

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

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

██████████  
██████████  
Request # 179735

NOTICE OF DECISION

PARTY

██████████  
██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████ 2021, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Assessment of Spousal Assets (“NOA”) notifying her that her total assets total \$147,244.90.

On ██████████ the Appellant requested a hearing to contest the amount of her spousal assessment.

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

On ██████████, 2021, ██████████, the Appellant’s authorized representative (“arep”) requested a reschedule of the hearing.

On ██████████ ██████████ 2021, OLCRAH issued a notice rescheduling the telephonic 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:

██████████, Appellant  
 ██████████ Appellant's sister and arep  
 Jeanette Burney, Department's Representative  
 Carla Hardy, Hearing Officer

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

The record remained open for the Department and the Appellant to submit additional information which was received. The hearing record closed on ██████████ 2021.

### STATEMENTS OF THE ISSUES

The issue is whether the Department correctly determined the spousal assets

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

### FINDINGS OF FACT

1. The Appellant, also referred to as the Institutional Spouse ("IS") married ██████████, the Community Spouse ("CS") in 1994. The CS resides in the community, in ██████████, ██████████ (Appellant's Testimony, Hearing Record)
2. The Appellant and the CS have been separated for over 18 years. (Exhibit C: Case Notes)
3. ██████████ is the Appellant's Authorized Representative ("arep"). (Hearing Record)
4. The Appellant is a resident at ██████████ ("the facility"). Her date of institution is ██████████ 2020. (Exhibit A: MFP Application, ██████████/20; Hearing Summary)
5. On ██████████ ██████████ 2020, the Department received the Appellant's application requesting Money Follows the Person ("MFP"). (Exhibit A; Hearing Summary)
6. The Appellant is seeking MFP eligibility effective ██████████ 2021. (Testimony)
7. The combined total of the Appellant's and the CS' non-exempt assets totaled \$147,244.90 as of the DOI.

Asset	Balance
██████████ xx5766	\$44.29

██████████ ██████████	\$4,945.22
██████████ ██████████	\$1,691.86
██████████ ██████████	\$5.96
██████████ 401k	\$140,557.57
Total	\$147,224.90

(After Hearing Exhibit E: Spousal Assessment Worksheet)

8. The spousal share of the assets equaled \$73,622.45 (½ of the couple's combined non-exempt assets) as of the DOI. (Exhibit E)
9. The maximum Community Spouse Protected Amount ("CSPA") was \$128,640.00 as of the DOI.
10. The Department determined that the total amount of assets that the CS and IS could retain without causing ineligibility was calculated to be \$75,222.45 (\$73,622.45 + \$1,600.00 = \$75,222.45). (Exhibit E)
11. On ██████████ 2021, the Department sent the Appellant a notice notifying her that the maximum amount of assets that she and the CS may keep and for her to be eligible for Medicaid long-term care benefits is \$75,222.45 (Exhibit D: Notice of Assessment of Spousal Assets, ██████████/21)
12. The Department did not deny the Appellant's application for MFP. The application is still pending. (Department's Testimony)
13. 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 was due on ██████████ 2021. However, the Authorized Representative requested a reschedule of the hearing which caused a 74-day delay, therefore this hearing is due not later than ██████████ 2022. The hearing record, which was expected to close on ██████████ 2021, did not close until ██████████ ██████████ 2021, causing an additional 7-day delay. Therefore, this hearing decision is not due until ██████████, 2022. (Hearing Record)

### **CONCLUSIONS OF LAW**

1. Section 17b-369(c) of the Connecticut General Statutes provides for the Money Follows the Person demonstration Project and states in part that the Commissioner of Social Services shall develop a strategic plan, consistent with the long-term care plan established pursuant to section 17b-337, to rebalance Medicaid long-term care supports and services, including, but not limited to, those supports and services

provided in home, community-based settings and institutional settings. The commissioner shall include home, community-based and institutional providers in the development of the strategic plan.

2. 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.
3. "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)).
4. UPM § 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.
5. UPM § 4005.10(A)(2)(a) provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
6. 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.
7. The Department correctly determined that the Appellant's initial period of institutionalization began on [REDACTED] 2020.
8. 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.
9. 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").
10. 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.
11. 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.
12. 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.
13. The Department correctly set the CSPA amount at \$75,222.45.
13. UPM § 4005.10(A)(2)(a) provides the asset limit for Medicaid for a needs group of one is \$1,600.00.
14. Effective [REDACTED] 2020, the value of the Appellant’s assets exceeded the Medicaid asset limit of \$1,600.00.

**DECISION**

The Appellant’s appeal is **DENIED.**

  
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Carla Hardy  
Hearing Officer

### **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.