

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 # 745023

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") stating that his applied income for Long Term Care ("LTC") Medicaid assistance would change from \$3,238.00 to \$2,218.50 effective ██████████ 2015.

On ██████████ 2016, ██████████, (the "Appellant's Power of Attorney"), requested an administrative hearing to contest the Department's decision to take this action.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2016.

On ██████████ 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:

██████████, Power of Attorney and Appellant's Daughter  
██████████, Appellant's Spouse  
██████████, Appellant's Witness  
Joti Ajodhi, Vernon Manor Health Care Center Representative

Sayaka Miyakoshi, Department's Representative  
 Sybil Hardy, Hearing Officer

The record was held open for the submission of additional information. On [REDACTED] 2016 the hearing record closed.

### **STATEMENTS OF THE ISSUE**

The first issue is whether, [REDACTED], (the "Community Spouse") needs additional assets protected, from the Appellant's share of assets, to produce additional income to meet the Community Spouse's Minimum Monthly Needs Allowance ("MMNA").

### **FINDINGS OF FACT**

1. The Appellant has been institutionalized continuously at [REDACTED] Manor Health Care Center, [REDACTED] Connecticut since [REDACTED] 2015 (the date of institutionalization ["DOI"]). (Exhibit K: Institution ["INST"] Screen, Exhibit R: [REDACTED] Manor Health Care Center Transaction History)
2. Effective [REDACTED] 2015, the Appellant was granted for LTC Medicaid effective [REDACTED] 2015. (Exhibit A: Assistance Status ["STAT"] Screen [REDACTED])
3. The Appellant was married to [REDACTED], (the "Community Spouse"). (Hearing record, Exhibit A)
4. The Community spouse resides in assisted living at [REDACTED]. (Appellant's Testimony, Hearing Record, Exhibit G: Tax Form # 1099-R)
5. The Community Spouse pays \$3,224.00 per month for rent in an assisted living facility and utilities are included. The Appellant also pays \$33.22 per month for renter's insurance. (POA's Testimony, Exhibit H: [REDACTED] Rent Verification, Exhibit O: American Eagle Financial Credit Union Bank Statement)
6. The Appellant has a monthly gross unearned income from Social Security Administration ("SSA") in the amount of \$1,610.90 deposited into his joint checking account and pays \$104.90 for his Medicare B premium. (Hearing Record, Exhibit B: [REDACTED] SVES Title II Information ["SVII"] Screen, Exhibit O)
7. The Appellant has a monthly gross unearned income from the Veteran's Administration ("VA") of \$2,120.00 directly deposited into his joint checking account. (Hearing Record, Exhibit C: Department of Veteran's Administration Income Statement, Exhibit O)
8. The Appellant has a monthly pension from [REDACTED] of \$1,289.77 directly deposited

into his joint checking account. (Exhibit D: Pension Information Tax Form 1099-R, Exhibit O)

9. The Appellant has a gross monthly benefit payment from Aetna Life Insurance Company of \$12.75 directly deposited into his joint checking account. (Hearing Record, Exhibit O)
10. The Community Spouse had a monthly gross unearned income of \$928.90 from SSA directly deposited into her joint checking account. The Community Spouse pays \$104.90 per month for her Medicare insurance premium. (Hearing Record, Exhibit F: ██████████ SVES Title II Information [SVII] Screen, Exhibit O)
11. The Community Spouse has a monthly gross unearned pension income from ██████████ ██████████ of \$228.06 and UFCW International of \$221.52 directly deposited into her joint checking account. (Hearing Record, Exhibit G: ██████████ Pension Information Forms 1099-R, Exhibit O)
12. The combined total of the Appellant and Community Spouse's non-exempt assets was \$0.00, as of the DOI. (Hearing Record)
13. The spousal share of the assets was \$0.00 as of DOI (half of the couple's combined non-exempt assets). (Hearing Record)
14. The Community Spouse's Protected Amount ("CSPA") was \$582.52 as of DOI. (Exhibit B)
15. Effective ██████████ 2015, the couple's assets generated the following annual rates of return:

Asset	Balance	Rate of Return	Owner
American Eagle Checking ██████████	\$4,462.52	0.00%	Appellant/Spouse
American Eagle Savings ██████████	\$6,671.18	0.03%	Appellant/Spouse
American Eagle Holiday Club ██████████	\$ 50.17	0.02%	Appellant/Spouse

(Exhibit 3: American Eagle Bank Statement, Exhibit O: American Eagle Bank Statement)

16. Effective ██████████ 2015, the couple's assets were \$11,183.70. (Exhibit 3, Exhibit O)
17. Effective ██████████ 2015, the Community spouse's CSPA was increased to \$1,609.02. (Exhibit P: Eligibility Management System ["EMS"] Narrative Screen ██████████, Exhibit Q EMS Narrative Screen ██████████)
18. The Community spouse does not receive any home care services. (POA's testimony)

19. Exceptional circumstances were claimed. (POA's Testimony)
20. The Community Spouse pays co-pays on her medical prescriptions. (Exhibit 2: CVS Patient Prescription Statement)
21. The Community Spouse is unable to live alone and cannot cook and clean for herself. (POA's Testimony)
22. The Community Spouse pays to a monthly fee of \$44.00 for medical alert services. (POA's Testimony, Exhibit 1: List of Expenses)
23. The Community Spouse was found eligible for home care based services ("HCBS") but declined these benefits in order to increase her CSA amount. (POA's Testimony, Exhibit: Q)
24. On [REDACTED] 2015, the Department sent the Appellant's Power of Attorney a Notice indicating that the Appellant's applied income would change from \$3,238.00 to \$2,218.50 effective [REDACTED] 2015. (Exhibit N: NOA, [REDACTED] 15)
25. As of the hearing date, [REDACTED] 2016, the average rate of return generated by a 12 month Certificate of Deposit was .25%. (Hearing Officer's Exhibit 1: BankRate.com printout, [REDACTED] 16)

