

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3725

██████████, 2018  
Signature Confirmation

Case # ██████████  
Client # ██████████  
Request # ██████████

**NOTICE OF DECISION**

**PARTY**

██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2018, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a notice denying his application for Medicaid for Long Term Care ("LTC") benefits effective ██████████, 2018.

On ██████████, 2018, the applicant's attorney requested an administrative hearing to contest the denial of the LTC.

On ██████████ 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2018.

The applicant's attorney requested a reschedule of the administrative hearing. On ██████████, 2018, OLCRAH issued a notice rescheduling the administrative hearing for ██████████ 2018.

On ██████████ 2018, 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 Power of Attorney and daughter

[REDACTED], Appellant's Attorney  
Michael Briggs, Department's Representative  
Susan McDonnell, Observer, DSS  
Noel Lord, Observer, DSS  
Carla Hardy, Hearing Officer

The record was held open for the Hearing Officer to review documents that were submitted by the applicant's attorney on the date of the hearing. The hearing record closed on [REDACTED] 2018.

### **STATEMENTS OF THE ISSUES**

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

### **FINDINGS OF FACT**

1. Since [REDACTED] 2017, the Appellant had been institutionalized continuously (the date of institutionalization ("DOI"). (Exhibit 4: Notice of Assessment of Spousal Assets)
2. On [REDACTED], 2018, the Department received the Appellant's LTC application. (Exhibit 1: LTC Application, [REDACTED]18)
3. [REDACTED] is the Appellant's Power of Attorney ("POA"). (Hearing Record)
4. The combined total of the Appellant's and the Community Spouse's ("CS") non-exempt assets equaled \$61,859.71 as of the DOI. (Exhibit 4; Exhibit 14: [REDACTED]; Exhibit 15: [REDACTED]; Exhibit 16: [REDACTED]; Exhibit 17: [REDACTED] Bank Statements ending in [REDACTED]; Applicant's Exhibit A: List of Assets)
5. The spousal share of the assets equaled \$30,929.85 (½ of the couple's combined non-exempt assets) as of the DOI. (Exhibit 4)
6. The Community Spouse Protected Amount ("CSPA") equaled \$32,529.85 as of the DOI. (Exhibit 4)
7. Effective [REDACTED] 2018, the CS had monthly homeowner's insurance of \$221.63. (Exhibit 13: Community Spouse Allowance Calculation)

8. Effective [REDACTED], the CS had monthly gross unearned income of \$529.00 (Exhibit 13; Exhibit 9: Social Security Printout)
9. Effective [REDACTED], the Appellant had monthly gross unearned income of \$1,324.00. (Exhibit 8: Social Security Printout)
10. As of [REDACTED], the Appellant and the Community Spouse had a combined monthly gross income of \$1,853.00 (Facts 9 and 10)
11. On [REDACTED] 2018, the Appellant expired. (Hearing Record)
12. The Appellant's and CS's assets were not reduced below \$32,529.85 by the date of the Applicant's death. (Hearing Summary)
13. On [REDACTED] 2018, the Department denied the LTC application due to excess assets. (Exhibit 5: Notice of Action, [REDACTED]/18)
14. On [REDACTED] 2018, the local average rate of return for a certificate of deposit in Connecticut equaled .84%. (Hearing Officer's Exhibit AA: Bankrate CD Rates in Connecticut, [REDACTED]/18)

### **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] 2017.
4. UPM § 4022.05(B)(2) 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)(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 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 institutional 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.
- 6. The Department correctly determined that the CSPA was \$30,929.85.
- 7. As of [REDACTED] 2018, the local average rate of return for a Certificate of Deposit was .84%.
- 8. Effective [REDACTED], 2017, the Community Spouse’s assets of \$30,929.85 would have generated monthly investment income of \$21.61 per month. See table below for calculations:

ASSET	BALANCE	INTEREST RATE	INTEREST PER MONTH
[REDACTED]	\$17,972.95	.84%	\$12.58
[REDACTED]	\$3,697.55	.84%	\$2.58
[REDACTED]	\$1,866.70	.84%	\$1.30
[REDACTED]	\$2,212.44	.84%	\$1.54
[REDACTED]	\$655.61	.84%	\$.45
[REDACTED]	\$1,459.16	.84%	\$1.02
[REDACTED]	\$3,065.44	.84%	\$2.14

Total	\$30,929.85	\$21.61
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9. Effective [REDACTED] 2018, the CS had gross monthly income of \$550.61 (\$529.00 + \$21.61 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
  - e. The Standard Utility Allowance (“SUA”) used in the Supplemental Nutritional Assistance (“SUA”) used for the community spouse.

