

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 #638022

**NOTICE OF DECISION**

**PARTY**

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

**PROCEDURAL BACKGROUND**

On ██████████ 2014, the Department of Social Services (the "Department") sent ██████████ ██████████ the "Appellant") a Notice of Action ("NOA") indicating the amount of his income he must contribute to the cost of his care.

On ██████████ 2014, the Appellant requested an administrative hearing to contest the Department's calculation of his applied income.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the 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, and Community Spouse  
██████████, Appellant's Representative, and Son  
██████████, Appellant's Representative, and Son  
██████████, Appellant's Representative, and Daughter  
Jan Kopchik, Department's Representative  
Michelle Massicotte, Observer for the Department  
Christopher Turner, Hearing Officer

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

### **STATEMENT OF THE ISSUES**

The first issue to be decided is whether the Appellant is eligible for an increase in her Minimum Monthly Needs Allowance ("MMNA") beyond the allowed maximum.

The second issue is whether the Department correctly denied the Appellant's request for a Community Spousal Allowance ("CSA").

The third issue is whether the Department correctly calculated the applied income owed to the long-term care facility.

### **FINDINGS OF FACT**

1. On [REDACTED] 2014, the Department received the Appellant's Medicaid application for Long Term Care ("LTC"). (Exhibit 1: W-1 LTC; Hearing summary)
2. The Institutionalized Spouse ("IS") is a resident of Westport Health Care Center. (Hearing summary; Testimony)
3. The Appellant's spouse lives in the community with her daughter. (Hearing summary, Testimony)
4. The IS' gross monthly social security benefit amount is \$1,058.90. (Exhibit 3: SVES printout; Hearing summary)
5. The IS' monthly Medicare B premium is \$104.90. (Hearing summary; Testimony)
6. The IS has medical bills from various providers. (Appellant's Exhibit ("A.E.") C: AMR bill, A.E. D: Hematology Oncology; A.E. E: Dr. Martin Perlin; A.E. F: Stamford Health; A.E. G: Stamford Hospital; A.E. H: West Haven Medical Group; A.E. M: Surgical Associates)
7. The Community Spouses' ("CS") gross monthly earned income is \$3,238.46. (Hearing summary; Testimony)
8. The CS has a monthly mortgage obligation of \$952.64. (Hearing summary; Testimony)
9. The CS is liable for repayment of her daughter's student loan. (Appellant's testimony; Appellant's Exhibit L: Department of Education bill)

10. The CS has an AT&T Uverse bill and a home insurance bill she wishes to be taken into account when calculating her CSA.
11. On [REDACTED] 2014, the Department granted the Appellant's LTC application effective [REDACTED] 2014 and determined that the Appellant's applied income due to Westport Healthcare was \$894.00. (Exhibit 5A: Notice dated [REDACTED]/14; Exhibit 5B: Notice dated [REDACTED] 14)
12. The six-month period prior to the granting of the Appellant's LTC application is [REDACTED] 2013 through [REDACTED] 2014. (Hearing record)

### **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 LTC 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 the IS' monthly income of \$1,058.90.
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 \$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.
7. The Department correctly allowed the Appellant a PNA of \$60.00.
8. UPM § 5035.25 (B) (2) provides for a monthly deduction from the income of assistance units in LTCF's a CSA when appropriate; (Cross Reference 5035.30)

9. UPM § 5035.25 (B) (4) provides a monthly deduction for LTFC units for Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for the Department or any other third party.
10. The Department correctly allowed the Appellant a deduction of his Medicare Part B premium of \$104.90.
11. UPM § 5035.25 (B) (5) provides a monthly deduction for LTFC units for costs of medical treatments approved by a physician which are incurred subsequent to the effective date of eligibility and which are not covered by Medicaid.
12. The Department correctly denied the Appellant a monthly deduction for medical treatments approved by a physician as there is no indication the Appellant's West Haven Medical Group bills from [REDACTED] 2014 through [REDACTED] 2014 were submitted to Medicaid for payment and denied as not a covered Medicaid service.
13. The Department correctly denied the Appellant a monthly deduction for medical treatments approved by a physician as there is no indication the Appellant's bills from Stamford Hospital in [REDACTED] 2014 and [REDACTED] 2014 were submitted to Medicaid for payment and denied as not a covered Medicaid service.
14. The Department correctly denied the Appellant a monthly deduction for medical treatments approved by a physician as there is no indication the Appellant's bills from Surgical Associates, PC in [REDACTED] 2014 and [REDACTED] 2014 were submitted to Medicaid for payment and denied as not a covered Medicaid service.
15. The Department correctly denied the Appellant a monthly deduction for medical treatments approved by a physician as there is no indication the Appellant's bills from Dr. Martin Perlin from [REDACTED] 2014 through [REDACTED] 2014 were submitted to Medicaid for payment and denied as not a covered Medicaid service.
16. The Department correctly denied the Appellant a monthly deduction for transportation by Ambulance, incurred in [REDACTED] 2014, as the transportation by Ambulance is not considered medical treatment.
17. UPM § 5035.25 (B) (6) provides: 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 those 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.

