

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
EXECUTIVE OFFICES OF HEALTH AND HUMAN SERVICES  
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September 8, 2014

Docket # 14-695  
Hearing Date: August 27, 2014

**ADMINISTRATIVE HEARING DECISION**

The Administrative Hearing that you requested has been decided in your favor. During the course of the proceeding, the following issue(s) and Agency policy reference(s) were the matters before the hearing:

**THE MEDICAID POLICY MANUAL: MEDICAL ASSISTANCE  
SECTION 0380 RESOURCES GENERALLY  
SECTION 0392 POST-ELIGIBILITY TREATMENT OF INCOME**

The facts of your case, the Agency policy, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the appellants in C/o your Attorney), and Agency representatives Gail Okai, Cynthia Lopes, and Tom Conlon.

Present at the hearing were: Your Attorney, your daughter, and Agency representative Cynthia Lopes.

**ISSUE:**

Should the Community Spouse Resource Allowance (CSRA) be expanded to include all of the income producing total joint resources that the spouses possess so that the community spouse will be able to adequately support himself in the community?

**DHS POLICIES:**

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy Manual.

**APPEAL RIGHTS:**

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

**DISCUSSION OF EVIDENCE:****The Agency representative testified:**

- The institutionalized spouse applied for Long Term Care Medical Assistance (LTC MA) on August 29, 2013. August 2013 is also the first month in which she became institutionalized.
- The couple's countable resources as of August 1, 2013 totaled \$61,089.07.
- The Agency calculated the Community Spouse Resource Allowance (CSRA) to be \$30,544.53.
- The remaining resources in the amount of \$30,544.54 were attributed to the institutionalized spouse, thereby rendering her ineligible for MA.
- The Agency sent the appellants' Attorney an MA-4 (Notice of Resource Attribution) informing her as to how the couple's resources were split/attributed.
- The Agency also sent the applicant, in c/o her attorney, a computerized notice to inform her that her August 2013 MA application had been denied because her resources exceeded the \$4,000.00 MA resource limit.
- The income of both the institutionalized spouse and community spouse as presented by their Attorney is correct.
- The interest income as calculated by the appellants' Attorney is correct.
- The community spouse's excess shelter allowance and Minimum Monthly Maintenance Needs Allowance (MMMNA) as calculated by his Attorney is correct.
- If the CSRA is expanded to include the couple's interest producing asset, the community spouse will still have a shortfall of \$668.76.

**The appellant's Attorney presented:**

- The applicant spouse became institutionalized in August 2013 and her application for MA was submitted in August 2013.
- The Agency's calculation of resources and resource attribution as they appear on the MA-4 is correct.

- As of August 1, 2013, the couple owned two bank accounts; one valued at \$1,335.73 and the other valued at \$59,702.34. The smaller of the two accounts does not earn any interest. The larger of the two accounts generates monthly interest of \$1.86.
- The institutionalized spouse's total monthly income consists of a gross monthly Social Security benefit of \$669.90.
- The community spouse's total monthly income consists of a gross monthly Social Security benefit of \$1,522.90.
- The community spouse is a one half owner of the property in which he resides and shelter expenses were prorated to determine his 50% share. The community spouse's monthly shelter expenses, consisting of property taxes, homeowner's insurance, and the standard utility allowance, total \$1,239.94.
- The community spouse has an excess shelter allowance of \$658.31 a month, which when added to the standard allowance of \$1,938.75 gives him a MMMNA of \$2,597.06.
- When the community spouse's gross income is supplemented by the institutionalized spouse's total gross income, a shortfall of \$404.26 still remains.
- The Agency has calculated a larger shortfall because they allowed personal needs allowance and health care premiums to be deducted from the institutionalized spouse's income.
- Due to the community spouse's excessive shortfall, the couple is requesting that the CSRA be expanded to include all of the jointly held resources that are income producing, or \$59,702.34.
- Even with the \$1.86 generated in monthly interest income, the community spouse will still have a shortfall of \$402.40.
- If the CSRA is expanded in the manner requested, the institutionalized applicant will be otherwise eligible for MA as of August 1, 2013.

#### **FINDINGS OF FACT:**

- The applicant/institutionalized spouse applied for LTC MA benefits in August 2013.
- The applicant's first month of continuance institutionalization is August 2013.
- The couple's total joint resources as of August 1, 2013 were \$61,089.07, resulting in a CSRA (community spouse resource allowance) of \$30,544.53.

