

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

FILED

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.

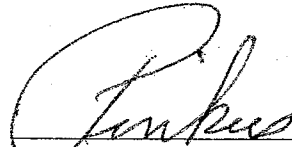

Pinkus, J.

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
Sort By: <input type="radio"/>	<input type="radio"/>	<input type="radio"/>		<input type="radio"/>	<input type="radio"/>	
Webster Bank <input type="radio"/>	10/11	3.93	M	4.00	1000	
ING DIRECT <input type="radio"/>	10/11	4.20	S	4.20	1	Lock your rate with No minimums! and No fees! Member FDIC.
Allstate Bank <input type="radio"/>	10/11	3.15	D	3.20	1000	
Bank of America <input type="radio"/>	10/11	3.45	D	3.51	1000	
Nexity Bank <input type="radio"/>	10/11	4.28	D	4.37	1000	
People's Bank <input type="radio"/>	10/11	2.00	D	2.00	1000	
Countrywide Bank <input type="radio"/>	10/11	4.32	D	4.41	10000	
State Farm Bank <input type="radio"/>	10/11	3.92	D	4.00	500	Expect more from your money. Find out how. Visit statefarm.com.
MetLife Bank, NA <input type="radio"/>	10/11	4.32	D	4.41	1000	High rates. Smart, safe, simple savings.
Sovereign Bank <input type="radio"/>	10/11	2.45	D	2.48	500	
Discover Bank <input type="radio"/>	10/10	3.22	D	3.27	2500	

Local

3.93

3.45

2.45

9.83 ÷ 3.28

highest (National)

4.32

4.32

4.28

4.3090

If you believe that you have received an inaccurate quote or are otherwise not satisfied with the services provided to you. Please [click here](#).

For an explanation of savings terms, [click here](#). These rates are updated weekly. For criteria used in surveys of rates above, [click here](#). These quotes are from banks, thrifts, and credit unions, some of whom have paid for a link to their

own Web site, where you can find additional information. Bank and thrift deposits are insured by the [Federal Deposit Insurance Corp.](#) Credit union deposits are insured by the [National Credit Union Administration](#). Bankrate.com rates banks, thrifts and credit unions through proprietary [Safe & Sound star rating system](#). Rates are subject to change without notice and may vary from branch to branch.

NEXT STEPS

Crunch the Numbers

Plug in these rates to find the best earnings for your banking style.

Learn More

Discover how to pay less, earn more on our checking and savings channel.

Search for Other Rates

Get objective, up-to-date interest rates on dozens of products in every state across the nation.

SPONSOR LINKS

4.0% APY - America's New Highest Savings Rate -- Our rates just got higher. Get 4.0% APY when you open a savings account with Emigrant Direct. No mins or fees. [Learn more.](#)

BEAT CD Rates with No Risk to Savings -- Age 50 or OLDER? Get 9-12% potential 1st yr. return on retirement savings. Shop 1000's of tax-deferred "fixed" & "index" annuities ...

Open a 3.50% MMA and Get a \$50 bonus! -- MetLife Bank could earn you more interest. We have a safe, secure high interest product right for your needs. Open an account today!

Buy Bonds for Less - At Institutional Prices -- Search more than 10,000 bonds at institutional prices previously available only to brokerage firms. With Zions Direct, do your ...

ING DIRECT - Orange Savings Account -- Open an account with 3.40% APY in less than five minutes. Orange Savings account with no fees or minimums. Member FDIC.

