

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3775

██████████ 2019
Signature Confirmation

Case ID ██████████
Client ID ██████████
Request #139993

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2019, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying his application for Medicaid for Long Term Care Facility Residents.

On ██████████, 2019, ██████████, (the "Appellant's Attorney") requested an administrative hearing to contest the Department's decision and to seek increased Community Spouse Protected Amount ("CSPA").

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2019.

On ██████████ 2019, 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 Authorized Representative

██████████, Appellant's Attorney
██████████, Appellant's Daughter
Jim Johnson, Department's Representative
Swati Sehgal, Hearing Officer

The hearing record remained open for submission of additional information. The hearing record closed on ██████████ 2019.

The Appellant was not present at the administrative hearing due to being institutionalized.

STATEMENT OF THE ISSUE

1. The first issue is whether the Department's decision to deny Medicaid benefits for Long Term Care Facility Residents was correct.
2. The second issue is whether ██████████ (the "Appellant's 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")

FINDINGS OF FACT

1. The Appellant was admitted to the ██████████, Skilled Nursing Facility ("SNF") on ██████████ 2018 (his "date of institutionalization" or "DOI") and began a continuous period of institutionalization (Hearing Record)
2. On ██████████ 2018, the Department received an application for Medicaid coverage for Long Term Care Facility Residents. (Hearing Summary, Exhibit 1: Application dated ██████████/18)
3. The Appellant is married to ██████████, also referred to as Community Spouse ("CS"), who resides in the community at ██████████, CT. (Exhibit 1: W-1LTC)
4. On ██████████, 2018, the Department completed a Community Spousal Assessment to determine the total value of the assets as of the date of institutionalization. (Exhibit 3: Spousal Assessment Worksheet, Exhibit 8: 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 were \$348,064.27 as of the DOI. (Exhibit 3 and Exhibit 8)

6. The Department determined the spousal share of the assets was \$174,032.14 as of the DOI ($\frac{1}{2}$ of the couple's combined non-exempt assets). (Exhibit 3)
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). (Exhibit 8)
8. The Appellant's Attorney is seeking Medicaid eligibility effective [REDACTED] 2019. (Appellant's Attorney's Testimony)
9. The Appellant's Attorney is not claiming that the Community Spouse has any expenses arising from exceptional circumstances. (Appellant's Attorney's testimony)
10. The Appellant's Attorney is seeking an increase in CSA to pay the monthly cost of living in the community effective [REDACTED] 2019. (Appellant's Attorney's Testimony)
11. The Appellant's Attorney is seeking an adjustment to the CSPA to have all of the couple's assets protected for the CS to generate the additional income necessary to supplement a shortfall in her own income in meeting her Minimum Monthly Needs Allowance ("MMNA"). (Attorney's testimony, Hearing Request)
12. Effective [REDACTED] 2019, the Community Spouse had monthly shelter costs totaling \$1637.57 including \$667.67 property tax, \$233.90, homeowners insurance and the standard utility allowance of \$736.00. (Exhibit L: CSA Calculation of Applied Income, Fair Hearing Memorandum)
13. Effective [REDACTED] 2019, the Community Spouse had monthly gross Social Security income of \$980.50. (Exhibit C: Social Security Administration letter)
14. Effective [REDACTED] 2019, the Appellant had monthly gross Social Security income of \$1844.10. (Exhibit C)
15. Effective [REDACTED] 2019, the Community Spouse had monthly gross pension of \$127.71. (Exhibit D: Pension from [REDACTED].)
16. The Appellant and CS have a monthly [REDACTED] Supplemental and Personal Health Plan insurance premium of \$473.00. (Exhibit G: Payment Record from [REDACTED])
17. As of [REDACTED], 2019 (the date of the administrative hearing), the average rate for the three highest yielding 12 month Certificates of Deposit for banks in the [REDACTED], Connecticut area was 2.58% (Northwest community bank 2.75% + Putnam Bank 2.50% . + Dutch point Credit Union 2.50 % = 7.75% / 3 = 2.58%). (Hearing Officer's Exhibit 1: Bankrate's Best CD Rates in June 2019)

