

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

██████████ 2014
SIGNATURE CONFIRMATION

Client ID # ██████████
Request # 607320

NOTICE OF DECISION

PARTY

██████████
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PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") sent, ██████████ the "Appellant") a Notice of Action ("NOA") denying her application for Long Term Care ("LTC") Medicaid assistance.

On ██████████ 2014, the Appellant's representative, requested an administrative hearing to contest the Department's decision to deny her application.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2014.

On ██████████ 2014, the Appellant's representative requested that OLCRAH reschedule the hearing.

On ██████████ 2014, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2014.

On ██████████ 2014, 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 were present at the hearing:

[REDACTED], Appellant's Power of Attorney ("POA) and representative
 [REDACTED], Appellant's son in law and spouse of the POA
 [REDACTED], Appellant's Attorney
 [REDACTED], Appellant's Attorney
 Dr. Ronald Szabo, Physician for the community spouse
 Liza Perez, Department's Representative
 Scott Zuckerman, Hearing Officer

The hearing record remained open for the submission of additional evidence. On [REDACTED] 2014, the hearing record closed.

STATEMENTS OF THE ISSUE

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. On [REDACTED] 2000, the Appellant's daughter was granted Power of Attorney ("POA") for the Appellant. (Ex. S: Connecticut Power of Attorney [Durable] Statutory Form, [REDACTED]/00)
2. The Appellant has been institutionalized continuously since [REDACTED], 2011 (the date of institutionalization ("DOI")). (Hearing summary)
3. On [REDACTED], 2012, the Appellant applied for Long Term Care Medicaid. (Exhibit: W-1F Application for Assistance and Hearing summary)
4. The Appellant is married to [REDACTED], the Community Spouse. (Hearing record)
5. The Community Spouse is [REDACTED] years old and suffers from severe osteoarthritis, moderate to severe chronic obstructive pulmonary disorder requiring oxygen, severely decreased mobility and pain, anxiety and depression. (Appellant's physician testimony, Ex. Q: Dr. Szabo's Affidavit, [REDACTED]/14)
6. The Community Spouse would not be able to live independently at this time without twenty four hour in home care. (Physician's testimony, Appellant's representative testimony, Ex. Q: Dr. Szabo's Affidavit, [REDACTED]/14)
7. The Community spouse pays for home care services for seven days a week, twenty

four hours per day. (Appellant's Representative Testimony, Dr. Szabo's testimony, Ex. K: Euro-American Homecare, LLC)

8. The Community Spouse receives assistance with his activities of daily living such as transferring, toileting, meal preparation, bathing. He also requires assistance using his oxygen mask. (Physician's testimony, Ex. Q: Dr. Szabo's Affidavit, ■■■/14)
9. As a result of his severe medical conditions incurs in excess of \$6400 per month in home care expenses. (Ex. K: Invoices from Euro-American Homecare LLC)
10. The combined total of the Appellant and Community Spouse's non-exempt assets was \$534,648.96 as of the DOI. (Exhibit 4: Spousal Assessment Worksheet and Hearing summary)
11. The spousal share of the assets was \$267,324.48 as of DOI (½ of the couple's combined non-exempt assets). (Exhibit 4: Spousal Assessment Worksheet and Hearing Summary)
12. The Community Spouse Protected Amount ("CSPA") was \$113,640.00 as of DOI (maximum CSPA). (Hearing record)
13. The Appellant is seeking Medicaid eligibility effective ■■■■■ ■ 2012. (Appellant's representative's testimony)
14. Effective ■■■■■ 2012, the Community Spouse incurs monthly real estate taxes of \$360.28 (\$4324.40 / yr. ÷ 12) and homeowners insurance of \$69.00 (\$828.00/yr. ÷12). (Exhibit P: Real Estate Tax Bill , ■■■/12 and Homeowner's Insurance Bill, ■■■/12)
15. Effective ■■■■■ 2012, the Community Spouse had monthly gross unearned income of \$1474.90 from the Social Security Administration an, IRA of \$75.39. (Exhibit N: 2012 Social Security Benefit Statement and Bank of America 2012 1099-R)
16. As of the hearing date, ■■■■■ 2014, the average rate of return generated by a 12 month Certificate of Deposit was .11%. (Exhibit 7: BankRate.com printout, ■■■/14)
17. The following assets generated the following annual rates of return:

