

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

██████████ 2021  
Signature Confirmation

██████████  
██████████  
Request # 177754

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████ ██████ 2021, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying her Long Term Care ("LTC") assistance effective ██████ 2021.

On ██████ ██████ 2021, ██████████ ██████████ (the "Appellant's spouse") requested an administrative hearing to contest the denial of her LTC application.

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

On ██████████ 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 participated in the hearing:

██████████, Spouse of Appellant  
██████████ Appellant's child  
██████████ Attorney for the Appellant  
Rutheven Williams, Department's Representative  
Carla Hardy, Hearing Officer

The Appellant is institutionalized and did not participate in the hearing.

The record was held open until [REDACTED] 2021, for the Hearing Officer to review the administrative hearing documents that were submitted by the Appellant and the Department.

Due to the COVID-19 Pandemic, this hearing was held as a telephonic hearing.

### **STATEMENTS OF THE ISSUES**

The first issue is whether, [REDACTED] (the “Community Spouse”) needs additional assets protected, from the Appellant’s share of assets, to produce additional income to meet the Community Spouse’s Minimum Monthly Needs Allowance (“MMNA”).

The second issue is whether the Appellant’s assets exceed the Medicaid asset limit.

### **FINDINGS OF FACT**

1. [REDACTED], the Institutional Spouse (“IS”) is married to [REDACTED], the Community Spouse (“CS”) who resides in the community at [REDACTED] Connecticut. (Hearing Record)
2. [REDACTED] is the Appellant’s Power of Attorney (“POA”). (Appellant’s Exhibit B: POA Document)
3. On [REDACTED] 2021, the date of institutionalization (“DOI”), [REDACTED], the Institutionalized Spouse (“IS”) was admitted to [REDACTED] [REDACTED] “the facility”) and has been institutionalized continuously since her admission. (Exhibit 5: Spousal Assessment Worksheet; Appellant’s Exhibit A3: Letter from [REDACTED] [REDACTED] Hearing Summary, Department’s Testimony)
4. On [REDACTED], 2021, the Department received an application requesting LTC Medicaid for the IS. (Exhibit 2: Application, [REDACTED] 21)
5. The Appellant is seeking Medicaid eligibility effective [REDACTED] 2021. (Hearing Record)
6. The combined total of the IS’ and the CS’ non-exempt assets totaled \$204,748.16 as of the DOI. The assets comprised of an [REDACTED] account; two [REDACTED] IRAs; one [REDACTED] account; two [REDACTED] accounts; and two [REDACTED] annuities. (Exhibit 5: Spousal Assessment Worksheet)
7. The spousal share of the assets equaled \$102,374.08 (½ of the couple’s combined

non-exempt assets) as of the DOI. (Exhibit 5)

8. The maximum Community Spouse Protected Amount (“CSPA”) was \$128,640.00 as if the DOI. (Exhibit 5)
9. The Department determined that the total amount of assets that the CS and IS could retain without causing ineligibility was calculated to be \$103,974.08 (\$102,374.08 + \$1,600.00 = \$103,974.08). (Exhibit 5)
10. The CS is seeking to have more assets protected to meet his Minimum Monthly Needs Allowance (“MMNA”). (Exhibit A1: Attorney’s Brief)
11. Effective [REDACTED] the Community Spouse had monthly shelter cost of \$1,124.62 that included condominium fees of \$250.00; property taxes of \$108.62; homeowner’s insurance of \$30.00; and standard utility allowance of \$736.00 (Appellant’s Exhibit A1: Attorney’s Brief; Department’s Testimony)
12. Effective [REDACTED] the IS had \$818.00 in monthly gross Social Security benefits. (Appellant’s Exhibit A1)
13. Effective [REDACTED] the CS had \$1,764.00 in monthly gross Social Security benefits. (Exhibit A1)
14. As of the date of this hearing, [REDACTED] 2021, the average rate of return generated by a 12-month certificate of deposit was .3166%  $[(.35\% + .30\% + .30\%) / 3 = .3166\%]$ . (Hearing Officer’s Exhibit Z2: Depositaccounts.com 1 Year CD Rates)
15. If the \$204,748.16 in assets that the couple owned as of the DOI earned the average rate of return of the three highest yielding CDs available in the couple’s area, the assets can generate \$54.01  $(\$204,748.16 \times .003166) / 12 = \$54.01$  monthly in interest income. (Fact # 14)
16. As of [REDACTED] 2021, the CS and the IS assets totaled \$191,524.96. (Exhibit A1; Appellant’s Exhibit G: [REDACTED] 021 Financial Statements)
17. The following assets generated the following annual rates of return:

