

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

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

Client ID # ██████████
Request # 623454

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") issued ██████████ (the "Appellant") a notice of action ("NOA") granting the Appellant's application for Medicaid under the Long Term Care ("LTC") Program effective ██████████ 2014. The notice stated the amount that the Appellant must pay towards the cost of his care is \$1,898.44 per month beginning ██████████ 2014.

On ██████████ 2014, ██████████ (the "Appellant's Spouse") 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
Ellen Croll, Department Representative
Lisa Nyren, Hearing Officer

The record remained open for the submission of additional evidence. On [REDACTED] 2014, the record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department has correctly calculated the amount of applied income that the Appellant is responsible to pay toward the cost of his long-term care was correct.

FINDINGS OF FACT

1. On [REDACTED] 2013, the Appellant entered the long-term care facility. (Hearing Summary)
2. The Appellant remains at the facility. (Hearing Record)
3. The Appellant's Spouse resides in the community. (Hearing Record)
4. On [REDACTED] 2104, the Department received an application for Medicaid under the LTC program. (Hearing Summary)
5. On [REDACTED] 2014, the Department granted Medicaid under the LTC program effective [REDACTED] 2014. (Hearing Summary)
6. The Appellant's Spouse works for [REDACTED] (the "employer") full time earning \$25.57 per hour. The Appellant received the following bi-monthly paychecks: Check date [REDACTED] 2014 \$2,266.15, Check date [REDACTED] 2014 \$2,240.58, Check date [REDACTED] 2014 \$2,358.83 and Check date [REDACTED] 2014 \$2,378.04. (Appellant's Spouse's Testimony, Exhibit 4: Employee Paystubs [REDACTED]/14 & [REDACTED]/14 and Exhibit C: Employee Paystubs [REDACTED]/14 & [REDACTED]/14)
7. The Appellant's spouse pays for employer sponsored dental insurance for herself and the Appellant of \$72.20 bi-monthly. (Appellant's Spouse Testimony, Exhibit 4: Employee Paystubs [REDACTED]/14 & [REDACTED]/14 and Exhibit C: Employee Paystubs [REDACTED]/14 & [REDACTED]/14)
8. The Appellant's spouse pays for employer sponsored vision plan for herself and the Appellant of \$7.08 bi-monthly. (Appellant Spouse's Testimony, Exhibit 4: Employee Paystubs [REDACTED]/14 & [REDACTED]14 and Exhibit C: Employee Paystubs [REDACTED]/14 & [REDACTED]/14)

9. The Appellant's Spouse pays for employer sponsored health insurance for herself of \$34.00 bi-monthly. (Appellant Spouse's Testimony, Exhibit 4: Employee Paystubs ■■■/14 & ■■■/14 and Exhibit C: Employee Paystubs ■■■/14 & ■■■/14)
10. The Appellant's Spouse participates in an employer sponsored health savings account with a deduction of \$52.28 bi-monthly. (Appellant Spouse's Testimony, Exhibit 4: Employee Paystubs ■■■/14 & ■■■/14 and Exhibit C: Employee Paystubs ■■■/14 & ■■■/14)
11. The Appellant receives gross Social Security Benefits ("SSA") of \$1,671.90 per month. (Exhibit 1: SSA Notification ■■■14, Exhibit D: SSA Notification ■■■/14 and Department Representative's Testimony)
12. The Appellant pays Medicare Part B ("Part B") premium of \$104.90 monthly. (Hearing Summary)
13. The Appellant pays Medicare Advantage Plan ("Part C") premium of \$88.40 monthly. (Hearing Summary)
14. The Appellant pays Prescription Drug Plan ("Part D") premium of \$48.60 monthly. (Hearing Summary)
15. Beginning ■■■2014, the Part D monthly premium changed to \$20.60 per month. (Exhibit D: SSA Notification 7/30/14)
16. The Appellant receives two pensions from John Hancock Life Insurance totaling \$607.72 per month based on 2013 yearly gross distributions of \$6,756.12 and \$536.52. (Exhibit 2: 1099-R 2013)
17. The Appellant's Spouse has a monthly mortgage payment of \$1,779.18, which includes real estate taxes and homeowners insurance. (Appellant's Spouse's Testimony, Exhibit 5: Mortgage Statement ■■■/14 and Exhibit E: Mortgage Statement ■■■/14)
18. The Appellant's Spouse pays for the utilities in her home including electricity, water, heating, cable, internet, and phone. (Appellant's Testimony and Exhibit E: Utility Expenses)
19. The Appellant's Spouse pays a monthly car payment and car insurance payment. (Appellant's Testimony)
20. The Appellant's Spouse has monthly shelter costs of \$2,473.18. [\$1,779.18 mortgage + \$694.00 standard utility allowance = \$2,473.18] (Exhibit 3: Community Spouse Allowance Calculation)

