STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Human Services
Appeals Office
600 New London Avenue
Cranston, Rhode Island 02920

Docket #'s 14-957 & 14-958
Hearing Date: July 14, 2014

July 15, 2014

[redacted]

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.

A. **THE DHS POLICY MANUAL: SECTION 380 - RESOURCES GENERALLY**
B. **SECTION 380.40.35 FAIR HEARING**
C. **SECTION 392.15.20 COMMUNITY SPOUSE ALLOCATION**
D. **SECTION 392.15.20.05 CALCULATION OF COMMUNITY SPOUSE ALLOCATION**

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: your attorney, Laurie O'Neil, Ted Dobek, Thomas Conlon, and Policy.

Present at the hearing were: your attorney, and Laurie O'Neil (agency representative).

ISSUE:

Should the Community Spouse Resource Allowance (CSRA) be expanded to include all of the income producing total joint assets that the spouses now possess, so that the community spouse will be able to adequately support him/her self in the community?

DHS POLICIES:

The Rhode Island Department of Human Services Manual provides in pertinent part:

RESOURCES GENERALLY - 0380

This section, in its entirety, examines general issues with regard to resources, including, but not limited to, resource limits and definitions, differentiation of income from resources, conversion and sale of resources, replacement and availability of resources, excluded and counted resources, and resource reduction. Specific to this case is the following subsection:

FAIR HEARING 0380.40.35
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.

Community Spouse Allocation 0392.15.20
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:

- In the case of a court order for spousal support; or,
- 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.

Calculation of Community Spouse Allocation 0392.15.20.05
REV: 07/2011

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.

DISCUSSION OF EVIDENCE:

The agency representative testified that:

- The institutionalized spouse applied for Medical Assistance Long Term Care (MA LTC) benefits on May 1, 2014.
- The application for MA/LTC was denied by agency notice dated May 23, 2014, due to excess resources.
- The appellant was sent an MA-4 (Notice of Resource Attribution), regarding the spousal resource split.
- The appellant requested a hearing in a timely manner received by the agency June 13, 2014.

The appellant's attorney testified:

- That the community spouse's income is significantly below the Minimum Monthly Maintenance Needs Allowance (MMMNA). The institutionalized spouse entered the nursing facility during March 2014.
- He is requesting an increase in the spousal share of the joint resources so that the income generated from said resources could be used for the support of the community spouse.

- The community spouse has total gross monthly income of $805.50.
- The joint resources total $166,064.18 as of May 1, 2014, all of which are income generating. The assets available for an expanded CSRA are $162,064.18. ($166,064.18-$4000.00 excluded for Mr. DiMarco).

FINDINGS OF FACT:

1. The institutionalized spouse applied for MA LTC benefits in May 2014 previously living in the community with his/her spouse.

2. The total joint assets as of the first of the month of institutionalization were $172,255.62 (3-1-2014).

3. The CSRA was determined to be $86,127.81

4. The community spouse has total gross monthly income of $805.50.

5. The community spouse has also verified a monthly excess shelter allowance of $618.37 for a total MMMNA of $2557.12. Basic monthly allowance of $1938.75 plus the excess shelter allowance ($618.37) =$2557.12.

6. The community spouse's income ($805.50) combined with the monthly income allowance made available by the institutionalized spouse ($806.90 + $145.65), plus the income generated from the assets ($488.89) = $2246.94, does not meet her MMNA of $2557.12.

7. The community spouse therefore has a monthly income shortfall of $310.18 ($2557.12-$2246.94=$310.18)

CONCLUSION:

The community spouse's income, combined with the income available from the institutionalized spouse is not adequate to raise the community spouse's income to her MMMNA.
The community spouse has demonstrated that he/she needs all of the total joint income producing assets that the spouses now possess. The income made available from the institutionalized spouse to the community spouse is not adequate to meet her MMNA. (Per DHS policy 0392.15.20, effective 7/2006.)
In this case the amount made available from the institutionalized spouse would be $952.55.
The community spouse's income, including the income made available from the institutionalized spouse, and the monthly income generated from the assets ($488.89), fails to meet the MMMNA of the community spouse. ($2557.12-$2246.94=$310.18) The

remaining community spouse shortfall is therefore $310.18.

The expansion of the CSRA to include all of the income producing assets is allowed. The income available to the community spouse from the institutionalized spouse plus the monthly income earned from the assets fails to eliminate the community spouse's income shortfall.
The appellant's request to authorize an expansion of the CSRA is granted.

ACTION FOR THE DEPARTMENT:

The appellant's application will be processed from May 1, 2014 the first of the month in which he/she applied for the program. The agency will attribute all of the stated income producing assets to the community spouse as noted on the agency MA-4 dated May 23, 2014.

APPEAL RIGHTS (SEE PAGE #6)

Michael Gorman
Appeals Officer

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.