- advertisement -

[Click Your State & Refinance Now!](#)
[AL](#)
[AK](#)
[AZ](#)
[AR](#)
[CA](#)
[CO](#)
[CT](#)
[DE](#)
[DC](#)
[FL](#)
[GA](#)
[HI](#)
[ID](#)
[IL](#)
[IN](#)
[IA](#)
[KS](#)
[KY](#)
[LA](#)
[ME](#)
[MD](#)
[MA](#)
[MT](#)
[NE](#)
[NV](#)
[NH](#)
[NJ](#)
[NM](#)
[NY](#)
[NC](#)
[ND](#)
[OH](#)
[OK](#)
[OR](#)
[PA](#)
[RI](#)
[SC](#)
[SD](#)
[TN](#)
[TX](#)
[UT](#)
[VT](#)
[VA](#)
[WA](#)

[News & Advice](#) | [Compare Rates](#) | [Calculators](#)

[Mortgage](#) | [Home Equity](#) | [Auto](#) | [CDs & Investments](#) | [Credit Cards](#) | [Checking & Savings](#) | [College Finance](#) | [Insurance](#)

[About Bankrate](#) | [Privacy](#) | [Online Media Kit](#) | [Partnerships](#) | [Investor Relations](#) | [Press/Broadcast](#) | [Contact Us](#)

[NASDAQ: RATE](#) | [RSS Feeds](#) | [Order Rate Data](#) | [Bankrate Canada](#)

* Mortgage rate may include points. See rate tables for details. [Click here.](#)

* To see the definition of overnight averages [click here.](#)

Bankrate.com ®, Copyright © 2005 Bankrate, Inc., [All Rights Reserved](#), [Terms of Use](#).



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.

INSTITUTION	DATE	RATE	CM	APY	MIN. DEPOSIT	ADVERTISER COMMENTS
Sort By: <input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
<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	

$$16.71 \div 3 = 5.23\%$$

If you believe that you have received an inaccurate quote or are otherwise not satisfied with the services provided to you. Please [click here](#).

For an explanation of savings terms, [click here](#). These rates are updated weekly. For criteria used in surveys of rates above, [click here](#). These quotes are from banks, thrifts, and credit unions, some of whom have paid for a link to their own Web site, where you can find additional information. Bank and thrift deposits are insured by the [Federal Deposit Insurance Corp.](#) Credit union deposits are insured by the [National Credit Union Administration](#). Bankrate.com rates banks, thrifts and credit unions through proprietary [Safe & Sound star rating system](#). Rates are subject to change without notice and may vary from branch to branch.

NEXT STEPS

[Crunch the Numbers](#)

[Learn More](#)

[Search for Other Rates](#)

97

6/28/2006

EXHIBIT A

1st page



Compare CDs & Investment Rates

CDs: Select an Option

- advertisement -

Search By 100 Highest Yield
Search By State

SUMMARY

Steps to Com

Start Over

NEXT

[News & Advice](#) | [Compare Rates](#) | [Calculators](#)

[Mortgage](#) | [Home Equity](#) | [Auto](#) | [CDs & Investments](#) | [Credit Cards](#) | [Checking & Savings](#) | [College Finance](#) | [Insura](#)

[About Bankrate](#) | [Privacy](#) | [Online Media Kit](#) | [Partnerships](#) | [Investor Relations](#) | [Press/Broadcast](#) | [Contact Us](#)

[NASDAQ: RATE](#) | [RSS Feeds](#) | [Order Rate Data](#) | [Bankrate Canada](#)

* Mortgage rate may include points. See rate tables for details. [Click here](#).

* To see the definition of overnight averages [click here](#).

Bankrate.com ®, Copyright © 2006 Bankrate, Inc., [All Rights Reserved](#), [Terms of Use](#).

2nd page



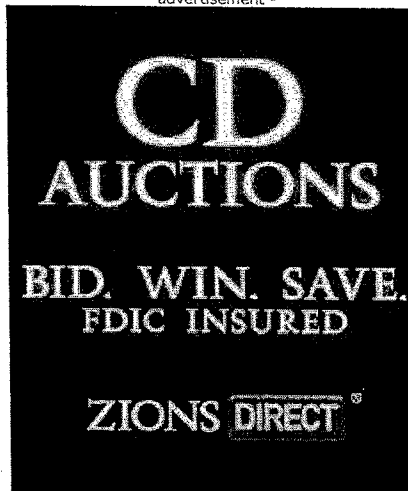
Compare CD/Savings Rates

Step 1: Choose Your State

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

NEXT

- advertisement -



SUMMARY

Steps to Complete:

