

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

■■■■ 2021
Signature Confirmation

Client ID ■■■■
Case ID ■■■■
Request # 174089

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ■■■■ ■■■■ 2021, the Department of Social Services (the "Department") issued ■■■■ ■■■■ (the "Applicant") a Notice of Action ("NOA") denying her application for Medicaid under the Husky C – Long Term Care Facility Residents Eligible Under Special Income Level program ("Medicaid") effective ■■■■ ■■■■ 2020 because her assets exceeded the Medicaid asset limit.

On ■■■■ ■■■■ 2021, ■■■■ ■■■■ the Applicant's Spouse, (the "Appellant") requested an administrative hearing to contest the Department's assessment of spousal assets, requesting that he be allowed to retain a greater share of the spousal assets to generate income to meet his minimum monthly needs in order to avoid undue financial duress.

On ■■■■ ■■■■ 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ■■■■ ■■■■ 2021.

On ■■■■ ■■■■ 2021, the Appellant requested a continuance which OLCRAH granted.

On ■■■■ ■■■■ 2021, the OLCRAH issued a notice scheduling the administrative hearing for ■■■■ ■■■■ 2021.

On [REDACTED] [REDACTED] 2021, 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 called in for the hearing:

[REDACTED] [REDACTED] Appellant
 [REDACTED] [REDACTED] Authorized Representative for the Appellant and Witness
 [REDACTED] [REDACTED] Appellant's Sister and Witness for the Appellant
 [REDACTED] [REDACTED] Business Office Manager, [REDACTED] [REDACTED] [REDACTED]
 Leigh Hunt, Department Representative
 Lisa Nyren, Fair Hearing Officer

The hearing record remained open for the submission of additional evidence. On [REDACTED] [REDACTED] 2021, the Appellant submitted a brief and supporting documents. The Department did not file a response. On [REDACTED] [REDACTED] 2021, the hearing record closed.

STATEMENT OF THE ISSUES

The issue is whether the Community Spouse ("CS") requires an increase to his 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 his minimum monthly needs allowance ("MMNA"), and if, as a consequence of protecting all of the assets for the CS, the Applicant's Husky C – LTC application should be reopened and granted retroactively.

FINDINGS OF FACT

1. [REDACTED] [REDACTED] (the "Applicant") is married to [REDACTED] [REDACTED] (the "Appellant"). (Exhibit 9: W-1LTC Application)
2. On [REDACTED] [REDACTED] 2020, the Applicant was admitted to [REDACTED] [REDACTED] (the "hospital") where she began a continuous period of institutionalization ("date of institutionalization" or DOI). (Hearing Record)
3. On [REDACTED] [REDACTED] 2020, [REDACTED] [REDACTED] [REDACTED] (the "facility") a skilled nursing facility, admitted the Applicant from the hospital. (Hearing Record)
4. On [REDACTED] [REDACTED] 2020, the Applicant applied for Medicaid to cover her stay at the facility. (Exhibit 9: W-1LTC Application)
5. On [REDACTED] [REDACTED] 2021, the Department, as part of the spousal assessment, determined that the total assets owned by the couple as of the DOI equaled \$64,867.94. Reference chart below. (Stipulated)

Asset	Owner	Value as of DOI
██████████ ("DDA-1")	Applicant/Appellant	\$1,053.74
██████████ ("Business DDA")	Appellant	\$16,239.37
██████████ ("DDA-2")	Appellant	\$15,273.15
██████████ ("SVG")	Appellant	\$32,301.68
Value of Total Assets Owned		\$64,867.94

6. On ██████████ 2021, the Department determined the spousal share of the couple's assets (or the CSPA) equaled \$32,433.97 as of the DOI, one half of the couple's assets: $\$64,867.94 \text{ total assets} / 2 = \$32,433.97$. (Exhibit 3: Spousal Assessment Worksheet and Exhibit 5: Notice of Assessment of Spousal Assets)
7. The Department determined the total allowable assets the couple could retain was \$34,033.97 to qualify for Medicaid: $\$32,433.97 \text{ CSPA} + \$1,600.00 \text{ Medicaid asset limit} = \$34,033.97$. (Exhibit 3: Spousal Assessment Worksheet, Exhibit 5: Notice of Assessment of Spousal Assets, and Department Representative's Testimony)
8. On ██████████ 2021, the Applicant died. (Hearing Record)
9. The Department determined that beginning in ██████████ 2020, and in each month of the Applicant's application, the Applicant's share of spousal assets exceeded the \$1,600.00 Medicaid asset limit. Reference chart below. Community Spouse ("CS")/Appellant, Institutionalized Spouse ("IS")/Applicant. (Stipulated)

