

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT06106-5033

██████████ 2017  
Signature Confirmation

Client ID # ██████████  
Request # 817227

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████, 2017, the Department of Social Services (the "Department") sent ██████████ (the Appellant") a notice of action denying his request for Long Term Care ("LTC") benefits under the Medicaid program.

On ██████████ 2017, the Appellant's attorney requested an administrative hearing to contest the Department's decision to deny such benefits.

On ██████████, 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████, 2017.

On ██████████, 2017, 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:

██████████ Appellant's Attorney  
Michael Briggs, Department Representative, by telephone  
Glenn Guerrero, Department Representative  
Christopher Turner, Hearing Officer

The Appellant's spouse was not present.

The Hearing record was left open for the submission of additional information. On [REDACTED], 2017, the record closed.

### STATEMENT OF THE ISSUES

1. The first issue is whether the Community Spouse (“CS”) needs income diverted from the Institutionalized Spouse’s (“IS”) income to help meet the Community Spouse Allowance (“CSA”).
2. The second issue is whether the CS needs additional assets protected, from the Appellant’s share of assets, to produce extra income to meet the CS’s Minimum Monthly Needs Allowance (“MMNA”).

### FINDINGS OF FACT

1. On [REDACTED] [REDACTED] 2016, the Appellant began a continuous period of institutionalization (his “date of institutionalization” or “DOI”) (Exhibit 1: W-1 LTC application; Exhibit 3: Spousal Assessment Worksheet; Hearing summary)
2. On [REDACTED], 2016, the Appellant applied for LTC benefits under the Medicaid Program. (Exhibit 1; Hearing summary)
3. As of the DOI, the Appellant’s and the CS’s non-exempt assets consisted of the individual assets listed in the below chart:

<b>Asset</b>	<b>Asset Value as of DOI</b>
Key Bank # [REDACTED]	\$1,206.12
Citizens Bank # [REDACTED]	\$1,030.15
Fidelity # [REDACTED]	\$191,121.38
Fidelity # [REDACTED]	\$2,164.33
MetLife # [REDACTED]	\$ 2,511.71
ExxonMobil stock	\$10,694.25
Home Property	Exempt
<b>Total Assets</b>	<b>\$208,778.48</b>

(Exhibit 3)

4. The Appellant is married to [REDACTED], (the “CS”). (Record)

5. The CS resides at [REDACTED]. (Exhibit 7: Social Security statement; Exhibit 8: Mortgage statement)
6. The CS has a \$1,390.83 monthly mortgage expense. (Exhibit 8)
7. The CS has a \$143.17 monthly home insurance expense. (Exhibit 9: Insurance statement)
8. The IS' monthly gross unearned income from Social Security is \$1,729.90. (Exhibit 6: Social Security statement)
9. The CS' monthly gross unearned income from Social Security is \$776.70. (Exhibit 7)
10. The Appellant's monthly Medicare Part B premium is \$104.90 and his spouse has a \$121.80 Medicare Part B premium. (Exhibit 6; Exhibit 7)
11. As of [REDACTED], 2017, the 12-month Certificate of Deposit Bankrate for Hartford/New Haven County was 0.5%. (0.05 Union Bank + 0.5% T.D. Bank + 0.5% Liberty Bank = 1.50/3 = 0.5%) (Hearing Officer Exhibit)
12. The combined total of the Appellant and Community Spouse's non-exempt assets was \$208,778.48 as of the DOI. (Exhibit 3)
13. The spousal share of the assets was \$104,389.24 as of the DOI. (Exhibit 3)
14. The Community Spouse Protected Amount ("CSPA") was \$104,389.24 as of DOI. (Hearing record)
15. As of the DOI, the CS's assets of \$208,178.48 would have generated the following rates of return.

Asset	Balance	Rate of Return
KeyBank #[REDACTED]	\$ 1,206.12	0.00%
Citizens Bank #[REDACTED]	\$ 1,030.15	0.00%
Fidelity Core Cash Account #[REDACTED]	\$191,121.38	0.10%
Fidelity Money Market #[REDACTED]	\$ 2,164.33	0.15%
MetLife Stock #[REDACTED]	\$ 2,511.71	0.40%

Exxon/Mobil stock	\$ 10,694.25	redeemed
Total	\$208,778.48	

(Exhibit's 10A to 10F: Financial statements)

16. On [REDACTED] 2017, the Department's representative sent the Appellant an assessment of spousal assets. The Department notified the Appellant it determined the couple's total assets as of the DOI were equal to \$208,778.48 and the Community Spouse Protected Amount ("CSPA") for the CS is \$104,389.24. (Exhibit 3: Assessment of Spousal Assets Notification of Results)
17. The Appellant's Attorney agrees to the accuracy of the Department's [REDACTED] 2017 assessment as it pertains to the total assets owned by the couple as of the DOI, and to the composition of the assets owned, but is requesting that the hearing official adjust the CSPA determined by the Department on the W-1-SAN. (Attorney's brief; Record)
18. The Appellant's Attorney is not claiming the CS has exceptional circumstances. (Record)
19. On [REDACTED] 2017, the Department denied the Appellant's application due to excess assets. (Exhibit 2; Hearing summary)
20. The Appellant is seeking a [REDACTED] 2016, Medicaid eligibility date. (Record)

### **CONCLUSIONS OF LAW**

1. Section 17b-260 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer 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.

**The Department correctly determined the Appellant's initial period of institutionalization began [REDACTED] 2016.**

3. UPM § 4000.01 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.

**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).**

4. 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.
5. UPM § 4022.05 (B) (2) 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.
6. 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).
  - 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.

