

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

██████████ 2014
Signature Confirmation

Client ID # ██████████
Request # 581631

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") regarding the amount of applied income he must pay toward the cost of his long term care.

On ██████████ 2014, the Appellant's Power of Attorney, ██████████ (the "POA") requested an administrative hearing to contest the Department's calculation of the applied income amount.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████ 2014.

On ██████████, 2014, 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's wife and Power of Attorney ("POA")
██████████, Appellant's daughter
Barbara Brunner, Department's Representative
Thomas Monahan, Hearing Officer

The hearing record was held open for the submission of additional evidence. On ██████████ 2014, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's calculation of the applied income that must be paid to the convalescent from █████ 2013 to █████ 2014 is correct.

FINDINGS OF FACT

1. The Appellant is a recipient of Medicaid Long Term Care assistance. (Hearing record)
2. The Appellant is a resident of Bethe Health Care. (Exhibit 3: Redetermination form, █████/14)
3. The Appellant's spouse lives in the community. (Exhibit 3: Redetermination form, █████/14)
4. The Appellant's spouse receives a Community Spouse Allowance ("CSA"). (CSA calculation)
5. In 2013, the Appellant received gross monthly Social Security benefits of \$1,533.90. In 2014, the Appellant receives gross monthly Social Security benefits of \$1,556.90. (Hearing record, Ex's. 4 and 8: Unearned income screens)
6. In 2013 and 2014 the Appellant received a gross monthly pension of \$2,393.39. (Hearing record, Ex's. 4 and 8: Unearned income screens)
7. The total gross monthly income for the Appellant in 2013 was \$3,927.29. The total gross monthly income for the Appellant in 2014 is \$3,950.29. (Facts 5 and 6)
8. The Appellant has \$104.90 deducted monthly from his Social Security benefit for his Medicare Part B premium. (Ex. 6: █████ 14 Institution screen)
9. In 2013, the Appellant paid a monthly private medical insurance premium of \$138.45. In 2014, the Appellant pays a monthly private medical insurance premium of \$163.07. (Ex. 7: █████ 13 Institution screen, Ex. 13: Pension statements)
10. In 2013, the Appellant's spouse received monthly gross Social Security benefits of \$734.90. In 2014 the Appellant's spouse received monthly gross Social Security benefits of \$746.90 (Hearing record, Ex. 4: Unearned income screen)

11. The Community Spouse paid a monthly mortgage of \$175.21 in 2013. The Appellant pays a monthly mortgage of \$175.69 effective [REDACTED] 2014. (Ex. 11: CSA calculation 2013, Ex. 15: CSA calculation 2014)
12. In 2013 the monthly property taxes for the community spouse were \$625.34. In 2014 the monthly property taxes for the Community spouse are \$647.25. (Ex. 11: CSA calculation 2013, Ex. 15: CSA calculation 2014)
13. In 2013 the community spouse paid monthly homeowners insurance of \$83.83. In 2014 the community spouse's homeowners insurance is \$108.28 monthly. (Ex. 11: CSA calculation, 2013, Ex. 15: CSA calculation 2014)
14. The Department determined that the community spouse's monthly minimum needs allowance for [REDACTED] 2013 through [REDACTED] 2013 was \$2,841.00. (Ex. 11: CSA calculation, 2013)
15. The Department determined that the community spouse's monthly minimum needs allowance for [REDACTED] 2014 through [REDACTED] 2014 was \$2,931.000. (Ex. 15: CSA calculation, 2014)
16. The Department determined that the CSA for [REDACTED] 2013 through [REDACTED] 2013 was \$2,106.10 [\$2,841 MMNA - \$734.90 income]. (Ex. 11: CSA calculation, 2013)
17. The Department determined that the CSA for [REDACTED] 2014 through [REDACTED] 2014 was \$2,184.10 [\$2,931 MMNA - \$746.90 income]. (Ex. 11: CSA calculation, 2013)
18. The Department determined that the Appellant's applied income for [REDACTED] 2013 through [REDACTED] 2013 was \$1,517.84. (Ex. 12: MAFI screens)
19. The Department determined that the Appellant's applied income for [REDACTED] 2014 through [REDACTED] 2014 was \$1,438.22. (Ex. 16: MAFI screens)

CONCLUSIONS OF LAW

1. Section 17b-2, section (9) of the Connecticut General Statutes, designates the Department of Social Services as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Regulation provides that 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. Uniform Policy Manual ("UPM") § 5045.20

3. Regulation provides that the recalculation of the amount to be contributed in any six month period is required under the following conditions: a. a significant change occurs in income which amounts to an increase or decrease in monthly income of \$15.00 or more per month; or b. a change occurs, in any amount in any deduction. UPM § 5045.20(B)
4. Regulation 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) (a)
5. Regulation provides for the amount of income to be contributed in LTCF cases and states that Total gross income is reduced by post-eligibility deductions (Cross reference: 5035-"Income Deductions") to arrive at the amount of income to be contributed. UPM § 5045.20(B)(1)(b)
6. UPM § 5035.25 provides that for residents 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.

A. Durational Use of Deductions

The deductions described below are subtracted from income:

1. beginning with the month in which the 30th day of continuous LTCF care or the receipt of community-based services occurs; and
2. ending with the month in which the unit member is discharged from the LTCF or community-based services are last received.

