

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06106-5033

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

Client ID # ██████████
Request # 718896

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2015, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") indicating that the amount of applied income that he must pay toward his long-term care services would increase to \$826.42.

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, 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
Kenneth Smiley, Department's Representative
██████████ Appellant's Witness and Daughter
Sybil Hardy, Hearing Officer

The record was held open for the submission of additional information. On ██████████ 2015 the record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department has correctly calculated of the amount of applied income that the Appellant is responsible to pay toward the cost of his long-term care for [REDACTED] 2015.

The issue regarding whether the Department correctly calculated the Appellant's amount of applied income for [REDACTED] 2015 will be addressed in a separate decision.

FINDINGS OF FACT

1. The Appellant is married and his spouse lives in the community. (Hearing Record)
2. Effective [REDACTED] 2015, the Appellant receives \$1,886.90 per month in Social Security Disability benefits. (Hearing Record, Exhibit 14: Unearned Income ["UINC"] Screen)
3. The Appellant pays \$104.90 for his monthly Medicare B premiums. (Appellant's Testimony, Exhibit 6)
4. The Appellant receives \$1,371.02 per month gross unearned income from his [REDACTED] pension. (Hearing Record, Exhibit 11: Payment Statement from [REDACTED])
5. The Appellant pays \$275.45 directly from his pension for his spouse's monthly health insurance premium with Transamerica. (Exhibit 11: Exhibit 16: Letter from [REDACTED], [REDACTED]/15)
6. The Appellant's spouse receives \$713.90 per month as a gross monthly unearned income from Social Security. (Hearing Record, Exhibit 3)
7. The Appellant's mortgage and property tax amount is \$935.69 per month. (Hearing Record, Exhibit 8)
8. The Appellant submitted non-covered medical expenses to the Department in the amount of \$344.27. (Exhibit 3)
9. Effective [REDACTED] 2015, the Appellant's monthly community spousal allowance amount is \$2,266.60. (Exhibit 8)
10. The Appellant does not have any exceptional circumstances. (Appellant's Testimony)
11. The personal needs allowance ("PNA") for a person residing in a Nursing Facility ("NF") is \$60.00 per month. (Hearing Record)

12. On [REDACTED], 2015, the Department diverted \$344.27 from an unpaid medical bill from American Ambulance. (Exhibit 3)
13. On [REDACTED] 2015, the Department notified the Appellant that his monthly applied income would be increased to \$826.42 per month effective [REDACTED] 2015. (Exhibit 3, Exhibit 10: Applied Income Confirmation Notice)

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 § 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.
4. 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)
5. The Department correctly determined that the Appellant's total gross monthly income is \$3,257.52. (\$1,886.90 (SSA) + \$1,371.02 ([REDACTED] pension)).
6. The Department correctly determined that the Appellant's Spouse's total gross monthly income is \$713.90.
7. UPM § 5035.25 provides for residents 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.

B. Deductions for LTCF Units

The following monthly deductions are allowed from the income of assistance units in LTCF's.

1. A personal needs allowance ("PNA") 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 5035.35)
 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 of 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.
8. The Department correctly allowed the Appellant a PNA of \$60.00
9. The Department was correct when it allowed the Recipient's Medicare and other health insurance premiums as a deduction.
10. 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.
11. 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.
12. The Department correctly determined that the Appellant was entitled to a community spouse allowance.

13. 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.
14. 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.
15. One hundred and fifty per cent of the poverty level for two persons is \$1992.00.
16. 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.
17. Thirty percent of 150% of the monthly federal poverty level for two is \$597.60. [30% X \$1992.00]
18. 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.
19. The Department correctly determined that the Appellant's monthly shelter cost is \$1,761.61 [\$564.21 (mortgage) + \$371.48 (property taxes) + \$101.95 (homeowner's insurance prorated monthly amount) + \$724(standard utility allowance)]
20. The Appellant's excess shelter cost is \$1011.97 (\$1601.85-\$589.88)
21. 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.
22. The Department correctly determined that the Appellant is eligible for the maximum MMNA amount of \$2980.50. (\$1011.97 [Excess shelter] + \$1966.50 [150% Federal Poverty Level for two), the MMNA maximum amount.
23. Effective [REDACTED], 2015, the Community Spouse's MMNA was \$2,980.50 as shown in the table below:

	AMOUNT
Shelter Costs:	
Mortgage + taxes	\$ 935.69

Homeowner's Insurance	\$101.95
Standard Utility Allowance	<u>+\$724.00</u>
Total shelter costs:	<u>\$ 1761.64</u>
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$597.60</u>
Excess shelter costs:	\$ 1,164.04
Plus 150% of the FPL for two:	<u>+\$1992.00</u>
Total	<u>\$3,156.04</u>
Equals the MMNA (MMNA max. \$2,980.50)	\$ 2,980.50
Community Spouse's Income	\$713.00
Community Spouses Allowance	\$0.00

24. The Department correctly determined the Appellant's monthly gross income is \$3,257.92 per month (\$1,886.90 [SSA] + \$1,371.02 [Redacted Pension])
25. The Department correctly determined that the CSA for [Redacted] of 2015 and ongoing was \$2,266.60. (\$2,980.50 (MMNA) - \$3,257.92 [Appellant's gross income] as shown in the table below:

Community Spouse Deficit	
MMNA	\$2,980.50
CS Income:	
Social Security	-\$713.90
Monthly Deficit	\$2,266.60

26. UPM § 1570.36(D)(3)(a)(b) provides that the Fair Hearing official increases the community spouses 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'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.

27. 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.
28. The Department correctly determined that the Appellant recurring Medicare premium do not qualify as an exceptional circumstance and the Appellant has not requested exceptional circumstances at the time of the hearing.
29. The Department incorrectly removed the medical expense given to pay his spouse's medical health insurance premiums with Transamerica.
30. The Department incorrectly increased the Appellant's applied income effective [REDACTED] 2015.
31. 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.
32. The Department correctly determined that the Appellant's applied income effective [REDACTED] 2015 was \$826.42. The correct applied income is \$550.97 per month (\$3,257.92, Appellant's total gross income - \$104.90, Medicare premium - \$275.45, other medical insurance premium - \$60.00, personal needs allowance - \$2,266.60, CSA)

DISCUSSION

The Department incorrectly removed the Appellant's medical health premiums as an acceptable expense because the health insurance is for his spouse. The medical expenses of both the Appellant and his spouse are allowed as deductions per policy.

DECISION

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

ORDER

1. The Department shall continue to allow the Appellant the Transamerica Medical Health Premiums as expense effective [REDACTED] 2015 and continue to process the case

2. Compliance with this order shall be submitted to the undersigned no later than [REDACTED] 2015.

Sybil Hardy
Sybil Hardy
Hearing Officer

Pc: Cheryl Parsons, Operations Manager, DSS R.O. # 40, Norwich
Kenneth Smiley, Hearing Liaison, DSS R.O. # 42, Willimantic

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.