

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

██████████ 2020
SIGNATURE CONFIRMATION

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

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 Long Term Care (“LTC”) Medicaid assistance.

On ██████████ 2019, the Appellant’s Power of Attorney (“POA”), Attorney ██████████, requested an administrative hearing to contest the Department’s decision to deny his application.

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, 17b-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
- ██████████, Appellant’s POA
- ██████████, Appellant’s step-daughter and POA
- Melissa Lora, Eligibility Services Specialist, Department’s Representative
- Roberta Gould, Hearing Officer

STATEMENTS OF THE ISSUE

The issue is whether, [REDACTED], (the “Community Spouse”) 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 in order to meet the Community Spouse’s Minimum Monthly Needs Allowance (“MMNA”), and if, as a consequence of protecting the assets for the Community Spouse, the Appellant’s Medicaid application should be granted.

FINDINGS OF FACT

1. The Appellant has been institutionalized continuously since [REDACTED] 2019 (the date of institutionalization [“DOI”]). (Hearing summary)
2. The Appellant entered the [REDACTED] long-term care (“LTC”) facility on [REDACTED] 2019. (Hearing record)
3. On [REDACTED] 2019, the Appellant applied for LTC Medicaid. (Exhibit 1: W-1 LTC application form and Hearing summary)
4. The Appellant is married to [REDACTED], the Community Spouse. (Hearing record)
5. The Community Spouse is [REDACTED] years old. (Exhibit 1)
6. The combined total of the Appellant and Community Spouse’s non-exempt assets was \$218,201.35 as of the DOI. (Exhibit 9: Spousal assessment worksheet and Hearing summary)
7. The spousal share of the assets was \$109,100.68 of the DOI (1/2 of the couple’s combined non-exempt assets). (Exhibit 9 and Hearing summary)
8. The maximum CSPA was \$110,700.68 as the DOI. (Hearing record)
9. The Appellant is seeking Medicaid eligibility effective [REDACTED] 2019. (Atty [REDACTED] testimony)
10. The Community Spouse has a medical history of anxiety, mobility limitations and falls. (Exhibit L: Primary Care Physician’s statement dated [REDACTED] and [REDACTED] wellness evaluation)
11. In [REDACTED] of 2019, the Community Spouse took several falls which exacerbated her anxiety and resulted in decreased mobility. (Exhibit L)
12. On [REDACTED], 2019, the Community Spouse underwent a baseline functional assessment in order to determine her needs and her Individualized Service Plan

- before entering an assisted living community. (Exhibit L)
13. The Community Spouse is prescribed Amlodipine for hypertension and Diazepam for anxiety. (Exhibit L)
 14. The Community Spouse requires the use of a cane and/or a walker for ambulation. (Exhibit L and Community Spouse's testimony)
 15. The Community Spouse's primary care physician states that she should not be living alone due to her anxiety and history of falls. (Exhibit L)
 16. The Community Spouse has medical conditions that directly threaten her ability to remain in the community. (Exhibit L)
 17. On [REDACTED] 2019, the Community Spouse moved from a condominium to [REDACTED] Retirement Assisted Living community. (Exhibit E: [REDACTED] Residency Agreement)
 18. As of [REDACTED] 2019, the Community Spouse incurs a monthly residential fee of \$5,500.00. (Exhibit E)
 19. As of the hearing date, [REDACTED] 2019, the average rate of return generated by a 12 month Certificate of Deposit for banks in the [REDACTED], CT area was 2.05%. (Exhibit 11: Depositaccounts.com CD rate)
 20. If the \$218,201.35 in assets the couple owned as of the DOI earned the 2.05% average rate of return of the three highest yielding CDs available in the couple's area, the assets are capable of generating \$4,473.13 per year or \$372.76 monthly in interest income. (\$218,201.35 multiplied by .0205). (Fact #18)
 21. As of [REDACTED] 2019, the Appellant had monthly gross unearned income of \$1,145.00 from SSA benefits. (Exhibit F: SSA benefit statement)
 22. Effective [REDACTED], 2019, the Community Spouse has monthly gross unearned income of \$1,317.00 from SSA benefits. (Exhibit F)
 23. As of [REDACTED] 2019, the couple's assets were \$204,181.45. (Exhibit 9)
 24. On [REDACTED] 2019, the Department sent the Appellant a notice of action denying Husky C LTC Medicaid assistance because the value of his assets is more than the amount that they are allowed to have for Medicaid eligibility. (Exhibit B: Notice of action dated [REDACTED] and Hearing summary)
 25. 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 her