Asset	Value as of ('ao") DOI	Value ao ██████████/20	Value ao ██████████/21	Value ao ██████████/21	Value ao ██████████/21
DDA-1	\$1,053.74	\$1,053.74	\$1,438.70	\$3,495.27	
Business DDA	\$16,239.37	\$16,239.37	\$14,114.75	\$13,649.75	\$12,568.66
DDA-2	\$15,273.15	\$15,655.53	\$14,117.68	\$14,715.25	\$14,538.13
SVG	\$32,301.68	\$32,301.68	\$32,304.91	\$32,306.42	\$32,306.42
Totals	\$64,867.94	\$65,250.32	\$61,976.04	\$64,166.69	\$59,413.21
CS Share	\$32,433.97	\$32,433.97	\$32,433.97	\$32,433.97	\$32,433.97
IS share	\$32,433.97	\$32,816.35	\$29,542.07	\$31,732.72	\$26,979.24

10. On ██████████ 2021, the Department denied the Applicant's request for Medicaid effective ██████████ 2020 due to assets in excess of the allowable limit and issued a Notice of Action. (Exhibit 3: Spousal Assessment Worksheet, Exhibit 5: Notice of Assessment of Spousal Assets, Exhibit 6: Notice of Action, and Department Representative's Testimony)

11. The Appellant owns his home where he resides in the community. The Appellant pays a monthly mortgage of \$1,850.64, annual property tax \$5,594.28 (466.19/month), annual homeowner's insurance of \$2,001.00 (\$166.75/month) and all utilities. (Appellant's Testimony)
12. The Appellant receives gross Social Security ("SSA") benefits of \$1,604.50. (Stipulated)
13. The Appellant owns and operates [REDACTED] [REDACTED] [REDACTED] [REDACTED] ("self-employment"), auto repair and restoration business earning an annual net profit in 2018 of \$3,728.00 and \$2,641.00 annual net profit in 2019. Due to the pandemic and providing home care for the Applicant, the Appellant did not work often in 2020 and earned less than 2018 and 2019 net profits of \$3,728 and \$2,641 respectively. The Appellant uses his Business DDA bank account for business transactions only. (Exhibit 10: Schedule C, Exhibit B: Appellant Supporting Documents, and Appellant's Testimony)
14. The Department calculated the Appellant's self-employment income as \$220.08 per month using the 2019 net profit as listed on the Appellant's 2019 Schedule C tax document. ($\$2,641.00$ 2019 annual income / 12 months = \$220.08) (Department Representative's Testimony and Exhibit 10: Schedule C)
15. The Appellant pays for Medicare Part B. In 2020, the Medicare Part B premium was \$144.50 per month. Beginning [REDACTED], 2021, the Medicare Part B premium increased to \$148.50 per month. (Department Representative's Testimony and Appellant's Testimony)
16. The Appellant has an outstanding medical bill from [REDACTED] [REDACTED] [REDACTED] [REDACTED] (the "hospital") totaling \$2,550.00 as of [REDACTED] [REDACTED] 2021 where he pays \$50.00 per month under a payment arrangement agreement with the hospital. (Exhibit B: Appellant Supporting Documents, Appellant's Testimony, and Authorized Representative's Testimony)
17. The Appellant incurs additional expenses of \$756 annually in order to care for the Applicant's two medical support dogs that remain at home since Applicant's admission to the facility. (Exhibit B: Appellant Supporting Documents, Appellant's Testimony and Authorized Representative's Testimony)
18. The Appellant did not claim any severe or unusual circumstances that prevent him from taking care of himself or threaten his ability to remain in the community. (Hearing Record)
19. In 2017, the Appellant inherited \$35,971.93 from his mother's estate for his sole use depositing these funds into the SVG account. The Appellant seeks to retain this account for his sole use. (Exhibit B: Appellant

