

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 #712533

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████ the Power of Attorney ("POA") for ██████████ (the "Appellant") a Notice of Action ("NOA") with the amount of applied income ("AI") that he must pay toward his cost of long term care.

On ██████████ 2015, the Appellant, through his attorney 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, 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, wife and POA
Attorney ██████████, for the Appellant
██████████, Appellant's Daughter
Sarah Bradley, Department's Representative
Douglas Farrell, Department's Representative
Thomas Monahan, Hearing Officer

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

STATEMENT OF THE ISSUE

The issue is whether the Department has correctly calculated the amount of applied income that the Appellant is responsible to pay toward the cost of his long-term care.

FINDINGS OF FACT

1. The Appellant is a resident of The Carolton a long term care facility in [REDACTED]. (Hearing record)
2. The Appellant's spouse ("Community Spouse") resides in the community. At [REDACTED] (Hearing record)
3. On [REDACTED] 2015, the Appellant applied for long-term care Medicaid. (Exhibit A: Verification We Need, [REDACTED]/15)
4. The Appellant's gross Social Security benefit is \$1,389.90 per month. (Exhibit H: TPQY printout)
5. The Appellant's gross pension is \$980.23 monthly. (Ex. I: Pension pay stub)
6. The Community Spouse's gross Social Security benefit is \$966.90 per month. (Ex. J: TPQY printout)
7. The Community Spouse's gross pension is \$188.00 per month. (Ex. K: Form 1099R, 2014)
8. The Appellant pays \$104.90 per month for his Medicare Part B premium. (Exhibit H: TPQY printout)
9. The Community Spouse pays \$26.25 monthly for Homeowners insurance (Ex. L: Homeowners insurance bill, [REDACTED]/2014)
10. At the time of application the Community spouse paid condo fees of \$417.00 per month. Effective [REDACTED] 2015 the condo fees increased to \$443.00 per month. (Ex. M: Bank statement, Ex. N: [REDACTED] letter, [REDACTED]/15)
11. The Community Spouse has macular degeneration and is legally blind. (Appellant's Ex. C-3: Doctors letters)

12. The Community spouse pays approximately \$100.00 out of pocket per month for a shot in each eye as part of her treatment for macular degeneration. (Community Spouse's testimony, Appellant's Ex. C-3: Doctors letter, [REDACTED]/15)
13. The Community spouse takes medications for COPD, Cholesterol and anxiety. The medications are measured and set-up by the daughter of the Community spouse. (Community Spouse's daughter's testimony)
14. The Community Spouse is unsteady on her feet. (Appellant's daughter's testimony)
15. The Community spouse is unable to buy or prepare her own meals due to her macular degeneration. (Appellant's daughters testimony)
16. Because of the Community Spouse's medical condition and the assistance she needs at her home she signed a caregiver agreement with her two daughters. (Appellant's Ex. C-3: Doctors letter, [REDACTED]/15, Appellant's Ex. D-4: Caregiver Agreement [REDACTED]/15)
17. The Caregiver Agreement is backdated to [REDACTED] 2015 for services that have already been provided. Payment has not been made for the prior services. The daughters' average a combined 20 hours per week and are paid \$9.15 per hour or \$183.00 per week. Services provided include: home health care, assistance with shopping and preparing meals, driving the Community Spouse to and from doctor's appointments, Supervision of Medications, Monitor the Community spouse's health care, act a spokesperson or agent in dealing with healthcare providers. (Appellant's Ex. D-4: Caregiver Agreement [REDACTED]/15)
18. On [REDACTED] 2015, the Department issued a notice of Approval for Long Term Medicaid stating that the Appellant must pay \$816.50 per month for the cost of his care (Applied Income "AI") beginning [REDACTED] 2015. (Ex. G: Long Term Care Approval letters, [REDACTED]/15)
19. The Community Spouse is seeking an increase in her Community Spouse Allowance due to Exceptional Circumstances causing Significant Financial Duress.

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 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. 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 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 that the Appellant's gross income was \$2,370.13 per month (\$1,389.90 + \$980.23).
5. The Department correctly determined that the Community Spouse's monthly income was \$1,154.90 (\$966.90 + \$188.00).
6. 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.
7. UPM § 5035.25 (B) (1) provides a monthly deduction for LTCF 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.
8. UPM § 5035.25 (B) (4) provides a monthly deduction for LTCF units of Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for the Department or any other third party.
9. UPM § 5035.25 (B) (2) provides for a Community Spouse Allowance ("CSA") as a monthly deduction for LTCF assistance units when appropriate; (Cross Reference 5035.30)
10. 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's gross monthly income; or the amount established pursuant to court order for the purpose of providing necessary spousal support.

11. 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.
12. 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.
13. UPM § 5035.30 B (5) (a) (b) provides that the MMNA may not exceed the greatest of either the maximum MMNA (\$2,980.50) or an amount established through a Fair Hearing.
14. The Department correctly determined that the Appellant's CSA was \$1,388.72 effective [REDACTED] 2015. See table below:

	AMOUNT
Shelter Costs:	
Homeowners insurance	\$26.25
Condo Fees	\$417.00
Standard Utility Allowance	\$724.00
Total Shelter Costs:	\$1,167.25
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$589.88</u>
Excess Shelter Costs:	\$577.37
Plus 150% of the FPL for two:	<u>\$1,966.25</u>
Equals the MMNA	\$2,543.62
Community Spouse's Income	<u>-\$1,154.90</u>
Community Spouse Allowance	\$1,388.72

15. 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.

