

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 # 124339

NOTICE OF DECISION

PARTY

██  
██  
██  
██

PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (the “Department”) sent ██████████ ██████████ (the “Appellant”) and ██████████ (the “Appellant’s husband”) an Assessment of Spousal Assets; Notification of Results finding the maximum amount of assets which the Appellant and spouse may retain without causing (in)eligibility is \$124,600.00.

On ██████████ 2018 the Department sent the Appellant and the Appellant’s husband a Notice of Action (“NOA”) denying the application for Long Term Care Medicaid for the Appellant due to excess assets.

On ██████████ 2018, the Appellant’s attorney requested an administrative hearing to contest the Department’s decision to deny the Appellant’s application due to excess assets and is seeking an increase in the Community Spouse Protected amount.

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

On ██████████, 2018, in 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 husband  
 ██████████, Appellant's son and Power of Attorney  
 ██████████, ESQ., Appellant's attorney  
 Noel Lord, Department's Representative  
 Trish Gethers, Department's Representative via telephone  
 Marci Ostroski, Hearing Officer

The Appellant was not present at the administrative hearing due to her institutionalization at a long term care facility.

### **STATEMENTS OF THE ISSUES**

1. The first issue is whether, ██████████, (the "Community Spouse") needs additional assets protected, from the Appellant's share of assets, to produce additional income to meet the Community Spouse's Minimum Monthly Needs Allowance ("MMNA").
2. The second issue is whether the Appellant's assets exceed the Medicaid asset limit.

### **FINDINGS OF FACT**

1. On ██████████, 2017, the date of institutionalization ("DOI"), the Appellant was admitted to ██████████ and has been institutionalized continuously since her admission. (Hearing Summary; Fair Hearing Memorandum, Ex. 3: Assessment of Spousal Assets)
2. On ██████████ 2018, the Appellant applied for Long Term Care ("LTC") Medicaid. (Ex. 1: W-1LTC application; Hearing Summary)
3. The Appellant is married to ██████████, also referred to as, the Community Spouse ("CS") who resides in the community at ██████████. (Ex 1: W-1LTC, Fair Hearing Memorandum)
4. On ██████████ 2018, the Department completed a Community Spousal Assessment to determine the total value of the assets as of the date of institutionalization. (Ex. 4: Assessment of Spousal Assets; Notification of Results)
5. The Department determined the combined total of the Appellant and the Community Spouse's non-exempt assets was \$728,917.56 as of the DOI. (Ex. 6: Spousal Assessment Worksheet; Ex. 4: Assessment of Spousal Assets; Notification of Results)
6. The Department determined the spousal share of the assets was \$364,458.78 as of

the DOI (½ of the couple’s combined non-exempt assets). (Ex. 6: Spousal Assessment Worksheet)

7. The Community Spouse Protected Amount (“CSPA”) was set at the maximum amount allowed of \$123,600.00. The total amount of assets the Appellant and husband could retain without causing ineligibility was determined to be \$125,200.00 (\$123,600.00+1600.00). (Ex. 4: Assessment of Spousal Assets; Notification of Results; Hearing Summary)
8. The Appellant is seeking Medicaid eligibility effective [REDACTED] 2018. (Appellant’s Attorney’s Testimony; Fair Hearing Memorandum)
9. The Community Spouse is seeking an increase in his MMNA to pay the monthly cost of living in the community effective [REDACTED] 2018. No exceptional circumstances have been claimed. (Appellant’s Attorney’s Testimony; Fair Hearing Memorandum)
10. Effective [REDACTED] 2018, the Community Spouse had monthly shelter costs totaling \$1208.13 including \$381.05 property tax, \$99.08, homeowners insurance and the standard utility allowance of \$728.00. (Ex. 7: CSA Calculation of Applied Income, Fair Hearing Memorandum)
11. Effective [REDACTED] 2018, the Community Spouse had monthly gross Social Security income of \$1381.00. (Ex. 7: CSA Calculation of Applied Income, Fair Hearing Memorandum, Ex. 8: SOLQ-I Results)
12. Effective [REDACTED] 2018, the Appellant had monthly gross Social Security income of \$960.00. (Fair Hearing Memorandum, Appellant’s Ex.. A: Social Security Administration letter)
13. The Community Spouse has a monthly Anthem Blue Cross/Blue Shield Advantage supplemental health insurance premium of \$247.76. (Appellant’s Ex. C: Anthem BC/BS invoice)
14. The combined total of the Appellant and Community Spouse’s non-exempt assets earned interest income of \$292.72 per month when computed using a three month average of the actual interest yield (\$878.18/3):

