

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

██████████
Signature Confirmation

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

NOTICE OF DECISION

PARTY

██████████
██████████
██████████ ██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, the Department of Social Services (the “Department”) sent ██████████ (the “Applicant”) a notice of action (“NOA”) denying his application for Long Term Care Medicaid because his assets exceeded the limit.

On ██████████, ██████████, (the “Appellant”), spouse and Power of Attorney (“POA”) for the Applicant, through her counsel, ██████████ ██████████, requested an administrative hearing to contest the Department’s assessment of spousal assets, requesting that she, as the Appellant’s spouse in the community, be allowed to retain a greater share of the spousal assets to generate income to meet her minimum monthly needs.

On ██████████, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing on the denial of Title 19 for ██████████, 2019.

On ██████████, OLCRAH issued a notice advising that the issue of the hearing was the Department’s determination of spousal assets.

On ██████████, 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:

██████████, the Appellant
Attorney ██████████, Counsel for the Appellant
██████████, the Appellant's daughter
William Johnson, ESW, DSS, New Haven
Maureen Foley-Roy, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Community Spouse ("CS") requires an increase to her protected share of the spousal assets (the "community spouse protected amount" or "CSPA") so that additional income could be generated to help meet a shortfall in her minimum monthly needs allowance ("MMNA").

FINDINGS OF FACT

1. On ██████████, the Applicant was admitted to ██████████ Hospital and on ██████████, he began residing at ██████████ Care Center. (Exhibit 2: Ascend printout)
2. The Department determined as part of the spousal assessment, that on the date the Applicant was institutionalized, he and his wife had \$109,570.74 in total assets. The Appellant does not contest this determination. (Exhibit 3: Spousal Assessment Worksheet and Appellant's testimony)
3. In ██████████ the Applicant and his wife had \$76,019.14 in total assets. (Exhibit 3)
4. In ██████████, the Applicant and his wife had \$73,595.37 in total assets. (Exhibit 3)
5. In ██████████ there was no change to the value of the assets of the Applicant and his spouse. (Hearing Summary)
6. In ██████████, the Applicant and his wife had \$77,083.18 in total assets. (Appellant's brief)
7. The Applicant's only source of income is his Social Security Benefit of \$1,978.00 per month. The Appellant has no income of her own. (Appellant's Exhibit C: Social Security Benefit statement and Appellant's testimony)

8. The Appellant is [REDACTED] years old. (Appellant's testimony)
9. The Applicant is a recipient of the Departments' Medicare Savings Program, wherein the Department pays his Medicare premiums. (Exhibit 5: Notice of Action)
10. On [REDACTED], the Applicant applied for Medicaid for Long Term Care. The Applicant has a spouse living in the community in an apartment in [REDACTED] Connecticut. (Exhibit 1: Application)
11. The Applicant's wife pays \$1200 a month in rent and for all of her own utilities. She does not pay property taxes or renter's insurance. (Appellant's Exhibit B: Lease and Appellant's testimony)
12. On [REDACTED], the Department determined that the Applicant's wife's share of the assets was \$54,785.37. The Department determined that the total allowable assets for the couple were \$56,385.37. (Exhibit 4: Assessment of Spousal Assets-Notification of Results)
13. On [REDACTED], the Department sent the Applicant a notice denying his Medicaid application for [REDACTED] of 2019. The notice stated "The value of your assets is more than the amount we allow you to have". (Exhibit. 5: Notice of Action [REDACTED])
14. The Appellant is seeking an adjustment to the CSPA to have all of the couple's assets protected to generate additional income necessary to supplement a shortfall in her own income in meeting her Minimum Monthly Needs Allowance ("MMNA"). (Appellant's testimony, Hearing Request)
15. The Appellant is seeking Medicaid eligibility beginning in [REDACTED] of 2018. (Appellant's testimony)
16. The Applicant's wife does not have exceptional medical circumstances which prevent her performing activities of daily living or threaten her ability to remain in the community. (Appellant's testimony)
17. As of [REDACTED] (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 2.59% (Capitol One 2.70% + United Bank .255 + Northwest Community Bank 2.53% = 7.78% / 3 = 2.59%). (Hearing Officer's Exhibit 1:1 year CD Rates from depositaccounts.com)
18. Regarding the \$109,570.41 in assets the couple owned as of the DOI, if the money earned 2.59%, the average rate of return of the three highest yielding CDs available in the couple's area, the assets are capable of generating

\$2837.88 per year or \$236.49 monthly in interest income. (\$109,570.41 multiplied by 2.59%). (Fact #17)

19. Regarding the \$77,083.18 remaining assets that the couple owned in [REDACTED] of 2019, if the money earned 2.59 % the average rate of return of the three highest yielding CDs available in the couple's area, the assets are capable of generating \$1996.45 in interest income per year or \$166.37 per month. (Fact #17)
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 is due not later than [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.
2. "The Department's Uniform Policy Manual ("UPM") is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v Rowe*, 43 Conn Supp. 175 178 (194) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d712(1990)).
3. Section 4000.01 of the UPM provides, in pertinent part, as follows:

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 does 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.

