

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

██████████ 2015
Signature Confirmation

Client ID # ██████████
Request #620010

NOTICE OF DECISION

PARTY

██████████
C/O ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On, ██████████ 2014, the Department of Social Services (the "Department") sent ██████████ ("Community Spouse") a Notice of Action ("NOA") with the amount of his Community Spouse Allowance, ("CSA") that he can retain from his spouse's, ██████████, (the "Appellant") applied income.

On ██████████ 2014, the Community Spouse requested an administrative hearing on the Appellant's behalf to contest the Department's calculation of the CSA amount. The Community Spouse is seeking an increase in the CSA.

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

On ██████████ 2014, the community spouse requested that OLCRAH reschedule the hearing.

On ██████████ 2014, OLCRAH issued a notice rescheduling the administrative hearing for ██████████ 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 Representative and Community Spouse
██████████, Community Spouse's attorney

██████████, Attorney's assistant
Marilyn Phillips, Department's Representative
Scott Zuckerman, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Community Spouse is entitled to an increase in the CSA. He is seeking an increase in his Minimum Monthly Needs Allowance (MMNA).

FINDINGS OF FACT

1. Effective ██████████ 2013, the Appellant is a resident of Lord Chamberlain Health Care Center in Stratford, CT. (Hearing Record)
2. On ██████████ 2014, the Department granted the Appellant Long Term Care Medical Assistance effective ██████████ 2014. (Ex. 5: Notice dated ██████████ 2014)
3. The Appellant's spouse lives in the community. (Summary, Testimony)
4. On ██████████ 2014, the Department informed the Community Spouse of his CSA of \$345.18. The CSA is a deduction from the Appellant's income for the Community Spouse's needs. (Hearing Summary, Exhibit 2: CSA Calculation and Exhibit 5: Notice with Applied income calculation, ██████████/14.)
5. Effective ██████████ 2014, the Community Spouse had gross monthly unearned income of \$2,295.90 from his Social Security benefit. (Hearing Summary, Appellant's Testimony, Ex. 2: CSA Calculation)
6. On ██████████ 2014, the Community Spouse's property tax payment payment was \$435.78 per month. (Hearing Summary, Appellant Testimony, Ex. 2: CSA calculation, Exhibit 12: Real Estate Tax bill, ██████████/14)
7. On ██████████ 2014, the Community Spouse's homeowner's insurance payment was \$84.17 per month. (Appellant's testimony, Ex. 2: CSA calculation, Exhibit 13: Homeowners Insurance statement, ██████████/13)
8. The Community Spouse is seeking an increase in his MMNA due to care and maintenance on his home, monthly out of pocket prescription expenses, monthly doctor co – payments, paid medical bills, outstanding medical expenses. (Community Spouse's Testimony)
9. The Community Spouse is able to care for himself but receives assistance with his home maintenance. (Community Spouse's Testimony)

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 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. UPM § 5035.25 (B) (2) provides a monthly deduction for LTFC units of a Community Spouse Allowance (“CSA”), when appropriate; (Cross Reference 5035.30)
5. 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.
6. 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.
7. 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.

8. 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.
9. The Department correctly determined that the Appellant's CSA was \$345.18 effective [REDACTED] 2014. See table below:

	AMOUNT
Shelter Costs:	
Real Estate Property Taxes	\$435.78
Homeowners Insurance	\$84.17
Standard Utility Allowance	+\$694.00
Total shelter costs:	\$1213.95
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$581.63</u>
Excess shelter costs:	\$632.33
Plus 150% of the FPL for two:	<u>+\$1,938.75</u>
Equals the MMNA	\$2571.08
Maximum MMNA	\$2,931.00
Community Spouse's Income	<u>- \$2,225.90</u>
Community Spouse Allowance	\$345.18

10. UPM § 1570.25 D (3) (a) (1) (2) (3) (b) (1) (2) (3) provides that the Fair Hearing 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. Exceptional circumstances are those that are severe and unusual and that: prevent the community spouse from taking care of his or her activities of daily living; or directly threaten the community spouse's ability to remain in the community; or 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). Significant financial duress is an expense or set of expenses that: directly arises from the exceptional circumstances described in subparagraph a above; and is not already factored into the MMNA; and cannot reasonably be expected to be met by the community spouse's own income and assets.

11. UPM § 1570.25 D (3) (c) (1) (2) (3) (4) (5) (6) (7) provides expenses that are factored into the MMNA, and thus do not generally qualify as causing significant financial duress, include, but are not limited to: shelter costs such as rent or mortgage payments; utility costs; condominium fees; real estate and personal property taxes; real estate, life and medical insurance; expenses for the upkeep of a home such as lawn maintenance, snow removal, replacement of a roof, furnace or appliance; medical expenses reflecting the normal frailties of old age.
12. UPM § 1570.25 D (4) 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.
13. The Community Spouse did not demonstrate he has exceptional circumstances allowed under Departmental policies.
14. The Department correctly determined the amount of the Appellant's CSA.

DISCUSSION

The Community spouse feels that the Community Spouse Allowance (CSA) he receives each month is not sufficient to pay his monthly expenses. I reviewed the evidence and testimony and find that the Department's ■■■/14 calculation is correct. The CSA is calculated by using the difference between the Community Spouse's gross income and the MMNA. The Community spouse does not have additional expenses as a result of exceptional circumstances that enable the undersigned to increase the MMNA. He testified that he has additional expenses beyond his taxes, homeowners insurance and utility bills. The community spouse testified that he is able to take care of his activities of daily living but needs help taking care of the upkeep of his home and payment of some of his medical expenses.

The community spouse provided testimony and a list of monthly home and property maintenance expenses. In addition he provided copies of his co pays for his prescriptions, doctor visits and a statement from the nursing facility of an outstanding balance. Departmental policy and regulations do not provide for expenses related upkeep the home, doctor and pharmacy co-pays. The medical expenses are reflecting the normal frailties of old age as indicated in policy. Regulation does not allow for the consideration of these items in calculating the CSA and increasing the MMNA. The Community Spouse does not have exceptional circumstances that affect him. The Department was correct in considering all expenses allowed by regulations.

DECISION

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



Scott Zuckerman
Hearing Officer

Pc: Poonam Sharma, Operations Manager, Bridgeport Regional Office
Fred Presnick, Operations Manager, Bridgeport Regional Office
Brian Sexton, Program Manager, Bridgeport Regional Office
Marilyn Phillips, Fair Hearings Liaison

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.