

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT06106-5033

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

REQUEST # 625812  
CLIENT ID # ██████████

NOTICE OF DECISION

PARTIES

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

PROCEDURAL BACKGROUND

On ██████████, 2014, the Department of Social Services (the "Department") sent ██████████ ██████████ (the "Appellant" and "Institutionalized Spouse") a Notice of Approval granting the Appellant's application for medical assistance, effective ██████████ 2014. The notice stated that the amount that the Appellant must pay towards the cost of his care is \$2,621.87 per month, effective ██████████ 2014.

On ██████████ 2014, the Appellant's son and Power of Attorney ("POA"), ██████████, requested an administrative hearing to seek an increase in the Community Spouse Allowance ("CSA") as determined by the Department.

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

On ██████████ 2014, 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 son, POA  
Jacqueline Mastracchio, Department's Representative  
John Dileonardo, Department's Representative  
Thomas Monahan, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Community Spouse 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 ██████ 2014, the Department granted the Appellant Long Term Care Medicaid effective ██████ 2014. (Hearing summary, Exhibit 4: Notice of Approval)
2. The Appellant's spouse resides in the community in assisted living. (Hearing Summary)
3. The Appellant's monthly gross income in ██████ and ██████ of 2014 was as follows: Railroad Retirement, \$2,774.44 monthly, Veterans benefit, \$1,337.00 monthly and an Annuity of \$287.01 monthly. (Hearing record)
4. In ██████ and ██████ of 2014, the Appellant paid \$104.90 per month for his Medicare Part B premium.
5. The Community Spouse's monthly income for ██████ and ██████ of 2014 was as follows: Railroad Retirement \$1,141.08 monthly, Pension, \$54.03 and an Annuity of \$124.21 monthly.
6. Effective ██████ 2014, the Community Spouse had monthly shelter costs of \$2,994.20 (\$2,300.20, monthly assisted living rate, plus \$694.00, Standard Utility Allowance). (Ex. 3: Community Spouse Allowance Calculation)
7. Effective ██████ 2014, the Department calculated that the Community Spouse has a monthly MMNA of \$4531.33 (\$2,412.58, excess shelter costs; plus \$1,938.75, 150% of the Federal Poverty Level for two persons). (Ex. 3: Community Spouse Allowance Calculation)
8. Effective ██████ 2014, the Department allowed the Community Spouse's the capped MMNA of \$2,931.00. (Hearing Summary; Dept.'s Ex. 3: Community Spouse Allowance Calculation)
9. Effective ██████ 2014, the Community Spouse's monthly gross income of \$1,319.32 was insufficient to meet her MMNA. (facts 5-8)
10. Effective ██████ 2014, the Department determined that the Community Spouse is eligible for a Community Spouse Allowance ("CSA") of \$1,611.68 per month

[\$2,931.00 - \$1,319.32] to meet her needs. (Hearing Summary; Ex. 3: Community Spouse Allowance Calculation)

11. The Community Spouse is seeking an increase in the Minimum Monthly Needs Allowance to cover additional monthly expenses for [REDACTED] and [REDACTED] of 2014. (POA's Testimony)
12. The Appellant passed away on [REDACTED] 2014. (POA's testimony)
13. The Community Spouse is not seeking an increase in the Community Spouse Protected Amount ("CSPA"). (POA's Testimony)
14. The Community spouse had monthly out of pocket prescription drug costs of \$288.43 in [REDACTED] and [REDACTED] of 2014. (Appellant's Ex. 1: Expenses)
15. The Community spouse has a monthly life insurance premium of \$40.51. (Appellant's Ex. 1: Expenses)
16. The Community spouse has a Medicare supplement premium of \$218.00. (Appellant's Ex. 1: Expenses)
17. The Community spouse has a Medicare part D premium of \$40.00. (Appellant's Ex. 1: Expenses)
18. The Community spouse suffers from type 2 diabetes, neuropathy and spinal stenosis. (Hearing record)
19. The Community spouse is unable to ambulate. She uses a wheelchair and scooter. (Hearing record)
20. The Community spouse is able to transfer from her lift chair to her wheelchair. (Hearing record)
21. The community spouse sometimes is assisted getting to the toilet and uses diapers for incontinence. (Hearing record)
22. The community spouse's meals are provided by the assisted living facility and she is able to feed herself.
23. The community spouse dresses herself except for her shoes. (Hearing record)
24. The Community spouse bathes with the assistance of aids. (Hearing record)
25. In assisted living the Appellant receives essential services to assist her with her activities of daily living and to enable her to remain in the community. The additional