21. The Department determined the Appellant has monthly excess shelter costs of \$1,891.56. [\$2,473.18 shelter costs – \$581.63 30% of \$1,938.75 = \$1,891.56] (Exhibit 3: Community Spouse Allowance Calculation)
22. On [REDACTED] 2014, the Department determined the monthly CSA as \$00.00 as her income exceeds the Minimum Monthly Needs Allowance. (Exhibit 3: Community Spouse Allowance Calculation)
23. On [REDACTED] 2014, the Department granted Medicaid under the LTC program effective [REDACTED] 2014. (Hearing Summary, Exhibit A: NOA [REDACTED]/14 and Exhibit B: NOA [REDACTED]/14)
24. On [REDACTED] 2014, the Department determined the Appellant must pay \$1,898.44 toward his cost of care effective [REDACTED] 2014 and issued two notices to the Appellant's Spouse. The notices stated the Department granted Medicaid effective [REDACTED] 2014 that includes a three-month retroactive period and that the Appellant must pay \$1,898.44 toward his cost of care beginning [REDACTED] 2014. (Hearing Summary, Exhibit A: NOA [REDACTED]/14 and Exhibit B: NOA [REDACTED] 14)

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") § 5035.30 provides for the regulations of the Community Spouse Allowance ("CSA").
 - A. Use of Community Spouse Allowance
 1. 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. (Cross Reference § 5035.25)
 2. For the purpose of using a CSA, the Department considers a CS to include a spouse receiving home and community based services under a Medicaid waiver.
 - B. Calculation of CSA
 1. 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.
 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 % 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 % 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. Standard Utility Allowance (SUA) used in the FS program for the community spouse.
 5. The MMNA may not exceed the greatest of either:
 - a. The maximum MMNA; or
 - b. An amount established through a Fair Hearing.
3. Effective [REDACTED] 2014, the maximum MMNA allowed is \$2,931.00.
 4. The Federal Register Volume 79, No. 14 Notice dated January 22, 2014 provides for the 2014 Federal Poverty Guidelines for a household of two as \$15,730 annual income.
 5. The Department incorrectly calculated 150% of the Federal Poverty Level ("FPL") as 1,938.75. The correct amount is \$1,966.50. ($\$15,730 \text{ annual FPL} / 12 \text{ months} = \$1,311.00 \text{ monthly FPL}$. $\$1,311.00 \times 150\% = \$1,966.50$)
 6. Effective October 1, 2014, the standard utility allowance is \$694.00.
 7. The Department correctly determined the CS monthly gross income as \$4,506.73. ($\$2,266.15 \text{ [REDACTED]} / 14 + \$2,240.58 \text{ [REDACTED]} / 14 = \$4,506.73$)
 8. The Department correctly calculated the CS shelter costs as \$2,473.18. ($\$1,779.18 \text{ mortgage} + 694.00 \text{ SUA} = \$2,473.18$)
 9. The Department incorrectly calculated 30% of the 150% FPL for 2 as \$581.63. The correct amount is: \$589.95. ($\$1,966.50 \times 30\% = \589.95)
 10. The Department incorrectly calculated the CS excess shelter costs as 1,891.56. The correct amount is \$1,883.23. ($\$2,473.18 \text{ shelter costs} - \$589.95 \text{ 30\% of 150\% of FPL} = \$1,883.23 \text{ excess shelter costs}$)

11. The Department correctly calculated the Appellant's MMNA as \$2,931.00. (\$1,883.23 excess shelter costs + \$1,966.50 150% of FPL = \$3,849.73, maximum allowed \$2,931.00)
12. The Department correctly calculated the Appellant's CSA as \$00.00 per month after subtracting the MMNA from her monthly income. (\$2,931.00 MMNA - \$4,506.73 CS monthly gross income = \$00.00)
13. UPM § 1570.25(D)(3) provides that the hearing official increases the community spouse's MMNA previously determined by the Department if either MCCA spouse established 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.
 - 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's 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 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.
 - c. 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.
 - d. In order to increase 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.

