

HHB-CV-06-4012113S HAS
HARRY GRISWOLD ET. AL.

SUPERIOR COURT
JUDICIAL DISTRICT OF

VS.

NEW BRITAIN

COMMISSIONER OF THE
DEPARTMENT OF SOCIAL SERVICES

MAY 25, 2007

MEMORANDUM OF DECISION

This administrative appeal is from a decision by the Department of Social Services (DSS), which denied Medicaid assistance benefits to Harry Griswold (plaintiff) for the months of October and November, 2005. The plaintiffs brought this appeal after a hearing officer for DSS found the plaintiff ineligible for benefits.

In order to qualify for Medicaid benefits, there are certain income and asset limits. Applicants with resources in excess of these limits must deplete their resources to fall under these limits before becoming eligible for Medicaid benefits. 42 U.S.C. § 1396a(a)(10) and (17). In order to prevent the community spouse from becoming impoverished by exhausting joint

SUPERIOR COURT

MAY 25 3 11 PM '07

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assets in order to pay for the institutionalized spouse's expenses, Congress enacted the Medicare Catastrophic Coverage Act of 1988 (MCCA). If the community spouse's income is deemed insufficient to yield income equal to the minimum monthly needs allowance (MMNA), the community spouse is allowed to retain some of the institutionalized spouse's income which would otherwise be considered available to pay for his care. If the institutionalized spouse's income is inadequate to supply the deficit in the community spouse's MMNA, assets of the institutionalized spouse may also be deemed transferred to the community spouse. This resource allocation is controlled by federal statute and state regulation. Basically, a determination is made as to how much of the institutionalized spouse's income and assets must be transferred in order to generate sufficient income to meet the MMNA of the community spouse. This reallocation from the institutionalized spouse to the community spouse is called the community spouse allowance. (CSA)

After a hearing, DSS denied plaintiff's application for Medicaid benefits because his assets exceeded the limit for benefits, despite the fact that DSS allocated most of his social security income and \$50,000 of his assets to his spouse (to allow her to meet her MMNA). The reallocation of assets left the plaintiff with \$18,568.60 in assets, which exceeded the Medicaid asset limit of \$1600.

The plaintiff claims that DSS was in error for two reasons. First, DSS used the interest rate in effect at the time of the hearing to calculate the CSA rather than the rate in effect at the time of the application. Interest rates increased substantially from the date of the application to the date of the hearing. Second, DSS used the national interest rate of 5.23% rather than the local rate of 3.60% to calculate the CSA. The use of either the lower local rate or the lower rate

in effect at the time of the application would have resulted in an additional reallocation of assets from the plaintiff, and he would be eligible for benefits.

The first issue as to whether to use the interest rate in effect at the time of the application or at the time of the hearing involves a determination of the validity of a section of the uniform policy manual (UPM) of DSS. UPM § 1570.25(D)(4)(c) requires that the interest rate be determined at the date of the administrative hearing and not the date on which the Medicaid application is filed with DSS. Under federal law resources shall be considered to be available to an institutionalized spouse at the time of the initial eligibility determination, but only to the extent that the amount of such resources exceeds the amounts allowed, computed as of the time of the application. 42 U.S.C. 1396r-5(c)(2)(B). The plaintiff's claim that the regulation of DSS is in contradiction of federal law is an interesting and compelling argument. However, the court is not required to reach this issue as a result of its ruling on the second issue presented by the plaintiff.

UPM §1570-30 directs DSS employees to consult an internet site in order to determine the average rate of return on a twelve-month CD without specifying whether to apply local or national rates. DSS concedes in its brief that, despite an apparent lack of guidance in its regulations, "employees of the department know to use local rates." (Defendant's substitute brief at page 33). Despite this statement, it is clear from the record that national rates were utilized.

The administrative record at page 97 is a printout of an internet site utilized by DSS to calculate the average rate of return. DSS calculated the rate of return using interest rates from Tennessee Commerce Bank, California First National Bank and FirstFedDirect. Clearly, from the record, DSS failed to comply with its own stated practice of using local rates. If it had, it

would have used a rate of 3.60%. (Record at page 97) In this case, the decision of DSS was arbitrary and capricious in light of DSS's stated practice of applying local rates and as a result substantial rights of the plaintiff have been prejudiced. Conn. General Statutes § 4-183(j).

Accordingly, pursuant to Connecticut General Statutes § 4-183(j), this matter is remanded to DSS with direction to recalculate the plaintiff's eligibility for Medicaid assistance benefits using the interest rate of 3.60% in its determination of the plaintiff's eligibility for these benefits.



Pinkus, J.

