

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

**REQUEST #131416**

██████████ 2019  
**SIGNATURE CONFIRMATION**

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

**NOTICE OF DECISION**

**PARTIES**

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██████████  
██████████

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**PROCEDURAL BACKGROUND**

On ██████████ 2018, the Department of Social Services (the “Department” or “DSS”) sent ██████████ (the “Appellant” and “Institutionalized Spouse”) a Notice of Action stating that the Appellant’s application for medical assistance had been denied through ██████████ 2018, because the value of her assets exceeded the allowable asset limit for the Medicaid program. The Appellant was granted medical assistance, effective ██████████ 2018 and ongoing, with a Patient Liability Amount of \$0.00, and a monthly Community Spouse Allowance (“CSA”) of \$80.78.

On ██████████ 2018, the Appellant’s representative, ██████████ requested an administrative hearing on behalf of the Appellant to contest the Appellant’s effective date of eligibility as determined by the Department.

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

OLCRAH granted the Appellant’s Representative a continuance.

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 eligibility as determined by the Department.

The following individuals were present at the hearing:

██████████ Appellant's Representative/Daughter  
Marilyn F. Phillips, Representative for the Department (By Telephone)  
Noel Lord, Representative for the Department  
Hernold C. Linton, Hearing Officer

The closing of the record was extended to ██████████ 2018 for the Department to provide its calculations for the monthly CSA and Minimum Monthly Needs Allowance ("MMNA"). On ██████████ 2018, the Department submitted its calculations of the monthly CSA and Patient Liability Amount which were shared with the Appellant's Representative for review and response. No response was received, and the record was closed on ██████████ 2018.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Appellant is ineligible for medical assistance under the Medicaid program through ██████████ 2018, due to excess assets.

### **FINDINGS OF FACT**

1. On ██████████ 2017, the Department received the Appellant's application for medical assistance under Medicaid program. (Hearing Summary)
2. The Appellant is a resident of ██████████ Stamford, which is a long-term care facility ("LTCF"). (Hearing Summary)
3. The Appellant has a spouse residing in the community. (Hearing Summary)
4. The Appellant is seeking Medicaid eligibility effective ██████████ 2018, to cover the cost of her stay in a LTCF. (Hearing Summary)
5. On ██████████ 2017, the Department sent the Appellant's representative Form W-1348LTC ("Verification We Need") requesting additional information needed to determine the Appellant's eligibility for medical assistance under Medicaid program. (Hearing Summary; Dept.'s Exhibit #2: Form W-1348LTC, dated ██████████ 17)
6. The Department sent the Appellant's representative Form W-1348 LTC Addendum providing hints to speed up the application process. (Hearing Summary; Dept.'s Exhibit #2)
7. The Department informed the Appellant's representative that there would be no Medicaid eligibility for the Appellant in any month in which the Appellant's assets exceeded \$1,600.00. (Hearing Summary; Dept.'s Exhibit #2)

8. The Department received some of the requested information needed to determine the Appellant's eligibility for medical assistance under Medicaid program. (Hearing Summary)
9. On [REDACTED] 2018, the Department sent the Appellant's representative its tenth and final W-1348LTC requesting the remaining information still needed to determine the Appellant's eligibility for medical assistance under Medicaid program. (Hearing Summary; Dept.'s Exhibit #2: Form W-1348, dated [REDACTED] 18)
10. The Department again informed the Appellant's representative that there would be no Medicaid eligibility for the Appellant in any month in which the Appellant's assets exceeded \$1,600.00. (Hearing Summary; Dept.'s Exhibit #2)
11. On [REDACTED] 2018, the Department sent the Appellant's representative a Notice of Assessment of Spousal Assets stating that the Appellant's date of institutionalization ("DOI") was [REDACTED] 2017, and that the total spousal assets as of DOI was \$145,095.55. (Hearing Summary; Dept.'s Exhibit #6: [REDACTED]/18 Notice of Assessment of Spousal Assets)
12. The Department determined that the Appellant is allowed \$1,600.00 of the spousal assets and the Community Spouse is allowed \$72,547.77 for a combined total of \$74,147.77 in allowable assets. (Hearing Summary; Dept.'s Exhibit #6)
13. The Department received verification that on [REDACTED] 2018, the Community Spouse ("CS") cashed in his Prudential Life Insurance policy and used the proceeds to pay the Appellant's cost of care at [REDACTED] Stamford which reduced the couple's total spousal assets within the allowable asset limit. (Hearing Summary; Dept.'s Exhibit #13: Spousal Assessment Worksheet)
14. The countable spousal assets as of DOI are calculated as follows:

