

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3725

██████████ 2016  
Signature Confirmation

Client ID # ██████████  
Request #731691

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On, ██████████ 2015, the Department of Social Services (the "Department") sent ██████████, ("Community Spouse") a Notice of Action ("NOA") with the amount of her Community Spouse Allowance, ("CSA") that she can retain from her spouse's, ██████████, (the "Appellant") applied income.

On ██████████ 2015, the Community Spouse requested an administrative hearing on the Appellant's behalf to contest the Department's calculation of the CSA amount. The Community Spouse is seeking an increase in the CSA.

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:

██████████ Community Spouse and Power of Attorney ("POA")  
██████████ Appellant's Daughter and Authorized Representative  
Nedra Pierce, Department's Representative  
Scott Zuckerman, Hearing Officer

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

## **STATEMENT OF THE ISSUE**

The issue is whether the Community Spouse is entitled to an increase in the CSA. She is seeking an increase in her Minimum Monthly Needs Allowance (MMNA).

## **FINDINGS OF FACT**

1. On [REDACTED], 2011, the Appellant required 24 hour supervision and assistance with his activities of daily living ("ADL"). (Letter from Bechara Barrak, Collins Medical Associates, [REDACTED]/11)
2. On [REDACTED] 2013, the Appellant and his spouse Quit Claimed their home to their daughter, [REDACTED]. (Appellant's Exhibit B: Quit Claim Deed, [REDACTED]13)
3. Effective [REDACTED] 2015, the Appellant is a resident of [REDACTED] Center in [REDACTED], CT. (Department Testimony)
4. The Appellant's spouse lives in the community. (Summary, Testimony)
5. On [REDACTED], 2015, the Appellant applied for Long Term Care Medicaid assistance. (Exhibit 1: W-LTC, Long-term Care/Waiver Application)
6. On [REDACTED], 2015, the Department informed the Community Spouse of her CSA of \$1159.69 for [REDACTED] and [REDACTED] 2015. The Department informed the Appellant of his CSA of \$1,099.69 for [REDACTED] 2015 and ongoing. The CSA is a deduction from the Appellant's income for the Community Spouse's needs. (Hearing Summary, Exhibit 3: CSA Calculation.)
7. The Community Spouse had gross monthly unearned income of \$923.90 from her Social Security benefit, \$180.83 from her [REDACTED] pension and \$328.36 monthly pension from [REDACTED] retirement plan for a total income of \$1433.59 (Hearing Summary, Appellant's testimony, Exhibit 7: Statement of Old Age Security Pension to Non-residents of [REDACTED], Exhibit 8: [REDACTED] statement of benefits, Exhibit 9: SSA-1099 – Social Security Benefit Statement)
8. Effective [REDACTED], 2015, the Community Spouse's property tax payment was \$324.82 per month. (Ex. 13: Real Estate Tax bill, [REDACTED]/15)
9. Effective [REDACTED] 2015, the Community Spouse's homeowner's insurance payment was \$124.08 per month. (Ex. 12: Travelers Insurance Agency)
10. The W-1LTC indicated the Appellant pays a monthly mortgage of \$1000.00 per month. (Exhibit 1)

11. The Community spouse incurs a monthly variable home equity payment. The [REDACTED] 2015 minimum payment is \$288.86, the [REDACTED] minimum payment is \$288.37. (Exhibit A: Webster Bank credit line statements)
12. The Community Spouse is seeking an increase in her MMNA due to automobile expenses (fuel and repairs), upkeep of the home and major home expenses. (Community Spouse's Testimony)
13. The Community Spouse is able to care for herself and is healthy. (Community Spouse's Testimony)

### **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 pertains to 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 the amount of income to be contributed in LTCF cases at initial calculation 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. UPM § 5035.25 (B) (2) provides a monthly deduction for LTFC units of a Community Spouse Allowance ("CSA"), when appropriate; (Cross Reference 5035.30)
5. 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 gross monthly income: or the amount established pursuant to court order for the purpose of providing necessary spousal support.
6. 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.

