

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

██████████ 2022
Signature Confirmation

Client ID # ██████████
Request # 175474

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2021, the Department of Social Services (the “Department”) issued a notice of action (“NOA”) to ██████████, (the “Appellant” or the “institutionalized spouse” or “IS”) denying her application for *HUSKY C Medicaid for Long Term Care Facility Residents* for the months from ██████████ 2020 to ██████████ 2021, inclusive, because her assets exceeded the limit in each month.

On ██████████ 2021, the Appellant requested an administrative hearing to appeal the Department’s division and allocation of the couple’s assets during the spousal assessment process.

On ██████████ 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2021. The hearing was scheduled to be held telephonically, at the Appellant’s request, due to the COVID-19 pandemic.

On ██████████ 2021, at the Appellant’s request, OLCRAH issued a notice rescheduling the hearing for ██████████ 2021.

On ██████████ 2021, the Appellant’s appeal was dismissed because she did not appear for the scheduled hearing.

On ██████████ 2021, the Appellant requested that the hearing be rescheduled because the Appellant’s authorized representatives did not receive notice of the ██████████ 2021 hearing.

On [REDACTED] 2021, OLCRAH issued a notice rescheduling the hearing for [REDACTED] 2021.

On [REDACTED] [REDACTED] 2021, at the Appellant's request, OLCRAH issued a notice rescheduling the hearing for [REDACTED] 2022.

On [REDACTED] 2022, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing, via telephone:

[REDACTED] Esq., Attorney for the Appellant
[REDACTED] Appellant's son
[REDACTED] Appellant's daughter
Ellen Croll-Wissner, Department's Long Term Care Hearing Liaison
James Hinckley, Hearing Officer

The record was held open for time for the Appellant to produce additional information. On [REDACTED] 2022, the hearing record closed.

STATEMENT OF THE ISSUE

1. Whether the Appellant's Community Spouse required an increase to his spousal share of the couple's assets to produce sufficient income to meet his Minimum Monthly Needs Allowance ("MMNA").

FINDINGS OF FACT

1. On [REDACTED] 2020, the Appellant entered a long term care nursing facility. (Hearing Record)
2. The Appellant is married. Following her [REDACTED] 2020 admission to the nursing facility, her spouse, [REDACTED] (The "Community Spouse" or "CS") maintained his residence in the community. (Hearing Record)
3. The date on which the Appellant was admitted to a nursing facility, [REDACTED] 2020, is known as her "date of institutionalization" or "DOI", which date is significant to the determination of the Appellant's Medicaid eligibility. (Hearing Record)
4. On [REDACTED] 2020, the Appellant applied for *Medicaid for Long Term Care Facility Residents*. (Hearing Record)
5. When an applicant for *Medicaid for Long Term Care Facility Residents* is a married individual, the Department performs a spousal assessment as part of the

application process that determines the married couple's assets as of the DOI. (Hearing Record)

6. As of the Appellant's [REDACTED] 2020 DOI, the Appellant and his spouse (the "couple") owned the following assets:

[REDACTED] checking account #1	\$20,662.77
[REDACTED] CD	\$19,056.52
[REDACTED] checking account #2	\$830.15
[REDACTED] savings account	\$8,218.35
[REDACTED] IRA	\$10,019.27
Life Insurance	\$4,688.44
Vehicle	\$653.00
Stock shares	\$899.45
Total	\$65,027.95

(Ex. 2-A: Spousal Assessment Worksheet)

7. On [REDACTED] 2021, the Department notified the Appellant that, of the \$65,027.89 in total assets owned by the couple as of the DOI, the Appellant could keep \$1,600.00 and her CS could keep \$32,513.94 without causing Medicaid ineligibility. (Ex. 4: W-0015 Notice of Assessment of Spousal Assets)
8. On [REDACTED] 2021, the Department issued an NOA to the Appellant denying her application for *HUSKY C for Long Term Care Facility Residents* for each month of the application, because the Appellant's share of the spousal assets exceeded the Medicaid asset limit in each of the months. (Ex. 5: NOA)
9. As of [REDACTED] 2020, the Appellant's only income was \$650.60 monthly from Social Security. (Testimony, Hearing Record)
10. As of [REDACTED] 2020, the Appellant paid an [REDACTED] health insurance premium of \$246.95 monthly. (Testimony, Hearing Record)
11. As of [REDACTED] 2020, the Appellant's CS's only income was \$1,287.60 monthly from Social Security. (Testimony, Hearing Record)