EXHIBIT A

**AVERAGE RATE OF RETURN COMPARISONS
Harry Griswold**

	Local: Date of App ¹ 3.28%	National: Date of App ¹ 4.3%	Local: Date of Hearing ² 3.60%	National: Date of Hearing ² 5.23%	Figures Agree/ Disagree
Total Spousal Resources DOA	132,146.04	132,146.04	132,146.04	132,146.04	Agree
Formula CSPA	66,073.02	66,073.02	66,073.02	66,073.02	Agree
Excess Resources Attributed to IS	66,073.02	66,073.02	66,073.02	66,073.02	Agree
Monthly income Shortfall	505.86	505.86	505.86	505.86	Agree
Less: Monthly Income on Formula CSPA	180.60	236.76	201.52	287.97	Disagree
Net Monthly Income Shortfall (NMI)	325.26	269.10	304.34	217.89	Disagree
Assets needed to generate income to cover shortfall	119,000.00	75,100.00	102,500.00	49,995.00	Disagree
Lessor of: Excess Resources or Assets needed to generate NMI	66,073.02	66,073.02	66,073.02	49,995.00	Disagree
Applicant over asset: Yes or No	Not over asset	Not over asset	Not over asset	Over asset by: 16,078.02	

¹ The averaged rate of return is based on an October 2005 bankrate.com listing. The application date was October 31, 2005. We were unable to obtain the correct bankrate.com rating for October 31, 2005 retrospectively.

² Rates as of 6/28/2006 on bankrate.com



Institution Rates For 1 yr CD in Hartford, CT

Date of Application
10/12/05

INSTITUTION	DATE	RATE	CM	APY	MIN. DEPOSIT	ADVERTISER COMMENTS
Webster Bank	10/11	3.93	M	4.00	1000	
ING DIRECT	10/11	4.20	S	4.20	1	Lock your rate with No minimums! and No fees! Member FDIC.
Allstate Bank	10/11	3.15	D	3.20	1000	
Bank of America	10/11	3.45	D	3.51	1000	
Nexity Bank	10/11	4.28	D	4.37	1000	
People's Bank	10/11	2.00	D	2.00	1000	
Countrywide Bank	10/11	4.32	D	4.41	10000	
State Farm Bank	10/11	3.92	D	4.00	500	Expect more from your money. Find out how. Visit statefarm.com.
MetLife Bank, NA	10/11	4.32	D	4.41	1000	High rates. Smart, safe, simple savings.
Sovereign Bank	10/11	2.45	D	2.48	500	
Discover Bank	10/10	3.22	D	3.27	2500	

Local

3.93
3.45
2.45

9.83 ÷ 3.08

highest (National)

4.32
4.32
4.28

4.3090

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10/12/2005

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Date of Hearing

Institution Rates For 1-year CD rates in Hartford, CT

Click the radio button at the top of the column to sort based on your preferences.

Sort By:	INSTITUTION	DATE	RATE	CM	APY	MIN. DEPOSIT	ADVERTISER COMMENTS
<input type="radio"/>	Tennessee Commerce Bank	6/27	5.37	M	5.50	5000	Apply Online or by Phone Today. FDIC Insured.
<input type="radio"/>	California First National Bank	6/27	4.99	M	5.11	5000	Apply online or by phone today! Member FDIC.
<input type="radio"/>	Discover Bank	6/27	4.41	D	4.50	2500	
<input type="radio"/>	Allstate Bank	6/27	4.21	D	4.30	1000	
<input type="radio"/>	FirstFedDirect	6/26	5.35	Q	5.46	10000	Established 1929 Parent Co. member NYSE, Symbol FED
<input type="radio"/>	Webster Bank	6/27	4.89	M	5.00	1000	
<input type="radio"/>	Bank of America	6/27	3.20	D	3.26	1000	
<input type="radio"/>	TD Banknorth, NA	6/27	2.72	D	2.75	500	
<input type="radio"/>	NewAlliance Bank	6/27	2.28	M	2.30	1000	

$16,71 \div 3 = 5.23\%$

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6/28/2006

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Search By 100 Highest Yield
Search By State

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4

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Compare CD/Savings Rates

Step 1: Choose Your State

- Alabama
- Alaska
- Arizona
- Arkansas
- California
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Florida
- Georgia
- Hawaii

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Compare CD/Savings Rates

Step 2: Choose the City Nearest You

- Bridgeport
- Danbury
- Hartford
- New Haven
- Stamford
- Torrington

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5.537%
YIELD

6-MONTH CD. AUCTIONED 4/26/2007

Summary

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State:

Connecticut

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Compare CD/Savings Rates

Step 3: Choose Your CD/Savings Options

- 1 month CD
- 2 month CD
- 3 month CD
- 6 month CD
- 9 month CD
- 1 yr CD
- 18 month CD
- 2 yr CD
- 2.5 yr CD
- 3 yr CD
- 4 yr CD
- 5 yr CD
- 1 month jumbo CD
- 2 month jumbo CD
- 3 month jumbo CD
- 6 month jumbo CD
- 9 month jumbo CD
- 1 yr jumbo CD
- 18 month jumbo CD
- 2 yr jumbo CD
- 2.5 yr jumbo CD
- 3 yr jumbo CD
- 4 yr jumbo CD
- 5 yr jumbo CD

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OPEN AN ACCOUNT IN MINUTES



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Steps to Complete:

State: Connecticut

City: Hartford

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Discover Bank 	5/7	5.07	D	5.20	2500	Great Rates, Security and Convenience, lock in your rate today!
MetLife Bank, NA 	5/4	4.69	D	4.80	25000	High rates. Smart, safe, simple savings.
Webster Bank	5/7	3.20	M	3.25	1000	
Bank of America	5/7	3.11	M	3.16	1000	
TD Banknorth, NA	5/7	2.30	D	2.32	500	
NewAlliance Bank	5/7	2.28	M	2.30	1000	

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