

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 # 786759

**NOTICE OF DECISION**

**PARTY**

██████████  
For ██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████ ██████████ the Appellant and institutionalized spouse (the "Appellant", or the "IS") notices of action ("NOA") approving his application for Long Term Care Medicaid effective ██████████ ██████████ 2016, but denying the months of ██████████ 2015 to ██████████ 2016, inclusive, because his assets exceeded the limit in those months.

On ██████████ 2016, the Appellant requested an administrative hearing because he was aggrieved by the Medicaid eligibility date determined by the Department.

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, 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 son  
Jason Bezzini, Department's Representative  
Anthony Gulino, from the Department, observing

**STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department was correct when it determined that the Appellant’s Medicaid eligibility began [REDACTED] 2016.

**FINDINGS OF FACT**

1. The Appellant, who is currently residing in a long term care facility, is married to [REDACTED] (the “community spouse”, or the “CS”) who continues to reside at home. (Hearing Record, Appellant testimony)
2. On [REDACTED] 2015, the Appellant became institutionalized for more than 30 days and remained continuously institutionalized thereafter, which the Department established as his date of institutionalization (“DOI”). (Hearing Record)
3. On [REDACTED] 2015, the Appellant applied to the Department for Medicaid. (Hearing Record, Appellant testimony)
4. The Medicaid Application was originally intended to be for Home Care Waiver Services because the Appellant was intending to return home, but when the Appellant’s health became such that it was no longer expected that he could return home, the Department continued to process the application, but as an application for Medicaid for Long Term Care. (Hearing Record, Appellant testimony)
5. As of the [REDACTED] 2015 DOI, the Appellant and the CS owned the following counted assets:

<b>Asset</b>	<b>Value as of DOI</b>
CSE Credit Union # [REDACTED]	\$56,476.16
Webster Bank # [REDACTED]	\$588.13
Webster Bank # [REDACTED]	\$12,504.65
Achieve Financial # [REDACTED]	\$5.00
TIAA CREF # [REDACTED]	\$102,005.03
2005 Honda Pilot	\$5,975.00
<b>Total</b>	<b>\$177,553.97</b>

(Ex. 1: Spousal Assessment Worksheet, Ex.15: W-1-SAN Assessment of Spousal Assets – Notification of Results, Hearing Record)

6. The *Achieve Financial* account with a value of \$5.00 was not discovered until very late in the process and was not included by the Department in its Spousal Assessment results. In its assessment results, the Department used a figure of \$177,548.97 to represent the total assets owned by the couple as of the DOI instead of the actual figure of \$177,553.97. The difference in the final result caused by not including the \$5.00 asset was inconsequential to the eligibility determination. (Ex. 1, Ex. 15, Department testimony)
7. On ██████ 2016, the Department sent the Appellant a *W-1-SAN Assessment of Spousal Assets – Notification of Results* informing him that it determined that the couple's total assets as of the DOI were equal to \$177,548.66, that the Community Spouse Protected Amount (CSPA) for the CS was \$88,774.49 and that the Appellant's Medicaid eligibility could not begin until the total spousal assets were reduced to \$90,374.49 or less (\$1600.00 for the Appellant plus \$88,774.49 for the CS). (Ex. 15, Ex. 3: Narrative screens)
8. The following table shows the total available non-excluded assets owned by the couple in each month that the Appellant's Medicaid application was pending, as of the last day of the month:

█████ 2015	As of ██████ 15	\$172,516.90
█████ 2015	As of ██████ 15	\$166,205.20
█████ 2015	As of ██████ 15	\$168,488.47
█████ 2015	As of ██████ 15	\$171,216.02
█████ 2015	As of ██████ 15	\$176,336.03
█████ 2016	As of ██████ 16	\$171,954.61
█████ 2016	As of ██████ 16	\$119,860.34
█████ 2016	As of ██████ 16	\$120,137.49
█████ 2016	As of ██████ 16	\$117,321.31
█████ 2016	As of ██████ 16	\$112,821.37
█████ 2016	As of ██████ 16	\$86,970.62

(Ex. 1)

9. On [REDACTED] 2016, the Department sent the Appellant a NOA advising him that his application for medical assistance was denied for the months of [REDACTED] 2015 to [REDACTED] 2016, inclusive, because his assets exceeded the limit in each denied month. (Ex. 13: [REDACTED] 2016 NOA)
10. On [REDACTED] 2016, the Department sent the Appellant a NOA advising him that his application for medical assistance was approved effective [REDACTED] 2016. (Ex. 14: [REDACTED] 2016 NOA)
11. The CS has no rental or mortgage expense, has a property tax expense of \$534.25 per month, and a homeowners insurance expense of \$55.25 per month. (Ex. 11: State Farm bill, Ex. 12: Property Tax History, Ex. 10: Community Spouse Allowance Calculation sheet)
12. The CS had income in 2015 consisting of \$1,701.90 per month Social Security and \$1,538.27 per month pension. (Ex. 6: [REDACTED] OSC Retirement Payroll Advice, Ex. 7: [REDACTED] Social Security benefit letter)
13. In 2016, the IS has income consisting of \$1,259.90 Social Security and \$133.17 per month pension. (Ex. 8: Notice of Approval for Long Term Care Medicaid, Ex. 4: Social Security benefit letter, Ex. 5: Department of Veterans Affairs pension letter)