### **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 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.
3. The Department correctly determined that the Appellant's initial period of institutionalization began on [REDACTED] 2015.
4. 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 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.
5. UPM § 1570.25(D)(3) provides that the Fair Hearing official increases the community spouse's MMNA previously determined by the Department if either MCCA spouse establishes that the community spouse has exceptional circumstances resulting in significant financial duress, and the MMNA previously calculated by the Department is not sufficient to meet the community spouse's monthly needs as determined by the hearing official. Exceptional circumstances are those that are severe and unusual and that; prevent the community spouse from taking care of his or her activities of daily living; or directly threaten the community spouse's ability to remain in the community; or involve the community spouse's providing constant and essential care for his or her disabled child, sibling or other immediate relative (other than institutionalized spouse). Significant financial duress is an expense or set of expenses that: directly arises from the exceptional circumstances described in subparagraph above; and is not already factored into the MMNA; and cannot reasonably be expected to be met by the community spouse's own income and assets.
6. UPM § 1570.25(D)(4) provides that the Fair Hearing official increases the Community 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 \$1,602.02.
8. Effective [REDACTED] 2015, the Community Spouse's assets of \$11,183.89 would have generated monthly interest income of \$0.16. See table below for calculations:

Asset	Balance w/interest	Interest Rate-highest	Interest Annual Yield	Interest per Month
American Eagle CH [REDACTED]	\$4,462.52	0.00%	\$ 0.00	\$ 0.00

American Eagle SV		\$6,671.18	0.03%	\$ 2.00	\$ .16
American Eagle SV		\$ 50.19	0.02%	\$ .01	\$ 0.00
Total		\$11,183.89		\$ 2.01	\$ .16

9. Effective [REDACTED] 2015, the Community Spouse had gross monthly income of \$1,378.64 (\$928.90, SSA + \$449.58, Pension Income + \$0.16, investment interest income).

10. 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.

11. Effective [REDACTED] 2015, the Community Spouse's MMNA was \$2,980.50 as shown in the table below:

	AMOUNT
Rent/Mortgage	\$3,224.00
Renter's Insurance Premium	\$ 33.22
Standard Utility Allowance	+\$ 708.00
<b>Total shelter costs:</b>	\$3,965.22
Less base shelter costs [30% of \$1,991.25, 150% of the federal poverty level (FPL) for two]	\$ 597.38
<b>Excess shelter costs:</b>	\$3,367.85
Plus 150% of the FPL for two:	+\$1,991.25
Equals MMNA	\$5359.10
<b>Equals the Maximum MMNA (capped at \$2980.50)</b>	\$2,980.50

12. Effective [REDACTED] 2015, the deficit between the Community Spouse's income and her MMNA was

COMMUNITY SPOUSE DEFICIT	
Social Security Income	\$ 928.90
Pension Income	\$ 449.58
Interest Income	\$ 0.00
<b>Total Income</b>	\$1,378.48
<b>MMNA</b>	\$5,359.10
<b>Deficit</b>	\$3,980.62

13. 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 the 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 if assistance units in LTCF's:
- a personal needs allowance ("PNA") of \$60.00, 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; (Effective July 1, 2013 = \$60.00)
  - a Community Spouse Allowance (CSA), when appropriate; (Cross Reference 5035.30)
  - 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 by the Department or any other third party;
  - e. 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;
  - f. expenses for services provided by a licensed medical provider in the six month period immediately preceding the first month of eligibility providing the following conditions are met:
    - 1) the expenses were not for LTCF services, services provided by 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
    - 2) the recipient is currently liable for the expenses; and
    - 3) the services are not covered by Medicaid in a prior period of eligibility.
15. Effective [REDACTED] 2015, the Appellant had a total available unearned income of \$4,,973.42 (\$1,610.90, SSA +\$2,120.00 VA + \$1,302.52, Pensions - \$60.00, PNA)
16. Effective [REDACTED] 2015, after a diversion of the Appellant's income \$1,602.02 to the Community Spouse, the Community Spouse still has a monthly income deficit of \$2,378.60 (\$5,359.10, MMNA - \$1,378.48, Community Spouse's Income -\$1,602.02, diverted income)
17. Since the additional interest income from the remaining assets is still insufficient to meet the Community Spouse's MMNA, effective [REDACTED] 2015, the Community Spouse is entitled to an increased CSPA of \$11,183.89.
18. 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.
19. UPM § 4005.10(A)(2)(a) provides the asset limit for Medicaid for a needs group of one is \$1,600.00
20. Effective [REDACTED] 2015, the value of the Appellant assets does not exceed the Medicaid asset Limit of \$1,600.00

### **DISCUSSION**

The Department acted correctly in its determination of the Appellant's spouse's CSPA. However, the regulation of the Department allows 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 shall increase the Appellant's MMNA for Medicaid to \$5,359.10 and the CSPA to \$11,183.89 effective [REDACTED] 2015 and continue the eligibility process.
2. No later than [REDACTED] 2016, the Department will submit to the undersigned verification of compliance with this order.

  
Sybil Hardy  
Hearing Officer

Pc: Elizabeth Thomas, Operations Manager, DSS R.O. # 11, Manchester  
Sayaka Miyakoshi, Hearings Liaison, DSS R.O. # 11, Manchester  
[REDACTED], POA, [REDACTED]

### **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.