

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

██████████ 2020
Signature Confirmation

Client ID # ██████████
Request # 155160

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2020, the Department of Social Services (the “Department”) issued a notice of action (“NOA”) to ██████████, (the “Appellant” or the “institutionalized spouse” or “IS”) denying his application for Medicaid for Home and Community Based Waiver Services because his assets exceeded the limit.

On ██████████ 2020, the Appellant requested an administrative hearing to contest the portion of spousal assets his spouse could retain as a result of the Department’s assessment and apportionment of the couple’s assets.

On ██████████, 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2020. The hearing was scheduled to be held telephonically due to the COVID-19 pandemic.

On ██████████ 2020, 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. None of the parties objected to the hearing being held telephonically.

The following individuals were present at the hearing:

██████████, the Appellant’s spouse, via telephone
██████████ Counsel for the Appellant, via telephone
██████████ Paralegal for ██████████, via telephone
Patricia Dixon, Department’s Representative, via telephone

James Hinckley, Hearing Officer

The Hearing Record was held open for the Appellant to provide additional evidence. On [REDACTED] 2020, the Hearing Record closed.

STATEMENT OF THE ISSUE

1. Whether the Appellant’s community spouse required an increase to her spousal share of the couple’s assets to produce sufficient income to meet her Minimum Monthly Needs Allowance (“MMNA”).

FINDINGS OF FACT

1. The Appellant is married and resides in the community. (Hearing Record)
2. The Appellant was assessed by a vendor agency of the Department and was determined, as of [REDACTED] 2019, to require a level of medical care provided at home without which he would require institutionalization in a nursing facility. (Hearing Record)
3. On [REDACTED] 2019, the Appellant applied for Medicaid. (Hearing Record)
4. The Department determined, for Medicaid purposes, that the Appellant’s “date of institutionalization” or “DOI” was [REDACTED] 2019, the date he required medical care at home that was the equivalent of nursing home care. (Hearing Record)
5. The Department determined, pursuant to its spousal assessment process, that the Appellant and his wife owned the following assets as of his [REDACTED] 2019 DOI.

Chase checking account	\$1,891.16
Chase savings account	\$15,000.00
ION account	\$3,643.96
Webster account	\$8,607.36
Retirement Acct ending in [REDACTED]	\$131,940.06
Retirement Acct ending in [REDACTED]	\$271,078.28
Retirement Acct ending in [REDACTED]	\$0.05
Retirement Acct ending in [REDACTED]	\$83,115.61

Total	\$515,276.48
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(Ex. 8: Spousal Assessment Worksheet)

6. On [REDACTED] 2020, the Department determined that, of the \$515,276.48 in total assets owned by the couple as of the DOI, the Appellant could keep \$1,600.00 and his spouse could keep \$128,640.00 without causing Medicaid ineligibility. The share of the couple's assets the Appellant's spouse could keep is known as the Community Spouse Protected Amount or "CSPA." (Ex. 7: Case Notes)
7. On [REDACTED] 2020, the Department issued a NOA to the Appellant denying HUSKY C Medicaid for Individuals Receiving Home and Community Based Services for the months of [REDACTED] 2019 to [REDACTED] 2020, inclusive, because his assets exceeded the Medicaid asset limit in each month. (Ex. 10: NOA dated [REDACTED] 2020)
8. As of [REDACTED] 2019, the Appellant had total gross income of \$2,273.00 from Social Security. (Testimony, Hearing Record)
9. As of [REDACTED] 2019, the Appellant's spouse had no income. (Testimony, Hearing Record)
10. As of [REDACTED] 2019, the Appellant's spouse has housing expenses totaling \$1,570.00 per month, which included a mortgage expense of \$1,113.61 and a tax expense of \$456.39. (Hearing Record, Ex. I: Town tax bill)
11. As of [REDACTED] 2020, the date of the hearing, the average of the three highest interest rates for a 12 month Certificate of Deposit in Connecticut was 1.05% (First County Bank .0115 + Connecticut Community Bank .01 + The First Bank of Greenwich .01 = .0315 / 3 = .0105 or 1.05%). (DepositAccounts.com)
12. The couple's Chase savings account, Chase checking account, ION account and Webster account all earned less than a 1.05% rate of interest. (Ex. A: Chase Bank statements, Ex. B: ION Bank statements, Ex. C: Webster Bank statements)
13. The couple's four retirement accounts held multiple investment types, and the income generated by the accounts fluctuated from month to month. (Ex. D-1, D-2: Statements for account ending in [REDACTED], Ex. E-1, E-2: Statements for account ending in [REDACTED], Ex. F-1, F-2: Statements for account ending in [REDACTED], Ex. G-1, G-2: Statements for accounts ending in [REDACTED])
14. The balances in the retirement accounts ending in [REDACTED], ending in [REDACTED], and ending in [REDACTED], had balances as of the [REDACTED] 2019 DOI that were not substantially different from the balances the accounts held throughout 2019. (Ex. D-1, D-2, E-1, E-2, G-1, G-2)