12. As of [REDACTED] 2020, the Appellant's CS had no mortgage. (Testimony, Hearing Record)
13. As of [REDACTED] 2020, the Appellant's CS was responsible for monthly property taxes of \$1,498.47. (Ex. C-1: Town tax bill)
14. As of [REDACTED] 2020, the Appellant's CS was responsible for monthly homeowners insurance of \$184.83. (Testimony, Hearing Record)
15. In 2020, the couple's checking account #1 earned a 0.02% rate of interest, their checking account #2 earned zero (.00%) interest, and their savings account earned a 0.01% rate of interest. (Ex. C: Letter from [REDACTED])
16. As of [REDACTED] 2022, the date of the hearing, the average of the three highest interest rates for a 12-month Certificate of Deposit in Connecticut was 0.45% (USAlliance Financial .0065 + bankHometown .004 + Stafford Savings Bank .003 = .0135 / 3 = .0045 or 0.45%). (DepositAccounts.com)
17. None of the couple's assets as of the DOI earned more than a 0.45% rate of interest. (Hearing Record)
18. The \$65,027.95 in total assets owned by the couple as of the [REDACTED] 2020 DOI had the ability to generate \$292.63 in annual income at the 0.45% average rate of return of a one-year CD in Connecticut ($\$65,027.95 \times .0045 = \292.63). The monthly income able to be generated was \$24.39 ($\$292.63 / 12$). (Calculations)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. The Department's Uniform Policy Manual ("UPM") "is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 177 (1994) (citing Conn. Gen. Stat. 17-3f(c) [now 17b-10]; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A. 2d 712(1990))
3. 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.”

4. 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.”
5. **Effective [REDACTED] 2020, the Appellant and her husband were MCCA Spouses as defined by the Medicaid program; the Appellant was an Institutionalized Spouse (IS) and her husband 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.
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).

8. 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.”

9. 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)

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

11. 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.

12. Effective [REDACTED] 2020, the CS's MMNA was \$3,216.00 as shown in the calculation below:

Property Tax	\$1,498.47
Homeowners Ins.	\$184.83
Standard Utility Allowance	+ \$736.00
Total Shelter Costs	= \$2,419.30
30% of 150% of FPL for 2	- \$634.13
Excess Shelter Costs	= \$1,785.17
150% FPL for 2	+ \$2,113.75
Exceeds Cap for MMNA	= \$3,898.92
Maximum MMNA	= \$3,216.00

13. Effective [REDACTED] 2020, the CS had \$1,287.60 in income. The CS needed \$1,928.40 in additional monthly income from other sources to meet his MMNA of \$3,216.60.

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(B) provides, in relevant part, as follows:

The following monthly deductions are allowed from the income of assistance units in LTCF’s:

1. a personal needs allowance of \$50.00, which, effective July 1, 1999 and annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration;
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 the Department or any other third party;
- ...

18. The personal needs allowance in effect in 2020, after adjustment for annual COLAs, was \$60.00 monthly.

19. The Appellant had gross income of \$650.60 monthly. After allowing a deduction of \$60.00 for a personal needs allowance and a deduction of \$246.95 for the cost of her [REDACTED] health insurance, the Appellant had \$343.65 available to divert to her CS as a CSA.

20. The CS, with the addition of \$343.65 in additional monthly income diverted to him from the Appellant, still had a monthly shortfall of \$1,584.75 from his MMNA of \$3,216.00 (CS’s income of \$1,287.60, plus \$343.65 diverted from Appellant, equaled \$1,631.25).

21. 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.

22. The rate used for the calculation in § 1570.25(D)(4)(c) is 0.45%, the 12-month cd rate, because it was higher than the actual rate the couple earned on any of their assets. At a 0.45% interest rate, the total assets owned by the couple as of the DOI had the capacity to generate \$24.39 in additional monthly income.
23. The income generated by all of the couple's DOI assets was insufficient to raise the CS's income to his required MMNA.
24. All of the couple's \$65,027.95 in DOI assets needed to be protected for the CS as a CSPA so that the income generated by the assets could contribute toward meeting the CS's MMNA.
25. The revised division of spousal assets, as determined by this Fair Hearing, is that all \$65,027.95 in DOI assets are allocated to the CS.
26. Effective [REDACTED] 2020, for purposes of Medicaid eligibility, the Appellant's assets were \$0.00.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department must protect all of the couple's \$65,027.95 in DOI assets as a CSPA for the CS, effective as of [REDACTED] 2020.
2. The Department must redetermine the Appellant's eligibility for *HUSKY C for Long Term Care Facility Residents* as of her initial [REDACTED] 2020 application date, and must consider the Appellant's assets to be \$0.00 beginning with the application date.
3. The Department must send proof of compliance with the above order to OLCRAH by no later than [REDACTED] 2022.

James Hinckley

James Hinckley
Hearing Officer

cc: Brian Sexton
Ellen Croll-Wissner
[REDACTED] Esq.

[REDACTED]
[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 06105-3725.

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, 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.