

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

██████████ 2016
SIGNATURE CONFIRMATION

Client ID # ██████████
Request # 722022

NOTICE OF DECISION

PARTY

██████████
For ██████████
██████████
██████████

PROCEDURAL BACKGROUND

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

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

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

██████████, Counsel for the Appellant
██████████, the Appellant's daughter & Power of Attorney ("POA")
██████████, the Appellant's son-in-law
Amy Kreidel, Department's Representative
Maureen Foley-Roy, Hearing Officer

On ██████████ 2015, Counsel for the Appellant requested that the hearing record be reopened to allow for the Medicaid coverage date be moved back to ██████████ of 2015. On

██████████ 2015, the hearing officer reopened the hearing record and the record remained open until ██████████ 2015 for the submission of additional evidence. On ██████████ 2015, the hearing record closed.

STATEMENTS OF THE ISSUE

The first issue is whether, ██████████, (the “Community Spouse”) needs additional assets protected to produce additional income to 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. On ██████████ 2015, (the date of institutionalization (“DOI”) the Appellant was admitted to the hospital and began a period of institutionalization. (Appellant’s testimony)
2. The Appellant currently resides at ██████████ House, a skilled nursing facility. (hearing record)
3. The Appellant is married to ██████████ who currently resides at an assisted living facility due to memory loss. (Hearing record, Appellant’s Exhibit A, pg.82: Letter from physician)
4. On ██████████ 2015, the date the Appellant was institutionalized, she and her spouse had a total of \$402,272.96 in countable assets. (Appellant’s Exhibit A: Chart of Assets with documentation and Department’s representative’s testimony)
5. On ██████████ 2015, the Appellant and her spouse had \$374,612.12 in countable assets. (Appellant’s Exhibit B: Asset Statements from ██████████ of 2015)
6. On ██████████ 2015, the Department received the Appellant’s application for long term care. (Exhibit 2: Application)
7. The Appellant is requesting Medicaid assistance for Long term care to commence in ██████████ of 2015. (Appellant’s Letter of ██████████ 2015 requesting reopening of hearing record)
8. The Appellant receives a gross benefit of \$498.90 per month from Social Security. (Appellant’s exhibit A, page 31: Social Security Beneficiary Letter: ██████████)
9. The Appellant has \$104.90 deducted from her Social Security for Medicare premiums. (Exhibit A, page 31)
10. The Community Spouse receives \$1,006.90 in Social Security income monthly and

has \$104.90 deducted for Medicare premiums. (Appellant's Exhibit A: page 32, Social Security Beneficiary Letter: ██████)

11. The Appellant and her spouse have no income other than their Social Security and interest income. (Exhibit 1: Application)
12. The Community Spouse lives in an assisted living facility and pays the following monthly living expenses: \$4,600 per month to the facility for rent, which includes two meals daily and other services. (Exhibit 10: Invoice)
13. The Community spouse is a fall risk, he needs assistance with grooming and he has wandered away from the facility. (POA's testimony)
14. The combined total of the Appellant and Community Spouse's non-exempt assets was \$402,272.96 as of the DOI. (Exhibit A, page 3: Appellant's Asset chart and Department representative's testimony)
15. The spousal share of the assets was \$201,136.48 as of DOI (½ of the couple's combined non-exempt assets). (Exhibit A, pg 3)
16. The Community Spouse Protected Amount (CSPA) was \$120,820.00 as of DOI. (Exhibit 2: W1SAN-Notification of results)
17. As of the hearing date, ██████ 2015, the average rate of return generated by a 12-month Certificate of Deposit was .18%. (Hearing Officer Exhibit: ██████ 2015: BankRate.com printout)
18. The following assets generated the following annual rates of return as of ██████ 2015:

Name of Asset	Amount of Asset	Rate of Return As of ██████/2015
Bank of America #XXXX XXXX ██████	\$4,387.82	.01%
Bank of America #XXXX XXXX ██████	\$22,191.28	.08%
Voya Financial XXXXX ██████	\$123,487.78	3.00%
Fidelity #XXXX ██████	\$224,545.24	4.58%
Total	\$374,612.12	

(Exhibits 4-7: Asset statements)

19. On ██████ 2015, the Department denied the Appellant's application for Medicaid for Long Term care assistance because the value of her assets exceeded the allowable limit. (Exhibit 8: Notice of Denial)

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 September 30, 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 Appellant's initial period of institutionalization began on [REDACTED] 2015.
5. 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 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 \$120,820.00,
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 Community Spouse’s MMNA was \$2,980.50 as shown in the table below:

Shelter Costs	AMOUNT
Rental charges	\$4600.00
Standard Utility Allowance	<u>+\$724.00</u>
Total shelter costs:	\$ 5324.00
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$597.38</u>
Excess shelter costs:	\$4726.63
Plus 150% of the FPL for two:	<u>+\$1,991.25</u>
	<u>\$6717.88</u>
Equals the MMNA (MMNA max. \$2,980.50)	\$2,980.50

11. Effective [REDACTED] 2015, the couples’ assets would generate monthly interest income in the amount of \$891.87 as follows:

Name of Asset	Amount of Asset	Interest Rate	Amount of Interest
Bank of America #XXXX XXXX [REDACTED]	\$4,387.82	.18%	\$.66
Bank of America #XXXX XXXX [REDACTED]	\$22,191.28	.18%	\$3.33
Voya Financial XXXXX [REDACTED]	\$123,487.78	3.00%	\$30.87
Fidelity #XXXX [REDACTED]	\$224,545.24	4.58%	\$857.01
Total	\$374,612.12		\$891.87

12. Effective [REDACTED] 2015, the deficit between the Community Spouse's income and his MMNA was \$1,081.73, as shown in the table below:

COMMUNITY SPOUSE DEFICT	
Social Security	\$1,006.90
Interest Income	\$891.87
Total Income	\$1,898.77
MMNA	\$2,980.50
Less Total Income	<u>-\$1,898.77</u>
Monthly Deficit	\$1,081.73

13. As of [REDACTED] 2015, the Appellant has \$438.00 per month in available income (\$498.00 [SSA} - \$60.00[Personal Needs Allowance])

14. Effective [REDACTED] of 2015, after a diversion of the Appellant's income of \$438, the Community Spouse still has a monthly income deficit of \$645.73 (\$1,081.73 - \$438.00).

15. Since the interest income from all of the couple's assets is insufficient to meet the Community Spouse's MMNA, effective [REDACTED] 2015, the CSPA is increased to \$374,612.12.

16. After the diversion of additional assets effective [REDACTED] 2015, for the benefit of the Community spouse, the value of the Appellant'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. Effective [REDACTED] 2015, the value of the Appellant'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 Appellant/Institutionalized Spouse to meet the needs of the Community Spouse.

DECISION

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

ORDER

1. The Department will re-open the Appellant's application dated [REDACTED] 2015 and continue the eligibility process.
2. Effective [REDACTED] 2015, the CSPA is increased to \$374,612.12.
3. No later than [REDACTED] 2016, the Department will submit to the undersigned verification of compliance with this order.

Maureen Foley-Roy

Maureen Foley-Roy,
Hearing Officer

**C: Musa Mohamud, Elizabeth Thomas, Social Service Operations Managers, DSS
R.O. #10, Hartford
Patricia Ostroski, Tricia Morelli, Laurie Filippini, Social Service Program
Managers, R.O.#10, Hartford)
Amy Kreidel, Hearing Liaison, DSS, R. O. #60, Waterbury**

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.