

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 # 187569

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2021, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”), a Notice of Action (“NOA”) informing him that he was approved for Medicaid for Long Term Care Services (“LTC”) effective ██████████ 2021.

On ██████████ ██████████ 2021, ██████████ ██████████ ██████████ (the “Conservator”), the Appellant’s Conservator requested an administrative hearing to contest the effective date of the LTC.

On ██████████, 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) scheduled an administrative hearing for ██████████, 2022.

On ██████████ 2022, 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:

██████████ Conservator
██████████, Business Office Manager, ██████████
Melissa Lora, Department’s Representative
Carla Hardy, Hearing Officer

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

STATEMENT OF THE ISSUE

The issue is whether the Department correctly granted the LTC effective [REDACTED] 2021.

FINDINGS OF FACT

1. On [REDACTED] 2021, the Appellant was admitted to the hospital. (Department's Testimony)
2. The Appellant appointed his spouse, [REDACTED] and his daughter, [REDACTED] as his Power of Attorneys ("POA"). (Exhibit C: POA Document)
3. [REDACTED] is the Appellant's son and Authorized Representative ("AREP"). (Exhibit B: Long-term Care Application, [REDACTED]/21; Hearing Record)
4. On [REDACTED] 2021, the Appellant was discharged from the hospital. (Department's Testimony)
5. On [REDACTED] 2021, the Appellant was admitted to the [REDACTED] ("the facility"), a skilled nursing facility. [REDACTED] Testimony; Department's Testimony)
6. On [REDACTED] 2021, the Department received the Appellant's application requesting long-term care services (Exhibit B, Hearing Summary)
7. The Appellant was 83 years old (DOB [REDACTED]37) at the time of his application. (Exhibit B)
8. The Appellant's spouse, [REDACTED] is the Community Spouse ("CS") who resides in the community. (Hearing Record)
9. The Department determined that [REDACTED] 2021, was the Appellant's date of institution ("DOI") based on the date that he was admitted to the hospital. (Department's Testimony)
10. On [REDACTED] 2021, the DOI, the Appellant's and the CS' combined assets totaled \$104,372.99. (Exhibit E1: Spousal Assessment Worksheet)

Account	Balance
[REDACTED] [REDACTED] [REDACTED] ck	\$4,565.84
[REDACTED] sv [REDACTED]	\$1,779.32
[REDACTED] ck [REDACTED]	\$6,272.86

██████████ cd ██████████	\$15,255.86
██████████ ck ██████████	\$1,129.87
██████████ whole life ins FV \$2,500.00	\$563.81
██████████ whole life ins FV \$2,500.00	\$393.71
██████████ Inv Acct ██████████	\$55,377.71
██████████ Inv Acct ██████████	\$19,034.01
Total	\$104,372.99

Exhibit E1: Spousal Assessment Worksheet)

11. The Community Spouse Protected Amount ("CSPA") equals \$52,372.99 as of the DOI. (Exhibit E1)
12. Effective ██████████, the Community Spouse ("CS") had monthly shelter cost of \$1,813.65 ($\$385.00 + \$525.00 + \$167.65 + 736.00 = \$1,813.65$) that included \$385.00 in condo association fees; \$525.00 in property tax; \$167.65 in homeowner's insurance; and \$736.00 standard utility allowance . (Exhibit B; Exhibit H: NOA, ██████████/21)
13. Effective ██████████ 2021, the IS received \$2,124.00 in monthly Social Security (SSA") income. (Exhibit H)
14. Effective ██████████ 2021, the CS received \$904.50.00 in monthly SSA income. (Exhibit H)
15. On ██████████ 2021, the Department requested that the Appellant provide the following proofs: the CS' citizenship or date of birth; medical insurance information; gross social security income; any other income; ██████████ and ██████████ statements; ██████████ account; home-equity line of credit agreement; any other assets; face and cash values of the ██████████ life insurance policies; funeral contracts; property deeds; and the car registration. The Appellant was notified that there is no eligibility for Title 19 Long Term Care benefits in any month in which counted assets exceed \$1,600.00. The requested information was due ██████████ 2021. (Exhibit D: Verification We Need # 1, ██████████21; Hearing Summary)
16. Between ██████████ 2021, and ██████████, 2021, the Department sent six requests to the Appellant, POA and the AREP requesting additional information to complete the application. (Exhibit D: Verification We Need # 1 through # 6)
17. All requests for additional information notified the Appellant that there is no eligibility for Title 19 Long Term Care benefits in any month in which counted assets exceed \$1,600.00. (Exhibit D: Verification We Need #1 through # 6)