Spousal Assets	DOI	[REDACTED] 2018	[REDACTED] t 2018	[REDACTED] r 2018
Account # [REDACTED]	\$5,872.96	\$8,546.50	\$8,546.50	
Account # [REDACTED]	\$71,352.38	\$61,433.67	\$61,509.04	
IRA # [REDACTED]	\$19,367.38	\$20,724.00		
IRA # [REDACTED]			\$22,298.10	\$21,941.00
Ins. Cash Value	\$48,502.86	\$48,502.86	\$48,502.26	\$48,502.26
Total	\$145,095.55	\$139,130.33	\$140,846.90	\$70,443.26

(Dept.'s Exhibit #13: Spousal Assessment Worksheet)

15. On [REDACTED] 2018, the Department denied the Appellant's request for medical assistance under the Medicaid program through [REDACTED] 2018, stating that the value of her countable assets exceeded the allowable asset limit for the program. (Hearing Summary; Dept.'s Exhibit #8: [REDACTED] 18 Notice of Action)

16. On [REDACTED] 2018, the Department granted the Appellant's application for medical assistance under the Medicaid program, effective [REDACTED] 2018, to cover the cost of her stay in a nursing facility. (Hearing Summary; Dept.'s Exhibit #8)
17. The Appellant owes the facility \$84,150.00 for providing room and board during the period of [REDACTED] 2018 through [REDACTED] 2018. (Hearing Summary; Dept.'s Exhibit #9: [REDACTED] 18 Invoice for [REDACTED] at [REDACTED])
18. The Department is diverting the Appellant's applied income to cover her cost of care at [REDACTED] for the period prior to the effective date of her Medicaid eligibility. (Hearing Summary)
19. The Department determined the Appellant's calculated Patient Liability Amount as \$0.00 per month, effective [REDACTED] 2018 as the Appellant's applied income is being diverted to cover her cost of care at the facility during the period prior to the effective date of her Medicaid eligibility. (Hearing Summary; Dept.'s Exhibit #17: LTSS Patient Liability Amount)
20. The Department determined the Community Spouse's MMNA as \$2,864.22 per month and the monthly CSA as \$80.78, effective [REDACTED] 2018. (Dept.'s Exhibit #14: CSA Calculation Sheet)
21. Effective [REDACTED] 2018, the Appellant receives \$849.00 per month in Social Security ("SSA") benefits. (Dept.'s Exhibit #8)
22. The Community Spouse is responsible to pay \$583.72 per month in property taxes, and \$131.50 per month in homeowner's insurance. (Dept.'s Exhibit #8)
23. Effective [REDACTED] 2018, the Community Spouse receives \$1,838.00 in monthly gross SSA benefits. (Dept.'s Exhibit #8)
24. Effective [REDACTED] 2018, the Community Spouse receives \$945.44 in monthly gross pension income. (Dept.'s Exhibit #8)
25. Effective [REDACTED] 2018, the Department is diverting \$80.78 per month of the Appellant's income to meet the Community Spouse's needs. (Dept.'s Exhibit #8)
26. Effective [REDACTED] 2018, the Community Spouse has total monthly gross unearned income of \$2,864.22. (Dept.'s Exhibit #8)
27. Effective [REDACTED] 2018, the Community Spouse does not experience a deficit when his adjusted total monthly gross unearned income of \$2,864.22 is compared to his MMNA. (See Facts # 20 to 26; Dept.'s Exhibit #8)

28. The Community Spouse is able to complete his activities of daily living (“ADL’s”) without assistance. (Appellant Representative’s Testimony)
29. The Appellant passed away on [REDACTED] 2018. (Appellant’s Exhibits)
30. The closing of the hearing record was extended to [REDACTED] 2018 for the Department to provide its calculations of the CSA and MMNA. On [REDACTED] 2018, the Department provided its calculations of the CSA and MMNA which were shared with the Appellant’s representative for review and response. No further response was received from the Appellant’s Representative, and the hearing was closed on [REDACTED] 2018. The issuance of this hearing decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the date of the hearing request or the closure of the record or by [REDACTED] 2019.

