

**STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT06105-3725**

[REDACTED] 2015
Signature Confirmation

REQUEST #698718

CLIENT ID # [REDACTED]

NOTICE OF DECISION

PARTIES

[REDACTED]
C/O Atty. [REDACTED]
[REDACTED]
[REDACTED]

-

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

PROCEDURAL BACKGROUND

On [REDACTED], 2015, the Department of Social Services (the "Department" or "DSS") sent [REDACTED] (the "Appellant" and "Institutionalized Spouse") a Notice of Denial stating that her application for medical assistance had been denied for the period of [REDACTED] 2015 through [REDACTED] 2015, because the value of her countable assets exceeded the allowable asset limit for the Medicaid program.

On [REDACTED], 2015, the Appellant's representative, **Attorney [REDACTED]**, requested an administrative hearing on behalf of the Appellant and Community Spouse to contest the denial of Medicaid and to seek an increase in the Community Spouse Protected Amount ("CSPA") as determined by the Department.

On [REDACTED], 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice of Administrative Hearing scheduling a hearing for [REDACTED] 2015 @ 9:00 AM.

On [REDACTED], 2015, in accordance with Connecticut General Statutes § 17b-60, § 17b-61 and § 4-176e to § 4-184, inclusive, OLCRAH held an administrative hearing to address the denial of Medicaid and the CSPA as determined by the Department.

The hearing was closed on [REDACTED], 2015.

The following individuals were present at the hearing:

Attorney [REDACTED], Representative for the Appellant and Community Spouse
Lucy Ramos, Representative for the Department
Hernold C. Linton, Hearing Officer

STATEMENTS OF THE ISSUES

1. The first issue to be decided is whether the Community Spouse needs additional assets protected, from the Appellant's share of the assets, to produce additional income to meet the Community Spouse's Minimum Monthly Needs Allowance ("MMNA").
2. The second issue to be decided is whether the Appellant's assets exceeded the Medicaid asset limit.

FINDINGS OF FACT

1. On [REDACTED] 2015, the Appellant became a resident of a long-term care facility ("LTCF"). (Hearing Summary)
2. The Appellant has a spouse residing in the community. (Hearing Summary; Dept.'s Exhibit #2: W-1-SA)
3. On [REDACTED] 2015, the Department received the Appellant's application for Medicaid coverage to pay for her long-term care ("LTC"). (Hearing Summary; Dept.'s Exhibit #1: W-1LTC)
4. The Department determined that the combined total of the Appellant and Community Spouse's non-exempt assets was \$37,844.11 as of the date of institutionalization ("D.O.I."). (Hearing Summary; Dept.'s Exhibit #2)
5. The Appellant and Community Spouse had a Prudential Life insurance policy with a cash value of \$6,211.93 as of [REDACTED] 2015. (Appellant's Exhibit A: [REDACTED]/15 Letter from Prudential)
6. The revised combined total of the Appellant and Community Spouse's non-exempt assets was \$44,056.04 as of the D.O.I. (Hearing Summary; Dept.'s Exhibit #2)
7. The Community Spouse's spousal share of the non-exempt assets ("CSPA") is \$23,844.00 (Minimum CSPA) as of the D.O.I. (Hearing Summary; Dept.'s Exhibit #2)
8. The Appellant's share of the non-exempt assets is \$1,600.00 as of the D.O.I. (Hearing Summary; Dept.'s Exhibit #2)
9. The total maximum combined non-exempt assets allowed as of D.O.I. is \$25,444.00 (\$23,844.00, CSPA; plus \$1,600.00, Appellant's portion). (See Facts # 1 to 8)
10. The couple needs to reduce their total combined non-exempt assets to less than \$25,444.00 in order for the Appellant to qualify for Medicaid. (See Facts #1 to 9)
11. The combined total of the Appellant and Community Spouse's non-exempt assets was \$32,010.74 as of [REDACTED] 2015. (Hearing Summary; Dept.'s Exhibit #2)

12. The combined total of the Appellant and Community Spouse's non-exempt assets was \$35,717.90 as of [REDACTED] 2015. (Hearing Summary; Dept.'s Exhibit #2)
13. On [REDACTED] 2015, the Department denied the Appellant's request for medical assistance under the Medicaid program, claiming that the value of her countable assets exceeded the allowable asset limit for the program. (Hearing Summary)
14. The Community Spouse is seeking an increase in the CSPA. (Appellant Representative's Testimony)
15. The Appellant is seeking an effective date for Medicaid eligibility of [REDACTED], 2015. (Appellant Representative's Testimony)
16. The combined total of the Appellant and Community Spouse's non-exempt assets was \$44,056.04 as of [REDACTED] 2015. (Hearing Summary)
17. The average rate of return on a 12-month Certificate of Deposit ("CD") is 0.18%. (BankRate.com)
18. The Community Spouse's mortgage payment is \$539.53 per month, which includes taxes and insurance. (Dept.'s Exhibit #10: Community Spouse Allowance Calculation)
19. The Community Spouse is eligible for the Standard Utility Allowance ("SUA") of \$724.00 per month. (Dept.'s Exhibit #10)
20. The Department determined the Community Spouse's MMNA as \$2,657.41, effective [REDACTED] 2015. However, the calculated MMNA is actually \$2,639.90. (Dept.'s Exhibit #10)
21. Effective [REDACTED], 2015, the maximum MMNA allowed was \$2,980.50. (Dept.'s Exhibit #10)
22. The Department determined that the Community Spouse as eligible for a Community Spouse Allowance ("CSA") of \$1,015.31 per month, effective [REDACTED] 2015 to meet his needs. However, the calculated CSA is actually \$997.80 (Hearing Summary; Dept.'s Exhibit #10)
23. Effective [REDACTED] 2015, the Community Spouse received \$1,328.00 in monthly gross Social Security ("SSA") benefits. (Dept.'s Exhibit #10)
24. Effective [REDACTED] 2015, the Community Spouse received \$314.10 in monthly gross pension income. (Dept.'s Exhibit #10)
25. Effective [REDACTED] 2015, the Appellant received \$975.00 in monthly gross Social Security ("SSA") benefits. (Dept.'s Exhibit #1)
26. Effective [REDACTED] 2015, the Appellant received \$221.94 in monthly gross pension income. (Dept.'s Exhibit #1)

