

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

██████████ 2016
Signature Confirmation

Client ID # ██████████
Request # 736197

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
██████████

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") approving his application for Long Term Care Medicaid effective ██████████ 2015, but denying the months of ██████████ 2015 and ██████████ 2015, because his assets exceeded the limit in those months.

On ██████████ 2015, the Appellant requested an administrative hearing to contest the Department's assessment of spousal assets, because he claims that his spouse in the community, ██████████, (the "community spouse" or "CS"), should be entitled to keep a greater share of the spousal assets 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, 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:

██████████, attorney representing the Appellant
██████████, Appellant's spouse

██████████ assisting attorney, ██████████
Michael Briggs, Department's Representative
Maren Walsh, Department's Representative
Tierra McClain, from the Department, observing
James Hinckley, Hearing Officer

The hearing record was held open for the submission of additional evidence from the Appellant. On ██████████, 2015, the hearing record closed.

STATEMENT OF THE ISSUE

1. The first issue to be decided is whether the CS required an increase to her spousal share of the couple's assets (the "community spouse protected amount" or "CSPA") to produce additional income to meet her minimum monthly needs allowance ("MMNA").
2. The second issue to be decided is whether, subsequent to any adjustment to the CS's CSPA, the Appellant's share of the assets is less than the Medicaid asset limit.

FINDINGS OF FACT

1. On ██████████ 2015, the Appellant began a continuous period of institutionalization (his "date of institutionalization" or "DOI"). (Record, stipulated)
2. On ██████████ 2015, the Appellant applied to the Department for Long Term Care Medicaid. (Record)
3. On ██████████ 2015, the Department notified the Appellant that it determined that the couple's total assets as of the DOI were equal to \$142,540.05, that the Community Spouse Protected Amount (CSPA) for the CS was \$71,270.03 and that the Appellant's Medicaid eligibility could not begin until the total spousal assets were reduced to \$72,870.03 or less (\$1600.00 for the Appellant plus \$71,270.03 for the CS). (Department's Ex. C: W-1-SAN, Assessment of Spousal Assets Notification of Results)
4. As of the DOI, the Appellant's and the CS's counted assets consisted of the individual assets listed in the chart below.

Asset	Asset Value As of DOI
Wells Fargo High Yield Savings	\$101,611.47
Wells Fargo Checking	\$991.48

Fidelity Investments	\$39,937.10
Consists of:	
275 shares Alps ETF	\$4,653.00
150 shares ATT	\$5,196.00
200 shares Alcoa	\$2,683.00
500 shares Alliance Bernstein	\$3,865.00
50 shares Altria Group	\$2,618.25
50 shares Con Ed	\$3,048.75
200 shares GE	\$5,460.00
50 shares Kinder Morgan Inc.	\$2,135.25
100 shares, Pfizer, Inc.	\$3,398.00
50 shares Verizon Communications	\$2,483.75
1004 shares Oppenheimer Global	\$4,106.36
\$1,281.22 Cash	<u>\$1,281.22</u>
	\$40,928.58
(\$991.48) discrepancy	

(Department's Ex. E: List of Assets as of Date of Institutionalization for form W-1-SA)

5. On [REDACTED] 2015, the Department sent the Appellant a notice approving his application for Medicaid effective [REDACTED] 2015, because the Department determined that [REDACTED] 2015 was the first month the Appellant's assets were below the Medicaid asset limit. (Department's Ex. D: Notice of Approval for Long Term Care Medicaid)
6. The Appellant is seeking Medicaid eligibility beginning [REDACTED] 2015. (Appellant testimony)
7. As of [REDACTED] 2015, the CS had monthly income of \$700.00 from Social Security. (Appellant's Ex. 4: Wells Fargo account statement for [REDACTED] 2015 showing Social Security deposits for IS and CS)
8. As of [REDACTED] 2015, the CS had a rental expense of \$660.00 per month. (Appellant's Ex. 3: Rent Verification Letter)
9. As of [REDACTED] 2015, the IS had monthly income of \$1,878.00 from Social Security. (Ex. 4)
10. As of [REDACTED] 2015, the IS had a monthly expense of \$7.10 for Blue Cross Blue Shield health insurance premium. (Record)
11. As of [REDACTED] 2015 (date of the administrative hearing), the average 12 month Certificate of Deposit bank rate for Bridgeport, CT was 0.84% (0.90% +

0.85% + 0.76% = 2.51% / 3 = 0.84%). (Hearing Officer Exhibit: *Bankrate.com* CD Rates : Bridgeport, CT dated [REDACTED] 2015)

