

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06104-3725

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

Client ID # ██████████
Request #632211

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") 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 ██████████ 2014, the Appellant 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 an administrative hearing for ██████████ 2014.

On ██████████ 2014, OLCRAH issued a notice rescheduling the Appellant's hearing to ██████████ 2014.

On ██████████ 2014, 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
██████████, Appellant's Son/Power of Attorney
Natosha Douglas, Department's Representative
Pamela J. Gonzalez, Hearing Officer

The hearing record was held open to allow for the submission of additional information. The record closed on [REDACTED], 2014.

STATEMENT OF THE ISSUE

The issue is whether the Department has correctly calculated the amount of Community Spouse Allowance in this case.

FINDINGS OF FACT

1. The Appellant was institutionalized on [REDACTED], 2013. (Hearing record)
2. The Appellant's spouse resides alone in the community. (Hearing record)
3. The Department determined that the Appellant's Community Spouse's Minimum Monthly Needs Allowance totaled \$2,931.00 (maximum) effective [REDACTED] 2014. (Community Spouses Allowance Calculation – Department's exhibit 4)
4. On [REDACTED] 2014, the Department granted the Appellant's application for long-term care Medicaid effective [REDACTED] 2014. (Notice dated [REDACTED] 2014 – Department's exhibit 15)
5. Effective [REDACTED] [REDACTED] 2014, the Department afforded the Appellant's Community Spouse a Community Spouse Allowance ("CSA") in the amount of \$1,200.64. (Community Spouse Allowance Calculation Sheet – Department's exhibit 4)
6. As of [REDACTED] 2014, the Appellant received Social Security income in the monthly amount of \$1,482.70 and a Pension in the monthly amount of \$1,515.62. (Social Security Award Letter – Department's exhibit 6, Fidelity Investments 1099 Form – Department's exhibit 8)
7. As of [REDACTED] 2014, the Appellant's Community Spouse received Social Security income in the gross monthly amount of \$1,183.90, and [REDACTED] Pension income of \$546.46 per month. (Social Security Award Letter – Department's exhibit 7, [REDACTED] 1099 Form – Department's exhibit 8)
8. In [REDACTED] 2014, the Community Spouse paid condo fees in the monthly amount of \$295.81. (Payment booklet - -Department's exhibit 12)
9. The Community Spouse pays [REDACTED] real estate taxes in the monthly amount of \$671.61. ([REDACTED] Payment Details Statement – Department's exhibit 10)

10. The Community Spouse pays [REDACTED] taxes in the monthly amount of \$371.48. ([REDACTED] District bill – Department's exhibit 11)
11. The Community Spouse pays homeowners insurance in the monthly amount of \$33.17. (Memorandum of Insurance – Department's exhibit 9)
12. Effective [REDACTED] 2014, the Community Spouse is afforded the standard utility allowance in the monthly amount of \$694.00. (Department's exhibit 4)
13. The Appellant's Community Spouse is 80 years of age (Community Spouse's testimony)
14. The Community Spouse's ability to care for herself has declined along with the decline in her health. She has peripheral neuropathy which causes her to lose her balance making her a moderate fall risk. She has chronic pain, headaches and joint pains which decrease her stamina. She has suffered from generalized anxiety and this has worsened with her husband's illness and being alone at home. (Medical Doctor's statement dated [REDACTED] 2014 –Appellant's exhibit E)
15. The Community Spouse's medications are for hypertension (candesartan, Tenormin), atrial fibrillation (Coumadin, Tenormin), headaches (butalbital), hypothyroidism (levothyroxine), hyperlipidemia (zetia), acid reflux (rabeprazole) and muscle pain (topical creams). (Appellant's exhibit E)
16. The Community Spouse is afflicted with irritable bowel syndrome. (Community Spouse's testimony)
17. The Community Spouse is on a waiting list for a pace maker. (Community Spouse's testimony)
18. The Community Spouse has difficulty ambulating. She uses a walker and a cane and wears braces on her ankles for support. (Community Spouse's testimony)
19. The Community Spouse has difficulty dressing. (Community Spouse's testimony)
20. The Community Spouse does not cook. (Community Spouse's testimony)
21. The Community Spouse needs three hours of help daily to assist her with dressing, showering, doing laundry, applying topical medications, and providing comfort and support to reduce anxiety. (Appellant's exhibit E)

22. The Community Spouse employs in-home care providers three hours per day, five days per week at \$20.00 per hour to help her dress, cook, clean, do heavy lifting, do laundry, grocery shop, transport her to visit her spouse. (Community Spouse's testimony, Hearing record)
23. The Community Spouse's daughters help her on the weekends with the things that the in-home care providers help her with during the week. (Community Spouse's testimony)
24. The Community Spouse rents an Auto Alert Help Button and pays for Lifeline Monitoring each month. The monthly cost is \$45.14. (Lifeline Invoice – Appellant's exhibit B)
25. The Community Spouse pays an average of \$212.59 per month for pharmacy charges. (Charges from █████ 2014 – █████ 2014, Statement from Oronoque Pharmacy Inc. – Appellant's exhibit A)

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 █████ 2014 was \$2,998.32.
5. 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.
6. 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.

