

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3725

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

Client ID # ██████████  
Request #141898

NOTICE OF DECISION

PARTY

██████████  
██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) denying her ██████████ 2019 application for the W01 Medicaid, the Connecticut Home Care Waiver Services Program (“W01”).

On ██████████, 2019, the Appellant requested an administrative hearing to contest the Department’s denying her application for the W01 program.

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

On ██████████, 2019, the OLCRAH issued a Notice rescheduling the administrative hearing for ██████████, 2019.

On ██████████ 2019, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The following individuals attended the hearing:

██████████, Appellant’s Spouse  
██████████, Appellant’s Representative  
Melissa Juliano, Department’s Representative (via telephone)  
Gary Sardo, Department’s Representative  
Miklos Mencseli, Hearing Officer

The Appellant was not present at the hearing.

The hearing record closed on [REDACTED] 2019.

### **STATEMENT OF THE ISSUE**

The issue is whether [REDACTED], (the "Community Spouse") requires an increase to his protected share of the spousal assets (the "community spouse protected amount" or "CSPA") due to exceptional circumstances, and if, as a consequence of protecting the assets for the Community Spouse, the Appellant's W01 application should be granted.

### **FINDINGS OF FACT**

1. On [REDACTED] 2019, the Department received the Appellant's application for Husky C (W01 Medicaid, Connecticut Home Care Waiver Services). (Summary, Exhibit A: W-1 LTC application)
2. On [REDACTED], 2019, a home care assessment was completed; this home care assessment established the Appellant's functional date of institutionalization ("DOI") as [REDACTED], 2019. (Summary, Exhibit J: Spousal Assessment, Exhibit K: Case Notes)
3. The Appellant's Spouse lives with the Appellant in the couple's residence. (Summary, Appellant's Spouse Testimony)
4. A Community Spousal Assessment completed determining the total value of the assets as of the date of institutionalization. (Exhibit J)
5. The combined total of the Appellant and the Community Spouse's non-exempt assets were \$154,691.03 as of the DOI. (Exhibit J)
6. The spousal share of the assets was \$77,345.51 as of the DOI ( $\frac{1}{2}$  of the couple's combined non-exempt assets). (Department's Representative Testimony, Exhibit J)
7. The Community Spouse Protected Amount ("CSPA") maximum amount equaled \$126,420.00 as of the DOI. (Exhibit J)
8. The Spousal Assessment incorporated the following counted assets of the couple: two Key Bank savings accounts; three Key Bank checking accounts; a Key Bank IRA; a Prudential whole life policy; and a State Farm whole life policy. (Exhibit J)

9. The Community Spouse claims that he has expenses arising from exceptional circumstances due to a high mortgage payment, home equity loan, medical health insurance payments and, health issues. (Appellant's Representative Testimony, Appellant's Spouse Testimony)
10. The Appellant's Representative submitted a monthly breakdown of expenses for the couple. (Exhibit 1: Monthly expenses)
11. The couple's monthly home expenses include: a mortgage of \$1,183.65 (includes real estate taxes), a home equity loan payment of \$149.79 and homeowner's insurance of \$228.00. (Appellant's Representative Testimony, Appellant's Spouse Testimony)
12. The Appellant pays a monthly medical premium payment of \$156.69 for Anthem Blue Cross/Blue Shield. (Appellant's Representative Testimony, Appellant's Spouse Testimony)
13. As of the hearing date, [REDACTED] 2019, the average rate of return generated by a 12 month Certificate of Deposit for banks in the Hartford and New Haven County areas was 2.27%. (Exhibit L: BankRate.com CD rate)
14. The \$154,691.03 in assets the couple owned as of the DOI—if the money earned the 2.27% average rate of return of the three highest-yielding CDs available in the couple's area—are capable of generating \$3,511.49 per year or \$292.62 monthly in interest income. (\$154,691.03 multiplied by 2.27%).
15. The Appellant had a monthly gross unearned income of \$1,269.90 from SSA benefits. (Exhibit A, Appellant's Representative Testimony)
16. The Appellant's Spouse had a monthly gross unearned income of \$1,314.90 from SSA benefits. (Exhibit A, Appellant's Representative Testimony)
17. The Community Spouse had a monthly gross earned income of \$3,307.39 from [REDACTED] (\$769.16 average gross earnings/week x 4.3). (Exhibit A, Appellant's Representative Testimony)
18. On June 6, 2019, the Department denied the Appellant's W01 application for due to excess assets. (Department's Representative Testimony, Hearing summary)
19. The Appellant is seeking an adjustment to the CSPA to have all of the couple's assets protected for the Community Spouse in order to generate additional income to supplement a shortfall in the Community Spouse's income in meeting his Minimum Monthly Needs Allowance ("MMNA"). (Appellant's Representative Testimony)

20. 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 originally was due no later than [REDACTED], 2019.