**The Department correctly set the CSPA at the maximum amount of \$104,389.24 based on assets held as of the DOI.**

7. As of the DOI, the CS’s assets of \$208,778.48 would have generated monthly interest income of \$53.71. See table below for calculations.

Asset	Balance	Interest Rate	Bankrate	Interest Amount
KeyBank # [REDACTED]	\$ 1,206.12	0.00%	0.50%	\$ 0.50
Citizens Bank # [REDACTED]	\$ 1,030.15	0.45%	0.50%	\$ 0.43
Fidelity Core Cash Account # [REDACTED]	\$ 29,094.06	0.45%	0.50%	\$12.12

Fidelity Money Market # [REDACTED]	\$108,515.46	0.45%	0.50%	\$45.21
MetLife Stock # [REDACTED]	\$ 2,511.71	0.40%	0.50%	\$ 7.50
Exxon/Mobil stock	\$ 10,694.25	N/A	N/A	N/A
Total	\$208,778.48			\$53.64

8. As of [REDACTED], 2016, the CS had gross monthly income of \$832.64 (\$779.00 SSA + \$53.64 interest).
9. UPM § 5035.30 (A) provides for the use of Community Spouse Allowance (“CSA”). 1. The CSA is used as an income deduction in the calculation of the post-eligibility applied income of an institutionalized spouse (IS) only when the IS makes the allowance available to the community spouse (CS) or for the sole benefit of the CS. (Cross Reference 5035.25)

UPM § 5035.30 (B) provides for the calculation of the CSPA. 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.

UPM § 5035.30(B)(2) provides that the MMNA is the amount which is equal to the sum of a. the amount of the community spouse’s excess shelter costs as calculated in section 5035.30 (B) (3) and b. 150 percent of the monthly poverty level for a unit of two persons.

UPM § 5035.30(B)(3) 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.

UPM § 5035.30(B) (4) provides the community spouse’s monthly shelter cost includes: a. rental cost 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. the Standard Utility Allowance (“SUA”) used in the Supplemental Nutrition Assistance Program for the community spouse.

10. Effective [REDACTED] 2016, the CS's MMNA was \$2,980.50 as shown in the below table:

	AMOUNT
<b>Shelter Costs:</b>	
Mortgage/Property Taxes	\$1,390.83
Home Insurance	\$ 143.17
Standard Utility Allowance	\$ 698.00
<b>Total shelter costs:</b>	<b>\$2,232.00</b>
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>\$ 597.38</u>
<b>Excess shelter costs:</b>	<b>\$1,634.62</b>
Plus 150% of the FPL for two:	<u>\$1,991.25</u>
Equals	\$3,625.87
<b>Maximum MMNA</b>	<b>\$2,980.50</b>

11. Effective [REDACTED] 2016, the deficit between the CS's income is \$2,150.16 as shown in the below calculation:

MMNA	\$2,980.50
CS's income	- \$ 776.70
Interest income	- \$ 53.64
Equals Deficit	= \$2,150.16

12. 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 [REDACTED] 2015), and the cost of Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid by the Department or any third party.

**As of [REDACTED] 2016, the IS had \$1,565.00 in income that could be diverted to the CS to meet her monthly needs (\$1,729.90 Social Security, minus \$104.90 part B premium, minus \$60.00 personal needs allowance)**

**After diverting all available income from the IS, the CS still is still short of her MMNA by a monthly deficit of \$585.16 (\$2,150.16 original deficit, minus \$1,565.00 diverted from spouse, equals \$585.16).**

**As the additional income remains insufficient to meet the CS' MMNA deficit of \$585.16, the CS' CSPA is increased to \$208,778.48 to generate the interest income to help meet her MMNA.**

13. UPM § 4005.10 (A) (2) (a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.

**After the diversion of all assets effective [REDACTED] 2016 for the benefit of the Community spouse, the value of the Appellant's countable assets is \$0.00.**

**Effective [REDACTED] 2016, the Appellant's assets do not exceed the Medicaid asset limit of \$1,600.00.**

14. UPM § 5045.20 (A) provides the amount of income to be contributed is calculated using the post-eligibility method starting with the month in which the 30th day of continuous LTCF care or receipt of community-based services occurs, and ending with the month in which the assistance unit member is discharged from the LTCF or community-based services are last received.

UPM § 5045.20 (B) (1) (b) provides total gross income is reduced by post-eligibility deductions (Cross reference: 5035-"Income Deductions") to arrive at the amount of income to be contributed.

**The Institutionalized Spouse has no applied income after the deduction of his personal needs allowance, medical deductions, and diversion of the remainder of income to his Community Spouse.**

**Effective [REDACTED] 2016, the institutionalized spouse has zero applied income.**




**DECISION**

The Appellant's appeal is Granted.

**ORDER**

1. Effective [REDACTED] 2016, the CSPA is increased to \$208,778.48.
2. The Department shall reopen the Appellant's application for Medicaid effective [REDACTED] 2016, and the Appellant's assets shall be considered \$0.00 as of [REDACTED] 2016.
3. The Department shall submit proof of compliance with this order to the undersigned no later than [REDACTED], 2017.

  
\_\_\_\_\_  
Christopher Turner  
Hearing Officer

Cc: Cathy Robinson-Patton, Deputy Director  
Tricia Morelli, Social Services Program Manager, Torrington  
Michael Briggs, DSS

### **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, law, and 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 06106.

### **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, if 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.