

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

[REDACTED] 2016  
Signature confirmation

Client: [REDACTED]  
Request: 780498

**NOTICE OF DECISION**

**PARTY**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**PROCEDURAL BACKGROUND**

On [REDACTED] 2016, the Department of Social Services (the "Department") issued [REDACTED] [REDACTED] (the "Appellant" or "institutionalized spouse") a notice denying his [REDACTED] 2016 Medicaid application for coverage of his long-term care services.

On [REDACTED], 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received an administrative hearing request to dispute the Department's action.

On [REDACTED] 2016, the OLCRAH issued a notice of administrative hearing to the Appellant, scheduling the administrative 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, the OLCRAH held the administrative hearing. [REDACTED] (the "community spouse") represented the Appellant's interests at the administrative hearing. The following individuals participated in the administrative hearing:

[REDACTED] Appellant's representative (the "community spouse")  
[REDACTED], Appellant's counsel  
Lorraine Crowe, Department's representative  
Lindsey Meyer, Department's witness (by telephone)  
Michael Briggs, Department's witness (by telephone)  
Christopher Turner, Hearing Officer

On [REDACTED] 2016, the administrative hearing record closed.

### **STATEMENT OF ISSUES**

The issue to be decided by this administrative hearing is whether to increase the Appellant's Community Spouse Protected Amount ("CSPA"). The Appellant is seeking Medicaid coverage effective [REDACTED] 2016.

### **FINDINGS OF FACT**

1. The Appellant and the Appellant's community spouse are married. (Appellant's representative's testimony)
2. The Appellant's community spouse resides in her home in [REDACTED]. (Department's representative's testimony)(Department's Exhibit 9: 2015 Tax Bill, undated)
3. The Appellant's and the community spouse's 2015 real estate tax bill associated with the home in [REDACTED] equaled \$6,533.84. (Department's Exhibit 9)
4. The Appellant's and community spouse's annual real estate insurance premium as associated with the home in [REDACTED] equaled \$1,546.00. (Department's Exhibit 10: Safeco Insurance bill, [REDACTED]/15)
5. The Appellant grosses \$1,863.00 in monthly Social Security benefits. (Department's Exhibit 12: SVES Title II Information-SVII, printed [REDACTED] 16)
6. The Appellant's community spouse grosses \$791.70 in monthly Social Security benefits. (Department's Exhibit 11: *Information About Current Social Security Benefits*, [REDACTED] 16)
7. On [REDACTED] 2016, the Appellant was admitted to Masonic Healthcare Center Hospital, a psychiatric facility. (Department's Exhibit 1: Ascend Connecticut Application, printed 8/16/16)
8. On [REDACTED] 2016, the Appellant and/or his spouse were the owners of the following counted assets: Bank of America (checking-[REDACTED]) \$2,728.38; Bank of America (savings-[REDACTED]) \$85.64; Symmetry IRA ([REDACTED]) \$11,522.72; and Prudential [REDACTED] \$106,544.82. (Department's Exhibit 7: *Spousal Assessment Worksheet*, through [REDACTED] 16)
9. On [REDACTED] 2016, the Appellant transferred to Pope John Paul II Center for Health Care, a skilled nursing facility, for long-term placement. (Department's Exhibit 1)

