

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
25 SIGOURNEY STREET  
HARTFORD, CT 06106-5033

██████████ 2013  
Signature Confirmation

Client ID # ██████████  
Request #525969

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") granting his application for long-term care and advising him of the amount of applied income that he must pay toward his cost of his care.

On ██████████ 2013, the Appellant requested an administrative hearing to contest the Department's calculation of the applied income amount.

On ██████████ 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for ██████████ 2013.

On ██████████ 2013, OLCRAH issued a notice rescheduling the Appellant's hearing to ██████████ 2013.

On ██████████ 2013, 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/Representative  
Paul Chase, Department's Representative  
Pamela J. Gonzalez, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue is whether the Department has correctly calculated the amount of applied income that the Appellant is responsible to pay to the facility for the cost of his care.

### **FINDINGS OF FACT**

1. On [REDACTED], 2013, the Appellant entered Kindred Care's Parway Pavillion. (Hearing record)
2. On [REDACTED] 2013, the Department granted the Appellant's application for long-term care Medicaid effective [REDACTED] 2013. (Hearing record)
3. The Appellant's monthly short-term care insurance income in [REDACTED] 2013 and [REDACTED] 2013 totaled \$9,338.39. (Earnings Statement – Department's exhibit F)
4. The Appellant's monthly long-term care insurance income effective [REDACTED] 2013 totaled \$6,408.13. (Department's exhibit F)
5. The Appellant's spouse lives in the community with their two minor children, ages [REDACTED]. (Community Spouse's testimony, Hearing record)
6. The Appellant's Community Spouse is employed with [REDACTED]. Her average gross earnings total \$1,272.42 per month. (Wage stubs – Department's exhibit D, Community Spouse's testimony)
7. The Community Spouse pays a monthly mortgage in the amount of \$2,323.55. (CitiMortgage account statement – Department's exhibit E, Community Spouse's testimony)
8. On [REDACTED] 2013, the Department granted the Appellant's application for long-term care Medicaid and determined that the applied income owing to the facility totaled \$6,391.97 for [REDACTED] 2013, \$6,391.97 for [REDACTED] 2013, and \$3,461.71 per month effective [REDACTED] 2013. (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 states, assistance units who are residents of Long Term Care Facilities ("LTCF") or receiving community based services ("CBS") 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) (1) discusses the amount of income to be contributed in LTCF cases at initial calculation and states that 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. The Department correctly determined that the Appellant's monthly gross income in █████ 2013 and █████ 2013 was \$9,338.39.
5. The Department correctly determined that the Appellant's monthly gross income effective █████ 2013 was \$6,408.13.
6. 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.
7. 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. Currently the PNA totals \$60.00.
8. UPM § 5035.25 (B) (2) provides a monthly deduction for LTFC units of a Community Spouse Allowance ("CSA"), when appropriate; (Cross Reference 5035.30)
9. UPM § 5035.30 B (1) (a) (b) provides that the calculation of the CSA is equal to the greater of the following: the difference between the Minimum Monthly Needs Allowance ("MMNA") and the community spouse gross monthly income; or the amount established pursuant to court order for the purpose of providing necessary spousal support.
10. UPM § 5035.30 B (2) (a) (b) provides that the MMNA is the amount which is equal to the sum of the amount of the community spouse's excess shelter costs as calculated in section 5035.30 B. 3. and 150 percent of the monthly poverty level for a unit of two persons.
11. UPM § 5035.30 B (3)(4)(a)(b)(c)(d)(e) provides that 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. The community spouse's monthly shelter cost includes: rental cost or mortgage payments, including principle and interest; real estate

taxes; real estate insurance; required maintenance fees charged by condominiums or cooperatives except those amounts for utilities and the Standard Utility Allowance ("SUA") used in the SNAP program for the community spouse.