Minimum Monthly Needs Allowance (“MMNA”). (Attorney’s testimony and Hearing Request)

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 Connecticut Supp. 175, 178 (1994) (citing Connecticut General Statutes § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Connecticut 601, 573 A.2d 712 (1990)).
3. 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 that the Appellant’s initial period of institutionalization began on [REDACTED] 2019.

4. 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 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.

5. UPM § 1500.01 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.”

Effective [REDACTED], 2019, 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 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.
3. 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).

The Department correctly conducted an assessment of the Appellant and Community Spouse’s combined assets from the date of institutionalization.

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:
 - (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.

Connecticut General Statutes § 17b-261k provides that notwithstanding any provision of subsection (g) of section 17b-261, the Commissioner of Social Services shall amend the Medicaid state plan to require that the spouse of an institutionalized person who is applying for Medicaid receives the maximum [CSPA], as determined pursuant to 42 USC 1396r-5. The commissioner shall adopt regulations, in accordance with chapter 54, to implement the provisions of this section.

The Department correctly determined that the CSPA was \$109,100.68 as of the DOI.

As of [REDACTED], 2019, the 12 month Certificate of Deposit bank rate was 2.05%.

Effective [REDACTED] 2019, the Community Spouse’s assets of 109,100.68 would have generated monthly interest income of \$186.38. See table below for calculations:

Asset	Balance	Interest Rate	Interest per Month
Union Svgs Bank # [REDACTED]	\$ 99.65	2.05%	\$.17
NewtownSvgs Bank CD # [REDACTED]	\$100,000.00	2.05%	\$170.83
Prudential LUP # [REDACTED]	\$6,625.23	2.05%	\$ 11.32
Union Svgs Bank # [REDACTED]	\$2,375.80	2.05%	\$ 4.06

Total	\$109,100.68		\$186.38

9. UPM § 5035.30(B) provides that

1. The Community Spouse Allowance is equal to the greater of the following:
 - a. the difference between MMNA and the Community Spouse's gross monthly income; or
 - b. the amount established pursuant to court order for the purpose of providing necessary spousal support.
2. 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.
3. 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.
4. The community spouse's shelter costs includes:
 - a. rental cost or mortgage payments, including principle and interest;
 - b. real estate taxes; and
 - c. real estate insurance; and
 - d. required maintenance fees charged by condominiums and cooperatives except those amounts for utilities;
 - e. and the Standard Utility Allowance ("SUA") used in the Supplemental Nutrition Assistance Program for the community spouse.
5. The MMNA may not exceed the greater of either:
 - a. the maximum MMNA; or
 - b. an amount established through a Fair Hearing.

Effective [REDACTED] 2019, the Medicaid program as administered by the Department used the 2019 Poverty Guidelines published in the Federal Register, Vol. 84, No. 22, pp. 1167-1168, [REDACTED] 2019.

Effective [REDACTED] 2019, the Community Spouse's MMNA was \$3,160.50 as shown in the calculation below:

Rent	\$5,500.00
Property Tax	+ 0.00
Home Insurance	+ 0.00
Standard Utility Allowance	+ \$736.00
Total Shelter Costs	= \$6,236.00
30% of 150% of FPL for 2	- \$617.25
Excess Shelter Costs	= \$5,618.75
150% FPL for 2	+ \$2,057.50
Total actual expenses	= \$2852.70
MMNA capped at \$3,160.50	\$3,160.50

10. UPM § 1570.25(D)(3) provides for Duties of Fair Hearing Official's:

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 the 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.

