

**STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT06105-3730**

REQUEST #126326

██████████ 2018
SIGNATURE CONFIRMATION

CLIENT ID ██████████
CASE ID ██████████

NOTICE OF DECISION

PARTIES

██████████
██████████
██████████

██████████
██████████
██████████
██████████ 2

PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (the “Department” or “DSS”) sent ██████████ (the “Appellant” and “Institutionalized Spouse”) a Notice of Action for Husky C-Long Term Care Medicaid stating the Appellant’s application for medical assistance was granted, effective ██████████ 2018. The notice stated that the amount of the Community Spouse Allowance (“CSA”) was \$0.00 per month, and that the Appellant’s Patient Liability Amount was \$0.00, effective ██████████ 2018.

On ██████████, the Appellant’s representative and “Community Spouse”, ██████████ requested an administrative hearing on behalf of the Appellant to contest the effective date of Medicaid eligibility and to seek an increase in the CSA as determined by the Department.

On ██████████ 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a Notice of Administrative Hearing scheduling an administrative hearing for ██████████, 2018 @ 10:00 AM.

On ██████████ 2018, in accordance with Connecticut General Statutes § 17b-60, § 17b-61 and § 4-176e to § 4-184, inclusive, OLCRAH held an administrative hearing to address the effective date of Medicaid eligibility and the amount of the CSA as determined by the Department.

The following individuals were present at the hearing:

██████████, Appellant’s Representative and Community Spouse
██████████ Appellant’s Daughter/Witness

Ni'ta Freeman, Representative for the Department (By Telephone)
 Sayaka Miyakoshi, Representative for the Department
 Hernold C. Linton, Hearing Officer

The closing of the record was extended for the Appellant's Representative to provide additional information regarding exceptional circumstances causing significant financial duress. On [REDACTED] 2018, the Appellant's Representative provided additional information for consideration, and the hearing record was closed [REDACTED] 2018.

STATEMENT OF THE ISSUE

1. The first issue to be decided is whether the Community Spouse ("CS") needs additional income diverted from the Institutionalized Spouse ("IS") to meet her Minimum Monthly Needs Allowance ("MMNA"), due to exceptional circumstances causing significant financial duress.
2. The second issue to be decided is whether the Appellant is ineligible for medical assistance under the Medicaid program during the period of [REDACTED] 2017 through [REDACTED] 2018, due to excess assets.

FINDINGS OF FACT

1. The Appellant/IS resides at Woodlake at Tolland, which is a long-term care facility ("LTCF"). (Hearing Summary; Dept.'s Exhibit #1: W-1LTC)
2. The Appellant's spouse resides in the community. (Hearing Summary)
3. On [REDACTED] 2017, the Department received the Appellant's application for Medicaid coverage to pay for his costs of long-term care ("LTC"). (Hearing Summary; Dept.'s Exhibit #1: W-1 LTC)
4. On [REDACTED] 2018, the Department determined that the combined total of the Appellant and Community Spouse's non-exempt assets was \$95,786.32 as of the date of institutionalization ("D.O.I.") of [REDACTED] 2017. (Hearing Summary; Dept.'s Exhibit #8: [REDACTED]/18 Assessment of Spousal Assets-Notification of Results)
5. The Department determined that the Community Spouse's spousal share of the non-exempt assets ("CSPA") was \$47,893.16 as of the D.O.I. (Dept.'s Exhibit #8)
6. The Department determined that the Appellant's share of the non-exempt assets was \$1,600.00 as of the D.O.I. (Hearing Summary; Dept.'s Exhibit #8)
7. The Department determined that the total maximum combined non-exempt assets allowed as of D.O.I. was \$49,493.16 (\$47,893.16, maximum CSPA allowed; plus \$1,600.00, Appellant's portion). (Dept.'s Exhibit #8)
8. The Department determined that the couple spent down their total combined non-exempt assets to less than \$49,493.16 in [REDACTED] 2018. (Hearing Summary; Dept.'s

Exhibit #7: Spousal Assessment Worksheet)

9. On █████ 2018, the Department granted the Appellant's application for Medicaid coverage, effective █████ 2018, to pay for his costs of long-term care ("LTC"). (Hearing Summary; Dept.'s Exhibit #4: █████/███/18 Notice of Action)
10. The Department denied the Appellant's application for Medicaid coverage for the months of █████ 2017 through █████ 2018, due to the value of his combined non-exempt assets exceeded the allowable asset limit for the program. (Hearing Summary; Dept.'s Exhibit #4)
11. The Appellant's total combined non-exempt assets for the period of █████ 2017 through █████ 2017 are as follows:

DOI █████/17	█████ 2017	█████ 2017	█████ 2017	█████ 2018	█████ 2018
\$95,786.32	\$97,214.25	\$94,574.14	\$93,176.37	\$79,625.09	\$47,955.46

