

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 # 699654

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 him that his application for Long Term Care Medicaid was denied for the months of ██████████ 2015 through ██████████ 2015, inclusive, because his 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 she claims that her share of the spousal assets must be increased to generate income to meet her minimum monthly needs.

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:

[REDACTED], CS, representing the Appellant
 [REDACTED], Appellant's son and POA
 [REDACTED], Appellant's daughter-in-law
 [REDACTED], Counsel for the Appellant
 [REDACTED] Medicaid Paralegal, [REDACTED]
 Laynette Serrano, Department's Representative
 James Hinckley, Hearing Officer

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

STATEMENT OF THE ISSUE

1. The issue to be decided is whether the CS required an increase to her spousal share of the couple's assets to produce additional income to meet her MMNA.

FINDINGS OF FACT

1. On [REDACTED] [REDACTED] 2015, the Appellant began a continuous period of institutionalization (his "date of institutionalization" or "DOI"). (Record, stipulated)
2. On [REDACTED] 2015, the Appellant applied to the Department for Long Term Care Medicaid. (Summary)
3. On [REDACTED] 2014, the Department notified the Appellant that it determined that the couple's total assets as of the DOI were equal to \$114,975.09, that the Community Spouse Protected Amount (CSPA) for the CS is \$57,487.55 and that the Appellant's Medicaid eligibility may not begin until the total spousal assets are reduced to \$59,087.55 or less (\$1600.00 for the Appellant plus \$57,487.55 for the CS). (Ex. 7: W-1-SAN, Assessment of Spousal Assets Notification of Results)
4. 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
Ameritrade # [REDACTED]	\$22,139.31
T. Rowe # [REDACTED]	\$32,542.62
Consists of:	
New Era fund	\$858.84
New Horizons fund	\$11,000.59

Science and Tech fund	\$8,191.33
Media and Telecom fund	<u>\$12,491.86</u>
	\$32,542.62
Webster # [REDACTED]	\$2,537.59
Webster # [REDACTED]	\$6,836.15
Berkshire # [REDACTED]	\$4,809.15
Vanguard High Yield Corporate fund # [REDACTED]	\$21,847.66
Vanguard Inflation Protected # [REDACTED]	\$19,608.46
VA Life Ins policy # [REDACTED]	\$4,654.15
Total Assets	\$114,975.09

(Ex. 1: Spousal Assessment Worksheet, Appellant's Ex. D – DOI Values)

5. On [REDACTED] 2015, the Department sent the Appellant a NOA denying his application for Medicaid for the months of [REDACTED] 2015 through [REDACTED] 2015, inclusive, because his assets exceeded the Medicaid asset limit in each of the denied months. (Ex. 3: NOA dated [REDACTED] 2015)
6. The CS is seeking Medicaid eligibility for the Appellant beginning [REDACTED] 2015. (Appellant testimony)
7. As of [REDACTED] 2015, the CS had monthly income of \$662.00 from Social Security. (Ex. 2: Community Spouse Allowance Calculation, Ex. C: Applicant and Community Spouse Gross Fixed Income)
8. As of [REDACTED] 2015, the IS had monthly income of \$1,366.00 from Social Security. (Ex. 2, Ex. C)
9. As of [REDACTED] 2015, the CS had a condominium rental expense of \$999.00 per month. (Ex. 2, Ex. B-1: Rental Verification Letter from Housing Management, LLC)
10. As of [REDACTED] 2015, the average 12 month Certificate of Deposit bank rate for Hartford County, CT is 0.49% ($0.76\% + 0.50\% + 0.20\% = 1.46\% / 3 = 0.49\%$). (Ex. D-9: Bankrate.com CD Rates : Hartford, CT)
11. As of [REDACTED] 2015, five of the IS' 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 VA Life Insurance produced \$10.70 per month (\$128.40 annual dividend, divided by 12 months)

The T. Rowe Price New Horizons fund produced \$130.20 per month (\$375.93 annual Required Minimum Distribution (“RMD”), plus \$34.90 short term capital gains, plus \$1,151.57 long term capital gains, equals \$1,562.30, divided by 12 months)

The T. Rowe Price Science and Technology fund produced \$128.45 per month (\$293.06 RMD, plus \$528.87 short term capital gains, plus \$719.41 long term capital gains, equals \$1,541.34, divided by 12 months)

The T. Rowe Price Media and Telecommunications fund produced \$142.12 per month (\$446.30 RMD, plus \$286.16 dividends, plus \$69.75 short term capital gains, plus \$903.19 long term capital gains, equals \$1,705.40, divided by 12 months)

The Vanguard High Yield Corporate fund produced \$83.02 per month (\$21,847.66 fund value, multiplied by 4.56% average rate of return, equals \$996.25, divided by 12 months. Average rate of return of 4.56% based on average of 2013 4.54% rate and 2014 4.58% rate)

(Ex. D: Financial statements, Supplemental Legal Memorandum)

