

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

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

NOTICE OF DECISION

PARTY

██████████
██████████
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PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (the "Department") sent ██████████ ██████████, the Appellant and institutionalized spouse (the "Appellant" or the "IS") a notice of action ("NOA") denying his application for Long Term Care Medicaid because his assets exceeded the limit.

On ██████████ 2018, the Appellant, by his spouse ██████████ (The "community spouse" or "CS"), requested an administrative hearing to contest the Department's assessment of spousal assets, arguing that the CS should have been entitled to retain a greater share of the spousal assets to generate income to meet her minimum monthly needs.

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

On ██████████ 2018, at the request of the Appellant's attorney due to a scheduling conflict, OLCRAH issued a notice rescheduling the hearing for ██████████, 2018.

On ██████████ 2018, 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 spouse, and the CS

██████████ counsel for the Appellant
Marilyn Phillips, Department's Representative, via telephone
Noel Lord, Department's representative, not participating in hearing
James Hinckley, Hearing Officer

Information provided by the Appellant which was faxed at the time of the hearing and initially labelled in its entirety as Appellant's exhibit A, was relabeled post-hearing to match the pre-labeling by Appellant's counsel. The information consists of a ten page Fair Hearing Memorandum and Appellant's exhibits A through H.

STATEMENT OF THE ISSUE

1. The issue is whether the CS required an increase to her protected share of the spousal assets (the "community spouse protected amount" or "CSPA") to include all of the couple's assets, so that additional income could be generated to help meet a shortfall in her minimum monthly needs allowance ("MMNA"), and if, as a consequence of protecting all of the assets for the CS, the IS's Medicaid application should be reopened and granted retroactively.

FINDINGS OF FACT

1. On ██████████ 2017, the Appellant began a continuous period of institutionalization (his "date of institutionalization" or "DOI"). (Hearing Record)
2. On ██████████ 2018, the Appellant applied for Long Term Care Medicaid. (Hearing Record)
3. Subsequently, the Department, as part of the spousal assessment, determined that the total assets owned by the couple as of the DOI equaled \$360,228.56; the Appellant does not contest this determination. (Ex. 5: Spousal Assessment Worksheet, Attorney's testimony)
4. The Department also determined that the CS's CSPA was set at the maximum amount of \$123,600.00, because a spousal share equaling one-half of the total assets was \$180,114.28, which was more than the maximum allowed; the Appellant does not contest the Department's initial determination which set the CSPA at the maximum of \$123,600.00, but requests an adjustment of the CSPA by the fair hearing officer. (Ex. 5, Attorney's testimony)
5. The Department also determined that, for purposes of determining whether the CS required a Community Spouse Allowance ("CSA"), the CS' MMNA was capped at \$3,090.00, which was the maximum amount. (Ex. 7: Department's Community Spouse Allowance Calculation)
6. The Department also determined that the CS did not require a CSA, because based on a consideration of her income from employment at ██████████

██████████, using pay stubs from ██████████ 2017 and ██████████ 2017, she had no shortfall in meeting her MMNA. (Ex. 7, Ex. 11: Pay Stubs from ██████████)