(Dept.'s Exhibit #7)

12. The Department determined the Appellant's monthly applied income as \$0.00, effective █████ 2018, as his monthly applied income is being diverted to pay off \$86,062.00 owed to the facility for Medicaid LTC services rendered prior to the effective date of Medicaid eligibility. (Hearing Summary; Dept.'s Exhibit #2; Dept.'s Exhibit #3; █████ 18 Billing Statement)
13. The Department determined the CS's MMNA as \$2,453.08, effective █████ 2018. (Hearing Summary; Dept.'s Exhibit #2: CSA Calculation)
14. The Department determined that the CS has monthly projected gross earned of \$3,146.16. (Hearing Summary; Dept.'s Exhibit #2)
15. The Department determined that the CS is eligible for a CSA of \$0.00 per month, effective █████ 2018 as her monthly projected gross earned exceeds her MMNA. (Hearing Summary; Dept.'s Exhibit #2)
16. Effective █████ 2018, the Appellant has total monthly unearned income of \$6,550.18 (\$1,823.00, SSA benefits; plus \$4,727.18, pension income). (Hearing Summary; Dept.'s Exhibit #4)
17. The CS is seeking an increase in the MMNA due to having exceptional circumstances resulting in additional monthly expenses that are causing significant financial duress. (Appellant Representative's Testimony)
18. The CS is seeking a diversion if the IS's spouses income [CSA/"CFA" (Community Family Allowance)] as she is caring for her grandchild, who is (9) years of age and is claimed on her taxes as a dependent. (Appellant Representative's Testimony; Dept.'s Exhibit #1: W-1 LTC)

19. The Department did not calculate a CFA for the CS, taking into consideration her grandchild as a tax dependent. (Hearing Record)
20. The CS is not seeking an increase in the Community Spouse Protected Amount ("CSPA"). (Appellant Representative's Testimony)
21. The CS's total shelter cost is \$1,411.41 (\$0.00, mortgage payment; \$353.33, property taxes, and \$330.08, homeowner's insurance, and \$728.00, Standard Utility Allowance). (Dept.'s Exhibit #2)
22. The CS receives monthly projected gross earned income of \$3,146.14. (Hearing Summary; Dept.'s Exhibit #6: Pay Stubs)
23. The CS is ■ years of age (DOB ■■■■■), and is able to complete her activities of daily living ("ADLs") without assistance. (Appellant Representative's Testimony)
24. The CS does not have exceptional circumstances that are severe and unusual as such, prevent her from taking care of her activities of daily living, or directly threaten the community spouse's ability to remain in the community. (Hearing Record; See Fact #24)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Sections 17b-260 to 17b-264 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Title XIX Medical Assistance Program to provide medical assistance to eligible persons in Connecticut.
3. Uniform Policy Manual ("UPM") § 1570.25(D)(3) provides that the official increases the community spouse's MMNA previously determined by the Department if either MCCA spouse establishes that the community spouse has exceptional circumstances resulting in significant 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.
4. UPM § 1570.25(D)(3)(a) provides that 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 institutionalized spouse).

5. UPM § 1570.25(D)(3)(b) provides that significant financial duress is an expense or set of expenses that:
 - (1) directly arises from the exceptional circumstances described in subparagraph a above; and
 - (2) is not already factored into the MMNA; and
 - (3) cannot reasonably be expected to be met by the community spouse's own income and assets.

6. UPM § 1570.25(D)(3)(c) provides that expenses that are factored into the MMNA, and thus do not generally qualify as causing significant financial duress, include, but are not limited to:
 - (1) shelter costs such as rent or mortgage payments;
 - (2) utility costs;
 - (3) condominium fees;
 - (4) real estate and personal property taxes;
 - (5) real estate, life and medical insurance;
 - (6) expenses for the upkeep of a home such as lawn maintenance, snow removal, replacement of a roof, furnace or appliance;
 - (7) medical expenses reflecting the normal frailties of old age.

7. UPM § 1570.25(D)(3)(d) provides that 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.

8. The Community Spouse does not have exceptional circumstances that are severe and unusual as such, prevent her from taking care of her activities of daily living, or directly threaten the community spouse's ability to remain in the community.

9. The Community Spouse is not eligible for an increase in her MMNA because she does not have exceptional circumstances resulting in significant financial duress.

10. 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.

11. Effective [REDACTED] 2018, the Community Spouse has monthly shelter costs of \$1,411.41, (\$353.33, property taxes; plus \$330.08, insurance; \$728.00, Standard Utility Allowance).

12. Effective [REDACTED] 2018, the Community Spouse has excess monthly shelter costs of \$802.41, (\$1,381.41, shelter costs; minus \$609.00, 30% of \$2,030.00, 150% of the Federal Poverty Level for two persons as of [REDACTED]/17).

