



The Hearing record was left open for the submission of additional information. The information was received and the record closed [REDACTED] 2019.

The Appellant’s attorney submitted a hearing packet on behalf of his client. For the sake of clarity, page numbers will reference the verifications cited in the findings of fact.

**STATEMENT OF THE ISSUES**

1. The first issue is whether the Community Spouse (“CS”) requires an increase to her minimum monthly needs allowance (“MMNA”) because of financial duress resulting from exceptional circumstance.
2. The second issue is whether the CS requires an increase to her spousal share of the couple’s assets to produce additional income to meet her MMNA.

**FINDINGS OF FACT**

1. On [REDACTED] 2018, the Appellant began a continuous period of institutionalization (his “date of institutionalization” or “DOI”) (Exhibit 1: W-1 LTC application; Exhibit 5: Spousal Assessment Worksheet; Hearing summary)
2. On [REDACTED] 2018, the Appellant applied for LTC benefits under the Medicaid Program. (Exhibit 1; Hearing summary)
3. As of the DOI, the Appellant’s and the CS’s non-exempt assets consisted of the individual assets listed in the below chart:

Asset	Asset Value as of DOI
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

## (Exhibit 5: Assessment of Spousal Assets; Page 83)

4. The Appellant is married to [REDACTED] (the "CS"). (Page 52: Marriage certificate; Record)
5. The CS resides at [REDACTED]. (Page 63: Social Security statement; Page 86)
6. The CS has a [REDACTED] monthly property tax expense [REDACTED] (Page 91)
7. The CS has a [REDACTED] monthly home insurance expense [REDACTED] (Page 92)
8. The IS and CS have a \$ [REDACTED] monthly [REDACTED] insurance expense. (Page 85; page 86)
9. The IS' monthly gross unearned income from Social Security is \$ [REDACTED] (Page 58)
10. The IS' monthly gross pension amount from Prudential is \$ [REDACTED] (\$ [REDACTED] months).
11. The CS' monthly gross unearned income from Social Security is \$ [REDACTED]. (Page 61)
12. The IS' monthly Medicare Part B premium is \$ [REDACTED] and the CS has a \$ [REDACTED] Medicare Part B premium. (Page 58; page 61)
13. As of [REDACTED] 2018, the 12-month Certificate of Deposit Bankrate for Hartford/New Haven County was [REDACTED]%. (Hearing Officer Exhibit; Page 55)
14. The combined total of the Appellant and Community Spouse's non-exempt assets was \$ [REDACTED] as of the DOI. (Page 71)
15. The IS share of the assets was \$ [REDACTED] as of the DOI. (Hearing summary; Page 71)
16. The Community Spouse Protected Amount ("CSPA") was \$ [REDACTED] as of DOI. (Hearing record)

17. On [REDACTED] 2018, the Department's representative sent the Appellant an assessment of spousal assets. The Department notified the Appellant it determined the couple's total assets as of the DOI were equal to \$ [REDACTED] and the Community Spouse Protected Amount ("CSPA") for the CS is \$ [REDACTED]. The share available to the IS equals \$ [REDACTED] (Exhibit 5: Assessment of Spousal Assets Notification of Results)
18. The Appellant's attorney agrees to the accuracy of the Department's [REDACTED] 2018 assessment as it pertains to the total assets owned by the couple as of the DOI, and to the composition of the assets owned, but is requesting that the hearing official adjust the CSPA determined by the Department on the W-1-SAN. (Attorney's brief; Record)
19. The Appellant's attorney is claiming the CS has exceptional circumstances that are severe and unusual. (Pages 93A and 93B: Doctor's letter)
20. The CS receives daily care from a live in caregiver to help with her activities of daily living. [REDACTED] provides services with the average cost of care provided of \$ [REDACTED] per day/event or \$ [REDACTED] monthly. (Pages 94 -103: [REDACTED] bill)
21. On [REDACTED] 2018, the Department denied the Appellant's application due to excess assets. (Exhibit 6: Notice of action dated [REDACTED]18; Hearing summary)
22. The Appellant's attorney is seeking a Medicaid eligibility date of [REDACTED] 2018. (Record)
23. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be rendered within 90 days of the request for an administrative hearing. The Appellant's attorney requested an administrative hearing on [REDACTED] 2018. The hearing decision was initially due [REDACTED], 2019. However, the Appellant's attorney requested an extension of time to submit additional information thereby lengthening the administrative hearing deadline by [REDACTED] days. This decision, therefore, was due no later than [REDACTED] 2019. (Hearing Record)

### **CONCLUSIONS OF LAW**

1. Connecticut General Statutes § 17b-2 (6) provides that the Department of Social Services is designated as the state agency 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.

**The Department correctly determined the Appellant's initial period of institutionalization began [REDACTED] 2018.**

3. UPM § 4000.01 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.

**The Appellant and his wife are MCCA Spouses as defined by the Medicaid program; the Appellant is an Institutionalized Spouse ("IS") and his wife is a Community Spouse ("CS").**

4. 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.
5. UPM § 1507.05 (A) provides for the assessment process for MCAA Spouses. 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).
6. 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.

7. 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). 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.
  
