

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

████████ 2015
Signature confirmation

Client: █████
Request: 696519

NOTICE OF DECISION

PARTY

████████
████████
████████

PROCEDURAL BACKGROUND

On █████ 2015, the Department of Social Services (the "Department") issued █████ (the "Appellant" or "institutionalized spouse") a notice granting his Medicaid application for long-term care services, effective █████ 2015. As part of the grant, the Department determined that the Appellant would have to contribute \$1,529.00 of his income, as applied income, toward his monthly cost of care at the skilled nursing facility.

On █████ 2015, █████, the Appellant's wife (the "community spouse"), filed a request for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") to request a Community Spouse Allowance ("CSA"), as an allowable deduction from the Appellant's applied income.

On █████ 2015, the OLCRAH issued a notice scheduling an administrative hearing for █████ 2015.

On █████ 2015, the Department issued the Appellant a notice stating that the agency had recalculated his applied income due to the facility to be \$800.09 per month, effective █████ 2015.

On █████ 2015, the Department issued the Appellant's community spouse a notice stating that she was eligible to receive a Spousal or Family Allowance of \$728.91 from the Appellant's income, effective █████ 2015.

On █████ 2015, 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 Appellant's community spouse represented the Appellant's interests at the

administrative hearing, as the Appellant was unable to attend due to his medical conditions. The following individuals attended the proceedings:

STATEMENT OF ISSUE

The issue to be decided by this administrative hearing is whether the Appellant's community spouse is eligible for an increase in the CSA beyond that calculated by the Department on [REDACTED] 2015.

FINDINGS OF FACT

1. The Appellant and his community spouse are married. (Appellant's community spouse's testimony)
2. The Appellant's community spouse resides alone in her private home in [REDACTED], Connecticut. (Appellant's testimony)
3. On [REDACTED] 2015, [REDACTED] (the "Facility") admitted the Appellant as a resident. (Department's Exhibit 11: Fax, [REDACTED]/15)(Appellant's community spouse's testimony)
4. Through [REDACTED] 2015, the Appellant received Medicaid coverage through the W01: Home Care Waiver for Adults program. (Department's Exhibit 11)
5. Effective [REDACTED] 2015, the Department granted the Appellant Medicaid coverage of his long-term care services at the Facility. (Department's Exhibit 11)
6. The Appellant's sole source of income is his Social Security benefits. (Appellant's community spouse's testimony)
7. The Appellant grosses \$1,589.00 per month in Social Security benefits. (Department's Exhibit 9: *Notice of Approval for Long-Term Care Medicaid*, [REDACTED]/15)
8. On [REDACTED] 2015, the Department issued a notice to the Appellant stating that the Appellant must contribute \$1,529.00 per month, or applied income, toward the cost of his care at the Facility effective [REDACTED] 2015. (Department's Exhibit 11)
9. The Department's [REDACTED] 2015 calculation of the Appellant's applied income of \$1,589.00 erroneously did not include a deduction for a CSA for the Appellant's community spouse. (Department's representative's testimony)
10. On [REDACTED] 2015, the Department issued the Appellant a notice stating that the agency had recalculated his applied income due to the facility to be \$800.09 per month, effective [REDACTED] 2015. (Department's Exhibit 9)(Department's Exhibit 1: *Notice Content-NCON*, [REDACTED]/15)

11. On [REDACTED] 2015, the Department issued the Appellant's community spouse a notice stating that she was eligible to receive a Spousal or Family Allowance of \$728.91 from the Appellant's income, effective [REDACTED] 2015. (Department's Exhibit 9)
12. The Appellant's community spouse is in good health. (Appellant's community spouse's testimony)
13. The Appellant's community spouse grosses \$1,312.90 per month in Social Security benefits. (Department's Exhibit 7: *Your New Benefit Amount*, undated)
14. The Appellant's community spouse grosses \$272.15 per month in a [REDACTED] pension. (Department's Exhibit 5: Earnings Statement, [REDACTED] 15)
15. The Appellant's community spouse grosses \$595.35 per month in a [REDACTED] retirement pension. (Department's Exhibit 6: 1099-R, 2014)
16. The Appellant and the Appellant's community spouse have a home owner's mortgage with Weichert Financial Services. (Department's Exhibit 8: Mortgage Statement, [REDACTED] 15)
17. In [REDACTED] 2015, the Weichert Financial Services mortgage payment was \$838.93 per month included principal, interest, escrow for real estate taxes, and escrow for home owner's insurance. (Department's Exhibit 8)(Appellant's community spouse's testimony)
18. The Appellant's community spouse is seeking an increase in her CSA, as she is unsure that her income alone will be enough to pay her bills. (Appellant's community spouse's testimony)