7. UPM § 5035.25 (B) (2) provides a monthly deduction for LTFC units of a Community Spouse Allowance (“CSA”), when appropriate; (Cross Reference 5035.30)
8. 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.
9. 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.
10. 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.
11. 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 \$2,931.00 effective January 2014.
12. Based upon the maximum MMNA, the Department correctly determined the CSA of \$1,200.64.
13. 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.
14. 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).

15. The Appellant's poor health directly threatens her ability to remain in the Community and constitutes an exceptional circumstance.

16. 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.

17. 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.

18. 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.

19. The Community Spouse has exceptional circumstances that are severe and unusual and prevent her from taking care of her activities of daily living as well as directly threaten her ability to remain in the community.
20. The Community Spouse's expense of employing in-home care providers three hours per day, five days per week, the cost of the Auto Alert Button, and the pharmacy costs directly result from her exceptional circumstances.
21. The Community Spouse's expense of employing in-home care providers three hours per day, five days per week, the cost of the Auto Alert Button, and the pharmacy costs cannot reasonably be expected to be met by the Community Spouse's income or assets.
22. The Community Spouse's MMNA shall be increased to include the cost of her in-home health aides of \$20.00 per hour, three times per week, five days per week or \$1,290.00 per month.
23. The Community Spouse's MMNA shall be increased to include the cost of her Auto Alert Button of \$45.14 per month.
24. The Community Spouse's MMNA shall be increased to include the cost of her pharmacy charges of \$212.59 per month.
25. The Appellant's Community Spouse's monthly shelter costs for CSA purposes total \$2,066.13. (\$671.67 [REDACTED] taxes + \$371.48 [REDACTED] taxes + \$295.81 Condo fees + \$33.17 home owners insurance + \$694.00 standard utility allowance)
26. 30% of 150% of the Federal Poverty Level for two persons in [REDACTED] 2014 totals \$581.63.
27. The Appellant's Community Spouse's excess shelter costs total \$1,484.50. (\$2,066.13 shelter costs - \$581.63 30% of \$1,938.75 or 150% of the Federal Poverty Level for two persons)
28. The MMNA before adjustment is capped at \$2,931.00.
29. The Appellant's Community Spouse's exceptional circumstance costs total \$1,547.73 per month. (\$1,290.00 in-home care + \$45.14 Auto Alert + \$212.59 pharmacy)
30. The Community Spouse's MMNA is increased to \$4,478.73 effective [REDACTED] 2014, to include her exceptional circumstance costs. (\$2,931.00 + \$1,547.73)

31. UPM § 5050.13(A)(1) provides that Social Security income is treated as unearned income in all programs.
32. The Department correctly determined that effective [REDACTED] 2014, the Community Spouse's monthly gross income was \$1,730.36.
33. The CSA totals \$2,748.37 per month effective [REDACTED] 2014. (\$4,478.73 Adjusted MMNA - \$1,730.36 unearned income)

DISCUSSION

The Department acted correctly in its determination of the Community Spouse's CSA; however, regulations allow the hearing officer to increase that figure if certain criteria are met.

The Community Spouse described her monthly expenses. She feels that the amount of applied income owing to the facility for her husband is too high to sustain her in the community.

I have reviewed the facts of this case and the Department's calculations and I find that the MMNA and CSA shall be increased for the Community Spouse thereby reducing the amount of applied income owing to the facility for her husband.

The maximum MMNA is \$2,931.00. In order to receive a higher MMNA, there must be exceptional circumstances as outlined in UPM § 1570.25. The Appellant's health and her need to employ in-home care providers to avoid her own institutionalization, as well as the cost of her Auto Alert Button and pharmacy expenses meet the exceptional circumstance criteria thus the MMNA and CSA shall be increased to allow for expenses that arise therefrom.

The Appellant's MMNA before the adjustment is capped at the \$2,931.00 figure. I did not remove the cap as shelter costs are factored into the MMNA and because the shelter costs that exceed the cap do not directly rise from the Community Spouse's exceptional circumstance.

DECISION

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

ORDER

The Department shall increase the CSA in accordance with this decision.

Verification of compliance is due to OLCRAH by [REDACTED] 2014.

Pamela J. Gonzalez

Pamela J. Gonzalez
Hearing Officer

Copy: Poonam Sharma, Operations Manager, R.O. #30, Bridgeport
Natosha Douglas, ESW, DSS Bridgeport

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, 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 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.