	[REDACTED] 07/18	07/18 [REDACTED]	[REDACTED] 08/18	Interest rate
[REDACTED] Money Market	\$10.62	\$10.10	\$10.82	.20%
[REDACTED] Roth IRA	\$263.40	\$290.07	\$293.08	.910%

██████████ ██████████ <b>Trustee Account</b>	\$0.00	\$0.06	\$0.03	

(Appellant's Ex. E: Actual Income Earned from Interest Bearing Accounts, bank statements)

15. Effective ██████████, 2018, the Appellant and his community spouse held combined assets in the amount of \$278,702.00. (Ex. 6: Spousal Assessment Worksheet)
16. The average rate of return on a 12 month certificate of deposit for ██████████, Connecticut when calculating the three highest interest rates for banks with a physical presence in the state was 0.82% ( $1.40+0.75+0.30=2.45/3$ ) as of ██████████ 2018. (Appellant's Ex. D: Bankrate.com screen print; Fair Hearing Memorandum)
17. Based upon its assessment of spousal assets, the Department found that the Appellant and her spouse exceeded the combined maximum asset amount allowed of \$125,200.00. ( $\$123,620.00$  maximum CSPA +  $\$1,600.00$  Appellant's allowable limit). (Ex. 6: Spousal Assessment Worksheet)
18. On ██████ 2018, the Department sent the Appellant and her husband an Assessment of Spousal Assets, Notification of Results stating that she "is not currently eligible for Medicaid ; the maximum amount of assets which you and your spouse may retain without causing (in)eligibility is \$1600 for the applicant + \$123,600.00 for the community spouse totaling \$124,600.00 ( $1600.00+123,600.00=\$125.200.00$ ). (Ex. 4: Assessment of Spousal Assets; Notification of Results; Hearing Summary)
19. On ██████████, 2018, the Department denied the Appellant's application for Long Term Care Medicaid assistance due to excess assets. (Ex. 5: Notice of Action, ██████/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. 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 the Appellant's initial period of institutionalization "DOI" date is ██████████, 2017.

4. UPM § 4000.01 defines 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.
5. The Appellant and her husband are MCCA spouses as defined by the Medicaid program; the Appellant is an Institutionalized Spouse (“IS”) and her husband is a Community Spouse (“CS”).
6. UPM § 1500.01 provides a community spouse protected amount (“CSPA”) is the amount of the total available non-excluded assets owned by both MCAA spouses which is protected for the community spouse and is not counted in determining the institutionalized spouse’s eligibility for Medicaid.
7. 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..
8. Based upon the date of application for the Medicaid program, the Department correctly set the CSPA at the maximum amount of \$123,600.00
9. Effective June 2018, the couple’s combined assets produced monthly interest income of \$292.72 as shown in the table below  $10.62 + 10.10 + 10.82 + 263.40 + 290.07 + 293.08 + 0 + 0.06 + 0.03 = 878.18/3 = 292.72$ .

<b>ASSET</b>			
<b>Money Market</b>	\$10.62	\$10.10	\$10.82
<b>IRA</b>	\$263.40	\$290.07	\$293.08
<b>Trustee Account</b>	\$0.00	\$0.06	\$0.03

10. Effective [REDACTED] 2018, the Community Spouse had gross monthly income of \$1381.00.

11. UPM § 5035.30 (B) provides for the calculation of the Community Spouse Allowance (“CSA”) and 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 Nutrition Assistance (“SNAP”) program is used for the community spouse.