8. UPM 1570.25 (D) (3) provides 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. 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 institutionalized spouse). b. Significant financial duress is an expense or set of expenses that: (1) directly arises from the exceptional circumstances described in subparagraph a above; an (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. 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: (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. 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.

UPM § 5035.30 (A) provides for the use of Community Spouse Allowance ("CSA"). 1. 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. (Cross Reference 5035.25)

UPM § 5035.30 (B) provides for the calculation of the CSA. 1. The CSA is equal to the greater of the following: a. the difference between the Minimum Monthly Needs Allowance (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.

UPM § 5035.30(B)(2) provides that the MMNA is the amount which is equal to the sum of a. the amount of the community spouse's excess shelter costs as calculated in section 5035.30 (B) (3) and b. 150 percent of the monthly poverty level for a unit of two persons.

UPM § 5035.30(B)(3) 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.

UPM § 5035.30(B) (4) provides the community spouse's monthly shelter cost includes: a. rental cost 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 Program for the community spouse.

UPM § 5035.30(B)(5) provides the MMNA may not exceed the greatest of either : a. the maximum MMNA; or b. an amount established through a Fair Hearing

**The CS' medical conditions are severe and unusual and prevent her from taking care of her activities of daily living, and directly threaten her ability to remain in the community and as a result, meet the exceptional circumstances policy.**

**The CS has a total of \$ [REDACTED] in monthly expenses that arise directly from her exceptional circumstances and her MMNA is therefore increased.**

9. Effective [REDACTED] 2018, the CS's MMNA is \$ [REDACTED] as shown in the below table:

	AMOUNT
<b>Shelter Costs:</b>	
Property Taxes	[REDACTED]
Home Insurance	[REDACTED]
Standard Utility Allowance	[REDACTED]
<b>Total shelter costs:</b>	[REDACTED]
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	[REDACTED]
<b>Excess shelter costs:</b>	[REDACTED]
Plus 150% of the FPL for two:	[REDACTED]

Equals	██████████
Plus Financial Duress expenses	██████████
<b>Equals Hearing Officer adjusted MMNA</b>	██████████

10. Effective ██████████ 2018, the deficit between the CS's income is \$ ██████████ as shown in the below calculation:

MMNA	██████████
CS's income	██████████
Interest income	██████████
Equals Deficit	██████████

11. As of the DOI, the CS's assets of \$ ██████████ would have generated monthly interest income of \$ ██████████. See table below for calculations.

Asset	Balance	Interest Rate	Bankrate	Interest Amount
██████████	██████████	0.01%	██████████	██████████
██████████	██████████	0.01%	██████████	██████████
██████████	██████████	Variable	██████████	██████████
██████████	██████████	1.91%	██████████	██████████
Total	██████████		██████████	██████████

12. As of ██████████ 2018, the CS had gross monthly income of \$ ██████████ (\$ ██████████ SSA + \$ ██████████ interest)
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 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 January 2015), 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 \$ [REDACTED] in income that could be diverted to the CS to meet her monthly needs (\$ [REDACTED] Social Security plus \$ [REDACTED] pension, minus \$ [REDACTED] part B premium, minus \$ [REDACTED] supplemental insurance, minus \$60.00 personal needs allowance)

After diverting all available income from the IS, the CS still is still short of her MMNA by a monthly deficit of \$ [REDACTED]. (\$ [REDACTED] original deficit, minus \$ [REDACTED] diverted from spouse, equals \$ [REDACTED]).

As the additional income remains insufficient to meet the CS' MMNA deficit of \$ [REDACTED], the CS' CSPA is increased to \$ [REDACTED] to generate the interest income to help meet her MMNA.

14. UPM § 4005.10 (A) (2) (a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.

After the diversion of all assets effective [REDACTED] 2018 for the benefit of the Community spouse, the value of the Appellant's countable assets is \$0.00.

Effective [REDACTED] 2018, the Appellant's assets do not exceed the Medicaid asset limit of \$1,600.00.

15. UPM § 5045.20 (A) provides 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.

UPM § 5045.20 (B) (1) (b) provides total gross income is reduced by post-eligibility deductions (Cross reference: 5035-"Income Deductions") to arrive at the amount of income to be contributed.

**The Institutionalized Spouse has no applied income after the deduction of his personal needs allowance, medical deductions, and diversion of the remainder of income to his Community Spouse.**

Effective [REDACTED] the institutionalized spouse has zero applied income.

**DECISION**

The Appellant's appeal is granted.

**ORDER**

1. Effective [REDACTED], the CSPA is increased to \$ [REDACTED] and the MMNA is increased to \$ [REDACTED].
2. The Department shall reopen the Appellant's application for Medicaid effective [REDACTED], 2018, and the Appellant's assets shall be considered \$0.00 as of [REDACTED] 2018, or if otherwise eligible, [REDACTED] 2018.
3. The Department shall submit proof of compliance with this order to the undersigned no later than [REDACTED] 2019.

*Christopher Turner*

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Christopher Turner  
Hearing Officer

Cc: Musa Mohamud, Program Manager, Hartford  
Rachel Anderson, Program Manager, New Haven  
William Johnson, DSS New Haven

**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, law, and 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 06106.

**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, if 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.