

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

[REDACTED], 2015
Signature Confirmation

Client ID # [REDACTED]
Request # 695592

NOTICE OF DECISION

PARTIES

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED], 2015, the Department of Social Services (the “Department”) sent, [REDACTED] (the “Appellant”) a Notice of Action (“NOA”) denying her application for long term care Medicaid assistance.

On [REDACTED] 2015, the Appellant requested an administrative hearing to contest the Department’s decision to deny her Medicaid application.

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

On [REDACTED], 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:

[REDACTED], Appellant’s Husband/Community Spouse
Attorney [REDACTED], Appellant and her Husband’s Legal Representative
Carleen Mason, Department’s Representative
Amy Kreidel, 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 divert income from the Appellant to her Community Spouse in attempt to raise the Community Spouse's income so that he might meet his Minimum Monthly Needs Allowance ("MMNA").

The second issue is whether to protect additional assets for the Community Spouse (increase the Community Spouse's Protected Amount of Assets ("CSPA"), so as to increase the interest income with which he may meet his MMNA.

The third 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] 2015. (Long-term Care Waiver Application – Department's exhibit 1)
2. On [REDACTED] 2015, the Appellant applied for Medicaid Long Term Care ("LTC") benefits. (Notice dated [REDACTED], 2015 – Department's exhibit 13)
3. The Appellant seeks Medicaid LTC assistance effective [REDACTED] 2015. (River Glen Health Care Center Statement – Department's exhibit 10, Hearing record)
4. The Appellant's spouse resides in the community. (Appellant's community spouse's testimony)
5. The combined total of the Appellant and Community Spouse's non-exempt assets was \$457,378.19 as of the DOI. (Spousal Assessment Worksheet – Department's exhibit 3, Stipulation)
6. The spousal share of the assets was \$228,689.09 as of DOI (½ of the couple's combined non-exempt assets). (Assessment of Spousal Assets Notification of Results W-1-SAN Form dated [REDACTED], 2015 - Department's exhibit 2)
7. The Community Spouse Protected Amount (CSPA) was set at the maximum amount allowed of \$119,220.00. (Department's exhibit 2)
8. As [REDACTED] 2015, the Appellant and her community spouse held combined assets in

the amount of \$452,198.15. (Income Yield Spreadsheet and supporting documentation for [REDACTED]/15 – Appellant's exhibit G)

9. The average rate of return on a 12 month certificate of deposit for [REDACTED], Connecticut was .38% on [REDACTED]/15, the day of this hearing. (Bankrate.com screen print – Hearing record)
10. As of [REDACTED] 2015, the combined total of the Appellant and Community Spouse's non-exempt assets earned interest income of \$40.37 per month when computed using the actual interest yield. (Appellant's exhibit G)
11. As of [REDACTED] 2015, the combined total of the Appellant and Community Spouse's non-exempt assets earned \$157.55 when computed using both the average rate of return per bankrate.com and the actual rate of return, whichever was higher. (Appellant's exhibit G, www.bankrate.com)
12. 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 \$120,820.00 without hindering Medicaid long-term care eligibility. [\$119,220.00 maximum CSPA + \$1,600.00 Appellant's allowable limit] (Department's exhibit 2)
13. On [REDACTED], 2015, the Department denied the Appellant's application due to assets in excess of the allowable limit. (Department's exhibit 13)
14. The Community Spouse is obligated to pay monthly rent in the amount of \$1,450.00. (Residential Lease made on [REDACTED], 2014 – Appellant's exhibit C)
15. As of [REDACTED] 2015, the Community Spouse had monthly gross unearned income of \$1,730.90 from the Social Security Administration (SSA), and \$133.17 from the Veteran's Administration. (TD Bank Checking Account Statement, Social Security Administration Award Letter, Department of Veteran's Affairs Award Letter – Appellant's exhibit D)
16. As of the date of application, the Appellant had monthly gross unearned income of \$832.90 from the Social Security Administration (SSA). (Appellant's exhibit D)

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)(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.