Supporting Documents, Appellant's Testimony and Authorized Representative's Testimony)

20. The Applicant receives gross monthly SSA benefits of \$2,002.60. (Hearing Record)
21. The Appellant is seeking an adjustment to the CSPA to have all of the couple's assets protected, including exempting the assets in which he solely owns, to generate additional income necessary to supplement a shortfall in his own income in meeting his monthly expenses necessary to remain in the community and avoid undue financial duress. In addition, the Appellant is seeking the Applicant's Medicaid coverage to begin [REDACTED] 2020. (Hearing Record)
22. The Department calculated the MMNA as \$3,216.00, maximum allowed. (Exhibit 7: Community Spouse Allowance)

Mortgage	\$1,850.64
+ Property Tax	+\$466.19
+Property Insurance	+\$166.75
+Standard Utility Allowance	+\$736.00
= Total Shelter Costs	=\$3,219.58
-30% of 150% of FPL	- \$646.50
= Excess Shelter Costs	=\$2,573.08
+150% of FPL for 2	+\$2,155.00
= MMNA	=\$4,728.08
MMNA Capped at \$3,216.00	\$3,216.00

23. The Department determined the Community Spouse Allowance ("CSA") as \$1,391.42. (Exhibit 7: Community Spouse Allowance)

Appellant's SSA	\$1,604.50
+ Appellant's self-employment income	+\$220.08
= Appellant's gross monthly income	=\$1,824.58
MMNA	\$3,216.00
-Appellant's gross monthly income	-\$1,824.58
=CSA	\$1,391.42

24. As of [REDACTED] [REDACTED] 2021, the average 12 month Certification of Deposit bank rate was .35%. (.40% + .35% + .30% = 1.05% / 3 = .35%) (Exhibit 11: Deposit Accounts)
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] [REDACTED] 2021. However, the hearing, which was originally scheduled for [REDACTED] [REDACTED] 2021, was rescheduled to [REDACTED] [REDACTED] 2021, at the request of the Appellant resulting in a [REDACTED]-day delay. In addition, the hearing record remained open through [REDACTED] [REDACTED] 2021 to allow for the submission of additional evidence from the Appellant causing a [REDACTED] day delay. Because these delays resulted from the Appellant's requests, this decision is not due until [REDACTED] [REDACTED] 2021 and therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes provides for **"Programs administered by the Department of Social Services.** The Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act."
2. "The Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department." Conn. Gen. Stat. § 17b-261b
3. "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 Income Maintenance*, 214 Conn. 601, 573 A.2d 712(1990))
4. "MCCA (Medicare Catastrophic Coverage Act of 1988) spouses are spouses who are members of a married couple one of who becomes an institutionalized spouse on or after September 30, 1989, and the other spouse becomes a community spouse." UPM § 4000.01

The Department correctly determined the Applicant and the Appellant as MCCA spouses as defined by the Medicaid program. The Applicant was an institutionalized spouse ("IS") and the Appellant was a community spouse ("CS").

5. Section 4000.01 of the Uniform Policy Manual ("UPM") provides for the following definitions:

The asset limit is the maximum amount of equity in counted assets which an assistance unit may have and still be eligible for a particular program administered by the Department. An available asset is cash or any item of value which is actually available to the individual or which the individual has the legal right, authority or power to obtain, or to have applied for, his or her general or medical support. A counted asset is an asset which is not excluded and either available or deemed available to the assistance unit. A deemed asset is an asset owned by someone who is not a member of the assistance unit but which is considered available to the unit.

“An assessment of spousal assets is a determination of the total value of all non-excluded available assets owned by both MCCA spouses which is done upon the request of an institutionalized spouse or a community spouse and is used to calculate the Community Spouse Protected Amount.” UPM § 4000.01

“A community spouse protected amount (“CSPA”) is the amount of the total available non-excluded 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 § 4000.01

“A spousal share is one-half of the total value of assets which results from the assessment of spousal assets.” UPM § 4000.01

Title 42 Section 1396r-(5)(c)(1) of the United States Code (“U.S.C.”) provides for the rules for treatment of resources for certain institutionalized spouses.

