

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 # 745650

NOTICE OF DECISION

PARTY

██████████
c/c ██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████
██████████ (the "Appellant") a Notice of Action ("NOA") denying his application for Long
Term Care Medicaid benefits.

On ██████████ 2016, the Appellant requested an administrative hearing to contest the
Department's decision to deny his application.

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:

██████████ Appellant's Spouse
██████████ Appellant's Granddaughter
██████████ Counsel for the Appellant
██████████ Counsel for the Appellant

Doris Hare, Department's Representative
Thomas Monahan, Hearing Officer

STATEMENTS OF THE ISSUE

1. 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").
2. The second issue is whether the Appellant's assets exceed the Medicaid asset limit.

FINDINGS OF FACT

1. Since [REDACTED] 2015, the Appellant has been institutionalized continuously (the date of institutionalization ["DOI"]) at Montowese Health Care Center. (Exhibit 1: Application form, [REDACTED] 15)
2. The Community Spouse Lives at [REDACTED] the home she owns with the Appellant. (Ex. 1: Application form, [REDACTED] 15)
3. On [REDACTED] 2015, the Appellant applied for Long Term Care ("LTC") Medicaid. (Ex. 1: Application form, [REDACTED] 15)
4. The combined total of the Appellant and the Community Spouse's non-exempt assets was \$119,078.68 as of the DOI. (Ex. 5: Assessment of Spousal Assets, [REDACTED] 15)
5. The spousal share of the assets was \$59,539.34 as of the DOI (½ of the couple's combined non-exempt assets).
6. The Community Spouse Protected Amount ("CSPA") was \$59,539.34 as of the DOI.
7. The Appellant is seeking Medicaid eligibility effective [REDACTED] 2015. (Hearing record)
8. In 2015, the Community Spouse had monthly taxes of \$282.78 and monthly homeowner's insurance of \$58.75. (Appellant brief :Ex. 4,5)
9. As of [REDACTED] 2015, the Community Spouse had monthly gross unearned income of \$525.00 from Social Security. (Appellant brief :Ex. 1)
10. As of [REDACTED] 2015, the Appellant had monthly gross unearned income of \$1,058.00 from Social Security. (Appellant brief :Ex. 2)

11. The Following assets of the couple generated the following annual rates of return:

ASSET	VALUE	INTEREST RATE
First Niagra [REDACTED] - joint acct	\$85,526.41	.50%
First Niagara- [REDACTED] joint acct	\$5,097.85	0.01%
Prudential Ins.- [REDACTED]	\$15,442.78	1.3%
Prudential Insurance- [REDACTED]	\$12,561.64	1.6%
Total	\$118,628.88	

(Attorney's brief, Ex. 6-10: Interest income)

12. As of [REDACTED] 2016, the one year Certificate of Deposit bank rate was .84% (Hearing Officer Exhibit 1: Bank Rate.com print out)

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. 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. MCAA 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. UPM § 0500
5. A community spouse protected amount ("CSPA") is the amount of the total available non-excluded 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. UPM § 0500
6. Regulation provides that every January 1, the Community Spouse Protected Amount ("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.

UPM § 4022.05(B)(2)

- 7. Connecticut General Statutes § 17b-261k provides that notwithstanding any provision of subsection (g) of section 17b-261, the Commissioner of Social Services shall amend the Medicaid state plan to require that the spouse of an institutionalized person who is applying for Medicaid receives the maximum [CSPA], as determined pursuant to 42 USC 1396r-5. The commissioner shall adopt regulations, in accordance with chapter 54, to implement the provisions of this section
- 8. Uniform Policy Manual (“UPM”) § 1570.25(D)(3) provides 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.
- 9. The Department correctly determined that the CSPA was \$59,539.00
- 10. Effective [REDACTED] 2015, the Community Spouse’s share of the assets would generate monthly interest income of \$61.31 as shown in the table below.

