

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3730

██████████, 2017  
Signature Confirmation

Client ID # ██████████  
Request #809247

NOTICE OF DECISION  
PARTY

██████████  
C/O ██████████  
██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████ 2017, the Department of Social Services (the “Department”) sent ██████████ (the Appellant”) a notice with the amount of applied income that he must pay toward the cost of his long-term care.

On ██████████ 2017, the Appellant’s spouse requested an administrative hearing to contest the Department’s calculation of her husband’s applied income.

On ██████████, 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a Notice scheduling the administrative hearing for ██████████ 2017.

On ██████████, 2017, OLCRAH, at the Appellant’s request, issued a notice rescheduling the administrative hearing for ██████████ 2017.

On ██████████, 2017, 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:

██████████ Appellant’s Spouse  
██████████, Appellant’s Son  
██████████, Appellant’s Representative  
Marian Walsh, Department’s Representative  
Christopher Turner, Hearing Officer

The Appellant was not present.

## **STATEMENT OF THE ISSUE**

The issue is whether the Department correctly calculated the amount of the Community Spouse Allowance used in the calculation of applied income that the Appellant is responsible to pay toward the cost of his long-term care.

## **FINDINGS OF FACT**

1. The Appellant is a recipient of Medicaid and resides in a long term care facility. (record)
2. On [REDACTED] 2017, the Department processed the Appellant's Long Term Care Medicaid ("LTC") redetermination and determined that the Appellant's applied income owed to the long term care facility to be \$252.50, (Gross income of \$2,369.00 – \$2,116.50 (\$60.00 personal needs allowance + \$112.00 Medicare B premium + \$1,944.50 CSA). (Exhibit 1: Notice of Approval for Long Term Care Medicaid dated 1/17/17; Exhibit 2C: MAFI screen-print)
3. The Appellant's spouse lives in the community, (CS). (Hearing summary, Testimony)
4. The Appellant's gross monthly Social Security benefit is \$2,369.00. (Exhibit 5: Social Security statement; [REDACTED])
5. The Appellant's monthly Medicare B premium is \$112.00. (Exhibit 5)
6. The Appellant does not have a secondary health insurance expense. (Hearing summary; Community spouse's testimony)
7. The CS's gross monthly Social Security benefit is \$1,078.00. (Exhibit 8: SVES Title II printout)
8. The CS's mortgage principal and interest is \$972.00 per month. This amount includes property taxes and insurance. (Exhibit 7: [REDACTED] Savings Bank mortgage statement)
9. The CS has a second mortgage with Bank of America. The current payment is \$1,048.00 per month. The CS is renegotiating the amount with Bank of America. (Exhibit 8: Bank of America loan statement, Appellant's Exhibit D: Bank of America modification request; Community spouse's testimony)
10. The CS's home is under foreclosure; Case number [REDACTED]. (Appellant's Exhibit D)
11. The CS is independent with her activities of daily living. (CS testimony)

12. The CS is claiming exceptional circumstances due to her house being in foreclosure. (CS testimony)

### **CONCLUSIONS OF LAW**

1. Sections 17b-260 to 17b-264 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Title XIX Medical Assistance Program to provide medical assistance to eligible persons in Connecticut.
2. Uniform Policy Manual ("UPM") § 5045.20 pertains to assistance units who are residents of Long Term Care Facilities ("LTCF") or receiving community based services are responsible for contributing a portion of their income toward the cost of their care. For LTCF cases only, the amount to be contributed is projected for a six-month period.

UPM § 5045.20 (B) (1) (a) provides that the amount of income to be contributed in LTCF cases at initial calculation for each month in the six month period for which the contribution is projected, monthly gross income is established as follows: total gross monthly income which was paid or payable to the applicant or recipient, in the six months prior to the period for which the contribution is projected, is divided by six.

UPM § 5045.20 (B) (1) (b) provides that the total gross income is reduced by post-eligibility deductions (Cross reference: 5035-"Income Deductions") to arrive at the amount of income to be contributed.

**The Department correctly determined that the Appellant's monthly gross income is \$2,369.00.**

3. UPM § 5035.25 (B) (1) provides a monthly deduction for LTFC units of a personal needs allowance ("PNA") of \$50.00, which, effective July 1, 1999 and annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration.