- A. Total joint resources. There shall be computed (as of the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse)-
 - i. the total value of the resources to the extent either the institutionalized spouse or the community spouse has an ownership interest, and
 - ii. a spousal share which is equal to $\frac{1}{2}$ of such value.
- B. Assessment. At the request of an institutionalized spouse or community spouse, at the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse and upon the receipt of relevant documentation of resources, the State shall promptly assess and document the total value described in subparagraph (A)(i) and shall provide a copy of such assessment and documentation to each spouse and shall retain a copy of the assessment for use under this section. If the request is not part of an application for medical assistance under

this subchapter, the State may, at its option as a condition of providing the assessment, require payment of a fee not exceeding the reasonable expenses of providing and documenting the assessment. At the time of providing the copy of the assessment, the State shall include a notice indicating that the spouse will have a right to a fair hearing under subsection (e)(2).

Federal statute provides for the attribution of resources at time of initial eligibility determination.

In determining the resources of an institutionalized spouse at the time of application for benefits under this subchapter, regardless of any State laws relating to community property or the division of marital property-

- A. except as provided in subparagraph (B), all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse, and
- B. resources shall be considered to be available to an institutionalized spouse, but only to the extent that the amount of such resources exceeds the amount computed under subsection (f)(2)(A) (as of the time of application for benefits).

42 U.S.C. § 1396r-5(c)(2)

State statute provides in pertinent part that:

For the purposes of determining eligibility for the Medicaid program, an available asset is one that is actually available to the applicant or one that the applicant has the legal right, authority or power to obtain or to have applied for the applicant's general or medical support.

Conn. Gen. Stat. § 17b-261(c)

Department policy provides 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 4025.69); 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.

UPM § 1507.05(A)

“Subject to the limitation described below, personal property such as a bank account held jointly by the assistance unit and by another person is counted in full toward the asset limit.” UPM § 4010.10(A)(1)

“Bank accounts include the following. This list is not all inclusive. 1. Savings account. 2. Checking account.” UPM § 4030.05(A)

“Tangible business assets such as equipment and supplies, inventory, cash on hand, accounts receivable are excluded if the business produces income sufficient to justify possession of the business assets.” UPM § 4020.10(E)(1)

The Department correctly determined DDA-1 as a countable asset valued at \$1,053.74 as of the DOI.

The Department correctly determined DDA-2 as a countable asset valued at \$15,273.15 as of the DOI.

The Department correctly determined SVG as a countable asset valued at \$32,301.68 as of the DOI. Although the initial deposit of

funds into this account were from the inheritance received by the Appellant, federal statute provides that “regardless of any State laws relating to community property or the division of marital property, ... all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse.” In addition, state statute § 17b-261(c) provides for available assets for the purposes of determining eligibility under the Medicaid program. This account is a countable asset and not exempt.

The Department correctly determined Business DDA as a countable asset valued at \$16,239.37 as of the DOI. Department policy provides that business assets including accounts receivable such as a checking account are only excluded if the “business produced income sufficient to justify possession of the business assets.” Based on Appellant testimony and 2018 and 2019 schedule C tax documents, the business net profits have steadily declined which does not support the possession of such account and therefore the account is a countable asset at time of application.

6. Department policy provides as follows:

Every January 1, the CSPA shall be equal to the greatest of the following amounts: a the minimum CSPA; or b. the less 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 1570); or d. the amount established pursuant to a court order for the purpose of providing necessary spousal support.

UPM § 4025.67(D)(3)

As of the DOI, the minimum CSPA equaled \$25,728 and the maximum CSPA equaled \$128,640. Effective January 1, 2021, the minimum CSPA increased to \$26,076 and the maximum CSPA increased to \$130,380.

The Department correctly determined the total value of the couple’s available assets as \$64,867.94 as of the DOI.

Asset	Owner	Value as of DOI
██████████ (“DDA-1”)	Applicant/Appellant	\$1,053.74
██████████ (“Business DDA”)	Appellant	\$16,239.37
██████████ (“DDA-2”)	Appellant	\$15,273.15
██████████ (“SVG”)	Appellant	\$32,301.68
Value of Total Assets Owned		\$64,867.94

The Department correctly determined the CSPA as \$32,433.97 which falls within the range of the minimum and maximum CSPA in effective ██████████ 2020. Total value of assets owned as of the DOI \$64,867.94 / 2 equals \$32,433.97 CSPA.

