMUNITY SPOUSE INCOME	
Social Security	\$1,334.50
Pension	\$578.00
Interest	\$9.54
Total Income	\$1,922.04
MMNA	\$2,892.30

11. The Appellant's Community Spouse is entitled to a CSA of \$970.26 as his income is less than his MMNA.
12. The need to protect additional assets for the Appellant's Community Spouse has not been established as his own income, when combined with the CSA, enables him to meet his needs in the community; his MMNA.
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. Effective [REDACTED] 2014, the Appellant's assets of \$74,117.27 exceed the Medicaid asset limit of \$1,600.00.
15. Effective [REDACTED] 2014, the Appellant is ineligible for Medicaid long-term care Assistance.
16. On [REDACTED] 2015, the Department correctly denied the Appellant's application for Long-term Care Medicaid.

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.

Regulations prescribe that in each instance, before protecting additional assets, a diversion of income is allowed.

In this case, the Community Spouse has demonstrated a need for additional income in the application month in order to meet his MMNA. Because the Appellant has sufficient income to divert to her spouse and the amount diverted enables him to meet his MMNA, the need to protect additional assets does not exist.

Because the Appellant's assets exceed the Medicaid program asset limit, she is ineligible for long-term care Medicaid.

I note that in [REDACTED] 2014, the month following the month of application, the Community Spouse begins to receive monthly income from his annuity in the amount of \$1,526.34. This income raises his total monthly income to an amount sufficient to meet his MMNA without a CSA from the Appellant.

DECISION

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

Pamela J. Gonzalez

Pamela J. Gonzalez
Hearing Officer

Copy: Musa Mohamud, Operations Manager, R.O. #10, Hartford

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.