CONCLUSIONS OF LAW

1. Section 5000.01 of the Department's Uniform Policy Manual ("UPM") provides definitions of terms used within the chapter. This section includes the following definitions:
 - Applied Income**. Applied income is that portion of the assistance unit's countable income that remains after all deductions and disregards are subtracted.
 - Community Spouse**. A community spouse is an individual who resides in the community, who does not receive home and community based services under a Medicaid waiver, who is married to an individual who resides in a medical facility or long-term care facility or who receives home and community based services (CBS) under a Medicaid waiver.
 - Institutionalized Spouse**. An institutionalized spouse is a spouse who resides in a medical facility or long-term care facility, or who receives home and Community Based Services (CBS) under a Medicaid waiver, and who is legally married to someone who does not reside in such facilities or who does not receive such services.
2. 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. The amount of income to be contributed is calculated using the post-eligibility method starting with the month in which the 30th day of continuous LTCF care or receipt of community-based services occurs, and ending with the month in which the assistance unit member is discharged from the LTCF or community-based services are last received. UPM § 5045.20 (A).
4. For each month in the six month period for which the contribution is projected, monthly gross income is established as follows: (1) 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; (2) any additional counted income expected in the period for which the contribution is projected, is divided by six; (3) any amount of the counted income received in the previous six months, but not expected to be received in the period for which the contribution is projected, is divided by six. The resulting figure is subtracted from the total of the amounts calculated in (1) and (2), above. UPM § 5045.20 (B)(1)(a).
5. Total gross income is reduced by post-eligibility deductions (Cross reference: 5035- "Income Deductions") to arrive at the amount of income to be contributed. UPM § 5045.20 (B)(1)(b).
6. The difference between the assistance unit's contribution and the Medicaid rate of the LTCF or CBS is the amount of benefits paid by the department to the facility or provider organization on the unit's behalf. UPM § 5045.20 (D).
7. 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. UPM § 5035.25.
8. UPM § 5035.20 (B) provides the allowable deductions for LTCF units. The following monthly deductions are allowed from the income of assistance units in LTCF's: 1. a personal needs allowance 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; 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; 5. costs for medical treatment approved by a physician which are incurred subsequent to the effective date of eligibility and which are not covered by Medicaid; 6. 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 these 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.

9. The CSA is equal to the greater of the following: a. the difference between the Minimum Monthly Needs Allowance (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. UPM § 5035.30 (B)(1).
10. The community spouse's monthly shelter cost includes: a. rental costs or mortgage payments, including principle and interest; and b. real estate taxes; and c. real estate insurance; and d. required maintenance fees charged by condominiums or cooperatives except those amounts for utilities; and e. Standard Utility Allowance (SUA) used in the FS program for the community spouse. UPM § 5035.30 (B)(4).
11. In [REDACTED] 2015, Connecticut's SUA equaled \$724.00 per month.
12. For the purposes of a CSA calculation, the Appellant's community spouse's shelter costs equal \$1,562.93, effective [REDACTED] 2015. $[\$838.93 + 724.00]$
13. The community spouse's 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 Federal Poverty Level for a unit of two persons. UPM § 5035.30 (B)(3).
14. Effective [REDACTED] 2015, one hundred and fifty percent of the Federal Poverty Level for two equaled \$1,992.00.
15. For the purposes of a CSA calculation, the Appellant's community spouse's excess shelter costs equaled \$965.33. $[\$1,562.93 \text{ minus } \$597.60 \text{ (30 percent of 150 percent of the Federal Poverty Level for two)}]$
16. 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 section 5035.30 B.3.; and b. 150 percent of the monthly poverty level for a unit of two persons. UPM § 5035.30 (B)(2).
17. The MMNA may not exceed the greatest of either: a. the maximum MMNA; or b. an amount established through a Fair Hearing. UPM § 5035.30 (B)(5).
18. The Appellant's community spouse's MMNA equals \$2,957.33. $[\$965.33 + 1,992.00]$
19. The Appellant's community spouse's gross monthly income equals \$2,180.40. $[\$1,312.90 + \$272.15 + \$595.35]$
20. 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. UPM § 1570.25 (D)(3).
21. 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). UPM § 1570.25 (D)(3)(a).

22. The Appellant's community spouse does not have exceptional circumstances that are severe and unusual that prevent her from taking care of 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 her disabled child, sibling, or other immediate relative.
23. The Appellant's community spouse's CSA equals \$776.93. [\$2,957.33 (MMNA) minus \$2,180.40, (Appellant's community spouse's gross monthly income)]
24. The Department incorrectly determined that the Appellant's community spouse's CSA was \$728.91.
25. The Appellant's community spouse is eligible for an increase in the CSA beyond that calculated by the Department on [REDACTED] 2015.

DISCUSSION

The Department's calculation of the Appellant's community spouse's CSA used an inaccurate SUA amount. The hearing officer recalculated the Appellant's community spouse's CSA to equal \$776.93 per month. The change in the CSA also results in a change in the Appellant's applied income due to the Facility.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department will update its computer records to show that the Appellant's community spouse's CSA equals \$776.93 per month, effective [REDACTED] 2015.
2. The Department will issue notices to affected parties, updating the Appellant's applied income amount due to the Facility, effective [REDACTED] 2015.
3. Within 21 calendar days of the date of this decision, or [REDACTED] 2015, documentation of compliance with this order is due to the undersigned.



Eva Tar
Hearing Officer

Cc: [REDACTED]

Lucy Ramos, DSS-New Haven (20)
Bonnie Shizume, DSS-New Haven (20)

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.