expenses of the assisted living residence are exceptional circumstances causing significant financial duress. (See Facts # 18 to 24; POA'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") § 5045.20 pertains to 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) 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. The Department correctly determined that the Appellant's gross income was \$4,398.45 per month ( $2,774.44 + 1,337.00 + 287.01$ ) for [REDACTED] and [REDACTED] of 2014.
5. The Department correctly determined that the Community Spouse's monthly income was \$1,319.32 ( $\$1,141.08 + \$54.03 + 124.21$ ) for [REDACTED] and [REDACTED] of 2014.
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 LTCF units of 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.
8. UPM § 5035.25 (B) (4) provides a monthly deduction for LTCF units of Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for the Department or any other third party.
9. UPM § 5035.25 (B) (2) provides a monthly deduction for LTCF units of a Community Spouse Allowance ("CSA"), when appropriate; (Cross Reference 5035.30)
10. 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’s gross monthly income: or the amount established pursuant to court order for the purpose of providing necessary spousal support.

11. 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.
12. 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.
13. UPM § 5035.30 B (5) (a) (b) provides that the MMNA may not exceed the greatest of either the maximum MMNA (\$2,931.00 in June and July of 2014) or an amount established through a Fair Hearing.
14. Effective [REDACTED] 2014, the Community Spouse’s MMNA was \$2,931.00

	AMOUNT
Shelter Costs:	
Assisted Living Basic Rate	\$2,300.20
Standard Utility Allowance	+\$694
<b>Total shelter costs:</b>	\$2,994.20
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two(1891.25)]	-\$581.63
<b>Excess shelter costs:</b>	\$2,412.57
Plus 150% of the FPL for two:	+\$1,938.75
<b>Equals the MMNA</b>	\$4,351.32
<b>Maximum MMNA</b>	<b>\$2,931.00</b>

15. The Department correctly determined that the Appellant’s MMNA was the maximum of \$2,931.00 per month for the months of [REDACTED] and [REDACTED] of 2014.
16. 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.

17. 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).

18. 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.

19. 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.

20. 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.
21. The Community Spouse's medical conditions and deteriorating health prevent her from taking care of her activities of daily living, and threaten her ability to remain in the community. Her condition requires assisted living and personal care services on a daily basis. The Community spouse's medical conditions and her need for assisted living and personal care services are exceptional circumstances.
22. The Community Spouse's insurance premiums and out of pocket prescription costs are not exceptional circumstances.
23. The excess cost associated with the Community Spouse's need for assisted services in the amount of \$1,420.32 (\$4351.32 actual MMNA - \$2,931.00 max MMNA without exceptional circumstances) per month are expenses that directly arise from the Community Spouse's exceptional circumstances. This amount of \$1,420.32 results in significant financial duress.
24. Based on Conclusion of Law #21, the Community Spouse's MMNA may be increased to \$4,351.32 (\$1,420.30 additional monthly assisted living expenses + original MMNA of \$2931.00).
25. Effective [REDACTED] 2014 based on the increased MMNA, the deficit between the Community Spouse's income and her MMNA (the CSA) was \$3032.00 (MMNA \$4,351.32 – Income of \$1,319.32).
26. After taking deductions for the personal needs allowance of \$60.00, the Medicare B premium amount of \$104.90, and the CSA of \$3,032.00 the Appellant's applied income for [REDACTED] and [REDACTED] 2014 is \$1,154.42 as calculated below.

	AMOUNT
Appellant's Income:	
Railroad Retirement	\$2,774.44
Veterans Benefit	\$1,337.00
Annuity	\$287.01
Total Income:	\$4,398.45
Income Deductions: Personal Needs Allowance	-\$60.00
Medicare Part B Premium	\$104.90
CSA	\$3,032.00
Applied Income	\$1,201.55

27. The Appellant's applied income is adjusted from \$2,621.87 to \$1,201.55 for [REDACTED] and [REDACTED] of 2014 due to the Community spouse's increased MMNA because of exceptional circumstances causing financial duress.

### **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 of the assisted living facility claimed by the Community Spouse are a direct result of exceptional circumstances as defined in the regulation.

The Community Spouse's monthly expenses that were exceptional services causing financial duress consisted only of her portion of the assisted living rate. Any assisted living charge for the institutionalized spouse is not counted in the calculation of the MMNA as it is not related to the cost of the Community Spouse's medical services received at the assisted living residence. The Community Spouse's 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 **GRANTED**.

1. The Department will adjust the Appellant's applied income for the months of [REDACTED] 2014, and [REDACTED] 14 as computed above.
2. Compliance with this decision is due no later than 15 days from the date of this decision.

*Thomas Monahan*

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Thomas Monahan  
Hearing Officer

P.c. Peter Bucknall, Operations Manager, New Haven Regional Office  
Lisa Wells, Operations Manager, New Haven 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, 55 Farmington Avenue, Hartford, CT 060105-3725.

### **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 06105-3725. 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.