Start Over

[News & Advice](#) | [Compare Rates](#) | [Calculators](#)

[Mortgage](#) | [Home Equity](#) | [Auto](#) | [CDs & Investments](#) | [Credit Cards](#) | [Checking & Savings](#) | [College Finance](#) | [Insurance](#)

[About Bankrate](#) | [Privacy](#) | [Online Media Kit](#) | [Partnerships](#) | [Investor Relations](#) | [Press/Broadcast](#) | [Contact Us](#) | [Sitemap](#)

[NASDAQ: RATE](#) | [RSS Feeds](#) | [Order Rate Data](#) | [Bankrate Canada](#)

* Mortgage rate may include points. See rate tables for details. [Click here.](#)

* To see the definition of overnight averages [click here.](#)

Bankrate.com ®, Copyright © 2007 Bankrate, Inc., All Rights Reserved, [Terms of Use](#).

3rd page



Compare CD/Savings Rates

Step 2: Choose the City Nearest You

Bridgeport
Danbury
Hartford
New Haven
Stamford
Torrington

NEXT

- advertisement -

5.537%
YIELD

6-MONTH CD. AUCTIONED 4/26/2007

Summary

Steps to Complete:

State:

Connecticut

Start Over

UPDATE

[News & Advice](#) | [Compare Rates](#) | [Calculators](#)

[Mortgage](#) | [Home Equity](#) | [Auto](#) | [CDs & Investments](#) | [Credit Cards](#) | [Checking & Savings](#) | [College Finance](#) | [Insurance](#)

[About Bankrate](#) | [Privacy](#) | [Online Media Kit](#) | [Partnerships](#) | [Investor Relations](#) | [Press/Broadcast](#) | [Contact Us](#) | [Sitemap](#)

[NASDAQ: RATE](#) | [RSS Feeds](#) | [Order Rate Data](#) | [Bankrate Canada](#)

* Mortgage rate may include points. See rate tables for details. [Click here.](#)

* To see the definition of overnight averages [click here.](#)

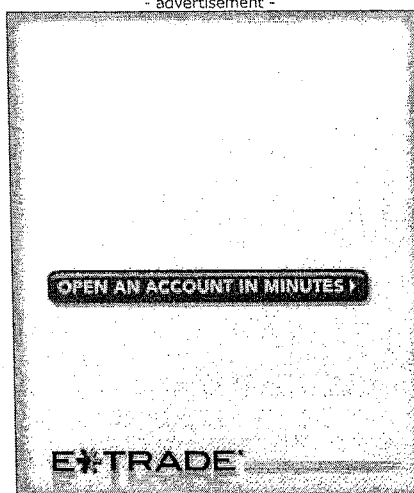
Bankrate.com ©, Copyright © 2007 Bankrate, Inc., [All Rights Reserved](#), [Terms of Use](#).

4th page

Compare CD/Savings Rates

Step 3: Choose Your CD/Savings Options

- ready selected →
- | | |
|--|---|
| <input type="radio"/> 1 month CD | <input type="radio"/> 1 month jumbo CD |
| <input type="radio"/> 2 month CD | <input type="radio"/> 2 month jumbo CD |
| <input type="radio"/> 3 month CD | <input type="radio"/> 3 month jumbo CD |
| <input type="radio"/> 6 month CD | <input type="radio"/> 6 month jumbo CD |
| <input type="radio"/> 9 month CD | <input type="radio"/> 9 month jumbo CD |
| <input checked="" type="radio"/> 1 yr CD | <input type="radio"/> 1 yr jumbo CD |
| <input type="radio"/> 18 month CD | <input type="radio"/> 18 month jumbo CD |
| <input type="radio"/> 2 yr CD | <input type="radio"/> 2 yr jumbo CD |
| <input type="radio"/> 2.5 yr CD | <input type="radio"/> 2.5 yr jumbo CD |
| <input type="radio"/> 3 yr CD | <input type="radio"/> 3 yr jumbo CD |
| <input type="radio"/> 4 yr CD | <input type="radio"/> 4 yr jumbo CD |
| <input type="radio"/> 5 yr CD | <input type="radio"/> 5 yr jumbo CD |