7. On ██████████, 2018, the Department issued a *Notice of Assessment of Spousal Assets* to the Appellant providing the results of the Department's assessment, that the maximum assets the couple was allowed to keep for the Appellant to be eligible for Medicaid long-term benefits was \$125,200.00 in total, \$1,600.00 for the Appellant/IS and \$123,600.00 for the CS. (Ex. 4: Notice of Assessment of Spousal Assets)
8. The Department determined that as of ██████████, 2018, and in each month of the Appellant's application, the Appellant's share of the spousal assets exceeded the \$1,600.00 Medicaid asset limit. (Hearing Record)
9. On ██████████ 2018, the Department sent the Appellant a NOA denying his Medicaid application for all application months for the reason, "The value of your assets is more than the amount we allow you to have". (Ex. 13: NOA dated ██████████/18)
10. The Appellant is seeking an adjustment to the CSPA to have all of the couple's assets protected for the CS to generate additional income necessary to supplement a shortfall in her own income in meeting her Minimum Monthly Needs Allowance ("MMNA"). (Attorney's testimony, Fair Hearing Memorandum)
11. The Appellant is seeking Medicaid eligibility beginning ██████████ 2018. (Attorney's testimony)
12. The Appellant is not claiming that the CS has any expenses arising from exceptional circumstances, and agrees that the CS' MMNA is properly capped at \$3,090.00. (Attorney's testimony)
13. The CS was laid off from her job at ██████████ in ██████████ 2018, and beginning ██████████ 2018, her only source of income, besides income generated by her assets, was from part time employment at ██████████, which was less than she made at her previous job. (Appellant's testimony, Hearing Record)
14. The Appellant's first pay from ██████████, which can be identified as the pay where the gross pay equals the year-to-date pay, was paid on ██████████ 2018, and was for the period from ██████████, 2018 through ██████████ 2018. (Ex. D: Appellant wage calculation and 10 pay stubs from ██████████)
15. The Appellant submitted bi-weekly pay stubs for the CS from ██████████ for the following pay dates in the following gross amounts: ██████████/18 - \$212.81, 3/2/18 -

\$446.47, █████ 18 - \$633.96, █████ 18 - \$475.21, █████/18 - \$476.39, █████/18 - \$424.30, █████/18 - \$430.99, █████/18 - \$401.59, █████/18 - \$471.93, █████/18 - \$341.38. (Ex. D)

16. The Appellant does not recall her exact start date at █████, and the fact that her first pay is lower than all the others indicates that it likely represents pay for a partial pay period, and is unrepresentative of her usual earnings. (Appellant's testimony, Fact #15)
17. Excluding the CS' first pay from █████ as unrepresentative, the average of the remaining nine bi-weekly pays is \$455.80 ($\$446.47 + \$633.96 + \$475.21 + \$476.39 + \$424.30 + \$430.99 + \$401.59 + \$471.93 + \$341.38 = \$4,102.22 / 9$) (Ex. D)
18. As of █████ 2018, the CS had shelter expenses that included primary and secondary mortgage payments totaling \$1,617.08 per month, property taxes of \$593.23 per month, and homeowners insurance of \$141.50 per month. (Ex. 7, Ex. E: Appellant's documentation of shelter expenses)
19. As of █████ 2018, the IS had monthly gross income of \$1,553.00 from Social Security. (Ex. B: Social Security Benefit Details for the Appellant)
20. As of █████ 2018, the IS had a monthly expense for United Healthcare medical insurance premium of \$76.00 per month. (Ex. C: United Healthcare statement for the Appellant)
21. As of █████ 2018 (the date of the administrative hearing), the average rate for the three highest yielding 12 month Certificates of Deposit for banks in the █████ CT area was 0.74% (M & T Bank 1.40% + Liberty Bank .75% + TD Bank 0.30% = 2.45% / 3 = 0.74%). (Bankrate.com CD Rates - █████ CT, as of █████, 2018)
22. As of the DOI, of the couple's \$360,228.56 in total assets, \$315,069.80 was held in a Fidelity IRA account composed of multiple funds, \$34,149.00 was held in a Vanguard IRA account composed of multiple funds, and the remaining \$2,740.87 was held in regular accounts at Webster Bank and Patriot Bank. (Hearing Record)
23. As of the quarterly statement for the period ending █████ 2018, when the balance in the Fidelity account was \$328,535.26, the estimated annualized income that Fidelity calculated the account would generate based on the couple's specific security position was \$3,722.67. (Ex. G: Account statements)