14. The Appellant's Spouse's situation does not meet the criteria for exceptional circumstances as her monthly household expenses are already factored into the MMNA.
15. UPM § 5045.20 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.
16. UPM § 5045.20(B) provides for the amount of income to be contributed in LTCF cases.
 1. Initial Calculation
 - a. For each month in the six month period for which the contribution is projected, monthly gross income is established as follows:
 1. 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.
 2. Any additional counted income expected in the period for which the contribution is projected, is divided by six.
 3. Any amount of the counted income received in the previous six months, but not expected to be received in the period for which the contribution is projected, is divided by six. The resulting figure is subtracted from the total of the amounts calculated in (1) and (2), above.
 - b. Total gross income is reduced by post-eligibility deductions (Cross reference: 5035-"Income Deductions") to arrive at the amount of income to be contributed.
17. The Department correctly determined the Appellant's gross monthly income as \$2,279.62. ($\$1,671.90 + \$607.72 = \$2,279.62$)
18. UPM § 5035.25 provides that for resident of LTCF and those individuals receiving 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.
19. UPM § 5035.25(B) provides that the following monthly deductions are allowed from the income of assistance units in LTCF's:
 1. A personal needs allowance ("PNA") of \$60.00, 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;
 2. A 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 co-insurance costs when not paid for by 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.
20. The Department correctly allowed the PNA of \$60.00.
21. The Department correctly allowed the Medicare Part B deduction of 104.90 from the Appellant’s income.
22. The Department correctly allowed the Medicare Part C/Advantage Plan of \$88.40 from the Appellant’s income.
23. The Department correctly allowed the Medicare Part D/RX plan deduction of \$48.60 from the Appellant’s income.
24. The Department correctly allowed the dental health insurance premium of \$72.20 from the Appellant’s income.
25. The Department correctly allowed the vision insurance premium of \$7.08 from the Appellant’s income.
26. The Department correctly calculated the Appellant’s applied income as \$1,898.44 effective [REDACTED] 2014 as \$1,898.44. See calculation.

SSA	1,671.90
Pension	+ 607.72
Gross Income	= \$2,279.62
Minus PNA	- \$60.00
Minus Med B	- 104.90
Minus Med C	- 88.40

Minus Med D	-	48.60
Minus Dental	-	72.20
Minus Vision	-	7.08
Applied Income	=	\$ 1,898.44

27. UPM § 5045.20(A) provides that the amount of income to be contributed is calculated using the post-eligibility method starting with the month in which the 30th day of continuous LTCF care or receipt of community-based services occurs, and ending with the month in which the assistance unit member is discharged from the LTCF or community-based services are last received.

28. UPM § 5035.25(A) provides that 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.

29. The Department correctly determined the Appellant must pay applied income of \$1,898.44 beginning [REDACTED] 2014.

DISCUSSION

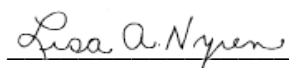
The Department correctly determined the amount of income the Appellant must pay toward his cost of care. Regulations allow the Hearing Officer to increase the MMNA if the Community Spouse's financial duress is a direct result of exceptional circumstances. The Appellant's Spouse provided testimony and evidence of the financial hardship she is currently experiencing, with the loss of her home looming. Testimony indicated she is unable to keep up with regular household payments due to outstanding medical bills incurred by her husband during his illness prior to his placement in the LTCF. However, it is unclear as to which bills she is paying and the outstanding balances that remain.

At the administrative hearing, the CS submitted medical bills incurred by the Appellant during his illness while residing at home, as well as in the LTCF. The dates of service and any remaining outstanding balances owed to each medical provider, including the LTCF, cannot be determined based on the hearing record as some dates of service overlap Medicaid eligibility and other outstanding balances referred to collections. Regulations allow for an additional deduction from the Appellant's income for payment of certain outstanding medical services incurred prior to Medicaid eligibility. The Department requires further clarification from each medical provider listing the dates of service and patient responsibility

after insurance payments to allow this deduction and recalculate the Appellant's applied income.

DECISION

The Appellant's appeal is DENIED.



Lisa Nyren
Hearing Officer

PC: Peter Bucknall, Field Operations Manager
Lisa Wells, Field Operations Manager

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, 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.