10. On ██████████ 2016, the Department received the Appellant's Medicaid application. (Department's Exhibit 3: *W-LTC: Long-term Care/Waiver Application*, ██████████ 16)
11. As of ██████████ 2016, the remainder of the Appellant's and/or his spouse's counted assets equaled \$64,720.00, comprised of: Bank of America (checking-██████████) \$1,273.80; Bank of America (savings-██████████) \$85.84; and Bank of America (██████████) \$63,360.69. (Department's Exhibit 7)
12. The Appellant stipulates that the Department's figures and dates—as provided in the agency's summary and exhibits—with respect to the Appellant's ██████████ 2016 Medicaid application are accurate. (Hearing record)
13. On ██████████ 2016, the Department issued the Appellant a *W1SA-N: Assessment of Spousal Assets/Notification of Results*, calculating the counted assets of the Appellant and his wife to equal \$120,911.76 as of ██████████ 2016. (Department's Exhibit 4: *Assessment of Spousal Assets/Notification of Results*, ██████████ 16)
14. The ██████████ 2016 *W1SA-N: Assessment of Spousal Assets/Notification of Results* stated that the Appellant was not eligible for Medicaid, as the maximum amount that he and his wife could retain without causing ineligibility was \$62,055.88, as calculated by allocating \$60,455.88 for the Appellant's wife and \$1,600.00 for the Appellant. (Department's Exhibit 4)
15. On ██████████ 2016, the Department issued a notice denying the Appellant Medicaid coverage of his long-term care for ██████████ 2016. (Department's Exhibit 6: *Notice Content-NCON*, ██████████ 16)
16. The Department granted the Appellant Medicaid coverage of his long-term care effective ██████████ 2016. (Department's Exhibit 5: *Notice of Approval for Long-Term Care Medicaid*, ██████████ 16)
17. The Appellant is seeking Medicaid coverage of his long-term care services for ██████████ 2016. (Appellant's representative's testimony)
18. Neither the Department nor the Appellant submitted the actual rates of return associated with the Appellant's and the community spouse's counted assets as generated in ██████████ 2016. (Hearing record)
19. The average of three one-year CD rates for Bethel, Connecticut as of ██████████ 2016 equaled 1.23 percent. (Appellant's Exhibit B: Printout, faxed ██████████ 16)

### **CONCLUSIONS OF LAW**

1. The Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act. Conn. Gen. Stat. § 17b-2.

2. Section 17b-261 (a) of the Connecticut General Statutes provides in part that Medical assistance shall be provided for any otherwise eligible person whose income, including any available support from legally liable relatives and the income of the person's spouse or dependent child, is not more than one hundred forty-three per cent, pending approval of a federal waiver applied for pursuant to subsection (e) of this section, of the benefit amount paid to a person with no income under the temporary family assistance program in the appropriate region of residence and if such person is an institutionalized individual as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3), and has not made an assignment or transfer or other disposition of property for less than fair market value for the purpose of establishing eligibility for benefits or assistance under this section. Any such disposition shall be treated in accordance with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). Any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, person authorized to make such disposition pursuant to a power of attorney or other person so authorized by law shall be attributed to such applicant, recipient or spouse. A disposition of property ordered by a court shall be evaluated in accordance with the standards applied to any other such disposition for the purpose of determining eligibility.
3. An institutionalized spouse applying for Medicaid and having a spouse living in the community shall be required, to the maximum extent permitted by law, to divert income to such community spouse in order to raise the community spouse's income to the level of the minimum monthly needs allowance, as described in Section 1924 of the Social Security Act. Such diversion of income shall occur before the community spouse is allowed to retain assets in excess of the community spouse protected amount described in Section 1924 of the Social Security Act. The Commissioner of Social Services, pursuant to section 17b-10, may implement the provisions of this subsection while in the process of adopting regulations, provided the commissioner prints notice of intent to adopt the regulations in the Connecticut Law Journal within twenty days of adopting such policy. Such policy shall be valid until the time final regulations are effective. Conn. Gen. Stat. §17b-261 (g).
4. Section 4000.01 of the Uniform Policy Manual ("UPM") provides in part the following definitions:
  - Assessment of Spousal Assets: An Assessment of Spousal Assets is a determination of the total value of all non-excluded available assets owned by both MCCA spouses which is done upon the request of an institutionalized spouse or a community spouse and is used to calculate the Community Spouse Protected Amount.
  - Asset Limit: The asset limit is the maximum amount of equity in counted assets which an assistance unit may have and still be eligible for a particular program administered by the Department.
  - Community Spouse: A community spouse is 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.

Community Spouse Protected Amount (CSPA): A community spouse protected amount 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.

Continuous Period of Institutionalization: A continuous period of institutionalization is 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.

Institutionalized Spouse: An institutionalized spouse is 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.

MCCA<sup>1</sup> Spouses: 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.

Spousal Share: A spousal share is one-half of the total value of assets which results from the assessment of spousal assets.

5. 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. UPM § 1507.05 (A)(2).
6. For the purposes of the Medicaid program, the Appellant's beginning date of a continuous period of institutionalization was [REDACTED] 2016.
7. For the purposes of the Medicaid program, the Appellant and his wife were MCCA spouses.
8. For the purposes of the Medicaid program, the Appellant's wife was a community spouse.
9. The Department counts the assistance unit's equity in an asset toward the asset limit if the asset is not excluded by state or federal law and is either: available to the unit; or deemed available to the unit. UPM § 4005.05 (B)(1).
10. Section 4020.10 of the Uniform Policy Manual provides the excluded assets for the AABD and MAABD programs.