B. Deductions For LTCF Units

The following monthly deductions are allowed from the income of assistance units in LTCF's:

1. 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; (note: the current PNA is \$60.00)
2. a Community Spouse Allowance ("CSA"), when appropriate; (Cross Reference 5035.30)
3. a Community Family Allowance ("CFA"), when appropriate; (Cross Reference 5035.35)

4. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for the Department or any other third party;
5. costs for medical treatment approved by a physician which are incurred subsequent to the effective date of eligibility and which are not covered by Medicaid;
6. expenses for services provided by a licensed medical provider in the six month period immediately preceding the first month of eligibility providing the following conditions are met:
 - a. the expenses were not for LTCF services, services provided by a medical institution equivalent to those provided in a long term care facility, or home and community-based services, when any of these services were incurred during a penalty period resulting from an improper transfer of assets; and
 - b. the recipient is currently liable for the expenses; and
 - c. the services are not covered by Medicaid in a prior period of eligibility.
7. The Department correctly allowed for the deduction of the personal needs allowance, Medicare premiums, health insurance, and a community spouse allowance.
8. 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.UPM §5035.30(B)(1)
9. 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.UPM § 5035.30(B)(2)
10. 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. UPM § 5035.30(B)(3)
11. 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. Standard Utility Allowance (SUA) used in the FS program for the community spouse
- UPM § 5035.30(B)(4)

12. Regulation 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 for October 2013 was \$2,898.00. The maximum MMNA for January 2014 is \$2,931.00. UPM § 5035.30
13. The Department determined the CSA for [REDACTED] 2013 through [REDACTED] 2013 as follows.

	AMOUNT
Shelter Costs:	
Mortgage / Rent	\$175.21
Property Taxes	\$625.34
Property Insurance	\$83.83
Standard Utility Allowance	<u>+\$668.00</u>
Total shelter costs:	\$1,552.38
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$567.38</u>
Excess shelter costs:	\$985.01
Plus 150% of the FPL for two:	<u>+\$1,891.25</u>
Equals the MMNA	\$2,876.25
Maximum MMNA	(\$2,841.00)
Community Spouse's Income	<u>-\$734.90</u>
Community Spouse Allowance	\$2,106.10

14. The Department incorrectly calculated the Appellant's MMNA and CSA for [REDACTED] 2013 through [REDACTED] 2013.
15. The correct CSA calculation for [REDACTED] 2013 through [REDACTED] 2013 is as follows:

	AMOUNT

Shelter Costs:	
Mortgage / Rent	\$175.21
Property Taxes	\$625.34
Property Insurance	\$83.83
Standard Utility Allowance	<u>+\$694.00</u>
Total shelter costs:	\$1,578.38
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$567.38</u>
Excess shelter costs:	\$1,011.00
Plus 150% of the FPL for two:	<u>+\$1,891.25</u>
Equals the MMNA	\$2,902.25
Maximum MMNA	(\$2,898.00)
Community Spouse's Income	<u>-\$734.90</u>
Community Spouse Allowance	\$2,163.10

The correct CSA of \$2,163.10 includes a Standard Utility Allowance of \$694.00 effective [REDACTED] 2013 and a maximum MMNA of \$2898.00.

16. The Department correctly determined the CSA for [REDACTED] 2014 through [REDACTED] 2014 as follows.

	AMOUNT
Shelter Costs:	
Mortgage / Rent	\$175.69
Property Taxes	\$647.25
Property Insurance	\$108.25
Standard Utility Allowance	<u>+\$694.00</u>
Total shelter costs:	\$1,625.19
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$581.63</u>
Excess shelter costs:	\$1,043.56
Plus 150% of the FPL for two:	<u>+\$1,938.75</u>

Equals the MMNA	\$2,982.31
Maximum MMNA	(\$2,931.00)
Community Spouse's Income	<u>-\$746.90</u>
Community Spouse Allowance	\$2,184.10

17. The Department incorrectly determined that the Appellant's applied income for [REDACTED] 2013 through [REDACTED] 2013 was \$1,517.84. The correct applied income for [REDACTED] 2013 through [REDACTED] 2013 is 1,460.84 (\$3,927.29 [total gross income] - \$60 [PNA] - \$243.35 [Medicare B and medical insurance premium] - \$2,163.10 [Community Spouse Allowance])
18. The Department correctly determined that the Appellant's applied income for [REDACTED] 2014 through [REDACTED] 2014 is \$1,438.22 (3,950.29 - \$60 [PNA] - \$267.97 [Medicare B + medical insurance] - \$2,184.10 [Community Spouse Allowance])

DECISION

The Appellant's appeal is **GRANTED** for [REDACTED] 2013 through [REDACTED] 2013 and **DENIED** for [REDACTED] 2014 through [REDACTED] 2014.

ORDER

1. The Department will recalculate the applied income for the months of [REDACTED] 2013 through [REDACTED] 2013 with the correct Standard Utility Allowance and MMNA.
2. Compliance with this order is due to the undersigned within 15 days of the date of this decision.

Thomas Monahan

Thomas Monahan
Hearing Officer

Pc: Carol Sue Shannon, Operations Manager, Danbury 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 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, 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 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.