Asset	Balance	Rate of Return as of 5/2021
[REDACTED] [REDACTED] 9-133	\$69,675.71	.01%
[REDACTED] [REDACTED] 3-133	\$17,442.27	.01%

██████████ xxx4819	██████████ Checking	\$4,106.85	0.00%
██████████	xxx593	\$4,524.68	0.00%
██████████	xxx909	\$12.97	0.00%
Total		\$95,762.48	

(Exhibit A1; Appellant's Exhibit G; ██████████ 2021 Financial Statements for ██████████ ██████████ 21 – ██████████ 21; ██████████ ██████████ 21-██████████ 21; ██████████ ██████████ /21 - ██████████ 21; ██████████ ██████████ /21 ██████████ 21 and ██████████ 21 – ██████████ /21)

18. On ██████████ 2021, the Department sent the IS a notice denying her Husky C LTC Medicaid assistance effective ██████████ 2021 because the value of her assets is more than the amount allowed by the program. (Exhibit 8: Notice of Action, ██████████ 21)
19. 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 the hearing on ██████████ 2021 therefore, this hearing is due on ██████████ 2021. (Hearing Record)

### CONCLUSIONS OF LAW

- Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
- "The department's Uniform Police Manual ("UPM") is the equivalent of 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)).
- Uniform Policy Manual ("UPM") § 4000.01 defines a Continuous Period of Institutionalization as a period of 30 or more consecutive days of residence in a medical institution or long term care facility, or receipt of home and community based services ("CBS") under a Medicaid Waiver.
- The Department correctly determined that the Appellant's initial period of institutionalization began on April 26, 2021.
- UPM § 4000.01 defines 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.
- The Appellant and her husband are MCCA spouses as defined by the Medicaid

program; the Appellant is an Institutionalized spouse (“IS”) and her husband is a Community Spouse (“CS”).

7. UPM § 1500.01 provides that a community spouse protected amount (“CSPA”) is the amount of the total available non-excluded assets owned by both MCAA spouses which is protected for the community spouse and is not counted in determining the institutionalized spouse’s eligibility for Medicaid.
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.
9. UPM § 1570.25(D)(4) provides that the Fair Hearing official increases the Community Spouse Protected Amount (“CSPA”) if either MCCA spouse establishes that the CSPA previously determined by the Department is not enough to raise the community spouse’s income to the MMNA (Cross References 4022.05 and 4025.67).
  - b. For applications filed on or after 10-1-03, in computing the amount of the community spouse’s income, the Fair Hearing official first allows for a diversion of the institutional spouse’s income in all cases.
  - c. In determining the amount of assets needed to raise the community spouse’s income to the MMNA, the Fair Hearing official computes the amount of assets that would generate the required income, assuming the asset is producing income at the higher of the following rates: the current average rate of return generated by a 12 month certificate of deposit as determined by the Department as of the date of the Fair Hearing; or the rate that is actually being generated by the asset.
10. The Department correctly set the CSPA amount at \$102,374.08.
11. As of ██████████ 2021, the average local Certificate of Deposit rate was .3166%.
12. Effective ██████████ 2021, the Community Spouse’s assets of \$102,374.08 would have generated monthly investment income of \$27.01. See table below for calculations:

Asset	Balance	Rate of	Interest based
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		Return as of 5/2021	on highest rate
██████████ ██████████ ██████████ 9-133	\$54,095.30	.3166%	\$14.27
██████████ ██████████ ██████████ ██████████ ██████████ 3-133	\$1,507.96	.3166%	\$.40
██████████ ██████████ ██████████ ██████████ ██████████ 9-133	\$4,578.22	.3166%	\$1.21
██████████ ██████████ ██████████ ██████████ ██████████ 4-004	\$23,706.36	.3166%	\$6.25
██████████ ██████████ ██████████ ██████████ ██████████ 0-004	\$12,841.83	.3166%	\$3.39
██████████ Checking xxx4819	\$2,272.44	.3166%	\$.60
██████████ xxx593	\$750.00	.3166%	\$.20
██████████ xxx909	\$2621.97	.3166%	\$.69
Total	\$102,374.08		\$27.01

13. Effective ██████████ 2021, the Community Spouse had gross monthly income of \$1,791.01 (\$1,764.00 + \$27.01 ((investment interest income) = \$1,791.01).