15. For the retirement accounts ending in ■■■, ending in ■■■, and ending in ■■■, the 2019 annual earnings from each account represents a reasonable estimate of the earnings each account could have generate from the balance that existed as of the ■■■■■ 2019 DOI. (Hearing Record)
16. The retirement account ending in ■■■ generated \$1,450.96 in income in 2019, consisting of \$1,417.83 in dividends and \$33.13 in interest. (Ex. D-1, D-2)
17. The retirement account ending in ■■■ generated \$7,307.78 in income in 2019, consisting of \$7,284.66 in dividends and \$23.12 in interest. (Ex. E-1, E-2)
18. The retirement account ending in ■■■ generated \$2,262.55 in income in 2019, consisting of \$2,244.64 in dividends and \$17.91 in interest. (Ex. G-1, G-2)
19. The retirement account ending in ■■■ did not maintain a reasonably consistent balance throughout 2019. Although the account generated \$878.59 in income in 2019, consisting of \$875.20 in dividends and \$3.39 in interest, as of the ■■■■■ ■■■■■ 2019 DOI the account held a meaningless balance of \$.05. The 2019 earnings from the account do not represent a reasonable estimate of income that could have generated from the account. The account has no ability to generate future income as of the DOI. (Ex. F-1, F-2)
20. The total balance of \$29,142.48 that the couple maintained in their Chase, ION and Webster accounts as of the ■■■■■, 2019 DOI had the ability to generate \$306.00 in annual income at the 1.05% average rate of return of a one-year CD in Connecticut ($\$29,142.48 \times .0105 = \306.00). (Hearing Record, Fact #11)

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. 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.

3. 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.
4. **Effective [REDACTED] 2019, the Appellant and his wife were MCCA Spouses as defined by the Medicaid program; the Appellant was an Institutionalized Spouse (IS) and his wife was a Community Spouse (CS).**
5. 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.
6. 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).

7. UPM § 4025.67(D)(3) 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.

8. UPM § 4025.67(A) provides that when the applicant or recipient who is a MCCA spouse begins a continuous period of institutionalization, the assets of his or her community spouse (CS) are deemed through the institutionalized spouse's initial month of eligibility as an institutionalized spouse (IS).
 1. As described in section 4025.67 D., the CS' assets are deemed to the IS to the extent that such assets exceed the Community Spouse Protected Amount.
 2. Any assets deemed from the CS are added to the assets of the IS and the total assets and the total is compared to the Medicaid asset limit for the IS (the Medicaid asset limit for one adult)

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

10. UPM § 5035.30(B) provides for the calculation of the Community Spouse Allowance ("CSA") and MMNA as follows:

B. Calculation of 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.

2. The MMNA is that amount which is equal to the sum of:
 - a. the amount of the community spouse's excess shelter cost 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 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.

4. The community spouse's monthly shelter cost includes:
 - a. rental costs 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
5. The Standard Utility Allowance ("SUA") used in the Supplemental Nutrition Assistance program ("SNAP") is used for the community spouse.

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

Mortgage	\$1,113.61
Property Taxes	+ \$456.39
Standard Utility Allowance	+ \$736.00
Total Shelter Costs	= \$2,306.00
30% of 150% of FPL for 2	- \$617.25
Excess Shelter Costs	= \$1,688.75
150% FPL for 2	+ \$2,057.50
Exceeds Cap for MMNA	= \$3,746.25
Maximum MMNA	= \$3,160.50

12. Effective [REDACTED] 2019, the CS had no income. The CS needed \$3,160.50 in monthly income from other sources to meet her MMNA.

13. The CS's \$3,160.50 monthly income deficit was equal to an annual deficit of \$37,926.00.

14. "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)

15. "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)

16. "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." UPM §

5035.25

17. UPM § 5035.25(C) provides, in relevant part, as follows:

The following monthly deductions are allowed from the income of assistance units receiving Community Based Services:

1. An amount to meet the basic community maintenance needs of the individual to the extent that it is equivalent to:

...

- (b) 200% of the Federal Poverty Level for those eligible under PAS or DMR waiver

18. The Federal Poverty Level guidelines in effect as of [REDACTED] 2019 are published in the Federal Register, Vol. 84, No. 22, Friday, February 1, 2019.

19. As of [REDACTED] 2019, 200% of the Federal Poverty level for one person was \$24,980.00 annually or \$2,081.66 monthly.

20. The Appellant had gross income of \$2,273.00 monthly. After allowing a deduction of 200% of the Federal Poverty Level, or \$2,081.66, from his gross income, the Appellant had \$191.34 available to deem to his CS.

21. After receiving \$191.34 in monthly diverted income from the Appellant, the CS had a remaining deficit to her monthly MMNA of \$2,969.16 (\$3,160.50 - \$191.34).

22. UPM § 1570.25(D)(4)(c) provides 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.

23. The CS's annual deficit to her MMNA, after receiving all available diverted income from her IS, was \$35,629.92 (\$2,969.16 x 12).

24. The total assets owned by the couple as of the DOI had the capacity to generate annual income as detailed in the following chart:

Retirement account ending in [REDACTED]	\$1,450.96
Retirement account ending in [REDACTED]	\$7,307.78

Retirement account ending in [REDACTED]	\$2,262.55
Combined balance in Chase, ION, Webster accounts	\$306.00
Total	\$11,327.29

25. The total income that could have been generated by all of the couple's \$515,276.48 in assets as of the [REDACTED] 2019 DOI, \$11,327.29, was insufficient to meet the annual deficit to the CS's MMNA of \$35,626.92.

26. All of the couple's \$515, 276.48 in assets as of the DOI must be protected as a CSPA in order to generate income to help meet the CS's MMNA.

27. Effective [REDACTED] 2019, the Appellant's assets were \$0.00.

DISCUSSION


The Department correctly determined the spousal shares pursuant to Department regulation in its initial assessment of spousal assets. However, the regulations of the Department allow the Hearing Officer to protect additional assets for the CSPA when the Community Spouse has income below the MMNA and needs the additional income that could be generated by retaining a greater share of the assets.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department must protect all of the couple's \$515,276.48 in assets as of the DOI as a CSPA for the CS.
2. The Department must notify the undersigned fair hearing officer, by no later than [REDACTED] 2020, of its compliance with the above.


James Hinckley
Hearing Officer

cc: [REDACTED]
hearings.commops@ct.gov

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.