24. A reasonable estimate of the income that could have been generated by the couple's assets held in the Fidelity account as of the DOI is \$3,722.67 per year. (Facts #22, #23)
25. For the year 2017, when the balance in the Vanguard IRA was substantially similar to the balance held in the account by the couple as of the DOI, the account generated \$1,753.72 in annual income. (Ex. G)
26. A reasonable estimate of the income that could have been generated by the couple's Vanguard IRA holdings as of the DOI is \$1,753.72 per year. (Facts #22, #25)
27. The remaining \$2,740.87 in assets the couple owned as of the DOI, if the money earned the .74% average rate of return of the three highest yielding CDs available in the couple's area, could have generated \$20.28 per year (\$2,740.87, multiplied by .0074). (Facts #21, #22)
28. All of the assets owned by the couple as of the DOI were capable of generating \$458.06 in monthly income. ($\$3,722.67 + \$1,753.72 + \$20.28 = \$5,496.67/12 = \$458.06$) (Facts #24, #26, #27)

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] 2017, the Appellant and her husband were MCCA Spouses as defined by the Medicaid program; the Appellant was an Institutionalized Spouse (IS) and her husband was 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 February 2018 the Medicaid program as administered by the Department used the 2017 Poverty Guidelines published in the Federal Register, Vol. 82, No. 19, pp. 8831-8832, [REDACTED], 2017.

Effective [REDACTED] 2018, the CS’s MMNA was \$3,090.00 as shown in the calculation below:

Mortgages	\$1,617.08
Property Tax	+ \$593.23
Homeowner’s Insurance	+ \$141.50
Standard Utility Allowance	+ \$728.00
Total Shelter Costs	= \$3,079.81
30% of 150% of FPL for 2	Minus \$609.00
Excess Shelter Costs	= \$2,470.81
150% FPL for 2	+ \$2,030.00
Total actual expenses	= \$4,500.81
MMNA capped at \$3,090.00	\$3,090.00

Effective [REDACTED] 2018, the CS' monthly income from employment at Lowe's was \$979.97, based on her average bi-weekly pay of \$455.80, multiplied by 2.15.

Effective [REDACTED] 2018, the deficit between the CS's income and her MMNA was \$2,110.03 as shown in the calculation below:

MMNA	\$3,090.00
CS's income	- \$979.97
Equals Deficit	= \$2,110.03

9. UPM § 1570.25(D)(4) b. provides that 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 § 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 February 2018), 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] 2018, the IS had \$1,417.00 in income that could have been diverted to the CS toward meeting her monthly needs. (\$1,553.00 Social Security, minus \$76.00 United Healthcare premium, minus \$60.00 personal needs allowance)

After diverting all available income from the IS, the CS' income would still have been short of her required MMNA by a monthly deficit of \$693.03 (\$2,110.03 original deficit, minus \$1,417.00 income diverted from spouse, equals \$693.03).

UPM § 1570.25(D)(4)(c) provides that 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 income that could have been generated by all of the couple's \$360,228.56 in DOI assets was \$458.06 per month, which was still

insufficient to make up the CS's \$693.03 income shortfall in meeting her MMNA as of [REDACTED] 2018. At the Bankrate average 1 year CD rate of .74%, the CS would have required an additional \$381,032.50 in assets more than the DOI assets to make up the remaining \$234.97 monthly shortfall in her income (\$381,032.50, multiplied by .0074 equals \$2,819.64 in yearly interest income, divided by 12 months equals \$234.97).

Effective [REDACTED] 2018, the CS' CSPA must be raised to include all of the couple's assets in order to generate income to help bring the CS' income to the level of the MMNA.

The IS had \$0.00 in assets as of [REDACTED] 2018.

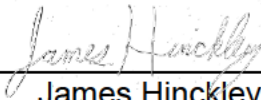
The Department must reopen the IS's Medicaid application effective [REDACTED] 2018, as of which date the IS had assets below the Medicaid asset limit, because the protected assets are not counted in determining the IS's eligibility for Medicaid.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. Effective [REDACTED] the CS's CSPA is raised to include all of the couple's assets.
2. The Department must reopen the Appellant's application for Medicaid effective [REDACTED] 2018 and consider the Appellant to have \$0.00 in assets as of that date.
3. The Department must submit proof of compliance with the above to the undersigned hearing officer by no later than [REDACTED] 2018.



James Hinckley
Hearing Officer

cc: [REDACTED]
[REDACTED]
[REDACTED]

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.