

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 #: ██████████
HEARING ID #: 737106

NOTICE OF DECISION

PARTY

██████████
C/O Attorney ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the “Department”) sent ██████████ ██████████ (the Appellant), the Institutionalized Spouse (“IS”), and his conservator a notice of its decision to grant his application for Long Term Care Medicaid effective ██████████ 2013.

On ██████████ 2015, ██████████ the Appellant’s conservator requested an administrative hearing to contest the Department’s assessment of spousal assets.

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

On ██████████ 2015 the Appellant’s conservator requested a reschedule.

On ██████████ 2016 OLCRAH issued a notice rescheduling the hearing for ██████████ 2016.

On ██████████ 2016 the Appellant’s conservator requested to be excused from the hearing and be represented by his attorney ██████████ (“The Appellant’s conservator’s attorney”)

On [REDACTED] 2016 the Appellant's conservator's attorney requested a reschedule.

On [REDACTED] 2016 OLCRAH issued a notice rescheduling the hearing for [REDACTED] 2016

On [REDACTED] 2016 OLCRAH issued a notice rescheduling the hearing for [REDACTED] 2016.

On [REDACTED] 2016 the Appellant's conservator requested a reschedule.

On [REDACTED] 2016 OLCRAH issued a notice rescheduling the hearing for [REDACTED] 2016.

On [REDACTED] 2016, 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:

- [REDACTED], Appellant's spouse
- [REDACTED] Appellant's son
- [REDACTED] Appellant's conservator
- [REDACTED] Appellant's conservator's attorney
- Emily Loveland, Department's representative
- Marci Ostroski, Hearing Officer

The hearing record remained open until [REDACTED] 2016 for the submission of additional evidence from the Appellant and until [REDACTED] 2016 for the Department's rebuttal. Additional exhibits were received from both parties and on [REDACTED] 2016, the record closed.

A separate decision will be issued regarding the issue of Effective Date of LTSS Medicaid due to transfer of asset penalty.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Community Spouse ("CS") required an increase to her spousal share of the couple's assets to produce sufficient income to meet her Minimum Monthly Needs Allowance ("MMNA") in the community.

FINDINGS OF FACT

1. At the time of the Long Term Care Medicaid application the Appellant resided in a Long Term Care Facility, St. Mary's Home. (Hearing Record)

2. At the time of the Long Term Medicaid application the Appellant was married to [REDACTED] the Community Spouse ("CS"). (Hearing Record)
3. The Appellant's date of institutionalization (the "DOI") is [REDACTED] 2008. (Hearing Record)
4. On [REDACTED] 2013, the Appellant applied to the Department for Long Term Care Medicaid. (Summary, Ex. A: W-1 Application Part 1)
5. On [REDACTED] 2015, the Department notified the Appellant that it granted the application for Medicaid effective [REDACTED] 2013. (Ex. Y: Notice of Approval for Long Term Care Medicaid)
6. On [REDACTED] 2016 the Department notified the Appellant that it determined that the total assets owned by the couple as of the DOI was \$74,707.39, that the Community Spouse Protected Amount (CSPA) for the Community Spouse ("CS") is \$37,353.96 and that the Appellant's Medicaid eligibility may not begin until the total spousal assets are reduced to \$38,953.96 or less (\$1600.00 for the Appellant plus \$37,353.96 for the CS). (Ex. GG: W-1-SAN, Assessment of Spousal Assets Notification of Results)
7. As of the [REDACTED] 2013 date of application, the couple's assets had been reduced to \$7,059.62. (Ex. FF: Spousal Assessment Worksheet)
8. As of [REDACTED] 2013, the date of application, the couple's assets were held, in their entirety, in two whole life accounts through Lincoln Financial. (Ex. FF: Spousal Assessment Worksheet)
9. Both Lincoln Financial accounts yield interest at the minimum guaranteed rate of 4.0% (Ex. FF: Lincoln National Life Statement of Accounts)
10. As of [REDACTED] 2016, the average 12 month Certificate of Deposit bank rate for Hartford County, CT is 0.87% $(1.05\% + 0.80\% + 0.75\% = 2.6\% / 3 = 0.87\%)$. (Bankrate.com CD Rates : Hartford, CT)
11. Of the two accounts where the couple's assets were held the Lincoln Financial accounts yield a rate of interest, at 4.0%, that exceeds the current rate of return generated by a 12 month CD. (FOF #9, #10)
12. As of [REDACTED] 2013, the CS had a rental expense of \$1536.00 per month. (Written statement from Appellant's Conservator's attorney)
13. As of [REDACTED] 2013, the Appellant had monthly gross income from Social Security of \$1431.90. (Ex. Y: Notice of Approval for Long Term Care Medicaid)