UPM § 4000.01

"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." UPM § 1500.01

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).

4. "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." UPM § 1500.01

Section 1507.05 of the UPM provides, in pertinent part, as follows:

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).

UPM § 1507.05(A)

Section 4025.67 of the UPM provides, in pertinent part, as follows:

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.

UPM § 4025.67(D)(3)

“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).” UPM § 1570.25(D)(4)

“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.” UPM § 5035.30(B)(2)(a),(b)

Section 5035.30 of the UPM provides, in pertinent part, as follows:

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 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.

UPM § 5035.30(B);(3),(4)(a through e)

Section 42 of the United States Code (U.S.Code) provides, in pertinent, as follows:

Each State shall establish a minimum monthly maintenance needs

allowance for each community spouse which, subject to subparagraph (C), is equal to or exceeds (i) the applicable percent (described in subparagraph (B)) of 1/12 of the income official poverty line (defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981^[210]) for a family unit of 2 members; plus(ii) an excess shelter allowance (as defined in paragraph (4)). A revision of the official poverty line referred to in clause (i) shall apply to medical assistance furnished during and after the second calendar quarter that begins after the date of publication of the revision.

42 U.S.Code Section 1396r-5(d)(3)(A)

Effective [REDACTED] 2019, the CS's MMNA was \$3,039.67 as shown in the calculation below:

Rent	\$1,200.00
Property Tax	+ 0
Home Insurance	+ 0
Standard Utility Allowance	+ \$736.00
Total Shelter Costs	= \$1,936.00
30% of 150% of FPL for 2	Minus \$617.50
Excess Shelter Costs	= \$1,318.50
150% FPL for 2	+ \$2,057.50
Total actual expenses	= \$3,376.00
MMNA capped at \$3,160	\$3,160.00

5. "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." UPM § 1570.25(D)(4) b

Section 1570.25 of the UPM provides, in pertinent part, as follows:

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.

UPM § 1570.25(D)(4)(c)

Regarding the \$109,570.41 in assets the couple owned as of the DOI, if the money earned 2.59%, the average rate of return of the three highest yielding CDs available in the couple's area, the assets are capable of

generating \$2837.88 per year or \$236.49 monthly in interest income. (\$109,570.41 multiplied by 2.59%).

Regarding the \$77,083.18 remaining assets that the couple owned in March of 2019, if the money earned 2.59 % the average rate of return of the three highest yielding CDs available in the couple's area, the assets are capable of generating \$1996.45 in interest income per year or \$166.37 per month.

Effective February 1, 2019, the deficit between the CS's income (\$0) and her MMNA was \$3,160.00 as shown in the calculation below:

MMNA	\$3,160
CS's income	- \$0.00
Equals Deficit	= \$3,160

Section 5035.25 of the UPM provides, in pertinent part, as follows:

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."

UPM § 5035.25

As of [REDACTED] 2019, the IS had \$1,918.00 in income that could have been diverted to the CS toward meeting her monthly needs. (\$1,978.00 Social Security, minus \$60.00 personal needs allowance)

After diverting all available income from the IS, the CS' income would still have been short of her required MMNA by a monthly deficit of \$1,121.67 (\$3,039.67 original deficit, minus \$1,918.00 income diverted from spouse, equals \$1,121.67).

The interest income generated by the couple's assets does not meet the CS's MMNA; therefore, effective [REDACTED] 2018, the CSPA is increased to \$109,570.74 to generate additional interest income needed to meet her MMNA.

6. "The asset limit for Medicaid for a needs group of one is \$1,600.00." UPM § 4005.10(A)(2)(a)

Effective [REDACTED] 2018, the Applicant had \$0.00 in assets.

Effective [REDACTED] 2018, the Appellant's assets did not exceed the asset limit of \$1600.00

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. Effective [REDACTED] 2018, the CSPA is increased to \$109,570.74.
2. The Department must reopen the Appellant's application for Medicaid effective [REDACTED] 2018 and consider the Appellant to have \$0.00 in assets as of that date.
3. The Department must submit proof of compliance with the above to the undersigned hearing officer by no later than [REDACTED] 2019.



Maureen Foley-Roy
Hearing Officer

cc: Rachel Anderson, Cheryl Stuart, Lisa Wells, DSS Managers, R. O.# 20, New Haven
[REDACTED], Esq.
William Johnson, DSS Fair Hearing Liaison, 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.

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.