18. The requests for information numbers two through five have are incorrectly dated [REDACTED] 2022. Those documents auto populated with that date, the date that the Department viewed the documents to print them. (Department's Testimony)
19. As of [REDACTED] 2021, the IS' and the CS' assets totaled \$95,880.02. (Exhibit E1: Spousal Assessment Worksheet)
20. The AREP is seeking Medicaid eligibility effective [REDACTED] 2021. (Hearing Record)
21. On [REDACTED] 2021, the Department received all documents required to complete the spousal assets as of the DOI. (Hearing Record)
22. On [REDACTED] 2021, the Department notified the AREP that the Appellant needed to reduce the assets. The Appellant's allowable assets were \$1,600.00 and that the CS' were \$48,510.80. The Department also requested proof of the CS' birthdate; BOA statements from [REDACTED], 202 to the present; [REDACTED] statements from [REDACTED] 2021, to the present; the additional information to complete the application. The requested information was due [REDACTED] 2021. (Exhibit D: Verification We Need # 7, [REDACTED]/21)
23. The Department incorrectly listed \$48,510.80 as the spousal share of assets on Verification We Need # 7. The correct amount is \$52,186.50. (Exhibit E2: Assessment of Spousal Results Notification of Results; Department's Testimony)
24. The AREP does not dispute the spousal assessment. (AREP's Testimony)
25. On [REDACTED] 2021, the Department requested BOA statements from [REDACTED] [REDACTED] 2021, to the present; [REDACTED] statements from [REDACTED] 2021, to the present; and the [REDACTED] statements from [REDACTED] 2021 to the present. The Department notified the Appellant that he and his spouse were allowed to have \$50,110.80 in assets and that their current assets totaled \$85,075.48. The AREP was notified that the assets must be reduced. The AREP was notified that there is no eligibility for Title 19 Long Term Care benefits in any month in which counted assets exceed \$1,600.00. The requested information was due [REDACTED] 2021. (Exhibit D: Verification We Need # 8, [REDACTED] 21)
26. On [REDACTED] 2021, the AREP requested an extension to reduce the assets. (Hearing Record)
27. The Appellant reduced the spousal assets to \$53,576.36 by [REDACTED] 2021. (Exhibit E1: Spousal Assessment Worksheet)
28. On [REDACTED] 2021, the Department determined through its examination of the Applicant's documentation that the Applicant's assets were within the asset limit and

granted the Applicant's LTC effective [REDACTED] 2021. (After Hearing Exhibit H: NOA, [REDACTED]/21)

29. The AREP is requesting a [REDACTED] 2021 effective date because he had difficulty retrieving the requested information. The AREP had to speak with his mother, who is the CS and POA to get the documents from [REDACTED]. She herself was in a rehab facility after surgery and was not discharged home until [REDACTED] 2021. (Appellant's Exhibit 2: AREP's After Hearing Statement; Hearing Request; Appellant's Testimony)
30. The CS' monthly household expenses equals \$1,813.65; \$167.65 homeowner's insurance, \$525.00 property tax, \$385.00 condo fees and \$736.00 for the standard utility allowance. (Exhibit B, Exhibit H)
31. The Department is diverting \$1,963.00 of the Appellant's monthly income to the CS. (Exhibit F: Case Notes)
32. On [REDACTED] 2021, the Appellant passed away. (AREP's Testimony)
33. On the date of this hearing, the Hearing Officer did not check the average rate of return generated by a 12-month certificate of deposit. (Hearing Record)
34. On [REDACTED] 2022, the average rate of return generated by a 12-month certificate of deposit was .35% $[(.40\% + .35\% + .30\%) / 3 = .35\%]$. (Hearing Officer's Exhibit Z1: Depositaccounts.com 1 Year CD Rates)
35. 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 [REDACTED] 2021; therefore, this hearing is due on [REDACTED] 2022. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Connecticut General Statutes 17b-261(c) provides 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. If the terms of a trust provide for the support of an applicant, the refusal of a trustee to make a distribution from the trust does not render the trust an unavailable asset. Notwithstanding the provisions of this subsection, the availability of funds in a trust or similar instrument funded in whole or in part by the applicant or the applicant's spouse shall be

determined pursuant to the Omnibus Budget Reconciliation Act of 1993, 42USC 1396p.

