

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

████████████████████
Signature Confirmation

Client ID # ██████████
Request # 702279

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████, (the "Appellant") for ██████████ (the "Recipient") a notice informing the Appellant that effective ██████████ 2015 the Recipient must pay \$1067.57 in applied income each month towards his cost of care under the Long Term Care Medical Assistance program.

On ██████████ 2015, the Appellant requested an administrative hearing to contest the Department's calculation of the applied income amount.

On ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2015.

On ██████████ 2015, in accordance with sections 17b-60, 17-61, 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:

████████████████████, the Appellant, wife and power of attorney ("POA") for ██████████
████████████████████, the Recipient
████████████████████, the Appellant's daughter
████████████████████, the Appellant's daughter
Ellen Croll, Department's Representative
Maureen Foley-Roy, Hearing Officer

The hearing record remained open for the submission of additional evidence. On [REDACTED] 2015, the hearing record closed.

STATEMENTS OF THE ISSUES

The issue to be decided is whether the Department's calculation of the Applicant's applied income is correct.

FINDINGS OF FACT

1. The Recipient, who is currently institutionalized at a long term care facility, was found eligible for Medicaid for Long Term Care effective [REDACTED] 2015. (Exhibit 9: Case Narrative)
2. The Appellant is the Recipient's spouse. She resides in her own home in the community. (Hearing record)
3. The Appellant pays a mortgage of \$637.52 per month. This includes \$162.97 for the principal, \$159.65 in interest and \$314.90 which is held in escrow to pay property taxes. (Exhibit 10: Wells Fargo Home Mortgage statement)
4. The Appellant pays \$2884.00 annually for home insurance. (Exhibit 10: p2: MetLife Billing Statement)
5. The Appellant is employed at [REDACTED] and is receives a gross salary of \$546 twice per month. (Exhibit 12: Appellant's income/paystubs)
6. The Appellant also receives a gross Social Security benefit of \$700 per month. (Exhibit 12: Appellant's income/Social Security letter)
7. The Appellant has no income other than her wages and Social Security. (Appellant's testimony)
8. The Recipient's income consists of a gross Social Security benefit of \$1873.90 per month, an [REDACTED] pension of \$458.49 per month and a gross payment of \$116.20 per month from a [REDACTED] annuity. (Exhibit 11: Recipient's income)
9. The Recipient has the following deductions taken from his income: \$104 is deducted from his Social Security benefit for Medicare and \$32.54 is deducted from his annuity for taxes. (Exhibit 11)
10. The Recipient pays \$30.30 per month for medical insurance, in addition to the Medicare. (Exhibit 11)

11. On [REDACTED] 2014, prior to being on Medicaid, the Recipient incurred two separate bills of \$225 each for ambulance transportation, which remain unpaid. (Exhibit 14: Envision Healthcare bill)
12. On [REDACTED] 2015, when calculating the Recipient's applied income for the month of [REDACTED] 2015, the Department allowed a deduction for one medical bill of \$225. (Exhibit 8: Case Narrative p.2)
13. On [REDACTED] 2015, the Department sent the Appellant a notice that the Recipient must pay \$1067.57 each month towards the cost of his care in the facility. (Exhibit 2: Notice of Applied Income Change)
14. The Department determined that the Recipient's applied income for the month of [REDACTED] 2015 was \$842.17 because the Department allowed for the deduction of the \$225 AMR medical bill. (Exhibit 5: FSFI screens printout)
15. The Department determined the applied income beginning with the month of [REDACTED] 2015 and ongoing, was \$1067.57 per month. (Exhibit 5)

CONCLUSIONS OF LAW

1. Section 17b-2, section (9) of the Connecticut General Statutes, designates the Department of Social Services as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual ("UPM") § 5045.20 provides that 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.
3. UPM § 2015.05 A provides for the basic requirements of assistance unit composition and states in relevant part that the assistance unit in the Aid to the Aged, Blind and Disabled program and the Medical Assistance for the Aged, Blind and Disabled program consists of only member.
4. UPM § 5045.20 A provides that 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 received.
5. The Department was correct when it determined that the Recipient must pay applied income after he had been in the facility for 30 days.