---

<sup>1</sup> MCCA – Medicare Catastrophic Coverage Act of 1988, Public Law 100-105.

11. The following are counted assets for the purposes of the Medicaid program: Bank of America (checking-██████); Bank of America (savings-██████); Symmetry IRA (██████); Prudential (██████) and Bank of America (██████).
12. 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. UPM 1507.05 (A)(1).
13. 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. UPM § 1507.05 (A)(3).
14. 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. UPM § 1507.05 (A)(4).
15. 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. UPM § 1507.05 (A)(5).
16. The Department correctly calculated the total of the couples' counted assets to equal \$120,911.76 as of ██████████ 2016.
17. The Department provides a notification of the results of the assessment to each spouse. The notification contains the following information: a. the result of the assessment; and b. the documents used for the assessment; and c. the amount of the spousal share; and d. the maximum amount of assets which may be retained by the spouses at the time of the results of the assessment which would not adversely affect eligibility; and e. the Department's determination of the assistance unit's current eligibility in regard to assets; and f. the right of each spouse to request a fair hearing. UPM § 1507.05 (C).
18. The Fair Hearing official modifies the results of the assessment of spousal assets when: a. either MCCA spouse requests a hearing regarding the assessment; and b. the Fair Hearing official determines the results of the assessment were incorrectly determined (Cross Reference 1507). UPM § 1570.25 (D)(2).
19. Every January 1, the CSPA shall be equal to the greatest of the following amounts: a. the minimum CSPA; or b. the lesser 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 1570); or d. the amount established pursuant to a court order for the purpose of providing necessary spousal support. UPM § 4025.67 (D)(3).

20. In ■■■■ 2016, the minimum CSPA equaled \$23,844.00; the maximum CSPA equaled \$119,220.00.
21. 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 e. Standard Utility Allowance (SUA) used in the FS program for the community spouse. UPM § 5035.30 (B)(4).
22. The standard utility allowance in Connecticut was \$708.00, effective October 1, 2015; the standard utility allowance is updated in October of each year.
23. For the purposes of the Medicaid program, the spouse had monthly shelter costs in the community of \$1,381.31. [\$544.48 (pro-rated real estate tax) plus \$128.83 (pro-rated real estate insurance) plus \$708.00, standard utility allowance in effect at time of the Appellant's filing of his Medicaid application]
24. 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. UPM § 5035.30 (B)(3).
25. One hundred and fifty percent of the Federal Poverty Level for two per month at the time of the Appellant's Medicaid application equaled \$1,991.25.
26. Thirty percent of 150 percent of the Federal Poverty Level for two per month at the time of the Appellant's Medicaid application equaled \$597.38.
27. For the purposes of the Medicaid program, the spouse had excess monthly shelter costs of \$783.93 at the time of the Appellant's Medicaid application. [\$1,381.31, monthly shelter costs; minus \$597.38, thirty percent of \$1,991.25, one hundred and fifty percent of the Federal Poverty Level for two per month]
28. The Minimum Monthly Needs Allowance ("MMNA") is that amount which is equal to the sum of the amount of the community spouse's excess shelter cost 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)(2).
29. At the time of the filing of the Appellant's Medicaid application, the minimum MMNA equaled \$1,991.25; the maximum MMNA equaled \$2,980.50.
30. For the purposes of the Medicaid program, the spouse's MMNA equaled \$2,775.18 at the time of the filing of the Appellant's Medicaid application. [\$783.93 plus \$1,991.25]
31. 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). 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 § 1570.25 (D)(4)(b).

32. The following monthly deductions are allowed from the income of assistance units in [Long-Term Care Facilities] LTCF's: 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; 3. a Community Family Allowance (CFA), when appropriate; 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 the following conditions are met: a. 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 b. the recipient is currently liable for the expenses; and c. the services are not covered by Medicaid in a prior period of eligibility. UPM § 5035.25 (B).
33. For the purposes of the Medicaid program, \$1,803.00 of the Appellant's gross monthly income from non-investment sources may be administratively diverted to his spouse toward meeting her MMNA. [\$1,863.00 (gross income) minus \$60.00 (monthly personal needs allowance)]
34. 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. UPM § 1570.25 (D)(4)(c).
35. For the purposes of the Medicaid program, it is reasonable to conclude that the Appellant's community spouse's \$60,455.88 share of the couple's counted assets had the potential to generate approximately \$61.97 per month in income. [\$60,455.88 multiplied by 1.23 percent rate of return; divided by 12 months]
36. For the purposes of the Medicaid program, it is reasonable to conclude that the remainder of the Appellant and the spouse's counted assets of \$64,720.33 as of [REDACTED] 2016 had the potential to generate approximately \$66.34 per month in income. [\$64,720.33 multiplied by 1.23 percent rate of return; divided by 12 months]