3. "The department's Uniform Policy 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. 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 Applicant's initial period of institutionalization began on [REDACTED] 2021.

5. UPM § 4000.01 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.
6. **The Appellant and his spouse are MCCA spouses as defined by the Medicaid program; the Appellant is an Institutionalized spouse ("IS") and his wife 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.

The Department correctly determined that the CSPA is \$52,186.50.

10. As of [REDACTED] 2022, the average local Certificate of Deposit rate was .35%.
11. Effective [REDACTED] 2021, the Community Spouse's assets of \$52,186.50 would have generated monthly investment income of \$15.22. See table below for calculations:

Account	Balance	Rate of Return as of July 2021	Interest Income
[REDACTED] ck [REDACTED]	\$2,282.92	.35%	\$.67
[REDACTED] sv [REDACTED]	\$889.66	.35%	\$.26
[REDACTED] ck [REDACTED]	\$3,136.43	.35%	\$.91
[REDACTED] [REDACTED] cd	\$7,627.93	.35%	\$2.22
[REDACTED] [REDACTED] ck	\$564.94	.35%	\$.16
[REDACTED] whole life ins FV \$2,500.00	\$281.91	.35%	\$.08
[REDACTED] whole life ins FV \$2,500.00	\$196.86	.35%	\$.06
[REDACTED] Inv Acct	\$27,688.85	.35%	\$8.08
[REDACTED] Inv Acct	\$9,517.00	.35%	\$2.78
Total	\$52,186.50		\$15.22

12. Effective [REDACTED] 2021, the Community Spouse had gross monthly income of \$919.72 (\$904.50 (SSA) + \$15.22 (interest income) = \$919.72).
13. 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:
 - a. the maximum MMNA; or
 - b. an amount established through a Fair Hearing.

14. Effective [REDACTED] 2021, the Community Spouse's MMNA was \$3,259.50 as shown in the table below:

	AMOUNT
Shelter Costs:	
Rent/Mortgage	\$ 0.00
Property Taxes	\$ 525.00
Homeowner's Insurance	\$ 167.65
Condo Fees	\$ 385.00
Standard Utility Allowance	\$ <u>+736.00</u>
= Total Shelter Costs	\$1,813.65
- 30% of \$2,178 (150% of Poverty Level for 2)	\$ -653.40
= Excess Shelter Costs	\$ 1,160.25
+ (150% of Poverty Level for 2)	\$2,178.00
= Minimum Monthly Needs Allowance ("MMNA") (Capped at \$3,259.50)	\$3,259.50

13. Effective [REDACTED] 2021, the deficit between the Community Spouse's income and her MMNA was \$2,339.78 as shown in the table below:

COMMUNITY SPOUSE DEFICIT	
Social Security	\$ 904.50
Interest	\$ +15.22
= Total Income	\$919.72
MMNA	\$3,259.50
Less Total Income	\$ -919.72
= Monthly Deficit	\$2,339.78

15. 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.
14. 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, 2021, = \$75.00)
 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 \$919.72.
17. As of [REDACTED] 2021, a portion of the Community Spouse's needs were met by diverting \$1,963.00 from the IS.
18. As of [REDACTED] 2021, after a diversion of the IS's income of \$1,963.00 to the CS, the CS still has a monthly income deficit of \$376.78 (\$3,259.50 MMNA - \$919.72 CS income - \$1,963.00 diverted income = \$376.78).

19. Effective [REDACTED] 2021, the remaining assets of \$43,693.52 ($\$95,880.02 - \$52,186.50 = \$43,693.52$) would generate monthly interest income of \$.12.74 [$(\$43,693.52 \times .0035)/12 = \12.74].
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 \$95,880.02.
21. After the diversion of additional assets of \$43,693.52 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] 2021, the CSPA is increased to \$95,880.02.
3. The Department shall submit verification of compliance with this order to the undersigned no later than [REDACTED], 2022.



Carla Hardy
Hearing Officer

Pc: Patricia Ostroski, Operations Manager, Melissa Lora, Fair Hearing Liaison,
Department of Social Services, New Britain Office

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.