### **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] 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 \$2,689.88 as shown in the calculation below:

Property Tax	\$534.25
Homeowners Insurance	\$55.25
Standard Utility Allowance	+ \$724.00
Total Shelter Costs	= \$1,313.50
30% of 150% of FPL for 2	- \$589.88
Excess Shelter Costs	= \$723.63
150% FPL for 2	+ \$1,966.25
Equals MMNA	= \$2,698.88

**Effective [REDACTED] 2015, the month following the IS's institutionalization, the CS's income of \$3,240.17 exceeded her MMNA, and the CS did not require**

**an increase to the CSPA to generate income to meet her minimum monthly needs.**

**The CS's CSPA is equal to \$88,776.99, one-half of the \$177,553.97 total assets owned by the couple as of the [REDACTED] 2015 DOI.**

9. 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 is compared to the Medicaid asset limit for the IS (the Medicaid asset limit for one adult)

UPM § 4025.67(D)(1) provides that the Department calculates the amount of assets deemed to the institutionalized spouse from the community spouse by subtracting the Community Spouse Protected Amount (CSPA) from the community spouse's total available non-excluded assets.

**Effective [REDACTED] 2015, the couple's assets of \$172,516.90 exceeded the CSPA by \$83,739.91, and such excess deemed to the IS exceeded the \$1,600.00 Medicaid asset limit.**

**Effective [REDACTED] 2015, the couple's assets of \$166,205.20 exceeded the CSPA by \$77,428.21, and such excess deemed to the IS exceeded the \$1,600.00 Medicaid asset limit.**

**Effective [REDACTED] 2015, the couple's assets of \$168,488.47 exceeded the CSPA by \$79,711.48, and such excess deemed to the IS exceeded the \$1,600.00 Medicaid asset limit.**

**Effective [REDACTED] 2015, the couple's assets of \$171,216.02 exceeded the CSPA by \$82,439.03, and such excess deemed to the IS exceeded the \$1,600.00 Medicaid asset limit.**

**Effective [REDACTED] 2015, the couple's assets of \$176,336.03 exceeded the CSPA by \$87,559.04, and such excess deemed to the IS exceeded the \$1,600.00 Medicaid asset limit.**

Effective [REDACTED] 2016, the couple's assets of \$171,954.61 exceeded the CSPA by \$83,177.62, and such excess deemed to the IS exceeded the \$1,600.00 Medicaid asset limit.

Effective [REDACTED] 2016, the couple's assets of \$119,860.34 exceeded the CSPA by \$31,083.35, and such excess deemed to the IS exceeded the \$1,600.00 Medicaid asset limit.

Effective [REDACTED] 2016, the couple's assets of \$120,137.49 exceeded the CSPA by \$31,360.50, and such excess deemed to the IS exceeded the \$1,600.00 Medicaid asset limit.

Effective [REDACTED] 2016, the couple's assets of \$117,321.31 exceeded the CSPA by \$28,544.32, and such excess deemed to the IS exceeded the \$1,600.00 Medicaid asset limit.

Effective [REDACTED] 2016, the couple's assets of \$112,821.37 exceeded the CSPA by \$24,044.38, and such excess deemed to the IS exceeded the \$1,600.00 Medicaid asset limit.

Effective [REDACTED] 2016, the couple's assets of \$86,970.62 did not exceed the CSPA and the IS's assets were below the \$1,600.00 Medicaid asset limit.

The Department was correct when it determined that the Appellant became eligible for Medicaid [REDACTED] 2016, because [REDACTED] 2016 was the first month that his assets were below the \$1,600.00 limit.

The Department was correct when it determined that the Appellant was ineligible for Medicaid for the months of [REDACTED] 2015 to [REDACTED] 2016, inclusive, because the Appellant's assets exceeded the Medicaid asset limit in those months.

## **DISCUSSION**

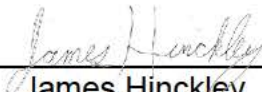
When a Medicaid applicant has a spouse in the community, a portion of the couple's assets may be protected for the community spouse when determining eligibility. The couple's assets as of the DOI are divided in half to determine the spousal shares, and the amount that can be protected, called the CSPA, is equal to the spousal share from a minimum of \$23,184.00 to a maximum of \$115,920.00. Eligibility for the institutionalized spouse begins when the assets that exceed the protected amount are no more than \$1,600.00, the Medicaid asset limit. The CSPA can only be increased by a Fair Hearing decision when the CS has insufficient income to meet minimum monthly needs and requires more assets to be protected to generate additional income. In this case, the CS had no income shortfall and required no additional protection of assets, so the CSPA is equal to the spousal share, one-half of the assets owned as of the DOI.



There is no legal basis by which the Appellant's Medicaid eligibility date could be changed from what the Department correctly determined was the date he became asset eligible for the program.

**DECISION**

The Appellant's appeal is DENIED.

  
\_\_\_\_\_  
James Hinckley  
Hearing Officer

cc: [REDACTED]  
Musa Mohamud, SSOM, Hartford  
Judy Williams, SSOM, Hartford  
Tricia Morelli, SSPM, Hartford

## **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.