

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
25 SIGOURNEY STREET  
HARTFORD, CT06106-5033

REQUEST #550377

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

CLIENT ID # ██████████

NOTICE OF DECISION

PARTIES

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PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department" or "DSS") sent ██████████ (the "Appellant" and "Institutionalized Spouse") a Notice of Approval granting the Appellant's application for medical assistance, effective ██████████ 2012. The notice stated that the amount that the Appellant must pay towards the cost of his care is \$1,493.67 per month, effective ██████████ 2012.

On ██████████ 2013, the Appellant's representative and Community Spouse, ██████████ requested an administrative hearing to seek an increase in the Community Spouse Allowance ("CSA") as determined by the Department.

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

On ██████████ 2013, in accordance with Connecticut General Statutes § 17b-60, § 17b-61 and § 4-176e to § 4-184, inclusive, OLCRAH held an administrative hearing to address the amount of the CSA as determined by the Department.

The following individuals were present at the hearing:

██████████, Appellant's Rep./ Community Spouse  
██████████, Appellant's son/Witness  
Mark Yeomans, Department's Representative  
Hernold C. Linton, Hearing Officer

## **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Community Spouse ("CS") needs income diverted from the Institutionalized Spouse ("IS") to meet her calculated Minimum Monthly Needs Allowance ("MMNA"), due to exceptional circumstances causing significant financial duress.

## **FINDINGS OF FACT**

1. On [REDACTED] 2011, the Appellant/IS became a resident of the West Hartford Health & Rehab. Center, which is a long-term care facility ("LTCF"). (Hearing Summary)
2. The Appellant's spouse resides in the community. (Hearing Summary)
3. On [REDACTED] 2012, the Department received the Appellant's application for Medicaid coverage to pay for his long-term care ("LTC"). (Hearing Summary; Dept.'s Exhibit #7: [REDACTED]/13 Notice of Action)
4. On [REDACTED] 2012, the Department granted the Appellant Medicaid effective [REDACTED] 2012 to pay for his LTC. (Hearing Summary, Dept.'s Exhibit #8: Applied Income Letter)
5. The Department determined that the Community Spouse is eligible for a CSA of \$1,788.40 per month, effective [REDACTED] 2012 to meet her needs. (Hearing Summary; Dept.'s Exhibit #6: Community Spouse Allowance Calculation)
6. The Community Spouse is seeking an increase in the MMNA to cover additional monthly expenses (car tax, insurance premiums, co-pays, and deductibles). (Community Spouse's Testimony)
7. The Community Spouse is not seeking an increase in the Community Spouse Protected Amount ("CSPA"). (Community Spouse's Testimony)
8. Effective [REDACTED] 2012, the Community Spouse has monthly shelter costs of \$1,993.00, (\$1,325.00, monthly rent; plus \$668.00, Standard Utility Allowance). (Dept.'s Exhibit #6)
9. Effective [REDACTED] 2012, the Community Spouse has excess monthly shelter costs of \$1,411.37, (\$1,993.00, shelter costs; minus \$581.63, 30% of \$1,938.75, 150% of the Federal Poverty Level for two persons as of [REDACTED]/13). (Dept.'s Exhibit #6)
10. Effective [REDACTED] 2012, the Community Spouse has a calculated MMNA of \$3,350.12, (\$1,411.37, excess shelter costs; plus \$1,938.75, 150% of the Federal Poverty Level for two persons as of [REDACTED]/13). (Dept.'s Exhibit #6)

11. Effective [REDACTED] 2013, the MMNA is capped at \$2,898.00. (Dept.'s Exhibit #6)
12. Effective [REDACTED] 2012, the Community Spouse received \$1,109.60 in monthly gross Social Security ("SSA") benefits. (Dept.'s Exhibit #6)
13. Effective [REDACTED] 2012, the Community Spouse's monthly income of \$1,106.60 was insufficient to meet her MMNA of \$2,898.00. (See Facts # 1 to 12; Dept.'s Exhibit #6)
14. Effective [REDACTED] 2012, the Community Spouse's calculated monthly income deficit or Community Spouse Allowance ("CSA") was \$1,788.40 (\$2,898.00, MMNA; minus \$1,109.60, Community Spouse's income). (See Facts # 1 to 13; Dept.'s Exhibit #6)
15. The Community Spouse is afflicted with reduced vision, diabetes, and high blood pressure. However, she is able to complete her activities of daily living ("ADL's"). (Community Spouse's Testimony)
16. The Community Spouse claimed that her medications are very expensive and that she has to prepare meals and bring to her spouse at the facility because he will not eat the food provided by the facility, which is causing her significant financial duress. (Community Spouse's Testimony)
17. The additional expenses claimed by the Appellant as causing significant financial duress are not recurring monthly expenses for receiving essential services to assist her with her activities of daily living and to enable her to remain in the community. (See Facts # 1 to 16; Community Spouse's Testimony)