7. "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)." UPM § 1570.25(D)(4)

"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)

"The CSA is used as an income deduction in the calculation of the post-eligibility applied income of an institutionalized spouse (IS) only when the IS makes the allowance available to the community spouse (CS) or for the sole benefit of the CS." UPM § 5035.30

Department policy provides as follows: 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 costs as calculated in section 5035.30B.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 5035.30B.4. and 30% of 150 percent of the monthly poverty level for a unit of two persons.
4. The community spouse's monthly shelter costs 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
 - e. Standard Utility Allowance (SUA) used in the FS program for the community spouse.
5. The MMNA may not exceed the greatest of either:

- a. the maximum MMNA; or
- b. an amount established through a Fair Hearing.

UPM § 5035.30(B)

The 2020 Annual Federal Poverty guideline for the 48 Contiguous States and the District of Columbia for a household of two is \$17,240.00. The monthly federal poverty limit ("FPL") equals \$1,437.00. ($\$17,240 / 12$ months = \$1,436.666) [Federal Register, Vol. 85, No. 12, Friday, January 17, 2020, pp3060]

The Department correctly calculated the Appellant's MMNA as \$3,216.00, the 2020 maximum allowed under federal standards. Effective January 1, 2021, the maximum MMNA equals \$3,259.00. Reference chart below.

Mortgage	\$1,850.64
+ Property Tax	+\$466.19
+Property Insurance	+\$166.75
+Standard Utility Allowance	+\$736.00
= Total Shelter Costs	=\$3,219.58
-30% of 150% of FPL	- \$646.50
= Excess Shelter Costs	=\$2,573.08
+150% of FPL for 2	+\$2,155.00
= MMNA	=\$4,728.08
MMNA Capped at \$3,216.00	\$3,216.00

Effective [REDACTED] 2020, the Department correctly determined the deficit between the Appellant's income and his MMNA equaled \$1,391.42 as shown below. To meet this deficit, the Department correctly authorized a CSA of \$1,391.42, diverting a portion of the Applicant's available income to the Appellant to meet his monthly needs and remain in the community.

MMNA	\$3,216.00
Appellant's (CS) Gross Income	-\$1,824.58
= Deficit	=\$1,391.42
Applicant's (IS) Gross Income (SA) diverted to CS	\$1,391.42
= Deficit after diversion	\$00.00

8. Department policy provides as follows:

The [fair hearing] 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 the direct result of the exceptional circumstances that affect him or her.

UPM § 1570.25(D)(3)

Effective July 1, 2020, the maximum MMNA equals \$3,216.00. Effective January 1, 2021, the Maximum MMNA equals \$3,259.00.

The Appellant failed to establish the MMNA calculated by the Department as not sufficient to meet his monthly needs. The hearing record failed to establish that the Appellant's significant financial duress is the direct result of exceptional circumstances that affect him. The Appellant failed to meet the criteria for exceptional circumstances resulting in significant financial duress as defined by UPM § 1570.25(D)(3). Although the Appellant cares for two dogs, their care does not prevent the Appellant from taking care of his

activities of daily living or threaten his ability to remain in the community. In addition, the payment arrangements made between the Appellant and the hospital do not qualify as financial duress but rather medical expenses reflecting the frailties of old age. The request to increase the MMNA is denied, the MMNA remains at \$3,216.00.

The Appellant's request to increase the CSPA of \$32,433.97 to remain in the community and avoid financial duress is denied. Department policy allows for a diversion of an institutionalized spouse's income to meet the needs of a community spouse prior to increasing the CSPA. The CSA of \$1,391.42 raises the Appellant's income to the MMNA of \$3,216.00. The Appellant failed to establish the need to increase the CSPA.

9. Department policy provides for the asset limit under the Medical Aid for the Aged, Blind, and Disabled program (MAABD) as \$1,600.00. UPM § 4005.10(A)(2)

Department policy provides as follows:

The Department counts the assistance unit's equity in an asset toward the asset limit if the asset is not excluded by state or federal law and is either:

- a. available to the unit; or
- b. deemed available to the unit.