### **CONCLUSIONS OF LAW**

1. 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.
2. Uniform Policy Manual (“UPM”), Section 1570.25(D)(4) provides that the Fair Hearing official increases the 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)
3. 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.
4. 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.

**The Department correctly determined that effective [REDACTED] 2018 the CS has total monthly shelter costs of \$1,443.22 (\$583.72, property taxes; plus \$131.50, homeowner's insurance, and \$728.00, SUA).**

5. UPM § 5035.30(A)(1) provides that 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.
6. UPM § 5035.30(B)(2) provides that 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 3 below; and
  - (b) 150 percent of the monthly poverty level for a unit of two persons.

**The Department correctly determined that the CS has a calculated MMNA of \$2,864.22 (\$834.22, excess shelter costs; plus \$2,030.00, 150% of the Federal Poverty Level for two persons as of 07/01/18), effective [REDACTED], 2018.**

7. UPM § 5035.30(B)(1) provides that the CSA is equal to the greater of the following:
- (a) the difference between the 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.

**The Department correctly determined the Community Spouse's total monthly unearned income as \$2,783.44 (\$1,838.00, SSA; plus \$945.44, pension income).**

**The Department correctly determined that effective [REDACTED] 2018, the CS's calculated monthly CSA is \$80.78 (\$2,864.22, MMNA; minus \$2,783.44, CS's income) per month in accordance with the UPM.**

8. UPM § 5035.30(B)(3) provides that 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.

**The Department correctly determined that effective [REDACTED] 2018, the CS has monthly excess shelter costs of \$834.22 (\$1,443.22, shelter costs; minus**

**\$609.00, 30% of \$2,030.00, 150% of the Federal Poverty Level for two persons as of 0■■■■18).**

9. UPM § 5035.30(B)(5) provides that the MMNA may not exceed the greatest of either:

(a) \$3,090.00, the maximum MMNA; or

(b) an amount established through a Fair Hearing.

10. 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).

UPM § 1570.25(D)(4)(b) provides that for application 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.

**By diverting \$80.78 per month of the Appellant's income to the Community Spouse and increasing his total monthly unearned income to \$2,864.22 (\$1,838.00, SSA; plus \$945.44, pension income, and \$80.78, CSA), the Community Spouse is not eligible for an increase in the CSPA to generate additional income to meet his needs.**

11. 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.

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

**The Community Spouse is not eligible for an increase in his MMNA due to exceptional circumstances resulting in significant financial duress.**

12. 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;

(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 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.

**The Department correctly determined that effective [REDACTED] 2018, the Appellant's Patient Liability Amount or applied income is \$0.00, as her applied income is being diverted to cover her cost of care for the period prior to the effective date of her Medicaid eligibility.**

13. UPM § 4005.05(A) provides that for every program administered by the Department, there is a definite asset limit.
14. 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.
15. UPM § 4005.05(B)(2) provides the Department considers an asset available when actually available to the individual or when the individual has the legal right, authority or power to obtain the asset, or to have it applied for, his or her general or medical support.



The Department correctly determined that for the period of [REDACTED] 2018 through [REDACTED] 2018, the cash value of the couple's Prudential Life Insurance policy exceeded the allowable asset limit for the Medicaid program.

The Department correctly determined that the Appellant became asset eligible for Medicaid effective [REDACTED] 2018.

**DECISION**

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



Hernold C. Linton  
Hearing Officer

Pc: **Yecenia Acosta**, Social Service Operations Manager,  
DSS, R.O. #32, Stamford

**Fair Hearing Liaisons**, DSS, R.O. #32, Stamford

[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.