18. The Department correctly denied the Appellant's request to consider the medical bills incurred from [REDACTED] 2010 through [REDACTED] 2013 from Hematology Oncology PC as being outside the six-month period preceding the first month of eligibility.
19. 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.
20. The Department correctly determined that the CS' monthly gross income is \$3,238.46.
21. The CS' monthly earned income of \$3,238.46 exceeds the MMNA of \$2,931.10.
22. 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.
23. The Department correctly determined that 150% of FPL for two equals \$1,938.75.
24. UPM § 5035.30 (B)(3) (4)(a)(b)(c)(d)(e) provides that the CS' 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. 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.
25. The Department correctly denied the CS' request to include her AT&T Uverse bill as part of her shelter cost calculation.
26. The Department correctly determined the CS' shelter expenses of \$1,680.97 (\$952.64 + 34.33 + 694.00). The omission of the Appellant's condominium common charges has no effect on the calculation of the MMNA as the CS' income is in excess of the CSA.
27. The Department correctly determined that 30% of 150% of the FPL for two equals \$581.63 ( $\$1,938.75 * 0.30$ )
28. 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.
29. The Department correctly determined the Appellant's MMNA as \$3,038.09 ( $\$1,680.97 - \$581.63 = \$1,099.34$ .  $\$1,099.34 + \$1,938.75$ ).



30. 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.
31. 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.
32. 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.
33. The Department correctly determined the repayment obligation for the CS' daughters' student loan is not considered an exceptional circumstance.
34. The CS does not have exceptional circumstances that are severe and unusual that prevents the CS from taking care of her activities of daily living, threaten her ability to remain in the community or involve her providing constant and essential care for a disabled child or other significant relative. The MMNA cannot be increased above the maximum allowed amount of \$2,931.00.

35. The Department correctly determined that the Appellant's CSA is \$0.00 based on the CS' income in excess of the CSA. See table below:

	AMOUNT
Shelter Costs:	
Mortgage	\$ 952.64
Home Insurance	34.33
Standard Utility Allowance	<u>+ 694.00</u>
<b>Total shelter costs:</b>	<b>\$1,680.97</b>
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>- 581.63</u>
<b>Excess shelter costs:</b>	<b>\$1,099.34</b>
Plus 150% of the FPL for two:	<u>+1,938.75</u>
<b>Equals the MMNA</b>	<b>\$3,038.09</b>
<b>Maximum MMNA</b>	<b>\$2,931.00</b>
<b>Community Spouse's Income</b>	<b>\$3,238.46</b>
<b>Community Spouse Allowance</b>	<b>\$2,931.00</b>


36. The Department correctly determined the Appellant's monthly applied income effective [REDACTED] 2014 and ongoing was \$894.00 (\$1,058.90 minus \$60.00 PNA minus \$104.90 Medicare Part B)
37. The Department correctly determined the amount of applied income that the Appellant must pay toward the cost of his long-term care.

### **DISCUSSION**

The representatives for the Appellant feel that the Community Spouse Allowance (CSA) is not significant enough for their mother to pay her monthly expenses. The calculation of the MMNA prevents the CS to receive a CSA. In order to receive a CSA, the CS' income, before taxes, must be below \$2,931.00 or there must be exceptional circumstances as outlined in UPM § 1570.25. While the Appellant has outstanding bills, her income at the time of the hearing as well as a lack of exceptional circumstances does not meet the criteria as set out in regulation. In the present case, the claims of the Community Spouse are not at the exceptional level nor are the combination of these issues exceptional and are therefore not considered cause to increase the MMNA, which would result in an income diversion to her from her Institutionalized Spouse.

### **DECISION**

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

  
Christopher Turner  
Hearing Officer

Pc: Poonam Sharma Perrin, Bridgeport Operations Manager  
Administrator, Westport Health Care Center



### **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, law, and 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 06105-3725.

### **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, if 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 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.