However, the hearing, which was originally scheduled for [REDACTED], 2019, was rescheduled for [REDACTED], 2019 at the request of the Appellant, which caused a 22-day postponement in the proceedings. Because this 22-day delay resulted from the Appellant's request, this decision was not due until [REDACTED], 2019 and is therefore timely.

### **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.

"The department's uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Maintenance*, 214 Conn. 601, 573 A.2d (1990)).

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."
3. The Department correctly determined that the Appellant's initial period of institutionalization began on [REDACTED], 2019.
4. UPM § 4000.01 defines "MCCA Spouses" as "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], 2019, the Appellant and her husband were MCCA spouses as defined by the Medicaid program; the Appellant was an Institutionalized Spouse (IS) and her husband was a Community Spouse (CS).
6. 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.

7. UPM § 1507.05 (A) discusses the Assessment of Spousal Assets for MCCA spouses and provides that:

Assessment Process

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).
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 amount 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 1507); or
  - d. the amount established pursuant to a court order for the purpose of providing necessary spousal support.
9. The Department correctly calculated the CSPA to be \$77,345.51.
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).
  - 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.
11. 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.
12. 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.
13. Effective [REDACTED] 2019, the CS’s MMNA was \$3,160.50 as shown in the calculation below:

Mortgage (includes property tax)	\$1,183.64
Home Equity loan	\$149.79
Home Insurance	\$228.00
Standard Utility Allowance	\$736.00
Total Shelter Costs	\$2,297.43
30% of 150% of FPL for 2	-\$617.40
Excess Shelter Costs	\$1,680.03
150% FPL for 2	+ \$2,058.00
Total actual expense	\$3,738.03
MMNA capped at \$3,160.50	\$3,160.50

14. UPM § 5025.05(B)(2)(b) provides that if income is received on other than a monthly basis, the estimate of income is calculated by multiplying 4.3 by a representative weekly amount that is determined as follows: b. if income varies from week to week, a representative period of at least four consecutive weeks is averaged to determine the representative weekly amount.
15. The Community Spouse's gross monthly earned income equaled \$3,307.39. (\$769.16 average gross earnings/week x 4.3)
16. The Community Spouse's gross monthly unearned income equaled \$1,314.90 from SSA benefits.
17. The deficit between the Community Spouse's income and his MMNA was resulted in a negative number, as shown in the calculation below:

MMNA (capped)	\$3,160.50
- CS Income from earnings	-\$3,307.39
- CS Income from SSA	-\$1,314.90
= Deficit	= -1461.79

18. UPM § 1570.25 (D)(3) provides for Exceptional Circumstances: 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; 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.
- 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.
19. The Appellant's Spouse's monthly expenses as submitted for the administrative hearing are not severe and are not unusual. These monthly expenses do not prevent him from taking care of his activities of daily living. These monthly expenses do not threaten his ability to remain in the community.
20. The Appellant's Spouse's monthly expenses of mortgage, real estate taxes, and homeowner's insurance are already factored into his MMNA, in accordance with UPM § 1570.25 (D)(3)(c), and do not qualify as causing significant financial duress.



21. UPM § 4005.10(A)(2)(a) provides the asset limit for Medicaid for a needs group of one is \$1,600.00.
22. The value of the Appellant's assets exceeds the Medicaid asset limit of \$1,600.00.
23. On [REDACTED], 2019, the Department correctly determined that the Appellant's counted assets exceeded the asset limit for the W01 program.

**DECISION**

The Appellant's appeal is Denied.



Miklos Mencseli  
Hearing Officer

C: Tyler Nardine, Operations Manager, DSS R.O. #40 Norwich

### **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.

### **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.