Asset	Balance	Rate of Return As of ■■■/2012
Bank of America, # ■■■■■ checking	\$133,683.54	.01%
Bank of America, # ■■■■■ money mkt	\$37.50	.01%
Bank of America, #	\$13,421.02	.30%

██████████, IRA		
People's United Bank # ██████████, checking	\$78,103.60	0%
People's United Bank # ██████████	\$.26	.05%
Genworth Financial Annuity # ██████████	\$17,700.26	0%
MetLife Insurance Policy # ██████████	\$4780.62	0%
MetLife Insurance Policy # ██████████	\$3225.66	0%
MetLife Insurance Policy # ██████████	\$\$3910.25	0%
Forethought Life Insurance policy # ██████████	\$828.29	0%
Forethought life insurance policy # ██████████	\$788.12	0%
Aetna Life insurance policy # ██████████	\$5609.00	0%
Aetna life insurance policy # ██████████	\$1571.21	0%
Aetna Life Insurance policy # ██████████	\$5873.30	0%
Bonds	\$39515.96	0%

(Ex. R: Bank of America Statement, ██████████ 2012 and People's Bank Statements, ██████████ 2012, Ex. F: Spousal Assessment Worksheet)

18. As of ██████████ 2012, the Appellant had monthly gross unearned income of \$1289.90 from SSA benefits and a pension of \$1431.03 for a total of \$2720.93. (Exhibit H: 2012 Social Security Benefit Statement and State of CT Comptroller Retirement Division 2012 1099-R)
19. Effective ██████████ 2012, the couple's assets were \$309,058.59. (Exhibit 4: Spousal Assessment Worksheet and Hearing summary)
20. On ██████████ 2014, the Department denied the Appellant's application for Long-Term Care Medicaid assistance due to excess assets. (Exhibit 2: Notice of Denial, ██████████/14 and Hearing summary)

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. 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.
3. The Department correctly determined that the Appellant’s initial period of institutionalization began on [REDACTED] 2011.
4. 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.
5. 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 institutionalized 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.
6. The Department correctly determined that the CSPA was \$113,640.00.
7. Effective [REDACTED] 2012, the Community Spouse’s assets of \$113,640.00 would have generated monthly interest income of \$12.55. See table below for calculations:

Asset	Balance	Rate of Return As of [REDACTED] 2012	Bankrate.com rate	Interest based on highest rate
People's United Bank # [REDACTED]	\$.26	.05%	.11%	\$0.00
Bank of America, # [REDACTED], IRA	\$13,421.02	.30%	.11%	\$3.36
Bank of America, # [REDACTED] checking	\$100,218.72	.01%	.11%	\$9.19
Totals	\$113,640.00			\$12.55

8. Effective [REDACTED] 2012, the Community Spouse had gross monthly income of \$1562.75(\$1474.90 SSA + \$75.30 IRA + \$12.55 interest income).
9. UPM § 5035.30(B) 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

5. The Standard Utility Allowance (“SUA”) used in the Supplemental Nutrition Assistance (“SNAP”) program is used for the community spouse.

10. Effective [REDACTED] 2012, the Community Spouse’s MMNA was \$2436.33 as shown in the table below:

	AMOUNT
Shelter Costs:	
Property Taxes	\$360.28
Standard Utility Allowance	\$683.00
Homeowners Insurance	<u>+\$69.00</u>
Total shelter costs:	\$1112.28
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$567.45</u>
Excess shelter costs:	\$544.83
Plus 150% of the FPL for two:	<u>+\$1,891.50</u>
Equals the MMNA	\$2436.33
Maximum MMNA	\$2841.00