18. As of the DOI, the couple had \$348,064.27 in total assets. \$142,542.14 was held in regular accounts at [REDACTED], \$205,456.93 was held in [REDACTED] IRA accounts and \$65.20 in [REDACTED] account. (Exhibit 3)
19. At the time of application, the Appellant disclosed three limited partnerships in real estate, which were in the process of liquidation. The Department treated these assets as non-home property and excluded them under the assumption of a bona fide effort to sell until the proceeds become available. (Department's Summary)
20. 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 his spouse could retain without causing ineligibility was determined to be \$125,200.00 (\$123,600.00+\$1600.00). (Exhibit 8: Assessment of Spousal Assets; Notification of Results; Hearing Summary)
21. On [REDACTED], 2019, the Department sent the Appellant and his Community spouse an Assessment of Spousal Assets, Notification of Results stating that he "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 \$125,200.00. (1600.00+123,600.00=\$125.200.00). (Exhibit 8 and Hearing Summary)
22. One of the Appellant's limited partnerships was sold in [REDACTED] 2018 and amount received by the Appellant was \$111,522.40 and the others were sold in [REDACTED] 2019 and amount received by the Appellant was \$125,500.00. (Department's Summary)
23. The Appellant paid \$167,600 to the SNF for his stay from [REDACTED] 2018 through [REDACTED] 2019. (Appellant's Attorney's Testimony and Exhibit H: Transaction Report from SNF)
24. On [REDACTED] 2019, the Department denied the Appellant's application for Long Term Care Medicaid assistance due to excess assets. (Hearing Summary)
25. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED] 2019. Therefore, this decision is due not later than [REDACTED], 2019. However, the close of the hearing record, which had been anticipated to close on [REDACTED], 2019, did not close for the admission of evidence until [REDACTED] 2019, at the Appellant's request. Because this 14-day delay in the close of the hearing record arose from the Appellant's request, this final decision was not due until [REDACTED], 2019, and is therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Department of Social Services to administer 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 do 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 § 4000.01 defines a community spouse is 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.
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. Effective [REDACTED] 2018, the Applicant and his wife were MCCA Spouses as defined by the Medicaid program; the Applicant was an Institutionalized Spouse (IS) and his wife was 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 are protected for the community spouse and is not counted in determining the institutionalized spouse’s eligibility for Medicaid.
7. UPM § 1507.05(A) discusses the Assessment of Spousal Assets for MCCA spouses and provides that:
 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 of the initial continuous period of institutionalization which started on or after September 30, 1989.
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. computation of the spousal share of those assets.
4. 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.
5. 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 physical or mental impairment. (Cross Reference: 4025.69).
8. UPM § 4022.05 (B)(2)) 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.
9. Based upon the date of application for the Medicaid program, the Department correctly set the CSPA at the maximum amount of \$123,600.00
10. Effective [REDACTED] 2019, the couple's combine assets of \$223,534.98 produced monthly interest income of \$288.93(0.129%) [REDACTED] account [REDACTED] earned monthly interest of \$0.04 + [REDACTED] [REDACTED] earned \$31.32 + [REDACTED] account [REDACTED] earned \$0.00+ [REDACTED] r account [REDACTED] 6 earned \$0.18 + [REDACTED] [REDACTED] earned \$164.38 + [REDACTED] [REDACTED] earned \$92.89 + [REDACTED] [REDACTED] earned \$.22.
11. Effective [REDACTED] 2019, the CS's initial CSPA of \$123,600.00 produced monthly interest income of \$159.44 ($123,600.00 \times 0.129\%$).

12. 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)
13. 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.
14. 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 [REDACTED] 2019, the CS's MMNA was \$3077.82 as shown in the Calculation below:

Rent or Mortgage	\$0.00
Property Tax	+\$667.67
Home Insurance	+ \$233.90
Standard Utility Allowance	+ \$736.00
Total Shelter Costs	= \$1637.57
30% of 150% of FPL for 2	- \$617.25
Excess Shelter Costs	= \$1020.32
150% FPL for 2	+ \$2,057.50
Total actual expenses	= \$3077.82
MMNA capped at	\$3,160.50

15. Effective [REDACTED] 2019, the CS' total monthly income from Social Security, pension and interest income is \$1267.65 (980.50, social security + 127.71, pension +159.76 actual interest earned on initial CSPA).
16. Effective [REDACTED] 2019, the deficit between the CS's income and her MMNA was \$1810.17 as shown in the calculation below:

MMNA	\$3,077.82
CS's income	-\$1267.65
Equals Deficit	= \$1810.17

17. 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.
18. 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.
19. 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.
20. As of █████ 2019, the Appellant had \$1547.60 in income that could have been diverted to the CS toward meeting her monthly needs. (\$1880.00, Social Security, - 35.90 Medicare prescription drug plan - \$60.00 personal needs allowance, minus \$236.50(473/2) IS's share of personal health insurance premium)
21. After diverting all available income from the Appellant, the CS' income would still have been short of her required MMNA by a monthly deficit of \$262.57 (\$1810.17 original deficit, minus \$1547.60 income diverted from the spouse).
22. For █████ 2019 after a diversion of the Appellant's income of \$1547.60 to the Community Spouse, the Community Spouse has a remaining monthly income deficit of \$262.57.
23. At the Bankrate average 1 year CD rate of 2.58%. the income that could have been generated by rest of the couple's \$99,934.98(\$223,534.98, total asset - \$123,600.00 initial CSPA) in assets was \$214.85 per month (\$99,934.98 x .0258/12), which is still insufficient to make up the CS's \$262.57 income deficit in meeting her MMNA as of April 1, 2019.
24. Effective █████ 2019, the CS's CSPA must be raised to include all of the couple's

assets in order to generate income to help bring the CS's income to the level of the MMNA.

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

26. After the diversion of all assets effective [REDACTED] 2019, for the benefit of the Community Spouse, the value of the Appellant's countable assets is \$0.00.


27. Effective [REDACTED] 2019, 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] 2019, application for Medicaid and continue to process eligibility in accordance with this decision.
2. Effective [REDACTED] 2019, the CSPA is increased to include all of the couple's assets of \$223,534.98.
3. The Department will submit to the undersigned verification of compliance with this order by [REDACTED], 2019.


Swati Sehgal
Hearing Officer

PC: Rachel Anderson, Operations Manager, DSS, RO#20, New Haven
Cheryl Stuart, Operations Manager, DSS, RO #20, New Haven
Lisa Wells, Operation Manager, DSS, RO #20, New Haven
William Johnson, Eligibility Services Worker, DSS, RO #20, 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 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.