37. For the purposes of the Medicaid program as it pertains to long-term care coverage, the Appellant's community spouse had \$2,656.67 in projected, available monthly income. [\$791.70 (personal Social Security benefits) plus \$1,803.00 (Appellant's divertible income as generated by his personal Social Security benefits) plus \$61.97 (potential monthly return of \$60,455.88 share of couple's counted assets)]
38. There remains a deficit of \$118.51 between the Appellant's spouse's monthly income from all sources and her MMNA. [\$2,775.18 (MMNA) minus \$2,656.67 (Appellant's spouse's projected, available monthly income)]
39. An increase in the Appellant's community spouse's CSPA to \$64,720.33—to equal the remainder of the couple's counted assets as they existed on [REDACTED] 2016—would generate additional monthly income to the spouse, so as to partially meet the deficit between the spouse's monthly income from all sources and her MMNA.
40. The Appellant's community spouse's CSPA is increased to \$64,720.33 in [REDACTED] 2016.
41. 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 is compared to the Medicaid asset limit for the IS (the Medicaid asset limit for one adult). UPM § 4025.67 (A).
42. An assistance unit is not eligible for benefits under a particular program if the unit's equity in counted assets exceeds the asset limit for the particular program, unless the assistance unit is categorically eligible for the program and the asset limit requirement does not apply. (cross reference: 2500 Categorical Eligibility Requirements). UPM § 4005.05 (D)(2).
43. MA [Medicaid], AABD [Aid to the Aged, Blind and Disabled] Residents of Long-Term Care Facilities: At the time of application, the assistance unit is ineligible until the first day of the month in which it reduces its equity in counted assets to within the asset limit. UPM § 4005.15 (A)(2).
44. As noted in section 4025.67 (A)(2), a community spouse is not a member of the institutionalized spouse's needs group for setting the asset limit. UPM § 4025.67 (C).
45. AABD and MAABD – Categorically and Medically Needy: (Except Qualified Medicare Beneficiaries, Specified Low Income Medicare Beneficiaries, Additional Low Income Medicare Beneficiaries, Qualified Disabled and Working Individuals,

Working Individuals with Disabilities, and Women Diagnosed with Breast or Cervical Cancer). The asset limit is \$1,600 for a needs group of one. UPM § 4005.10 (A)(2)(a).

46. In order for the Appellant to be eligible for Medicaid coverage of his long-term care services effective [REDACTED] 2016, the couple's counted assets must equal \$66,320.33 or less in [REDACTED] 2016. [\$64,720.33 (CSPA-as increased by this decision) plus \$1,600.00]

**DECISION**

The Appellant's appeal is GRANTED. The CSPA is increased to \$64,720.33.

**ORDER**

1. If it has not already done so, the Department will reopen the Appellant's [REDACTED] 2016 Medicaid application. For the purposes of the Medicaid program, the CSPA equals \$64,720.33.
2. The Department will take appropriate action to process the Appellant's Medicaid application with respect to determining Medicaid long-term care eligibility for [REDACTED] 2016.
3. Within 21 calendar days of the date of this decision, or [REDACTED] 2016, documentation of compliance with this order is due to the undersigned.

*Eva Tar-electronic signature*  
Eva Tar, for Christopher Turner  
Hearing Officer

- cc: Attorney [REDACTED]  
[REDACTED]  
Lindsay Meyer, DSS-Bridgeport (30)  
Michael Briggs, DSS-Bridgeport (30)  
Poonam Sharma, DSS-Bridgeport (30)  
Fred Presnick, DSS-Bridgeport (30)  
Yecenia Acosta, DSS-Bridgeport (30)  
Lorraine Crowe, DSS-Danbury (31)  
Carol Sue Shannon, DSS-Danbury (31)

### **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.