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Uniform Policy Manual ("UPM") § 1570.25(D)(3) provides that the 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.
3. UPM § 1570.25(D)(3)(a) provides that 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's providing constant and essential care for his or her disabled child, sibling or other immediate relative (other than institutionalized spouse).
4. UPM § 1570.25(D)(3)(b) provides that significant financial duress is an expense or set of expenses that:
  - (1) directly arises from the exceptional circumstances described in subparagraph a above; and
  - (2) is not already factored into the MMNA; and
  - (3) cannot reasonably be expected to be met by the community spouse's own income and assets.
5. UPM § 1570.25(D)(3)(c) provides that 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 removal, replacement of a roof, furnace or appliance;
  - (7) medical expenses reflecting the normal frailties of old age.
6. 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.
7. The Community Spouse does not have exceptional circumstances that are severe and unusual circumstances as such that prevent her from taking care of her activities of

daily living or directly threaten the community spouse's ability to remain in the community.

8. Because the Community Spouse does not have exceptional circumstances, the additional expenses (car tax, insurance premiums, co-pays, and deductibles) that she claimed as causing her significant financial duress could not be considered.
9. The Community Spouse is not eligible for an increase in her MMNA due to exceptional circumstances resulting in significant financial duress.
10. UPM § 5035.30(B) provides for the calculation of the Community Spouse Allowance ("CSA") and MMNA and states:

B. Calculation of CSA

1. The CSA is equal to the greater of the following:
  - a. the difference between 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.
2. The MMNA is that amount which is equal to the sum of:
  - a. the amount of the community spouse's excess shelter cost as calculated in section 5035.30 B.3.; and
  - b. 150 percent of the monthly poverty level for a unit of two persons.
3. The community spouse's excess shelter cost 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.
4. The community spouse's monthly shelter cost includes:
  - a. rental costs 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 (“SNAP”) program is used for the community spouse.
11. Effective [REDACTED] 2012, the Community Spouse has monthly shelter costs of \$1,993.00, (\$1,325.00, monthly rent; plus \$668.00, Standard Utility Allowance).
  12. Effective [REDACTED] 2012, the Community Spouse has excess monthly shelter costs of \$1,411.37, (\$1,993.00, shelter costs; minus \$581.63, 30% of \$1,938.75, 150% of the Federal Poverty Level for two persons as of [REDACTED]/13).
  13. Effective [REDACTED] 2012, the Community Spouse has a calculated MMNA of \$3,350.12, (\$1,411.37, excess shelter costs; plus \$1,938.75, 150% of the Federal Poverty Level for two persons as of [REDACTED]/13).
  14. Effective [REDACTED] 2013, the maximum MMNA allowed is \$2,898.00.
  15. Effective [REDACTED] 2012, the Community Spouse's calculated monthly income deficit or CSA was \$1,788.40 (\$2,898.00, maximum MMNA allowed; minus \$1,109.60, Community Spouse's income).
  16. UPM § 5035.25 provides that for resident of long term care facilities (LTCF) and those individuals receiving community-based services (CBS) when the individual has a spouse living in community, total gross income is adjusted by certain deductions to calculate the amount of income which is to be applied to the monthly cost of care.
  17. UPM § 5035.25(B) provides that the following monthly deductions are allowed from the income of assistance units in LTCF's:
    - a. a personal needs allowance (“PNA”) of \$69.00, which, effective July 1, 2009 and annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration;
    - b. Community Spouse Allowance (CSA), when appropriate; (Cross Reference 5035.30)
    - c. a Community Family Allowance (CFA), when appropriate; (Cross Reference 5035.35)
    - d. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for the Department or any other third party;
  18. As of [REDACTED] 2012, the Community Spouse's total income is insufficient to

meet her needs in the community.

19. Effective [REDACTED] 2012, the Community Spouse is eligible to receive a monthly diversion of the Institutionalized Spouse's income of \$1,788.40 as her MMNA exceeds her total monthly gross income.
20. The Department correctly determined the Appellant/Institutionalized Spouse as eligible for medical assistance under the Medicaid program, effective [REDACTED] 2012.

### DISCUSSION

The Department acted correctly in its determination of the Appellant's eligibility. However, the regulations allow the Hearing Officer to increase the MMNA if it has been established that the Community Spouse's significant financial duress is a direct result of exceptional circumstances. In this case, the additional expenses claimed by the Community Spouse is not a direct result of exceptional circumstances as defined in the regulation.

The Community spouse's calculations of her monthly expenses overstated the actual amount allowed in the calculation of her MMNA. She claimed that she has exceptional circumstances resulting in significant financial duress and that her calculated MMNA was insufficient to meet her needs in the community. However, the undersigned finds that the Community Spouse's additional expenses are not due to exceptional circumstances. She is able to take care of her activities of daily living with without assistance. Additionally, the Community Spouse's high shelter costs and insurance premiums are not exceptional expenses that are unique to her. They are expenses that everyone residing in the community has to pay regardless of whether or not they have an institutionalized spouse.

### DECISION

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



Hernold C. Linton  
Hearing Officer

### **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 Administrative Hearings and Appeals, 25 Sigourney Street, Hartford, CT 06106-5033.

### **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, CT06106. 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.