- As of August 1, 2013, \$30,544.54 of the couple's total joint resources were attributed to the applicant/institutionalized spouse.
- The institutionalized spouse's resources as of August 1, 2013, the first moment of the month of application, exceeded the \$4,000.00 MA resource limit.
- On April 1, 2014, the Agency sent the appellants' attorney an MA-4 (Notice of Resource Attribution) informing her as to how the couple's resources were split/attributed and informing her that at the time of application the institutionalized spouse was over the MA resource limit by \$26,544.54.
- On April 17, 2014, a request for hearing was filed on behalf of the couple to appeal the spousal share of resources and to seek an increase in the CSRA.
- On April 30, 2014, the Agency sent the applicant/institutionalized spouse, in c/o her attorney, a notice informing her that the institutionalized spouse's MA application had been denied for the month of August 2013 because her resources exceeded the \$4,000.00 MA resource limit.
- An Administrative Hearing scheduled for June 25, 2014 was rescheduled at the request of the appellants' attorney.
- An Administrative Hearing scheduled for July 14, 2014 was rescheduled at the request of the appellants' attorney.
- An Administrative Hearing scheduled for August 4, 2014 was rescheduled at the request of the appellants' attorney.
- The Administrative Hearing was convened on August 27, 2014.
- The institutionalized spouse receives gross monthly Social Security income in the amount of \$669.90.
- The community spouse receives gross monthly Social Security income in the amount of \$1,522.90.
- \$619.90 of the institutionalized spouse's income can be made available to the community spouse under the post-eligibility treatment of income formula.
- The community spouse has total monthly income of \$2,142.80.
- The community spouse's minimum monthly maintenance needs allowance (MMMNA) is \$2,597.06.
- The community spouse's MMMNA exceeds his total monthly income by \$454.26.

- The couple's income producing resources earn a monthly income of \$1.86.

## CONCLUSION:

The issue to be decided is whether the Community Spouse Resource Allowance (CSRA) should be expanded to include all of the income producing total joint resources that the spouses possess so that the community spouse will be able to adequately support himself in the community.

The appellants are a married couple. The applicant wife became institutionalized in August 2013 and applied for MA in that same month. Her non-applicant husband lives in the community, residing in a home in which he is half owner of. As of August 1, 2013, the first moment of the month of in which the wife became institutionalized and applied for MA, the couple's countable resources totaled \$61,089.07. There is no dispute that per MA policy, \$30,544.53 was attributed to the community spouse as the CSRA (community spouse resource allowance) and the remaining amount of \$30,544.54 was attributed to the institutionalized spouse/applicant, thereby rendering her ineligible for MA because such amount exceeded the \$4,000.00 MA resource limit.

The appellants' Attorney argues that the community spouse's income plus the institutionalized spouse's income falls short of the community spouse's calculated MMMNA (Minimum Monthly Maintenance Needs Allowance). The couple thereby requests that all of their total joint income producing resources be allocated to the community spouse so that he will be able to adequately support himself in the community.

A review of the Agency's Medicaid/MA policy reveals that Hearing Officers have the authority to raise the CSRA to an amount adequate to meet the community spouse's MMMNA, but that in determining how much more income must be generated by the additional resources in order to raise the community spouse's income to the MMMNA, the community spouse's existing income must be considered. The community spouse's existing income includes the monthly income allowance that the institutionalized spouse can make available to him under the post-eligibility treatment of income formula. An amount of resources adequate to provide the difference between the MMMNA and all income available to the community spouse can then be allocated to the community spouse.

There is no dispute that based on the community spouse's shelter expenses totaling \$1,239.94, the community spouse has an excess shelter allowance of \$658.31 and a calculated MMMNA of \$2,597.06. There is also no dispute that the institutionalized spouse receives gross monthly income of \$669.90 and the community spouse receives gross monthly income of \$1,522.90. Under the post-eligibility treatment of income formula, the institutionalized spouse is allowed to retain \$50.00 for her personal needs prior to the deduction of the spousal allowance from her income. Therefore, \$619.90 of the institutionalized spouse's income can be made available to the community spouse. When this amount is added to the community spouse's gross monthly income, the community spouse has a total monthly income of \$2,142.80, which is \$454.26 less than

his MMMNA. The record establishes that as of August 1, 2013, the couple's countable resources included two bank accounts; one valued at \$1,335.73 and the other valued at \$59,702.34. There is no dispute that the larger of the two accounts generates monthly interest of \$1.86 and that the smaller of the two accounts does not generate any income as it does not earn any interest. The MA-2 (Statement of Resources) and the MA-4 (Notice of Resource Attribution) establish that the couple's total countable resources as of August 1, 2013 also included additional non-income producing resources in the amount of \$51.00.

In summary, the community spouse has a MMMNA of \$2,597.06 and monthly income totaling \$2,142.80. Even with the \$1.86 in monthly income generated from the couple's income producing bank account, the community spouse's income still falls short of his MMMNA.