12. Effective [REDACTED] 2018, the Community Spouse’s MMNA was \$2,629.13 as shown in the table below.

	AMOUNT
Shelter Costs:	
Property Taxes	\$381.05
Property Insurance	\$99.08

Standard Utility Allowance	\$728.00
<b>Total Shelter Costs:</b>	\$1,208.13
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two] [REDACTED]/18	<u>\$-609.00</u>
<b>Excess shelter costs:</b>	\$599.13
Plus 150% of the FPL for two:	<u>\$2,030.00</u>
Equals the MMNA	\$2,629.13
<b>Maximum MMNA</b>	\$3,090.00

13. 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.
14. 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]), and the cost of Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid by the Department or any third party.
15. As of [REDACTED] 2018, the IS had \$652.24 in income that could have been diverted to the CS toward meeting his monthly needs. (\$960.00 Social Security, minus \$247.76 BC/BS Advantage premium, minus \$60.00 personal needs allowance)
16. Effective [REDACTED] 2018, the deficit between the Community Spouse's income and his MMNA was \$595.89, as shown in the table below:

COMMUNITY SPOUSE DEFICIT	
Social Security	\$1381.00
Community Spouse Allowance	\$652.24

<b>Total Income</b>	\$2033.24
<b>MMNA</b>	\$2,629.13
Less Total Income	<u>-\$2033.24</u>
<b>Monthly Deficit</b>	\$ 595.89

17. Effective [REDACTED] 2018, the Community Spouse's MMNA was \$2,629.13 as shown in the table below.

	AMOUNT
Shelter Costs:	
Property Taxes	\$381.05
Property Insurance	\$99.08
Standard Utility Allowance	\$728.00
<b>Total Shelter Costs:</b>	\$1,208.13
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two] [REDACTED]	<u>\$-617.40</u>
<b>Excess shelter costs:</b>	\$590.73
Plus 150% of the FPL for two:	<u>\$2,058.00</u>
Equals the MMNA	\$2,648.73
<b>Maximum MMNA</b>	\$3,090.00

18. Effective [REDACTED] 2018, the deficit between the Community Spouse's income and his MMNA was \$615.49, as shown in the table below:

COMMUNITY SPOUSE DEFICIT	
Social Security	\$1381.00
Community Spouse Allowance	\$652.24



<b>Total Income</b>	\$2033.24
<b>MMNA</b>	\$2,648.73
Less Total Income	<u>-\$2033.24</u>
<b>Monthly Deficit</b>	\$ 615.49

19. UPM § 1570.25 (D)(3) provides that the official increases the community spouse's Monthly Minimum Needs Allowance ("MMNA") previously determined by the Department if either MCAA spouse establishes that the community spouse has exceptional circumstances resulting in financial duress, and the MMNA previously calculated by the Department is not sufficient to meet the community Spouse's monthly needs as determined by the hearing official.
- a. Exceptional circumstances are those that are severe and unusual and that:
    - (1) prevent the community spouse from taking care of his or her activities of daily living; or
    - (2) directly threaten the community spouse's ability to remain in the community; or
    - (3) involve the community spouse's providing constant and essential care for his or her disabled child, sibling or other immediate relative (other than the institutionalized spouse).
  - b. Significant financial duress is an expense or set of expenses that:
    - i. directly arises from exceptional circumstances described in subparagraph a above; and
    - ii. is not already factored into the MMNA; and
    - iii. cannot be reasonably be expected by the community spouse's own income and assets
  - c. Expenses that are factored into the MMNA, and thus do not generally qualify as causing significant financial duress, include, but are not limited to :
    - i. shelter costs such as rent or mortgage payments;
    - ii. utility costs;
    - iii. condominium fees
    - iv. real estate and personal property taxes;
    - v. real estate, life and medical insurance;
    - vi. expenses for upkeep of a home such as lawn maintenance, snow removal, replacement of a roof, furnace or appliance;
    - vii. Medical expenses reflecting the normal frailties of old age.