27. Effective [REDACTED], 2015, the Appellant had post eligibility deductions of \$1,267.93 (\$60.00, PNA; plus \$997.80, CSA, and \$210.13, other medical insurance premiums). (See Facts # 1 to 26; Dept.'s Exhibit #1)
28. The Appellant had applied income of -\$70.99, effective [REDACTED] 2015. (See Facts # 1 to 27)
29. The Appellant passed away on [REDACTED], 2015. (Hearing Summary)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
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. 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 1570); or
 - (d) the amount established pursuant to a court order for the purpose of

providing necessary spousal support.

4. The calculated the CSPA is \$23,844.00, in accordance with the UPM.
5. The monthly interests that would be earned on the couple's total combined non-exempt assets (\$44,056.04) using the average rate of return (0.18%) on a 1 year CD is \$6.61.
6. Effective [REDACTED] 2015, the Community Spouse had total monthly gross income of \$1,642.10 (\$1,328.00, SSA; plus \$314.10, pension income).
7. UPM § 5035.30(B) provides for the calculation of the Community Spouse Allowance ("CSA") and 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.
8. Effective [REDACTED], 2015, the Community Spouse had shelter costs of \$1,263.53 per month (\$539.53, mortgage, which includes taxes & insurance; plus \$724.00, Standard Utility Allowance).
9. Effective [REDACTED], 2015, the Community Spouse had excess monthly shelter costs of \$673.65, (\$1,263.53, shelter costs; minus \$589.88, 30% of \$1,966.25, 150% of the Federal Poverty Level for two persons as of [REDACTED]/15).
10. Effective [REDACTED] 2015, the Community Spouse’s MMNA was \$2,639.90, (\$673.65, excess shelter costs; plus \$1,966.25, 150% of the Federal Poverty Level for 2 persons as of [REDACTED]).
11. Effective [REDACTED] 2015, the maximum MMNA allowed is \$2,980.50.
12. Effective [REDACTED] 2015, the Community Spouse's calculated monthly income deficit or CSA was \$997.80, (\$2,639.90, MMNA; minus \$1,642.10, Community Spouse's income).
13. UPM § 5035.25 provides that for resident 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.
14. UPM § 5035.25(B) provides that the following monthly deductions are allowed from the income of assistance units in LTCF's:
 - a. a personal needs allowance (“PNA”) of \$69.00, which, effective July 1, 2009 and annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration;
 - b. Community Spouse Allowance (CSA), when appropriate; (Cross Reference 5035.30)
 - c. a Community Family Allowance (CFA), when appropriate; (Cross Reference 5035.35)
 - d. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for the Department or any other third party;
15. As of [REDACTED] 2015, the Community Spouse’s total income was insufficient to meet his needs in the community.
16. The Community Spouse is found eligible to receive a diversion of the Institutionalized Spouse’s income of \$997.80 per month, effective [REDACTED] 2015, as his calculated

MMNA exceeded his total income.

17. The Community Spouse is found eligible for a diversion of the Institutionalized Spouse's excess share of the spousal assets (\$18,612.04) to produce additional interest income to meet his calculated MMNA, effective [REDACTED] 2015, as his combined total income, including the diverted income, was insufficient to meet his needs as determined by his calculated MMNA.
18. Effective [REDACTED] 2015, the Appellant had total non-exempt spousal assets of \$1,600.00, as the excess portion of her share of the spousal was diverted to the Community Spouse to meet his needs.
19. UPM § 4005.10(A)(2)(a) provides that the asset limit for the Medicaid program for a needs group of one is \$1,600.00, per month.
20. Effective [REDACTED] 2015, the Appellant's countable assets did not exceed the Medicaid asset limit of \$1,600.00, as her excess share of the spousal assets was diverted to meet the needs of the Community Spouse.
21. The Department incorrectly determined the Appellant as ineligible for medical assistance under the Medicaid program for the months of [REDACTED] 2015 and [REDACTED] 2015, due to excess assets.

DECISION

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

ORDER

1. The Department is directed to reopen the Appellant/Institutionalized Spouse's [REDACTED] [REDACTED] 2015, application for Medicaid coverage, based on the findings of this hearing decision.
2. Effective [REDACTED], 2015, the CSPA is increased to \$42,456.04.
3. No later than thirty (30) days from the date of this hearing decision, the Department will provide to the undersigned proof of the Department's compliance with this order.

Hernold C. Linton

Hernold C. Linton
Hearing Officer

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, CT06105. 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.