

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3725

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

CLIENT No # ██████████  
Request # 826950

NOTICE OF DECISION

PARTY

██████████  
██████████  
██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████, 2017, the Department of Social Services - (“the Department”) sent ██████████ - (the “Appellant”) a Notice of Applied Income stating that she must pay \$1600.50 per month towards the cost of her long term care effective ██████████ 2017.

On ██████████ 2017, the Appellant’s spouse requested an administrative hearing to contest the Department’s calculation of the 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, the Appellant requested a re-scheduled hearing and it was granted.

On ██████████, 2017, OLCRAH issued a notice scheduling the Administrative hearing for August 10, 2017.

On ██████████, 2017, in accordance with sections 17b-60, 17-61 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 for ██████████  
 ██████████ Appellant's daughter (telephone)  
 ██████████, Jr., Appellant's son  
 Olga Ivenskaya, Department's Representative  
 Almelinda McLeod, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department correctly calculated the amount of the Community Spouse Allowance ("CSA") used in the calculation of applied income that the Appellant is responsible to pay towards the cost of her long term care.

### **FINDINGS OF FACT**

1. The Appellant is a recipient of Medicaid and resides in ██████████ Care Center, a long term care facility. ( Hearing record)
2. The Appellant's spouse lives in the community. For purposes of this hearing, he is the community spouse. ("CS"). ( Hearing record)
3. The Appellant receives Social Security income of \$966 and ██████████ pension of \$694.50. (Hearing summary, Exhibit 4)
4. The CS receives Social security income of \$2130.00 and a ██████████ pension of \$900.98 and a ██████████ pension of \$181.00.( hearing summary)
5. The state pays for the Appellant's Medicare B premium. (Exhibit 3)
6. The Appellant receives a monthly allowable deduction of \$60.00 as her personal needs allowance ("PNA").
7. The CS has mortgage obligation of \$2728.61 per month and Town taxes of \$14146.60 per year, Sewer taxes of \$314.28 which converted is  $\$14460.88/12 = \$1205.07$  and home insurance of \$208.25 per month. (Hearing summary )
8. On ██████████ 2017, the Department processed the Appellant's Long Term Care Medicaid ("LTC") redetermination and determined the applied income ("AI") owed to the long term facility was \$1600.50 per month effective ██████████ 2017. ( \$966.00 Social Security + ██████████ pension \$694.50- \$60.00 PNA) (Exhibit 1, Applied Income notice and Exhibit 10).
9. The Department was not aware that the Appellant had the ██████████ pension of \$694.50 and also noted that no medical expenses was reported in this

review; whereas the Appellant had a medical insurance premium of \$222.25 previously. Both indicated a change from a previous review. (Department testimony)

10. The CS testified that the initial application contained the [REDACTED] pension and provided the original W-1LTC application dated [REDACTED]/14 to prove it was reported. (Appellant testimony and Exhibit F)
11. The Department submitted an W-1 LTC application dated [REDACTED] 14 which also reports [REDACTED] pension. ( Exhibit 11)
12. The Appellant's daughter confirmed that the \$222.25 medical insurance premium that was previously reported ended in [REDACTED] 2017 or [REDACTED] 2017. (Appellant testimony)
13. On [REDACTED] 2017, the Appellant's daughter submitted a letter to the Department reporting the following expenses and income because she disagreed with the figures used.

The Community spouses expenses are as follows

Mortgage	\$2728.61
Homeowners ins.	\$208.25
Property taxes	\$14146.60 per year
Sewer to City of [REDACTED]	\$ 314.28

[REDACTED] monthly income

Social Security	\$966.00
[REDACTED] pension	\$694.50
Total:	\$1660.50

[REDACTED] monthly income

Social Security	\$2130.00
[REDACTED] pension	\$900.98
[REDACTED] pension	\$156.00 (\$25.00 withheld federal tax)

(Exhibit 9, Letter to the Department from [REDACTED])

14. The Department interpreted from the letter sent that the CS' [REDACTED] pension amount was actually \$181.00. (\$156.00 the net + \$25.00 tax withholding)
15. The Appellant's daughter, wanted to correct two errors noted in the review of this hearing. 1. The mortgage of \$2728.61 includes taxes and insurance; and the [REDACTED] pension is not \$181.00. It's \$156.00 gross. [REDACTED] testimony)

16. At this hearing, the CS presented verification that his [REDACTED] pension was \$156.00 gross per month. (Appellant testimony and W-1099 form)
17. The CS also submitted a Budget Template Worksheet for consideration confirming the income and showing his expenses which include his mortgage, health insurance, homeowners insurance, payment to [REDACTED] Rehab, property taxes, car taxes, [REDACTED] hospital bill, groceries, electricity, gas, water, other utilities and his medical expenses not covered by insurance. (Exhibit B)
18. On [REDACTED] 2017, the Department determined the calculated CSA is \$0.00 because the CS' income of \$3211.98 (\$2130.00 + \$900.98 + 181) is more than the Minimum Monthly Needs Allowance ("MMNA"). (Exhibit E)
19. The MMNA is capped at \$3022.50. (Hearing summary)

### **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.
3. 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.
4. 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.
5. UPM § 5050.13 (A) (1) provides payments from Social Security are treated as countable unearned income in determine eligibility in all programs.