ASSET	VALUE	INTEREST RATE	Bank Rate.Com	Interest Based on Highest Rate

First Niagra- [REDACTED] - joint acct	\$85,526.41	.50%	.59%	42.05
First Niagara- [REDACTED] - joint acct	\$5,097.85	0.01%	.59%	2.51
Prudential Insurance- [REDACTED]	\$12,561.64	1.6%	.59%	16.75
Total				\$61.31

11. Effective [REDACTED] 2015, the Community Spouse had gross monthly income of \$586.31 (\$525.00 SSA + \$61.31 interest).

12. 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 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.

- 13. Effective [REDACTED] 2015 the Community Spouse's MMNA was \$2,459.40 as show in the table below.

	AMOUNT
Shelter Costs:	
Property Taxes	\$282.78
Homeowners Insurance	\$58.75
Utility Allowance (effective [REDACTED]/15 reduced to \$708.00)	\$724.00
Total shelter costs:	\$1065.53
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>\$597.38</u>
Excess shelter costs:	\$468.15
Plus 150% of the FPL for two:	<u>\$1991.25</u>
Equals the MMNA	\$2459.40

- 14. Effective [REDACTED] 2015, the deficit between the Community Spouse's income and her MMNA was \$1,873.09, as shown in the table below:

COMMUNITY SPOUSE DEFICT	
Social Security	\$525.00
Interest Income	<u>\$61.31</u>
Total Income	\$586.31
MMNA	\$2459.40
Less Total Income	<u>\$586.31</u>
Monthly Deficit	\$1,873.09

- 15. UPM § 5035.25 provides that for resident 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.

B. Deductions For LTCF Units

The following monthly deductions are allowed from the income of assistance units in LTCF's:

- 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. (Effective January 2009= \$69.00)

- 21. After taking deductions for the personal needs allowance from the Appellant's income, the Appellant has income in the amount of \$1,148.90 (\$1,058.00 SSA - \$60.00 PNA = \$998.00) to be diverted to the Community Spouse to help meet her MMNA.
- 22. After a diversion of the Appellant's income of \$998.00 to the Community Spouse, the Community Spouse still has a monthly income deficit of \$875.09 (\$1,873.09- \$998.00).
- 23. Effective [REDACTED] 2015, the remaining assets of \$18,641.44 would generate interest income of \$12.11 monthly based on the bank rate of .78%.

ASSET	VALUE	INTEREST RATE	Bank Rate.Com	Interest Based on Highest Rate
Prudential Insurance [REDACTED]	\$15,442.78	1.3%	.59%	16.73

- 24. Since the additional interest income of \$16.73 from the remaining assets is still insufficient to meet the Community Spouse's MMNA deficit of \$875.09, effective [REDACTED] 2015, the Community Spouse's CSPA is increased to \$119,078.68 to generate the interest income needed to help meet her MMNA.
- 25. After the diversion of all the assets effective [REDACTED] 2015 for the benefit of the Community Spouse, the value of the Appellant's countable assets is \$0.00.
- 26. Regulation provides that the asset limit for Medicaid for a needs group of one is \$1,600.00. UPM § 4005.10(A)(2)(a)
- 27. Effective [REDACTED] 2015, the Appellant's assets did 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 Applicant/Institutionalized Spouse to meet the needs of the Appellant/Community Spouse.

DECISION

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

1. The Department will re-open the Appellant's application dated [REDACTED] 2015, with a look back to [REDACTED] 2015, and continue the eligibility process.
2. Effective [REDACTED] 2015, the CSPA is increased to \$119,078.68.
3. No later than fifteen days from the date of this decision, the Department will submit to the undersigned verification of compliance with this order.

Thomas Monahan

Thomas Monahan
Hearing Officer

Pc: Lisa Wells, Operations Manager, New Haven Regional Office
Bonnie Shizume, Program Manager, New Haven Regional Office
Brian Sexton, Operations Manager, New Haven Regional Office
Doris Hare, Hearing Liaison

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 06105-3725. 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.