Connecticut General Statutes § 17b-272. **(Formerly Sec. 17-134m). Personal fund allowance.** Effective July 1, 2011, the Commissioner of Social Services shall permit patients residing in nursing homes, chronic disease hospitals and state humane institutions who are medical assistance recipients under sections 17b-260 to 17b-262, inclusive, 17b-264 to 17b-285, inclusive, and 17b-357 to 17b-361, inclusive, to have a monthly personal fund allowance of sixty dollars.

**The Department correctly determined that the Appellant's net income equals \$2,197.00, (\$2,369.00, minus \$60, PNA, minus \$112.00 Medicare premium equals \$2,197.00)**

4. UPM § 5035.25 (B) (2) provides a monthly deduction for LTFC units of a Community Spouse Allowance (“CSA”), when appropriate; (Cross reference 5035.30)

UPM § 5035.25 (B) (4) provides a monthly deduction for LTFC units of Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid by the Department or any other third party.

**The Department correctly allowed deductions for personal fund allowance, and Medicare B premium.**

**The Department correctly removed the Appellant’s secondary health insurance premium.**

5. UPM § 5035.30 (B) (2) provides the MMNA is that amount which is equal to the sum of: a. the amount of the community spouse’s excess shelter costs as calculated in section 5035.30 (B) (3) and b. 150 percent of the monthly poverty level for a unit of two persons.

UPM § 5035.30 (B) (3) provides the community spouse’s shelter 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.

UPM § 5035.30 (B) (4) provides the community spouse’s monthly shelter cost includes: a. rental cost 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 e. the Standard Utility Allowance (“SUA”) used in the Supplemental Nutrition Assistance Program for the community spouse.

UPM § 5035.30 (B) (5) provides the MMNA may not exceed the greatest of either: a. the maximum MMNA; or b. an amount established through a Fair Hearing.

UPM § 1570.25 (D) (3) provides the Fair Hearing official increases the community spouse's MMNA previously determined by the Department if either MCCA spouse establishes 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’ 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 above; and (2) is not already factored into MMNA; and (3) cannot reasonably be expected to be met by the community spouse’s own income and assets.

UPM § 1570.25 (D) (3) (c) provides 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 renewal, replacement of a roof, furnace or appliance; (7) medical expenses reflecting the frailties of old age.

**The Appellant's spouse does not have exceptional circumstances resulting in financial duress as her mortgage expense is already factored into the MMNA.**

**The CS's MMNA equals the maximum of \$3022.50.**

Shelter Costs:	AMOUNT
Mortgages/Taxes/Property Insurance	\$2,020.00
Standard Utility Allowance	\$ 698.00
<b>Total shelter costs:</b>	<b><u>\$2,718.00</u></b>
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two (\$2,002.50)]	-\$ 600.75
<b>Excess shelter costs:</b>	<b>\$2,117.25</b>
Plus 150% of the FPL for two:	\$2,002.50
Equals the MMNA	\$4,119.75
<b>Maximum MMNA</b>	<b>\$3,022.50</b>

6. UPM § 5035.30 (B) (1) provides the calculation of the CSA is equal to the greater of the following: a. the difference between the Minimum Monthly Needs Allowance ("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.

<b>Maximum MMNA</b>	\$3,022.50
<b>Community Spouse's Income</b>	\$1,078.00
<b>Community Spouse Allowance</b>	\$1,944.50

**The Department correctly calculated the Appellant's monthly-applied income of \$252.50 as follows: \$2,369.00 – \$2,116.50 (\$112.00 Medicare B premium + \$60.00 PNA + \$1,944.50 CSA).**

**DISCUSSION**

Regulation allows the hearing officer to increase the MMNA if the community spouse can show the presence of exceptional circumstances. In this case, the CS presents that her impending foreclosure is an exceptional circumstances. I find that since her mortgage payments are already factored into the MMNA calculation, this situation does not meet the criteria for exceptional circumstance as set out in regulations.

**DECISION**

The Appellant's appeal is Denied.

  
Christopher Turner  
Hearing Officer

Cc: Fred Presnick, Bridgeport Operations Manager  
Yesenia Acosta, Bridgeport Operations Manager  
Maren Walsh, DSS Bridgeport

### **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, law, and 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.

### **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. 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.