14. As of [REDACTED] 2013, the Appellant had monthly gross income from a pension of \$1034.00. (Ex. Y: Notice of Approval for Long Term Care Medicaid)
15. As of [REDACTED] 2013, the CS had monthly gross income of \$2220. (Written statement from Appellant's Conservator's attorney)

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 September 30, 1989, and the other spouse becomes a community spouse.
4. Effective [REDACTED] 2013, 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 § 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)
9. The Department correctly determined that the initial calculation of the CSPA for the CS is equal to \$37,353.96, or the spousal share calculated in the assessment of spousal assets, which is equal to one-half of the total countable assets owned by the couple as of the [REDACTED] 2008 DOI.
10. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.
11. The Department correctly determined that the assets did not exceed the Medicaid asset limit for one adult because the couple's assets did not exceed \$38,953.96 (\$37,353.96 CSPA plus \$1,600.00 Medicaid asset limit for one adult) in the Medicaid application month of [REDACTED] 2013 or the prior three months of retroactive coverage, [REDACTED], 2013 through [REDACTED] 2013.
12. 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 § 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.
13. 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 the Minimum Monthly Needs Allowance (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 program ("SNAP") is used for the community spouse.

14. Effective [REDACTED] 2013, the CS's MMNA is \$2,980.50 as shown in the calculation below:

Mortgage	\$1536.00
Standard Utility Allowance	+ \$668.00
Total Shelter Costs	= \$2,204.00
30% of 150% of FPL for 2	- \$581.85
Excess Shelter Costs	= \$1,622.15
150% FPL for 2	+ \$1,939.50
Exceeds Cap for MMNA	= \$3,561.65
Maximum MMNA	= \$2,980.50

15. Effective [REDACTED] 2013, the deficit between the CS's income (exclusive of diverted income, or income generated by her spousal share of assets) and her MMNA is \$2,344.60 as shown in the calculation below:

MMNA	\$2,980.50
Minus CS's income	- \$2,220.00
Equals Deficit	= \$760.50

16. 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.

17. 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 December 2012), and the cost of Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid by the Department or any third party.

18. Effective [REDACTED] 2013, the Appellant had income in the amount of \$2301.00 available to be diverted to the CS to help meet her MMNA (\$1,431.90 SSA, plus \$1034.00 pension, minus \$104.90 Medicare B premium minus \$60.00 personal needs allowance).
19. Effective [REDACTED] 2013, the IS (Appellant) had sufficient income available to divert to the CS to bring the CS’s income to the level of the MMNA.
20. The Appellant does not require any protection of additional assets in order to raise his income to the level of the MMNA.
21. The Appellant’s CSPA is \$37,353.96; no adjustment by the Fair Hearing Official of the CSPA previously determined by the Department is necessary.
22. The Department was correct to find that the IS was eligible for Medicaid commencing in the month of [REDACTED] 2013 because his assets did not exceed the \$1,600.00 Medicaid asset limit for one person (the couple’s assets never exceeded the \$37,353.96 CSPA, plus \$1,600.00 limit, equaling \$38,953.96) in each month

DECISION

The Appellant’s appeal is **DENIED**.

Marci Ostroski
Marci Ostroski
Hearing Officer

cc: Musa Mohamud, SSOM, Hartford
Judy Williams, SSOM, Hartford
Tricia Morelli, SSPM, Hartford
Emily Loveland, Eligibility Services Specialist, Hartford
[REDACTED], Appellant’s Conservator’s Attorney.

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