UPM § 4005.05(B)(1)

Department policy provides as follows:

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 4025.67D, 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 is compared to the Medicaid asset limit for the IS (the Medicaid asset limit for one adult).

UPM § 4025.67(A)

Department policy provides for the Deeming Methodology as follows:

1. The Department calculated the amount of assets deemed to the institutionalized spouse from the community spouse by subtracting the Community Spouse Protected Amount (CSPA) from the community spouse's total available non-excluded assets.
2. The Department calculated the community spouse's total available non-excluded assets by subtracting the value of the following assets from the total value of the assets owned by the community spouse:
 - a. inaccessible assets; and
 - b. excluded assets.
3. Every January 1, the CSPA shall be equal to the greatest of the following amounts:
 - a. the minimum CSPA; or
 - b. the lesser 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 1570); or
 - d. the amount established pursuant to a court order for the purpose of providing necessary spousal support.
4. For the purpose of calculating the amount to be deemed, the community spouse's total available non-excluded assets include only those assets which are:
 - a. owned solely by the community spouse; and
 - b. owned jointly with any other person except the institutionalized spouse. Assets owned jointly with the IS are treated as being owned by the IS, as described in UPM 4010.
5. When the calculation results in a zero or lesser amount, the Department does not deem any portion of the community spouse's assets to the institutionalized spouse.

UPM § 4025.67(D)

The Department correctly determined a portion of the Appellant's assets are deemed available to the Applicant. Appellant's total counted assets minus \$32,433.97 CSPA equals the Value of Appellant's Assets Deemed Available to the Applicant/IS. Reference chart below.

Appellant/CS Assets	Value AO DOI	Value ao █████/20	Value ao █████/21	Value ao █████/21	Value ao █████/21
Business DDA	\$16,239.37	\$16,239.37	\$14,114.75	\$13,649.75	\$12,568.66
+ DDA-2	\$15,273.15	\$15,655.53	\$14,117.68	\$14,715.25	\$14,538.13
+ SVG	\$32,301.68	\$32,301.68	\$32,304.91	\$32,306.42	\$32,306.42
= Appellant's Total	\$63,814.20	\$64,196.58	\$60,537.34	\$60,671.42	\$59,413.21

Counted Assets					
minus (-) CSPA	\$32,433.97	\$32,433.97	\$32,433.97	\$32,433.97	\$32,433.97
= Deemed to Applicant/IS	\$31,380.23	\$31,762.61	\$28,103.37	\$28,237.45	\$26,979.24

10. "At the time of application, the assistance unit is ineligible until the first day of the month in which it reduces its equity in counted assets to within the asset limit." UPM 4005.15(A)(2)

The Department correctly found the Applicant ineligible for Medicaid effective [REDACTED] 2020 because the Applicant's counted assets exceed the Medicaid asset limit. The Applicant's counted assets which include assets deemed from the Appellant exceed the Medicaid asset limit of \$1,600.00. Reference chart below. Although the Department determined the equity in the assistance unit's counted assets exceed \$34,033.97, the total assets that can be retained by both the Applicant and Appellant without impacting eligibility under Medicaid, the result is the same. The Applicant's assets exceed the Medicaid asset limit.

Applicant's Counted Assets	Value AO DOI	Value ao [REDACTED]/20	Value ao [REDACTED]21	Value ao [REDACTED]21	Value ao [REDACTED]21
DDA-1	\$1,053.74	\$1,053.74	\$1,438.70	\$3,495.27	
Deemed Assets	\$31,380.23	\$31,762.61	\$28,103.37	\$28,237.45	\$26,979.24
Applicant's Total counted assets	\$32,433.97	\$32,816.35	\$29,542.07	\$31,732.72	\$26,979.24
Medicaid Asset limit	\$1,600.00	\$1,600.00	\$1,600.00	\$1,600.00	\$1,600.00

The Department correctly denied the Applicant's application for Medicaid to cover her stay at the facility effective [REDACTED] 2020 for assets exceeding the Medicaid asset limit.

DECISION

The Appellant's appeal is denied.



Lisa A. Nyren
Fair Hearing Officer

CC: Brian Sexton DSS RO #50
Leigh Hunt, DSS RO #20

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, 165 Capitol Avenue, 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.