7. 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.
8. 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.
9. The Department incorrectly determined that the Appellant's CSA was \$1115.69 effective [REDACTED] and [REDACTED] 2015. See table below:

	AMOUNT
Shelter Costs:	
Homeowners insurance	\$124.08
Property Taxes	\$324.82
Standard Utility Allowance	<u>+\$724.00</u>
<b>Total shelter costs:</b>	<b>\$1172.90</b>
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$589.88</u>
<b>Excess shelter costs:</b>	\$583.03
Plus 150% of the FPL for two:	<u>+\$1,966.25</u>
<b>Equals the MMNA</b>	\$2549.08
<b>Maximum MMNA</b>	<b>\$2,931.00</b>
<b>Community Spouse's Income</b>	<u>-\$1433.59</u>
<b>Community Spouse Allowance</b>	<b>\$1115.69</b>

The correct CSA is \$1404.29. See table below:

Shelter Costs:	
Homeowners insurance	\$124.08
Property Taxes	\$324.82
Home equity loan payment	\$288.61
$\blacksquare/15 \$288.86 + \blacksquare/15 \$288.37 = \$577.22 / 2 =$ \$288.61	
Standard Utility Allowance	<u>+\$724.00</u>
<b>Total shelter costs:</b>	<b>\$1461.51</b>
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$589.88</u>
<b>Excess shelter costs:</b>	<b>\$871.63</b>
Plus 150% of the FPL for two:	<u>+\$1,966.25</u>
<b>Equals the MMNA</b>	<b>\$2837.88</b>
<b>Maximum MMNA</b>	<b>\$2,931.00</b>
<b>Community Spouse's Income</b>	<u>-\$1433.59</u>
<b>Community Spouse Allowance</b>	<b>\$1404.29</b>

14. The Department incorrectly determined the Appellant's CSA was \$1099.69 effective ██████████ 2015. See table below:

	AMOUNT
Shelter Costs:	
Homeowners insurance	\$124.08
Property Taxes	\$324.82
Standard Utility Allowance	<u>+\$708.00</u>
<b>Total shelter costs:</b>	<b>\$1156.90</b>
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$589.88</u>
<b>Excess shelter costs:</b>	<b>\$567.03</b>
Plus 150% of the FPL for two:	<u>+\$1,966.25</u>

<b>Equals the MMNA</b>	\$2523.88
<b>Maximum MMNA</b>	<b>\$2,931.00</b>
<b>Community Spouse's Income</b>	<u>-\$1433.59</u>
<b>Community Spouse Allowance</b>	<b>\$1099.69</b>

The correct CSA is \$1388.29. See table below:

Shelter Costs:	
Homeowners insurance	\$124.08
Property Taxes	\$324.82
Home equity loan payment	\$288.61
$\blacksquare/15 \$288.86 + \blacksquare/15 \$288.37 = \$577.22 / 2 = \$288.61$	
Standard Utility Allowance	<u>+\$708.00</u>
<b>Total shelter costs:</b>	<b>\$1445.51</b>
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$589.88</u>
<b>Excess shelter costs:</b>	<b>\$855.63</b>
Plus 150% of the FPL for two:	<u>+\$1,966.25</u>
<b>Equals the MMNA</b>	<b>\$2821.88</b>
<b>Maximum MMNA</b>	<b>\$2,931.00</b>
<b>Community Spouse's Income</b>	<u>-\$1433.59</u>
<b>Community Spouse Allowance</b>	<b>\$1388.29</b>

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 § 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.
18. The Community spouse did not demonstrate she has exceptional circumstances.
19. The Department incorrectly determined the amount of the Appellant's CSA by not allowing for the home equity line of credit expense.

### **DISCUSSION**

The Community spouse feels that the Community Spouse Allowance (CSA) she receives each month is not sufficient to pay her expenses. I reviewed the evidence and testimony and find that the Department's calculation is incorrect. The CSA is calculated by using the difference between the Spouse's gross income and the MMNA. The Community spouse testified that she has additional expenses that were not reflected in the calculation of her CSA beyond her property taxes, homeowners insurance and utility bills which were reflected at the time of the grant. The Appellant provided additional documentation of a home equity line of credit which reflected the monthly minimum payments due each month.

The Appellant stated she has other expenses, such as care of her home, vehicle maintenance and other major home expenses. Regulation does not allow for the consideration of these items in calculating the CSA. The Community Spouse does not have exceptional circumstances that affect her.

**DECISION**

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

**ORDER**

1. The Department must recalculate the Appellants CSA and consider the Appellant's average monthly minimum home equity payments.
2. Proof of compliance of this order should be submitted to the undersigned no later than 20 days from the date of this decision.

  
Scott Zuckerman  
Hearing Officer

Pc: Tyler Nardine, Operations Manager, Middletown Regional Office  
Nedra Pierce, Fair Hearing Liaison, New Haven 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 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.