3. Based on the assets held as of DOI of \$457,378.19, the Department correctly set the CSPA at the maximum amount of \$119,220.00.
4. Effective the date of application, [REDACTED] 2015, the Community Spouse's assets of \$119,220.00 (CSPA) would generate monthly interest income of \$37.75, based on the average rate of return on a 12 month CD in [REDACTED] of .38%.
5. Effective [REDACTED] 2015, the Community Spouse has gross monthly unearned income of \$1,901.82. (Social Security income of \$1,730.90 plus VA income of \$133.17 plus \$37.75 interest income on CSPA computed using the average rate of return per bankrate.com).
6. UPM § 5035.30 provides for the calculation of the Community Spouse Allowance ("CSA") and Minimum Monthly Needs Allowance ("MMNA") and states in part:

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.

7. Effective [REDACTED] 2015, the Community Spouse's adjusted MMNA was set at the maximum amount of \$2,980.50, as show in the table below.

	AMOUNT
Rent	\$1,450.00
Standard UtilityAllowance	\$724.00
Total shelter costs:	\$2,174.00
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$589.88</u>
Excess shelter costs:	\$1,584.12
Plus 150% of the FPL for two:	<u>+\$1,966.25</u>
Equals the MMNA	\$3,550.37 limited to \$2,980.50

8. As of [REDACTED] 2015, based on a CSPA of \$119,220.00, the difference between the Community Spouse's income and his MMNA was \$1,078.68 as shown in the table below:

COMMUNITY SPOUSE DEFICIT	
Social Security	\$1,730.90
Veteran's Benefit	<u>\$133.17</u>
Interest Income	<u>+\$37.75</u>
Total Income	\$1,901.82
MMNA	\$2,980.50
Less Total Income	<u>-\$1,901.82</u>
Monthly Deficit	\$1,078.68

9. 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.

C. Deductions For CBS Units

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 5035.30)
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 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.

10. After allowing a deduction for the cost of her personal needs the Appellant has \$772.90 available to be diverted to the Community Spouse to help meet his MMNA. (\$832.90 - \$60.00)

11. Effective [REDACTED] 2015, \$772.90 shall be diverted from the Appellant to her

Community Spouse to help him meet his MMNA.

12. After a diversion of the Appellant's income of \$772.90 to the Community Spouse, the Community Spouse still has a monthly income deficit of \$305.78. (\$2,980.50 – \$1,901.82 - \$772.90).
13. Effective [REDACTED] 2015, the remaining assets of \$332,978.15 generate interest income of \$105.44, based on the average interest rate of .38%.
14. Effective [REDACTED] 2015, the Community Spouse's CSPA is increased to \$452,198.15.
15. Effective [REDACTED] 2015, the Appellant has zero assets.
16. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.
17. Effective [REDACTED] 2015, the Appellant's assets do not exceed the Medicaid asset limit of \$1,600.00.
18. Effective [REDACTED] 2015, the Appellant is eligible for Medicaid long-term care assistance, provided that all other eligibility factors are met.

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.

In this case, the community spouse has demonstrated a need for additional income and assets in order to meet his needs in the community, his MMNA. Accordingly, a portion of the Appellant's income shall be diverted to her community spouse and the CSPA shall be increased to provide additional needed income (interest).

For the purpose of determining the interest income generated by the CSPA, I used the average 12 month CD rate of return for [REDACTED], CT. I do note that three of this couple's assets generate interest at a higher rate of return but even when the higher rates of return are factored in, the result is the same: the Community Spouse faces a deficit and requires the protection of all of the assets for the income they produce.

In determining the amount of the CSA, I note that the Department references health insurance premium costs. I did not factor in the Medicare premiums and United Healthcare premium but to do so would yield the same result: the Community Spouse

would require the protection of all of the assets after the diversion of his spouse's income. The Department shall afford the Appellant all of the deductions to which she may be entitled before diverting income to her spouse.

DECISION

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

ORDER

1. The Department shall reopen the Appellant's [REDACTED] 2015 application for Medicaid and process determining eligibility in accordance with this decision.
2. Effective [REDACTED] 2015, the CSPA is increased to \$452,198.15.
3. Verification of compliance with this order is due by [REDACTED] 2015.



Pamela J. Gonzalez
Hearing Officer

Copy: Judy Williams, SSOM, DSS R.O. # 60, Waterbury
Karen Main, SSOM, DSS R.O. #60, Waterbury
Carleen Mason, ESW, DSS R.O. #60, Waterbury
Amy Kreidel, Hearing Liason, DSS R.O. #60, Waterbury
Attorney [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 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.