11. UPM § 1570.25(D)(3) provides that 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 a direct result of the exceptional circumstances that affect him or her.
13. The Community Spouse's medical conditions prevent him from taking care of his activities of daily living, and threaten his ability to remain in the community. His condition requires home care services on a daily basis. The community spouse's medical conditions and his need for home care are exceptional circumstances.
14. The medical expenses (home care services) of \$6400.00 per month are expenses that directly arise from the Community Spouse's exceptional circumstances. The medical expenses are considered significant financial duress.
15. Based on medical expenses, the Community spouse's MMNA may be increased to \$8,836.33 (\$6400.00 additional home care costs + original MMNA of \$2436.33)
16. Effective [REDACTED] 2012, the deficit between the Community Spouse's income and his MMNA was \$7,273.58, as shown in the table below:

COMMUNITY SPOUSE DEFICIT	
Social Security	\$1474.90
Interest Income	\$12.55
IRA	\$75.30

Total Income	\$1562.75
MMNA	\$8,836.33
Less Total Income	<u>-\$1562.75</u>
Monthly Deficit	\$ 7,273.58

17. 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 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.
18. 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, 2012 = \$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;
19. Effective [REDACTED] 2012, the Appellant had total available unearned income of \$2720.93 (\$1289.90 SSA + \$1431.03 pension).
19. As of [REDACTED] 2012, a portion of the Community spouse's needs are met by diverting \$2660.93 of the Appellant's income (\$2720.93 - \$60.00 PNA) to the community spouse.
20. Effective [REDACTED] 2012, after a diversion of the Appellant's income of \$2660.93 to the Community Spouse, the Community Spouse still has a monthly income deficit of \$4612.65 (\$8836.33 MMNA - \$1562.75 CS income - \$2660.93 diverted income).
21. Effective [REDACTED] 2012, the remaining assets of \$195,418.59 (\$309,058.59 - \$113,640.00) would generate interest income of \$15.56. See table below:

Asset	Balance	Rate of Return As of [REDACTED]/2012	Bankrate.com rate	Interest based on highest rate
Bank of America, # [REDACTED], checking	\$33,464.82	.01%	.11%	\$3.07
Bank of America, # [REDACTED], money market	\$37.50	.01%	.11%	\$0.00
People's United Bank # [REDACTED] checking	\$78,103.60	0%	.11%	\$0.00
Genworth Financial Annuity # [REDACTED]	\$17,700.26	0%	.11%	\$1.62
Metlife Insurance Policy # [REDACTED]	\$4780.62	0%	.11%	\$5.26
MetLife Insurance Policy # [REDACTED]	\$3225.66	0%	.11%	\$0.30
MetLife Insurance Policy # [REDACTED]	\$3910.25	0%	.11%	\$0.36
Forethought Life Insurance policy # [REDACTED]	\$828.29	0%	.11%	\$0.08
Forethought life insurance policy # [REDACTED]	\$788.12	0%	.11%	\$0.07
Aetna Life insurance policy # [REDACTED]	\$5609.00	0%	.11%	\$0.51
Aetna life insurance policy # [REDACTED]	\$1571.21	0%	.11%	\$0.14
Aetna Life Insurance policy # [REDACTED]	\$5873.30	0%	.11%	\$0.53
Bonds	\$39,515.96	0%	.11%	\$3.62
Total				\$15.56

22. Since the additional interest income from the remaining assets is still insufficient to meet the Community spouse's MMNA, effective [REDACTED] 2012, the Community Spouse's CSPA is increased to \$309,058.59.

23. After the diversion of additional assets of \$195,418.59 effective [REDACTED] 2012 for the benefit of the Community spouse, the value of the Appellant's countable assets is \$0.00.
24. UPM § 4005.10(A)(2)(a) provides the asset limit for Medicaid for a needs group of one is \$1,600.00.
25. Effective [REDACTED] 2012, the value of the Appellant's 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 Appellant/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] 2012, application for Medicaid and continue the eligibility process.
2. Effective [REDACTED], the CSPA is increased to \$309,058.59.
3. Effective [REDACTED] 2012, the MMNA is increased to \$8836.33
4. No later than twenty days from the date of this decision, the Department will submit to the undersigned verification of compliance with this order.



Scott Zuckerman
Hearing Officer

Pc: Albert Williams, Operations Manager, Hartford R.O.
Musa Mohamud, Operations Manager, Hartford R.O.
Elizabeth Thomas, Manager, Hartford R.O.
Liza Perez, Fair Hearings Liaison, Hartford R.O.

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, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105-3725. 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.