11. Effective [REDACTED], 2018, the Community Spouse’s MMNA was \$2,370.63 as shown in the table below:

	AMOUNT
Shelter Costs:	
Rent/Mortgage	\$0 .00
Sewer/Water	\$ 0.00
Property Taxes	\$ 0.00
Home Insurance	\$ 221.63

Condo Fees	\$ 0.00
Utility Allowance	+ \$ 728.00
<b>= Total Shelter Costs</b>	<b>\$949.63</b>
- 30% of \$2,030.00 (150% of Poverty Level for 2)	-\$ 609.00
<b>= Excess Shelter Costs</b>	<b>\$ 340.63</b>
+ (150% of Poverty Level for 2)	\$2030.00
<b>= Minimum Monthly Needs Allowance ("MMNA")(Capped at \$3,090.00)</b>	<b><u>\$2,370.63</u></b>

12. Effective [REDACTED], the deficit between the Community Spouse's income and her MMNA was \$1,899.26 as shown in the table below:

COMMUNITY SPOUSE DEFICIT	
Social Security	\$ 529.00
Interest Income	\$ <u>+21.61</u>
= Total Income	\$ 550.61
MMNA	\$2,370.63
Less Total Income	\$ <u>-550.61</u>
= Monthly Deficit	\$1,820.02

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 of assistance units in LTCF's:

1. 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, 2017 = \$60.00)
2. a Community Spouse Allowance (CSA), when appropriate; (Cross Reference 5035.30)
3. a Community Family Allowance ("CFA"), when appropriate; (Cross Reference 5035.35)
4. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for by the 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;

15. Effective [REDACTED] 2018, the Appellant had income in the amount of \$1,264.00 (\$1,324.00, total income - \$60.00, PNA = \$1,264.00) available to be diverted to the Community Spouse to help meet her MMNA.
16. As of [REDACTED], 2018, after a diversion of the Appellant's income of \$1,264.00 to the CS, the CS still has a monthly income deficit of \$556.02 (\$2,370.63 MMNA - \$550.61 CS income - \$1,264.00 diverted income).
17. Effective [REDACTED], the remaining assets of \$29,329.86 (\$61,859.71 - \$32,529.85 = \$29,329.86) would generate monthly interest income of \$.20.53 [(\$29,329.86 x .0084)/12 = \$20.53].
18. Since the additional interest income from the remaining assets is still insufficient to meet the Community Spouse's MMNA, effective [REDACTED] 2018, the Community Spouse's CSPA is increased to \$61,859.71.
19. After the diversion of additional assets of \$29,329.86 effective [REDACTED] for the benefit of the CS, the value of the Appellant's countable assets is \$0.00.
20. UPM § 4005.10(A)(2)(a) provides the asset limit for Medicaid for a needs group of one is \$1,600.00.
21. Effective [REDACTED] 2018, the value of the Appellant's 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 regulations of the Department allow the Hearing Officer to protect additional assets from the Institutionalized Spouse to meet the needs of the Community Spouse.

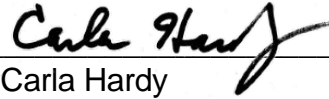
### **DECISION**

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

### **ORDER**

1. The Department shall reopen the Appellant's [REDACTED], 2018, application for Long Term Care Medicaid and continue the eligibility process.
2. Effective [REDACTED] 2018, the CSPA is increased to \$61,859.71.

3.The Department shall submit verification of compliance with this order to the undersigned no later than [REDACTED] 2018.



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Carla Hardy  
Hearing Officer

Pc: Yecenia Acosta, DSS, Stamford  
Michael Briggs, DSS, Stamford  
Luciana Walker, 22 Fensky Rd, Easton, CT 06612  
Atty Cathy Kohut, PO Box 38, Monroe, CT 06468



### **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.