In conclusion, the community spouse has demonstrated that he needs all of the total joint income-producing resources that the couple possessed at the time of institutionalization and application for MA. This Hearing Officer thereby authorizes an expansion of the CSRA to include the couple's income-producing bank account valued at \$59,702.34. As the remaining non-incoming producing resources total less \$4,000.00, the institutionalized applicant spouse will be within the MA resource limit standard to be otherwise eligible for MA as an institutionalized individual.

**ACTION FOR THE AGENCY:**

The Agency is to determine the institutionalized spouse's eligibility for Medicaid (MA) as of August 1, 2013, the first of the month in which she applied for the program, attributing \$59,702.34 of the couple's total joint resources to the community spouse and the remaining \$1,386.73 to the institutionalized spouse.



Debra L. DeStefano  
Appeals Officer

**APPENDIX**

## MEDICAL ASSISTANCE (MEDICAID)

### 0380 RESOURCES GENERALLY

#### 0380.05 RESOURCE LIMITS

REV:06/1994

For MA Resource eligibility to exist, the institutionalized individual's countable resources cannot exceed the following basic limits:

- o For Categorically Needy eligibility - \$2000
- o For Medically Needy eligibility - \$4000

The evaluation of resources of an institutionalized individual with a community spouse first determines:

- o The total joint resources of a couple;
- o The spousal share of resources; and,
- o The community spouse resource allowance.

The computation of the community spouse resource allowance is based on the couple's total joint resources and the spousal share of those resources as of the first moment of the month in which the period of continuous institutionalization begins.

Except for the community spouse resource allowance, the total joint resources of a married couple with an institutionalized spouse are deemed available to the institutionalized spouse for purposes of MA eligibility.

Each determination of eligibility (new, reopening or redetermination) requires a review of resources, which includes sending three bank statements (AP-91). Resources are also reviewed at the time of a reported change, or when information is received which indicates a change has occurred, or that unreported resources may exist (Income Eligibility Verification System match, etc.).

Resources must be verified by a review of documents related to the resource, with copies of the documentation kept for the case file.

#### 0380.40 COUNTABLE RESOUR, INSTIT SPOUS

REV:06/1994

The evaluation of resources of an institutionalized spouse with a community spouse first determines:

- o The total joint resources of the couple; then,
- o The spousal share of the resources; and,
- o The community spouse resource allowance.

The computation of the community spouse resource allowance is based on the couple's total joint resources at the beginning of the period of continuous institutionalization.

The total joint resources of the married couple with an institutionalized spouse are deemed available to the institutionalized spouse for the purpose of eligibility determination.

### **0380.40.10 Spousal Share**

REV: 06/1994

The spousal share is equal to one-half of the value of the couple's total joint resources as of the beginning of a period of continuous institutionalization. The value of the spousal share remains fixed at the value computed as of the beginning of the period of continuous institutionalization, regardless of changes in resources which may occur between the beginning period of institutionalization and the time of the Medicaid eligibility determination.

### **0380.40.15 Community Spouse Resource Allowance**

REV:02/2013

The community spouse resource allowance, to the extent such resources are available, is equal to the greater of:

- O \$23,184; or,
- O The spousal share, up to a maximum of \$115,920.

### **0380.40.35 Fair Hearing**

REV:06/1994

If either the institutionalized spouse or the community spouse is dissatisfied with the spousal share of the joint resources, the attribution of resources, or the determination of the community spouse resource allowance, and if an application for Medical Assistance has been made on behalf of the institutionalized spouse, the dissatisfied spouse is entitled to a fair hearing.

Section 1924 (e) (2) (C) of the Social Security Act provides State Hearing Officers authority to raise the community spouse resource allowance (CSRA) under certain circumstances. If either the community spouse or the institutionalized spouse establishes that the community spouse resource allowance is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, an amount adequate to provide such a minimum monthly maintenance needs allowance (under the post-eligibility formula) shall be substituted for the current community spouse resource allowance. In determining how much more income must be generated by the additional resources in order to raise the community spouse's income to the minimum maintenance allowance, the Hearing Officer considers the community spouse's existing income. Existing income for this purpose includes the monthly income allowance which the institutionalized spouse has made available to the community spouse under the post-eligibility formula. There can be no substitution for the current community spouse resource allowance if the institutionalized spouse does not actually make a monthly income allowance available to the community spouse under the post-eligibility formula.

The additional resource(s) above the CSRA which may be protected under this section of the Social Security Act must be income producing. To be protected, the income producing resource must be providing a

reasonable rate of return.

The hearing must be held within thirty days of receipt by the agency of a written request for a hearing.