12. The remainder of the \$114,975.09 of the assets owned by the couple as of the DOI which produce less than the average rate of return of a 12 month Certificate of Deposit equals \$56,789.50

Earns more than .49%	
VA Life Ins	\$4,654.15
T. Rowe	
New Horizons fund	\$11,000.59
Science and Tech fund	\$8,191.33
Media and Telecom fund	\$12,491.86
Vanguard High Yield Corporate fund	<u>\$21,847.66</u>
	\$58,185.59
Earns less than .49%	
T. Rowe New Era fund	\$858.84
Vanguard Inflation Protected fund	\$19,608.46
Ameritrade # [REDACTED]	\$22,139.31
Webster # [REDACTED]	\$2,537.59
Webster # [REDACTED]	\$6,836.15

Berkshire # [REDACTED]	\$4,809.15 \$56,789.50
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(Record)

13. The total income produced by the five assets which generate more than the average rate of return of a 12 month Certificate of Deposit equals \$494.49 per month (\$10.70, plus \$130.20, plus \$128.45, plus \$142.12, plus \$83.02). (Record, Fact #11)
14. The total income that could be produced by the \$56,789.50 in remaining assets if they were invested in a 12 month Certificate of Deposit equals \$23.19 per month. (\$56,789.50, multiplied by .0049, equals \$278.27, divided by 12 months)

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 [REDACTED] 1989, and the other spouse becomes a community spouse.
4. Effective [REDACTED] 2015, the Appellant and his wife are MCCA Spouses as defined by the Medicaid program; the Appellant is an Institutionalized Spouse (IS) and his wife 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 [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).
7. UPM § 4025.67(D)(3) provides that every [REDACTED] 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.

Effective [REDACTED] 2015, the CS's MMNA is \$2,980.50 as shown in the calculation below:

Condominium Rental	\$999.00
Standard Utility Allowance	+ \$724.00
Total Shelter Costs	= \$1,723.00
30% of 150% of FPL for 2	-\$589.88
Excess Shelter Costs	= \$1,133.13
150% FPL for 2	+ \$1,966.25
Equals MMNA	= \$2,980.50

Effective [REDACTED] 2015, the deficit between the CS's income and her MMNA is \$2,318.50 as shown in the calculation below:

MMNA	\$2,980.50
CS's income	- \$662.00
Equals Deficit	= \$2,318.50

9. 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] 2015), 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] 2015, the IS had \$1,306.00 in income that could be diverted to the CS to meet her monthly needs (\$1,366.00 Social Security, minus \$60.00 personal needs allowance)

After diverting all available income from the IS, the CS still is still short of her MMNA by a monthly deficit of \$1,012.50 (\$2,318.50 original deficit, minus \$1,306.00 diverted from spouse, equals \$1,012.50).

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.

The income that can be generated by all of the couple’s \$114,975.09 in assets as of the DOI is \$517.68 per month.

The CS requires that the CSPA be raised to include all of the \$114,975.09 in assets owned by the couple as of the DOI, because she requires the entire \$517.68 in income produced by the assets to help raise her income to the level of the MMNA.

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)

Effective [REDACTED] 2015 the CSPA is raised to \$114,975.09 and the IS' share of the couple's assets as of the DOI is \$0.00.

DISCUSSION

The Department provides an Assessment of spousal assets for MCCA spouses as of the beginning date of the first continuous period of institutionalization of the IS, which is known as the DOI. As part of the Assessment the Department determines the CSPA, that portion of the assets owned by both MCCA spouses which is protected for the CS. Either spouse may request a fair hearing if they disagree with any of the results of the Assessment, including the establishment of the CSPA, and the Fair Hearing Official has the authority to increase the CSPA when the CS needs additional assets to be protected in order to produce income.

The Assessment has several components, and the determination of the DOI, of the total assets owned as of the DOI, of the spousal shares, and of the CSPA, among other things, are all part and parcel of it.

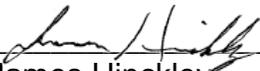
According to the Appellant, in [REDACTED] 2015, after the hearing was requested but before it was held, the couple received \$140,000.00 in returned gifts. The \$140,000.00 in returned gifts was not owned by the couple as of the DOI and was not considered as part of the Department's Assessment that is being appealed; the CSPA may not be increased to more than the total that the couple owned as determined by the Assessment.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. Effective [REDACTED] 2015, the CSPA is increased to \$114,975.09.
2. The Department shall reopen the Appellant's application for Medicaid effective [REDACTED] 2015 and the Appellant's assets shall be considered to be \$0.00 as of [REDACTED] 2015.
3. The Department shall submit proof of compliance with this order to the undersigned no later than [REDACTED] 2015.


James Hinckley
Hearing Officer

cc: Brian Sexton, SSOM, New Haven
Lisa Wells, SSOM, New Haven
Bonnie Shizume, SSPM, New Haven

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.