[NEXT](#)


SUMMARY

Steps to Complete:

State:

Connecticut

City:

Hartford

[Start Over](#)
[UPDATE](#)
[News & Advice](#) | [Compare Rates](#) | [Calculators](#)
[Mortgage](#) | [Home Equity](#) | [Auto](#) | [CDs & Investments](#) | [Credit Cards](#) | [Checking & Savings](#) | [College Finance](#) | [Insurance](#)
[About Bankrate](#) | [Privacy](#) | [Online Media Kit](#) | [Partnerships](#) | [Investor Relations](#) | [Press/Broadcast](#) | [Contact Us](#) | [Sitemap](#)
[NASDAQ: RATE](#) | [RSS Feeds](#) | [Order Rate Data](#) | [Bankrate Canada](#)

* Mortgage rate may include points. See rate tables for details. [Click here](#).

* To see the definition of overnight averages [click here](#).

Bankrate.com ©, Copyright © 2007 Bankrate, Inc., All Rights Reserved, [Terms of Use](#).

5th page



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.

INSTITUTION	DATE	RATE	CM	APY	MIN. DEPOSIT	ADVERTISER COMMENTS
Sort By: <input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
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	

If you believe that you have received an inaccurate quote or are otherwise not satisfied with the services provided to you. Please [click here](#).

For an explanation of savings terms, [click here](#). These rates are updated weekly. For criteria used in surveys of rates above, [click here](#). These quotes are from banks, thrifts, and credit unions, some of whom have paid for a link to their own Web site, where you can find additional information. Bank and thrift deposits are insured by the Federal Deposit Insurance Corp. Credit union deposits are insured by the National Credit Union Administration. Bankrate.com rates banks, thrifts and credit unions through proprietary [Safe & Sound star rating system](#). Rates are subject to change without notice and may vary from branch to branch.

SPONSOR LINKS

WTDirect Savings: 5.26% APY. Apply online now! -- Earn 5.26% APY for 60 days! Keep that rate with a \$10k minimum balance

Name Your Yield for CDs -- Bid on CDs through CD Auctions from Zions Direct. Higher CD Yields, FDIC-Insured.

Earn 8% Interest Rate on your money. -- Lend to fellow Americans and make a great return on your money. Over 250,000 members and counting. Free to register!

Ready to Beat CD Rates? Try Annuities! -- Learn how annuities can give you better rates as well as tax, probate, & safety benefits. Fast form, free guide, expert help.

HSBC Direct Online Savings -- Earn 5.05% APY* on your savings. Open an HSBC Direct Online Savings Account and start earning more on your money. FDIC Insured

- advertisement -

EmigrantDirect.com™
 More Money For Your Money™
[► Learn More](#)

[News & Advice](#) | [Compare Rates](#) | [Calculators](#)
[Mortgage](#) | [Home Equity](#) | [Auto](#) | [CDs & Investments](#) | [Credit Cards](#) | [Checking & Savings](#) | [College Finance](#) | [Insurance](#)
[About Bankrate](#) | [Privacy](#) | [Online Media Kit](#) | [Partnerships](#) | [Investor Relations](#) | [Press/Broadcast](#) | [Contact Us](#) | [Sitemap](#)
[NASDAQ: RATE](#) | [RSS Feeds](#) | [Order Rate Data](#) | [Bankrate Canada](#)

* Mortgage rate may include points. See rate tables for details. [Click here](#).

* To see the definition of overnight averages [click here](#).

Bankrate.com ®, Copyright © 2007 Bankrate, Inc., All Rights Reserved, [Terms of Use](#).