## **0392 POST-ELIGIBILITY TREATMENT OF INCOME**

### **0392.05 OVERVIEW**

REV:06/1994

Institutionalized Medical Assistance recipients are required to apply their income toward the cost of institutional care. Once Categorically Needy or Medically Needy eligibility has been established, and the applicant has been determined eligible for payment of institutional care services, a determination is made of the amount of income that the institutionalized individual must allocate to the cost of care. The individual may protect certain prescribed amounts of income for specific needs. ONLY the prescribed amounts for the specific purposes may be protected. ALL of the institutionalized individual's remaining income must be used to reduce the Medical Assistance payment for institutional care. The applicant's income, protected amounts, and allocation to the cost of care are computed on a monthly basis. The policy in this section applies to individuals who reside in Nursing Facilities and Public Medical Facilities. See Section 0396 for the specific post-eligibility policies which apply to individuals who receive home and community based services under a Waiver. For eligibility determination purposes, children receiving Medical Assistance under the "Katie Beckett" provisions are considered to be institutionalized. However, "Katie Beckett" eligible children are not subject to the post-eligibility process since only regular covered medical services are provided.

### **0392.15 INCOME APPLIED TO COST OF CARE**

REV:06/1994

For each month in which Medical Assistance is requested to pay for the individual's institutional care, the individual must contribute his/her income to pay for institutional services, deducting only certain allowable amounts. The individual's income remaining after allowable deductions is paid to the institution as his/her contribution to the cost of the institutional care. Such income is known as APPLIED INCOME. The Medical Assistance payment to the institution is reduced by the applied income amount.

The calculation of applied income starts with the individual's gross income, which includes the deduction and disregard amounts which were subtracted from gross income in the determination of eligibility. To determine applied income, certain allowable deductions are subtracted from the recipient's gross income. The deductions, and the order in which they are subtracted from the recipient's gross income are:

- o Personal Needs Deduction (Regular) or \$90 Reduced Pension Deduction;
- o Personal Needs Deduction (Expanded);
- o Personal Needs Deduction (Guardian and Legal);
- o Community Spouse Allowance;
- o Community Dependent Allowance;
- o Medical Insurance Premiums;

- o Medical/Remedial Items;
- o Home Maintenance Deduction;
- o First/Last Month Institutionalization Expenses.

### **0392.15.20 Community Spouse Allocation**

REV:02/2013

Rhode Island is an income first state in which the income is first examined as part of the allocation. If the institutionalized individual has a community spouse, the individual may wish to allot an amount to the community spouse for his/her support. In reviewing for eligibility, DHS must consider all the income of the institutionalized spouse that could be made available to a community spouse has been made available before DHS allocates to the community spouse an amount of resources adequate to provide the difference between the minimum monthly maintenance needs allowance and all income available to the community spouse. This is applicable to individuals who became institutionalized individuals on or after February 8, 2006. Reference is made to applying this Section to fair hearings, as found in Section 0380.40.35. The amount of the community spouse allocation is based on the income already available to the community spouse. Thus, the calculation of this allocation is preceded by a determination of the community spouse's income.

If the institutionalized individual has a community spouse and other community dependents, s/he may choose in addition to the community spouse and can allocate only to his/her dependents.

The maximum amount that may be taken from an institutionalized individual's income for the support of a spouse and dependents in the community is \$2,898.00 per month, except:

- o In the case of a court order for spousal support; or,
- o In the case of a court order or a finding by an administrative hearing.

The allocation to community spouse is based upon the gross income otherwise available to the community spouse. The income of the community spouse is determined in the same manner as gross income for purposes of eligibility determination. No disregards or deductions are applied to the community spouse's gross income in determining the allocation from the institutionalized spouse.

#### **0392.15.20.05 Calculation of Community Spouse Allocation**

REV:08/2013

The calculation of the community spouse allowance considers the following:

- o The community spouse's gross income; and,
- o The spouse allowance which consists of two parts, the basic allowance and the excess shelter allowance.

The BASIC ALLOWANCE to a community spouse with no other income is \$1,938.75 per month.

An EXCESS SHELTER ALLOWANCE is added to the basic spouse allowance if the community spouse's shelter expenses exceed \$581.63 per month.

#### **0392.15.20.10 Excess Shelter Allowance**

REV:08/2013

The excess shelter allowance is the amount by which the community spouse's shelter expenses exceed \$581.63 monthly.

Only shelter expenses relating to the community spouse's principal place of residence may be used to calculate the excess shelter allowance.

Shelter expenses are defined as and limited to:

- o Rent;
- o Mortgage payment (including principal and interest), taxes and insurance and, in the case of a condominium or cooperative, required maintenance charge;
- o The STANDARD UTILITY ALLOWANCE, as updated annually in Sec. 1038.20.05 of the SNAP Manual (Standard Utility Allowance), regardless of the actual utility costs, IF utility costs are incurred by the community spouse.

If the total allowable monthly shelter expenses are less than \$581.63 there is no excess shelter allowance. The amount of shelter costs that EXCEEDS \$581.63 is the excess shelter allowance.

### NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.