16. 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.
17. UPM Section 1570.25(D)(3)(d) 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.
18. The Community Spouse's medical condition is severe and unusual and directly threatens her ability to remain in the community. The Appellant's macular degeneration and legal blindness prevent her from completing her daily activities that allow her to remain in the community. The Appellant requires Homecare assistance which allows her to remain in the community. The expenses of the monthly shots are directly related to her medical condition.
19. The expenses related to the Appellant's exceptional circumstances cause the Community Spouse significant financial duress. The average monthly cost of these expenses is \$886.90 (\$100.00 shots + \$786.00 Homecare Assistance [\$183.00 x 4.3 weeks]).
20. The Community Spouse Allowance ("CSA") effective of [REDACTED] 2015 through [REDACTED] 2015 is \$2,275.62. See table below:

	AMOUNT
Shelter Costs:	
Homeowners insurance	\$26.25
Condo Fees	\$417.00
Standard Utility Allowance	\$724.00
Total Shelter Costs:	\$1,167.25
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$589.88</u>
Excess Shelter Costs:	\$577.37
Plus 150% of the FPL for two:	\$1,966.25
Equals the MMNA	\$2,543.62

Costs due to exceptional circumstances	\$886.90
MMNA including exceptional circumstances	\$3,430.52
Community Spouse's income	<u>- \$1,154.90</u>
Community Spouse Allowance	\$2,275.62

21. The Appellant's monthly-applied income for the months of [REDACTED] 2015 through [REDACTED] 2015 is \$0.00 (\$2,370.13 income minus \$60.00 PNA minus \$2,275.62 CSA, minus \$104.90 Medicare Part B).

22. The CSA for the month of [REDACTED] 2015 is \$2,319.12. See table below.

	AMOUNT
Shelter Costs:	
Homeowners insurance	\$26.25
Condo Fees	\$443.00
Standard Utility Allowance	\$724.00
Total Shelter Costs:	\$1,193.25
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two] eff. 7/1/15	<u>-\$597.38</u>
Excess Shelter Costs:	\$595.87
Plus 150% of the FPL for two:	<u>\$1,991.25</u>
Equals the MMNA	\$2,587.12
Costs due to exceptional circumstances	\$886.90
MMNA including exceptional circumstances	\$3,474.02
Community Spouse's income	<u>- \$1,154.90</u>
Community Spouse Allowance	\$2,319.12

23. The Appellant's monthly-applied income for the month of [REDACTED] 2015 is \$0.00 (\$2,370.13 income minus \$60.00 PNA minus \$2,319.12 CSA, minus \$104.90 Medicare Part B).

DISCUSSION

The Department correctly determined the CSA in its initial determination of the Appellant's eligibility for LTC Medicaid. However, the regulations state that if a Fair Hearing Official finds that the Community spouse has exceptional circumstances, which cause her significant financial duress, the Fair Hearing Official may increase the MMNA based on the expenses related to the

exceptional circumstances. The policy is specific in regards to such circumstances. They must be extreme and unusual, not relating to household upkeep, the normal frailties of old age or escalating medical insurance costs. The Hearing Official may only consider severe medical conditions that prevent the community spouse from taking care of her activities of daily living or threaten her ability to remain in the Community. In this case, I find that the Community Spouse's macular degeneration threatens her ability to remain in the community without the assistance of a Home Health Aid. The additional cost of the shots she receives specifically for her macular degeneration is costs that relate to her ability to complete some activities on her own. I have calculated and averaged the expenses of a Home Health Aid and necessary out of pocket medical cost for the monthly shots and determined that these expenses, which are a result of the Community Spouse's exceptional circumstance result in significant financial duress for the community spouse.

The Care agreement submitted at the hearing was signed on [REDACTED] 2015, but was effective [REDACTED] 2015. The Department granted assistance effective [REDACTED] 2015 and therefore the updated CSA is effective [REDACTED] 2015.

DECISION

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

ORDER

1. The Department is to recalculate the applied Income considering a community spouse allowance as computed above.
2. Compliance with this order is due to the undersigned no later than 15 days from the date of this decision.
3. In addition, the Department shall consider and calculate the expenses related to the community spouse's exceptional circumstances at each review of the CSA.

Thomas Monahan
Thomas Monahan
Hearing Officer

C: Poonam Sharma, Operations Manager, Bridgeport Regional Office
Fred Presnick, Operations Manager, Bridgeport Regional Office
Yecenia Acosta, Program Manager, Bridgeport Regional Office
Cheryl Stuart, Program Manager, Bridgeport Regional Office
Sarah Bradley, Hearing Liaison, Bridgeport Regional Office
Douglas Farrell, Hearing Liaison, Bridgeport Regional Office

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, 25 Sigourney Street, Hartford, CT 06106.

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, 25 Sigourney Street, Hartford, CT 06106. 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.