12. The *Fidelity Investments* Investment Report for the IS' and CS' account with Fidelity for the period [REDACTED] 2015 to [REDACTED] 2015 included a projection of future total estimated cash flow from the couple's holdings which stated in part, "The table below presents the estimated monthly interest and dividend income and return of principal that your current holdings may generate over the next rolling 12 months", and projected that over the period from [REDACTED] 2015 to [REDACTED] 2016 the estimated cash flow from the couple's holdings would be \$1,212.00, which amounts to \$101.00 per month (\$1,212.00, divided by 12 months). (Appellant's Ex. 6: Fidelity Account Statements, [REDACTED] 2015 – [REDACTED] 2015 Investment Report, Page 4 of 7)
13. As of [REDACTED] 2015, the couple's \$39,937.10 share of DOI assets in *Fidelity Investments* holdings was capable of generating \$101.00 in monthly income, which exceeds the 0.84% current average 12 month Certificate of Deposit rate for Bridgeport, CT according to *Bankrate.com*. (Facts #11 and #12)
14. As of [REDACTED] 2015, the couple's *Wells Fargo* High Yield Savings account was earning a 0.35% rate of return, which is less than the 0.84% average 12 month Certificate of Deposit rate for Bridgeport, CT according to *Bankrate.com*. (Appellant's Ex. 7: Wells Fargo statements, Fact #11)
15. As of [REDACTED] 2015, the couple's \$102,602.95 share of DOI assets on deposit in *Wells Fargo* accounts was capable of generating \$71.82 in monthly income at the 0.84% current *Bankrate.com* average 12 month Certificate of Deposit rate. (\$102,602.95, multiplied by .0084, divided by 12 months). (Facts #4 and #11)
16. As of [REDACTED] 2015, the total assets owned by the couple as of the DOI, \$142,540.05, could have generated \$172.82 in monthly income (\$101.00 per month from *Fidelity Investment* holdings, and \$71.82 per month from the remainder of the assets invested at the *Bankrate.com* average CD rate). (Facts #4, #13 and #15)

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 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).

7. UPM § 4025.67(D)(3) 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 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 through 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 \$2,760.37 as shown in the calculation below:

Rent	\$660.00
Standard Utility Allowance	+ \$724.00

Total Shelter Costs	= \$1,384.00
30% of 150% of FPL for 2	-\$589.88
Excess Shelter Costs	= \$794.12
150% FPL for 2	+ \$1,966.25
Equals MMNA	= \$2,760.37

Effective [REDACTED] 2015, the deficit between the CS's income and her MMNA is \$2,060.37 as shown in the calculation below:

MMNA	\$2,760.37
CS's income	- \$700.00
Equals Deficit	= \$2,060.37

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 June 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 \$1,810.90 in income that could be diverted to the CS toward meeting her monthly needs (\$1,878.00 Social Security, minus \$7.10 private health insurance premium, minus \$60.00 personal needs allowance)

After diverting all available income from the IS, the CS' income is still short of her MMNA by a monthly deficit of \$249.47 (\$2,060.37 original deficit, minus \$1,810.90 income diverted from spouse, equals \$249.47).

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 could be generated by all \$142,540.05 in assets owned by the couple as of the DOI is \$172.82 per month.

The CSPA must be raised to include all of the \$142,540.05 in assets owned by the couple as of the DOI, because the CS requires all of the income that could be produced by the entirety of 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 \$142,540.05 and the IS' share of the couple's assets is \$0.00.

Effective [REDACTED] 2015, the Appellant's assets are below the asset limit for Medicaid for a needs group of one.

DISCUSSION

The CS currently owns significantly less in assets than the amount she is entitled to have protected by the hearing-adjusted CSPA. The reason is that, before she had the opportunity for a hearing to appeal the CSPA previously determined by the Department, she provisionally spent down the couple's assets according to the initial CSPA determination. Now that the Appellant will qualify for Medicaid for [REDACTED] 2015 and [REDACTED] [REDACTED] the CS will presumably receive a refund from the facility of the monies she paid privately for her husband's cost of care for those months because, as a Medicaid provider, the facility *must* accept the Medicaid rate as payment in full. Any refunded monies would be used to replenish the CS' assets that she should not have been required to deplete.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. Effective [REDACTED] 2015, the Department shall raise the CSPA to \$142,540.05 and the Appellant's share of the spousal assets shall be \$0.00.
2. The Department shall reopen the Appellant's application for Medicaid effective [REDACTED] 2015 and determine his eligibility based on having zero share of the spousal assets.
3. The Department shall submit proof of compliance with this order to the undersigned no later than [REDACTED] 2016.

James Hinckley

James Hinckley
Hearing Officer

cc: [REDACTED]

[REDACTED]
Poonam Sharma, SSOM, Bridgeport
Fred Presnick, SSOM, Bridgeport
Yecenia Acosta, SSPM, Bridgeport
Cheryl Stuart, SSPM, Bridgeport

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.