

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT06105- 3725

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

REQUEST #650481

CLIENT ID # ██████████

NOTICE OF DECISION

PARTIES

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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 ██████████ 2013. The notice stated that the amount that the Appellant must pay towards the cost of his care is \$3,884.35 per month, effective ██████████ 2013.

On ██████████ 2014, the Appellant's representative, ██████████, requested an administrative hearing on behalf of the Appellant and ██████████ ██████████ ██████████s (the "Community Spouse"), 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 @ 1:00 PM.

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:

██████████, Representative for the Appellant  
Michael Stebe, Representative for the Department  
Hernold C. Linton, Hearing Officer

## **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Community Spouse (“CS”) needs additional income diverted from the Institutionalized Spouse (“IS”) to meet her Minimum Monthly Needs Allowance (“MMNA”), due to exceptional circumstances causing significant financial duress.

## **FINDINGS OF FACT**

1. On ██████ 2013, the Appellant became a resident of Touchpoints, which is a long-term care facility (“LTCF”). (Hearing Summary Appellant’ Exhibit E: Representative’s Memorandum)
2. The Appellant’s spouse resides in the community. (Hearing Summary)
3. On ██████ 2013, the Department received the Appellant’s application for Medicaid coverage to pay for his long-term care (“LTC”). (Hearing Summary)
4. On ██████ 2014, the Department granted the Appellant Medicaid effective ██████ 2013 to pay for his LTC. (Hearing Summary, Dept.’s Exhibit #4: Applied Income Calculations)
5. The Department determined that the Community Spouse is eligible for a CSA of \$2,161.83 per month, effective ██████ 2013 to meet her needs. (Hearing Summary; Dept.’s Exhibit #4)
6. The Community Spouse is seeking an increase in the MMNA due to exceptional circumstances resulting in additional monthly expenses. (Appellant’s Exhibit E)
7. The Community Spouse is not seeking an increase in the Community Spouse Protected Amount (“CSPA”). (Appellant’s Exhibit E)
8. Effective ██████ 2013, the Community Spouse has monthly shelter costs of \$1,095.60, (\$366.60, property taxes; plus \$61.00, insurance; \$668.00, Standard Utility Allowance). (Dept.’s Exhibit #6: Community Spouse Allowance Calculation)
9. Effective ██████, 2013, the Community Spouse has excess monthly shelter costs of \$513.97, (\$1,095.60, shelter costs; minus \$581.63, 30% of \$1,891.25, 150% of the Federal Poverty Level for two persons as of ██████/13). (Dept.’s Exhibit #6)
10. Effective ██████ 2013, the Community Spouse has a calculated MMNA of \$2,405.22, (\$513.97, excess shelter costs; plus \$1,891.25, 150% of the Federal Poverty Level for two persons as of ██████/13). (Dept.’s Exhibit #6)
11. Effective ██████ 2013, the Community Spouse received \$290.90 in monthly gross Social Security (“SSA”) benefits. (Dept.’s Exhibit #6)

12. Effective [REDACTED], 2013, the Community Spouse's monthly income of \$290.90 was insufficient to meet her MMNA of \$2,405.22. (See Facts # 1 to 11)
13. Effective [REDACTED] 2013, the Community Spouse's calculated monthly income deficit or Community Spouse Allowance ("CSA") was \$2,114.32 (\$2,405.22, MMNA; minus \$290.90, Community Spouse's income). (See Facts # 1 to 12; Dept.'s Exhibit #6)
14. The Community Spouse suffers from Neuropathy, Osteoporosis, Thyroid Disease, Hypertension, and Costochondritis. (Appellant's Exhibit F: [REDACTED]/14 Letter from Dr. Cappadona)
15. The Community Spouse is 85 years of age and very frail. (Appellant's Exhibit F)
16. The Community Spouse is homebound and unable complete her activities of daily living alone. (Appellant's Exhibit F)
17. The Community Spouse needs assistance with showering, preparing her meals, and setting out her medications so she remembers to take them. (Appellant's Exhibit F)
18. The Community Spouse needs 8 hours per day of in-home healthcare services in order to avoid institutionalization. (Appellant's Exhibit F)
19. The Community Spouse incurs additional monthly costs of \$1,408.00 for the healthcare services provided to her by her aides that enable her to remain in the community. (See Facts # 1 to 18; Appellant's Exhibit F: Monthly Expenses)