13. Effective [REDACTED] 2018, the Community Spouse has a calculated MMNA of \$2,832.41, (\$802.41, excess shelter costs; plus \$2,030.00, 150% of the Federal Poverty Level for two persons as of [REDACTED]/17).

14. Effective [REDACTED] 2018, the Community Spouse's calculated monthly income deficit or CSA is \$0.00 (\$2,802.41, MMNA; minus \$3,146.14, Community Spouse's income).
15. As of [REDACTED] 2018, the Community Spouse's total income is sufficient to meet her calculated MMNA in the community.
16. The Department correctly calculated the Appellant's CSA as \$0.00.
17. UPM § 5035.35(A)(1) provides that the CFA is used as an income deduction in the calculation of the post-eligibility applied income of an institutionalized spouse (IS) when any of the following individuals are living with the community spouse (CS):
 - a. a minor child of either spouse; or
 - b. a child, parent, or sibling who is a legal tax dependent of either spouse.

(Cross Reference: 5035.25)
18. UPM § 5035.35(B) provides that the Department calculates the CFA deduction for each eligible family member by:
 1. subtracting the gross monthly income of each eligible family member from 150 percent of the monthly poverty level for a unit of two persons; and
 2. multiplying the result of Step 1 by 33 1/3%.
19. Because the CS is caring for her grandchild and claimed her as a tax dependent, she may be eligible for a CFA as a deduction in the calculation of the Appellant's applied income.
20. The Department failed to consider that the Appellant may be entitled to a deduction for a CFA.
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.
22. UPM § 5035.25(B) provides that the following monthly deductions are allowed from the income of assistance units in LTCF's:
 - a. a personal needs allowance ("PNA") of \$60.00, which is effective July 1, 2016 and annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration;
 - b. Community Spouse Allowance (CSA), when appropriate; (Cross Reference 5035.30)
 - c. a Community Family Allowance (CFA), when appropriate; (Cross

Reference 5035.35)

- d. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for the Department or any other third party;
23. UPM § 4005.05(A) provides that for every program administered by the Department, there is a definite asset limit.
24. UPM § 4005.05(B)(1) provides that the Department counts the assistance unit's equity in an asset toward the asset limit if the asset is not excluded by state or federal law and is either:
- a. available to the unit; or
 - b. deemed available to the unit.
25. UPM § 4030.05(A) provides that bank accounts include the following. This list is not all inclusive.
1. Savings account;
 2. Checking account;
 3. Credit union account;
 4. Certificate of deposit;
 6. Patient account at long-term care facility;
 7. Children's school account;
 8. Trustee account;
 9. Custodial account.
26. UPM § 4030.05(B)(2) provides that that part of a checking account to be considered as a counted asset during a given month is calculated by subtracting the actual amount of income the assistance unit deposits into the account that month from the highest balance in the account for that month.
27. UPM § 4005.05(D)(2) provides that an assistance unit is not eligible for benefits under a particular program if the unit's equity in counted assets exceeds the asset limit for the particular program, unless the assistance unit is categorically eligible for the program and the asset limit does not apply (cross reference: 2500 Categorically Eligibility Requirements).
28. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
29. The Appellant's total combined non-exempt assets for the period of [REDACTED] 2017 through [REDACTED] 2018 are as follows:

[REDACTED] 2017	[REDACTED] 2017	[REDACTED] 2018	[REDACTED] 2018
\$94,574.14	\$93,176.37	\$79,625.09	\$47,955.46

30. The Appellant's assets exceeded the Medicaid asset limit of \$1,600.00 for the months of [REDACTED] 2018 to [REDACTED] 2018.
31. The Department correctly determined that the Appellant/Institutionalized Spouse is eligible for medical assistance under the Medicaid program, effective [REDACTED], 2018.

DECISION

1. The Appellant's appeal is **DENIED** with respect to Appellant's ineligibility for medical assistance under the Medicaid program during the period of [REDACTED] [REDACTED] 2017 through [REDACTED] 2018, due to excess assets.
2. The Appellant's appeal is **DENIED** with respect to her request for an increase in the CSA due to exceptional circumstances.
3. The Appellant's appeal is **REMANDED** to the Department to review the Appellant's eligibility for a CFA.

ORDER

1. Effective [REDACTED] 2018, the Department will review the Appellant's eligibility for a CFA and if eligibility for the CFA, issue a new notice regarding the Appellant's monthly applied income.
2. No later than thirty days from the date of hearing decision, the Department will provide to the undersigned proof of the Department's compliance with this order.



Hernold C. Linton
Hearing Officer

Pc: **Tricia Morelli**, Social Service Operations Manager,
DSS, R.O. #11, Manchester

Fair Hearing Liaisons, DSS, R.O. #11, Manchester

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.