6. UPM § 5050.09 (A) provides payments received by the assistance unit from annuity plans, pensions and trusts are considered unearned income.
7. **The Department correctly used the Appellant's Social Security income and her [REDACTED] pension towards the calculation of her applied income.**
8. **The Department correctly determined that the Appellant's monthly gross income is \$1660.50.**
9. Connecticut General Statutes § 17b-272. **(Formerly Sec. 17-134m). Personal fund allowance.** Effective [REDACTED] 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.
10. UPM § 5035.25 (B) (1) provides a monthly deduction for LTFC units of a personal needs allowance ("PNA") of \$50.00, which, effective [REDACTED] 1999 and annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration.
11. **The Department correctly provided a \$60.00 personal needs allowance (PNA) deduction.**
12. **The Department correctly determined that the Appellant's net income equals \$,1600.50 (\$1660.50, minus \$60 PNA)**
13. 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 removed the Appellants medical insurance premium.**
14. UPM 5035.30 (A) (1) provides for the Use of Community Spouse Allowance ("CSA"). The CSA is used as an income deduction in the calculation of the post-eligibility applied income of an institutionalized spouse ("IS") only when the IS makes the allowance available to the community spouse ("CS") or for the sole benefit of the CS.

15. 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.
16. 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.
17. 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.
18. 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.
- 19. The Department incorrectly included the CS's Town taxes and Home owners insurance separately from the monthly mortgage of \$2728.61.**
- 20. The correct shelter costs consisted of the CS's mortgage, \$2728.61 which included the Town taxes and Home owners insurance.**
21. 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 expected to be met by the community spouse's own income and assets.

22. 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.

23. **The CS does not have exceptional circumstances resulting in a financial duress as all expenses in his Budget Template Worksheet presented are factored into the MMNA.**

24. The CS's MMNA equals the MAXIMUM of \$ 3022.50.

<b>Mortgages/Taxes/Property Insurance</b>	\$2728.61
<b>Standard Utility Allowance</b>	\$ 698.00
<b>Total shelter costs:</b>	<u>\$ 3426.61</u>
<b>Shelter Costs:</b>	\$3426.61
<b>Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two (\$2,002.50)]</b>	-600.75
<b>Excess shelter costs:</b>	\$2825.86
<b>Plus 150% of the FPL for two:</b>	\$2002.50
<b>Equals the MMNA</b>	\$4828.36
<b>Maximum MMNA</b>	\$3022.50

25. 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.

Maximum MMNA	\$ 3022.50
<b>Community Spouse's Income – minus</b>	\$ 3186.98
<b>Community Spouse Allowance</b>	\$ 0.00

**The Department correctly determined the Appellant's monthly applied income of \$0.00. (\$1660.50 - \$1720.50 [ \$1660.50 + \$60 PNA + \$0.00 CSA]).**

### **DISCUSSION**

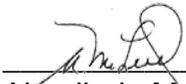
After reviewing the evidence and testimony presented at this hearing, the Department was correct in the determination of the Appellant's Applied income.

The Appellant had reported her [REDACTED] pension when she first applied for Long Term care assistance, however, for reasons unknown, the Department did not factor the pension in its initial determination of the applied income. The Department's action to add the [REDACTED] pension of \$694.50 per month and the removal of medical insurance premium of \$222.25 were factored into the new calculation of the applied income resulting in an applied income of \$1600.50.

The Department miscalculated the CS's [REDACTED] monthly pension income by \$25.00. The gross pension should have been \$156.00, instead they counted \$181.00 (\$156+\$25.00). However, the income error did not alter the outcome since the CS's income of \$3186.98 exceeded the Maximum MMNA of \$3022.50; thus his CSA resulted in \$0.00. The Department's Applied Income calculation is upheld.

### **DECISION**

The Appellant's appeal is DENIED.

  
\_\_\_\_\_  
Almelinda McLeod  
Hearing Officer

CC: Lisa Wells, SSOM New Haven Regional Office  
Brian Sexton, SSOM New Haven Regional Office  
Cheryl Stuart, SSPM New Haven Regional Office  
Olga Ivenskaya, Fair Hearing Liaison, Stamford Regional Office

### **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 or law, 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 Legal Counsel, Regulations, and Administrative Hearings, 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 his 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.