6. UPM § 5045.20 (B)(1)(b) provides for the amount of income to be contributed in LTCF cases and states that total gross income is reduced by post-eligibility deductions (Cross reference: 5035-"Income Deductions") to arrive at the amount of income to be contributed. (Emphasis added)
7. The Recipients total gross monthly income is \$2448.59. (\$1873.90 (Social Security) + \$458.59 (████████ pension) + \$116.20(██████████ pension))
8. UPM § 5035.20 B provides that the following monthly deductions are allowed from the income of assistance units in LTCF's:
 1. for veterans whose VA pension has been reduced to \$90.00 pursuant to P.L. 101-508, and for spouses of deceased veterans whose pension has been similarly reduced pursuant to P.L. 101-508, as amended by Section 601 (d) of P.L. 102-568, a personal needs allowance equal to the amount of their VA pension and the personal needs allowance described in 2. below;
 2. a personal needs allowance ("PNA") of \$50.00 for all other assistance units, 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;(note: prior to July 2011, the PNA was \$69 per month; in July of 2011, the PNA was reduced to \$60)
 3. an amount of income diverted to meet the needs of a family member who is in a community home to the extent of increasing his or her income to the MNIL which corresponds to the size of the family;
 4. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for by Medicaid 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 Department was correct when it allowed the Recipient's Medicare and other health insurance premiums as a deduction.
10. The Department was correct when it allowed an unpaid medical expense received within the six month period immediately preceding the first month of the Recipient's eligibility for Medicaid.
11. UPM § 5000.01 provides for the definition of a community spouse and states that 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.
12. UPM § 5035.30 A 1 provides for the use of a community spouse allowance ("CSA") and states 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.
13. The Department correctly determined that the Appellant was entitled to a community spouse allowance.
14. UPM § 5035.30 B 1 a provides for the calculation of the CSA and states in relevant part that the CSA is equal to the difference between the Minimum Monthly Needs Allowance (MMNA) and the community spouse's gross monthly income.
15. UPM § 5035.30 B 2 a and b provide that the MMNA is that amount which is equal to the sum of: the amount of the community spouse's excess shelter cost as calculated in section 5035.30 B.3 and 150 percent of the monthly poverty level for a unit of two persons.
16. 150 per cent of the poverty level for two persons is \$1966.25.
17. UPM § 5035.30 B 3 provides that 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 poverty level for a unit of two persons.
18. Thirty percent of 150% of the monthly federal poverty level for two is \$589.88. [30% X \$1966.25]

19. UPM § 5035.30 B 4 provides that the community spouse's monthly shelter cost includes rental costs or mortgage payments, including principle and interest; and real estate taxes; and real estate insurance; and required maintenance fees charged by condominiums or cooperatives except those amounts for utilities and Standard Utility Allowance (SUA) used in the FS program for the community spouse.
20. The Department correctly determined that the Appellant's monthly shelter cost is \$1601.85. [\$322.62 (mortgage) + \$314.90 (property taxes) + \$240.33 (homeowner's insurance prorated monthly amount) + \$724 (standard utility allowance)]
21. The Appellant's excess shelter cost is \$1011.97 (\$1601.85 - \$589.88)
22. The Department correctly determined that the Appellant's MMNA was \$2978.22. (\$1011.97 [Excess shelter] + \$1966.25 [150% Federal Poverty Level for two]).
23. Effective [REDACTED] 2015, the Community Spouse's MMNA was \$2,801.12 as shown in the table below:

	AMOUNT
Shelter Costs:	
Mortgage + taxes	\$ 637.52
Homeowner's Insurance	\$ 240.33
Standard Utility Allowance	<u>+\$724</u>
Total shelter costs:	\$ 1601.85
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$589.88</u>
Excess shelter costs:	\$ 1011.97
Plus 150% of the FPL for two:	<u>+\$1966.25</u>
Equals the MMNA (MMNA max. \$2,980.50)	\$ 2,978.22

24. UPM § 5025.05(A)(1) provides for converting income to monthly amounts and states for past months the Department uses the exact amount of the unit's available income received or deemed in the month.
25. The Department was correct when it calculated the Appellant's ongoing earnings as \$1092 per month. (\$546 X 2)

26. The Department correctly determined that the CSA for █████ 2015 and ongoing was \$1186.22. (\$2822.70 (MMNA) - \$1909.45(Appellant's gross income- \$700 Social Security + \$1092 earnings) as shown in the table below:

COMMUNITY SPOUSE DEFICIT	
Social Security	\$700
Earnings	\$ 1092.00
Total Income	\$ 1792
MMNA	\$ 2,978.22
Less Total Income	<u>-\$1792</u>
Monthly Deficit	\$ 1186.22

27. The Department correctly determined that the Recipient's applied income for █████ 2015 was \$1067.17 per month [\$2448.59 -\$104.90(Medicare premiums-) \$30.30 (other medical insurance premium)-\$60(personal needs allowance) -\$1186.22 (CSA)].
28. The Department correctly determined that the Recipient's applied income for the month of █████ 2015 was \$842.17. (\$2448.59 -\$104.90(Medicare premiums-) \$30.30 (other medical insurance premium)-\$60(personal needs allowance) -\$1186.22 (CSA) - \$225 (outstanding AMR bill).
29. The Department correctly determined that the Recipient's applied income beginning in █████ 2015 was \$1067.17 per month [\$2448.59 - \$104.90(Medicare premiums-) \$30.30 (other medical insurance premium)- \$60(personal needs allowance) -\$1186.22 (CSA)].

DISCUSSION

The Appellant's frustration in attempting to comprehend the applied income calculation(s) is understandable. The undersigned has not reviewed and cannot explain the applied income figures that were found prior to █████ 2017. Many factors affect the applied income. Some, such as the income for the nursing home resident and his or her spouse, are apparent. Others, such as the federal poverty levels and standard utility allowance used in calculating the community

spouse allowance, may not be known to the general population. However, they are found in the regulations.

The issue of this hearing was the [REDACTED] 2015 notice advising the Appellant that the applied income was \$1067.17 per month. The undersigned has completed a thorough review and determined that the \$1067.17 applied income figure is correct. The Department has allowed all of the possible deductions.

DECISION

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

Maureen Foley-Roy
Maureen Foley-Roy
Hearing Officer

CC: Lisa Wells, Brian Sexton, Operations Managers, DSS, New Haven
Bonnie Shizume, Program Manager, DSS New Haven
Ellen Croll, Fair Hearing Liaison, DSS New Haven
Olga Ivenskaya, ESS, DSS, Stamford

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.

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.