14. UPM § 5035.30 provides for the calculation of the Community Spouse Allowance ("CSA") and Minimum Monthly Needs Allowance ("MMNA") and states:

**B. Calculation of CSA**

1. The CSA is equal to the greater of the following:
  - a. The difference between 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

- e. The Standard Utility Allowance (“SUA”) used in the Supplemental Nutritional Assistance (“SUA”) used for the community spouse.
5. The MMNA may not exceed the greatest of either:
- the maximum MMNA; or
  - an amount established through a Fair Hearing.

15. Effective [REDACTED] 2021, the Community Spouse’s MMNA was \$2,649.22 as shown in the table below:

	AMOUNT
Shelter Costs:	
Rent/Mortgage	\$ 0.00
Property Taxes	\$ 108.62
Homeowner’s Insurance	\$ 30.00
Condo Fees	\$ 250.00
Standard Utility Allowance	\$ <u>+736.00</u>
<b>= Total Shelter Costs</b>	\$1,124.62
- 30% of \$2,178 (150% of Poverty Level for 2)	\$ -653.40
<b>= Excess Shelter Costs</b>	\$ 471.22
+ (150% of Poverty Level for 2)	\$2,178.00
<b>= Minimum Monthly Needs Allowance (“MMNA”) (Capped at \$3,259.50)</b>	<b><u>\$2,649.22</u></b>

13. Effective [REDACTED] 2021, the deficit between the Community Spouse’s income and her MMNA was \$1,899.26 as shown in the table below:

COMMUNITY SPOUSE DEFICIT	
Social Security	\$ 1,764.00
Interest	\$ <u>+27.01</u>
<b>= Total Income</b>	\$ 1,791.01
MMNA	\$2,649.22
Less Total Income	\$ <u>-1,791.01</u>
<b>= Monthly Deficit</b>	<b>\$858.21</b>

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 to be 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, 2020 = \$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 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.
16. Effective [REDACTED] 2021, the CS had total available income of \$1,791.01.
17. As of [REDACTED] 2021, a portion of the Community Spouse's needs were met by diverting \$758.00 (\$818.00 IS' income - \$60.00 PNA = \$758.00)
18. As of [REDACTED] 2021, after a diversion of the IS's income of \$758.00 to the CS, the CS still has a monthly income deficit of \$100.21 (\$2,649.22 MMNA - \$1,791.01 CS income - \$758.00 diverted income = \$100.21).
19. Effective [REDACTED] 2021, the remaining assets of \$89,150.88 (\$191,524.96 - \$102,374.08 = \$89,150.88) would generate monthly interest income of \$.2352 [(\$89,150.88 x .003166)/12 = \$23.52].
20. Since the additional interest income from the remaining assets is still insufficient to meet the Community Spouse's MMNA, effective [REDACTED] 2021, the Community Spouse's CSPA is increased to \$191,524.96.
21. After the diversion of additional assets of \$89,150.88 effective [REDACTED] 2021 for the benefit of the CS, the value of the Appellant's countable assets is \$0.00.
22. UPM § 4005.10(A)(2)(a) provides the asset limit for Medicaid for a needs group of one is \$1,600.00.
23. Effective [REDACTED] 2021, the value of the IS' 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 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 [REDACTED], 2021, application for Medicaid and continue the eligibility process.
2. Effective [REDACTED] 021, the CSPA is increased to \$191,524.96.
3. The Department shall submit verification of compliance with this order to the undersigned no later than [REDACTED] 2021.

*Carla Hardy*  
\_\_\_\_\_  
Carla Hardy  
Hearing Officer

Pc: Rachel Anderson, Mathew Kalarickal, Lisa Wells, Social Services Operations Managers, Department of Social Services, New Haven  
Rutheven Williams, Fair Hearing Liaison, Department of Social Services, New Haven  
Atty Michael Giardina. [REDACTED]

### **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.