- d. In order to increase the MMNA, the Fair Hearing official must find that the community spouse's significant financial duress is a direct result of the exceptional circumstances that affect him or her.
20. There are no exceptional circumstances causing financial duress for the Community Spouse.
21. UPM § 5035.25 provides that for resident 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.

B. Deductions For LTCF Units

The following monthly deductions are allowed from the income of assistance units in LTCF's:

1. a personal needs allowance of \$60.00, which, effective [REDACTED] and Annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration. (Effective July 1, 2013 = \$60.00)
2. a Community Spouse Allowance (CSA), when appropriate; (Cross Reference 5035.35)
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 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.

21. UPM § 5045.20 provides that assistance units who are residents of Long Term Care Facilities or receiving Community Based Services are responsible for contributing a portion of their income toward the cost of their care. For LTCF cases only, the amount to be contributed is projected for a six-month period.
22. UPM § 5045.20 (A) provides that 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.
23. Total gross income is reduced by post eligibility deductions (Cross reference: 5035- Income deductions”) to arrive at the amount of income to be contributed.
24. The Institutional Spouse has no applied income after deducting her personal needs allowance, medical deductions and diverting the remainder of income to her Community Spouse. Effective [REDACTED] 2018, the institutionalized spouse has zero applied income.
25. The Appellant has allowable deductions totaling \$307.76 that includes \$60.00 personal needs allowance and \$247.76 BC/BS Advantage health insurance supplement.
26. After deducting the \$307.76 of total of allowable deductions from the Appellant’s gross income of \$960.00, the Appellant has income in the amount of \$652.24 (\$960 SSA - \$307.76) to be diverted to the Community Spouse to help meet his MMNA.
27. UPM § 1570.25(D)(4) provides 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 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

28. For █████ 2018, after a diversion of the Appellant's income of \$652.24 to the Community Spouse, the Community Spouse has a remaining monthly income deficit of \$595.89. ( $\$2,629.13$  (MMNA) -  $\$2033.24$ (income) =  $\$595.89$ ).
29. For █████ 2018 after a diversion of the Appellant's income of \$652.24 to the Community Spouse, the Community Spouse has a remaining monthly income deficit of \$615.49. ( $\$2648.73$ (MMNA)- $\$2033.24$ (income)= $\$615.49$ )
30. At the Bankrate average 1 year CD rate of .82%. the income that could have been generated by all of the couple's \$278,702.00 in assets was \$190.45 per month ( $278702 \cdot .0082 / 12$ ), which was still insufficient to make up the CS's \$595.89 income shortfall in meeting his MMNA as of █████ 2018 and 615.49 as of █████ 2018.
31. Based on the couple's actual interest income earned at the time of application, \$292.72, the Community Spouse's income is still insufficient to meet his \$595.89 income shortfall in meeting his MMNA as of █████ 2018 and 615.49 as of █████ 2018.
32. Effective █████ 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
33. UPM § 4005.10 (A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.
34. After the diversion of all assets effective █████ 2018 for the benefit of the Community Spouse, the value of the Appellant's countable assets is \$0.00.
35. Effective █████ 2018, the Appellant's assets do not exceed the Medicaid asset limit of \$1,600.00.

### **DECISION**

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

**ORDER**

1. The Department shall reopen the Appellant's [REDACTED], 2018 application for Medicaid and continue to process eligibility in accordance with this decision.
2. Effective [REDACTED] 2018, the CSPA is increased to include all of the couple's assets as of at the time of application; \$278,702.00.
3. The Department shall reduce from the effective date of grant, the Appellant's applied income to zero after allowing the applicable deductions and diversion of income to her community spouse.
4. No later than 10 days from the date of this decision, [REDACTED], 2018, the Department will submit to the undersigned verification of compliance with this order.



Marci Ostroski  
Hearing Officer

cc: Fred Presnick, Operations Manager, Bridgeport DSS Regional Office  
Yecenia Acosta, Operations Manager, Bridgeport/Stamford DSS Regional Office  
Tim Latifi, Operations Manager, Bridgeport DSS Regional Office  
Trish Gethers, Fair Hearing Liaison, Bridgeport DSS Regional Office  
[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 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. 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.