12. UPM § 5035.30 B (5) (a) (b) provides that the MMNA may not exceed the greatest of either the maximum MMNA or an amount established through a Fair Hearing. The maximum MMNA was \$2,898.00 effective January 2013.
13. The Appellant's Community Spouse's monthly shelter costs for CSA purposes total \$2,991.55. (\$2,323.55 mortgage + \$668.00 standard utility allowance)
14. 30% of 150% of the Federal Poverty Level for two persons totals \$567.38.
15. The Appellant's Community Spouse's excess shelter costs total \$2,424.17. (\$2,991.55 shelter costs - \$567.38 30% of \$1,891.25 or 150% of the Federal Poverty Level for two persons)
16. The Community Spouse's minimum monthly needs allowance is \$2,898.00.
17. UPM § 5025.05 (B) (2) (a) (b) provides that if income is received on other than a monthly basis, the estimate of income is calculated by multiplying 4.3 by a representative weekly amount that is determined as follows: if income is the same each week, the regular weekly income is the representative weekly amount; if income varies from week to week, a representative period of at least four consecutive weeks is averaged to determine the representative weekly amount.
18. The Department correctly determined that the Community Spouse's monthly gross income was \$1,272.42.
19. The CSA totals \$1,625.58 per month. (\$2,898.00 MMNA - \$1,272.42 earned income)
20. UPM § 5035.35(A) (1) (a) (b) provides that the Community Family Allowance ("CFA") is used as an income deduction in the calculation of the post-eligibility applied income of an institutionalized spouse ("IS") when any of the following individuals are living with the community spouse ("CS"): a minor child of either spouse; or a child, parent, or sibling who is a legal tax dependent of either spouse. (Cross Reference: 5035.25)
21. UPM § 5035.35(B) provides that the Department calculates the CFA deduction of each eligible family member by: 1. subtracting the gross monthly income of each eligible family member from 150 percent of the monthly poverty level for a unit of two persons; and 2. multiplying the result of Step 1 by 33 1/3%.

22. The Appellant is entitled to a CFA in the amount of \$630.42 for each of his two minor children. (\$1,891.25 150% of the Federal Poverty Level for two persons x 33 1/3%)
23. UPM § 1570.25 D (3) (a) (1) (2) (3) (b) (1) (2) (3) provides that the Fair Hearing official increases the community spouse's MMNA previously determined by the Department if either MCCA spouse establishes that 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. Exceptional circumstances are those that are severe and unusual and that: prevent the community spouse from taking care of his or her activities of daily living; or directly threaten the community spouse's ability to remain in the community; or involve the community spouse's providing constant and essential care for his or her disabled child, sibling or other immediate relative (other than institutionalized spouse). Significant financial duress is an expense or set of expenses that: directly arises from the exceptional circumstances described in subparagraph a above; and is not already factored into the MMNA; and cannot reasonably be expected to be met by the community spouse's own income and assets.
24. UPM § 1570.25 D (3) (c) (1) (2) (3) (4) (5) (6) (7) 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: shelter costs such as rent or mortgage payments; utility costs; condominium fees; real estate and personal property taxes; real estate, life and medical insurance; expenses for the upkeep of a home such as lawn maintenance, snow removal, replacement of a roof, furnace or appliance; medical expenses reflecting the normal frailties of old age.
25. UPM § 1570.25 D (3) (d) provides that in order to increase the MMNA, the Fair Hearing official must find that the community spouse's significant financial duress is a direct result of the exceptional circumstances that affect him or her.
26. The Appellant's spouse did not demonstrate she has exceptional circumstances.
27. The Appellant's applied income in █████ 2013 was \$6,391.97. (\$9,338.39 - \$60.00 PNA - \$1,625.58 CSA - \$1,260.84 CFA x 2).
28. The Appellant's applied income in █████ 2013 was \$6,391.97. (\$9,338.39 - \$60.00 PNA - \$1,625.58 CSA - \$1,260.84 CFA x 2).
29. The Appellant's monthly applied income effective █████ 2013 was \$3,461.71. (\$6,408.13 - \$60.00 PNA - \$1,625.58 CSA - \$1,260.84 CFA x 2).

30. The Department correctly determined the amount of applied income the Appellant owes to the facility.

### **DISCUSSION**

The Community Spouse presented a spread sheet that shows her everyday expenses. She feels that the amount of applied income owing to the facility for her husband is too high to sustain her and her minor children in the community.

I have reviewed the facts of this case and the Department's calculations and I find no error.

The maximum MMNA is \$2898.00. In order to receive an amount above \$2,898.00 in the calculation, there must be exceptional circumstances as outlined in UPM § 1570.25. While the Appellant's monthly expenses are high, they do not meet the exceptional circumstances criteria.

The Appellant's Community Spouse testified that she carries medical insurance for her husband. The Department's representative stated that it would look into whether the cost of his premium can be used as a deduction in determining the amount of applied income owing to the facility and that the Department would update calculations as appropriate. The Community Spouse is reminded to verify the cost of private medical insurance for her husband if she has not already done so.

### **DECISION**

The Appellant's appeal is **DENIED**.

*Pamela J. Gonzalez*

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Pamela J. Gonzalez  
Hearing Officer

Electronic copy: John Hesterberg, Operations Manager, R.O. #11, Manchester

### **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, 25 Sigourney Street, Hartford, CT 06106.

### **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, 25 Sigourney Street, Hartford, CT 06106. 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.