### **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"), Section 1570.25(D)(4) provides that the Fair Hearing official increases the CSPA if either MCCA spouse establishes that the CSPA previously determined by the Department is not enough to raise the community spouse's income to the MMNA (Cross References 4022.05 and 4025.67)
3. UPM § 1570.25(D)(4)(b) provides that for applications filed on or after 10-1-03, in computing the amount of the community spouse's income, the Fair Hearing official first allows for a diversion of the institutionalized spouse's income in all cases.
4. UPM § 5035.25 provides that for resident of long term care facilities (LTCF) and those individuals receiving community-based services (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.
5. 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, 2009 and annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration;
  - (2) a Community Spouse Allowance (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 coinsurance costs when not paid for the Department or any other third party;
6. The Department correctly calculated the Appellant’s monthly-applied income as \$3,884.35, effective [REDACTED] 2013.
7. UPM § 5035.30(A)(1) provides that 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.
8. UPM § 5035.30(B)(1) provides that the CSA is equal to the greater of the following:
  - (a) the difference between the 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.
9. The Department correctly calculated the CSA at \$2,114.32 (\$2,405.22, MMNA; minus \$290.90, CS’s income) per month in accordance with the regulation.
10. UPM § 5035.30(B)(2) provides that 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 3 below; and
  - (b) 150 percent of the monthly poverty level for a unit of two persons.
11. UPM § 5035.30(B)(5) provides that the MMNA may not exceed the greatest of either:
  - (a) \$2,898.00, the maximum MMNA; or
  - (b) an amount established through a Fair Hearing.
12. The Department correctly calculated the MMNA at \$2,405.22 per month.

13. UPM Section 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.

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 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.

14. Because of the Community Spouse's illnesses, she needs 8 hours per day of in-home healthcare services to assist her with completing her activities of daily living, and which enable her to remain in the community. The Community Spouse's need for 8 hours per day of in-home healthcare services is an exceptional circumstance.

15. If not for the in-home healthcare services that she receives, the Community Spouse would require institutionalization in a skilled nursing facility.
16. The monthly cost (\$1,408.00) for 8 hours of in-home healthcare services causes the Community Spouse significant financial duress. This significant financial duress is a direct result of the Community Spouse's exceptional circumstances.
17. The Community Spouse's revised MMNA due to exceptional circumstances causing significant financial duress is \$3,813.22 (\$2,405.22, MMNA; plus \$1,408.00, additional expense)
18. The Community Spouse's monthly income of \$290.90 is insufficient to meet her revised MMNA of \$3,813.22; therefore, the Community Spouses needs a diversion of the Institutionalized Spouse's income to meet her needs in the community.
19. Effective [REDACTED] 2013, the Community Spouse's adjusted CSA is \$3,522.22, based on the increase in her MMNA (\$3,813.22, revised MMNA; minus \$290.90, CS's income), due to exceptional circumstances causing significant financial duress.

**DECISION**

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

**ORDER**

1. Effective [REDACTED] 2013, the Department will increase the Community Spouse's MMNA to \$3,813.22, due to exceptional circumstances causing significant financial duress.
2. The Department will increase the CSA to \$3,522.22, effective [REDACTED] 2013, due to exceptional circumstances.
3. No later than thirty days from the date of hearing decision, the Department will provide to the undersigned proof of the Department's compliance with this order.



Hernold C. Linton  
Hearing Officer

Pc: **Musa Mohamud**, Social Service Operations Manager,  
DSS, R.O. #10, Hartford

[REDACTED]

### **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 06105-3725.

### **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. 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.