The Community Spouse has documented medical conditions that directly threaten her ability to remain in the community.

- 11. 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).”
- 12. 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.”
- 13. 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.”

The Department correctly determined that as of [REDACTED] 2019, the Community Spouse had gross monthly unearned income of \$1,317.00.

Effective [REDACTED] 2019, the deficit between the Community Spouse’s income and her MMNA was \$1,843.50 as shown in the calculation below:

MMNA	\$3,160.50
CS’s income	- \$1,317.00
Equals Deficit	= -\$1,843.50

- 14. 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 the community, total gross income is adjusted by certain deductions to calculate the amount of income which is applied to the monthly cost of care.”
- 15. 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; (effective July 1, 2019 = \$60.00)

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 by 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.

Effective [REDACTED] 2019, the Appellant had gross monthly SSA income of \$1,145.00.

As of [REDACTED] 2019, a portion of the Community Spouse's needs are met by diverting \$1,085.00 of the Appellant's income (\$1,145.00 SSA - \$60.00 PNA).

Effective [REDACTED] 2019, after a diversion of the Appellant's income of \$1,145.00 to the Community Spouse, the Community Spouse still has a monthly income deficit of \$698.50 (\$3,160.50 MMNA - \$1,317.00 CS SSA - \$1,145.00 diverted income)

Effective [REDACTED] 2019, the remaining assets of \$95,080.77 (\$204,181.45 total assets as of [REDACTED] - \$109,100.68) would generate interest income of \$186.38 See table below:

Asset	Balance	Rate of Return As of [REDACTED] 2019	DepositAccounts.com Rate	Interest based on Highest Rate
Union Svgs Bank # [REDACTED]	\$ 1,891.85	.0%	2.05%	\$ 3.23
Union Svgs Bank # [REDACTED]	\$82,571.89	.031	2.05%	\$141.06
VA LIP # [REDACTED]	\$ 4,548.89	.0%	2.05%	\$ 7.77
VA LIP # [REDACTED]	\$ 6,068.14	.0%	2.05%	\$ 10.37
Total				\$186.38

Since the additional interest income from the remaining assets is still insufficient to meet the Community Spouse's MMNA, effective [REDACTED] 2019, the CSPA is increased to \$204,181.45.

After the diversion of additional assets of \$95,080.77 effective [REDACTED] 2019, for the benefit of the Community Spouse, the value of the Appellant's countable assets is \$0.00

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

Effective [REDACTED] 2019, the value of the Appellant's assets does not exceed the Medicaid asset limit of \$1,600.00.

DISCUSSION

The Department acted correctly in its determination of the Appellant's spouse's CSPA. However, the regulations of the Department allow the hearing officer to protect additional assets from the Appellant/Institutionalized Spouse to meet the needs of the Community Spouse.

DECISION

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

ORDER

1. The Department shall reopen the Appellant's application for LTC Medicaid back to [REDACTED] 2019, and continue the eligibility process.
2. Effective [REDACTED] 2019, the CSPA is increased to \$204,181.45.
3. Effective [REDACTED] 2019, the MMNA is increased to \$3,919.00.
4. No later than [REDACTED], 2020, the Department will submit to the undersigned verification of compliance with this order.



Roberta Gould
Hearing Officer

Pc: Peter Bucknall, Social Services Operations Manager, DSS Waterbury
James Hilliard, Social Services Operations Manager, DSS Waterbury
Melissa Lora, Eligibility Services Specialist, DSS Waterbury
[REDACTED] POA

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, 25 Sigourney Street, Hartford, CT 06106-5033.

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, 25 Sigourney Street, Hartford, CT06106. 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.