

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

[REDACTED] 2016
Signature confirmation

Client: [REDACTED]
Request: 750192

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On or around [REDACTED] 2015, the Department of Social Services (the "Department") issued a notice to [REDACTED] (the "Appellant" or "institutionalized spouse"), a Medicaid recipient of long-term care services, residing at Wadsworth Glen Health Care. The Department inadvertently failed to issue a copy of the notice to [REDACTED] [REDACTED], the holder of the Appellant's power of attorney and his authorized representative.

On [REDACTED] 2016, Wadsworth Glen Health Care Center notified the Appellant's authorized representative in writing that the Department had recalculated the Appellant's applied income due to the facility, effective [REDACTED] 2015.

On [REDACTED] 2016, the Appellant's authorized representative filed a request on behalf of the Appellant for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") to dispute the amount of the Appellant's community spouse's Community Spouse Allowance, a deduction given from an institutionalized individual's applied income. Although not within the 60-day statutory time limit for requesting an administrative hearing on an agency action, the OLCRAH granted the Appellant good cause for the delay in his request.

On [REDACTED] 2016, the OLCRAH issued a notice scheduling an administrative hearing for [REDACTED] 2016.

On [REDACTED] 2016, 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. The following individuals attended the proceedings:

[REDACTED], Appellant's community spouse
 [REDACTED], Appellant's witness
 Kenneth Smiley, Department's representative
 Eva Tar, Hearing Officer

The hearing record closed [REDACTED] 2016.

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 Community Spouse Allowance beyond that calculated by the Department for [REDACTED] 2015.

FINDINGS OF FACT

1. The Appellant's community spouse resides alone in a private apartment in [REDACTED], Connecticut. (Appellant's community spouse's testimony)
2. The Appellant is a Medicaid recipient of long-term care services at Wadsworth Glen Health Care Center. (Hearing request)
3. The Appellant's community spouse does not receive Medicaid benefits. (Appellant's community spouse's testimony)
4. In 2015, the Appellant's gross monthly Social Security benefit equals \$1,918.90 per month. (Department's Exhibit 3: Your New Benefit Amount, undated)
5. The Appellant's gross monthly [REDACTED] pension equals \$881.30. (Department's Exhibit 4: Pension stub, [REDACTED] 15)
6. The Appellant's receives an additional \$68.40 per month (above the \$881.30) from his pension administrator, as a partial reimbursement of his Medicare B premium. (Department's Exhibit 4)(Appellant's community spouse's testimony)(Appellant's witness's testimony)
7. In 2015, the Appellant's community spouse's gross monthly Social Security benefit equals \$1,298.90 per month. (Department's Exhibit 5: [Social Security Administration correspondence], undated)
8. The Appellant's community spouse receives \$68.40 per month from the Appellant's pension administrator as a partial reimbursement of her Medicare B premium; this

benefit is issued to her as the spouse of a retiree. (Department's Exhibit 6: Citizen's Bank statement, thru ██████15)(Appellant's community spouse's testimony)(Appellant's witness's testimony)

9. The Appellant's community spouse does not receive a private pension from a former employer. (Appellant's community spouse's testimony)(Appellant's witness's testimony)
10. The Appellant's community spouse pays \$865.00 per month in rent. (Department's Exhibit 7: Rental agreement and addendum, varying dates)
11. The Appellant's community spouse pays \$165.00 per year for renters insurance. (Appellant's Exhibit A: American Commerce Insurance Company, ██████15)
12. The Appellant's community spouse first provided verification of her renters insurance to the Department on ██████ 2016. (Department's representative's testimony)
13. The Appellant's community spouse requires air conditioning in warm or humid weather due to bronchiectasis, a chronic lung condition. (Appellant's Exhibit B: Middlesex Family Physicians correspondence, ██████15)
14. On ██████ 2015, the Appellant's community spouse purchased two air conditioners, for a total of \$1,254.91, to use in her apartment. (Appellant's Exhibit C: Gene's TV & Appliance, Inc., ██████15)
15. The Appellant's community spouse's electric bill runs between \$48.00 and \$83.00 per month. (Department's Exhibit 9: Utilities bills, varying dates)(Appellant's community spouse's testimony)
16. The Appellant's community spouse pays a premium for life insurance with United of Omaha Life Insurance. (Department's Exhibit 10: Cancelled check, ██████15)
17. The Department has calculated that the Appellant's community spouse's Community Spouse Allowance equaled \$1,599.58 per month. (Department's Exhibit 8: Community Spouse Allowance Calculation, effective ██████15)
18. The Department's calculation of the Appellant's community spouse's Community Spouse Allowance did not take into account the Appellant's community spouse's renter's insurance. (Department's representative'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.

Counted Income. Counted income is that income which remains after excluded income is subtracted from the total of available income.

Deductions. Deductions are those amounts which are subtracted as adjustments to counted income and which represent expenses paid by the assistance unit.

Disregards. Disregards are those amounts which are subtracted as standard adjustments to countable income and which do not represent expenses paid by the assistance unit.

Gross Unearned Income. Gross unearned income is the total amount of counted unearned income before disregards are subtracted from it.

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. UPM § 5045.20.
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 recalculation of the amount to be contributed in any month of the six-month period is required under the following conditions: a. a significant change occurs in income which amounts to an increase or a decrease in monthly income of \$15.00 or more per month; or b. a change occurs in any amount, in any deduction. UPM § 5045.20 (B)(2).
7. 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).
8. 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.
9. 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.
10. The allowable deductions cited at UPM § 5035.20 (B) are deductions that apply to a Medicaid recipient's gross monthly income, when that individual is receiving long-term care services. These deductions reduce the Medicaid recipient's applied income due to a skilled nursing facility.
11. The Community Spouse Allowance 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. UPM § 5035.30 (A)(1).

12. The Community Spouse Allowance 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).
13. 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).
14. Effective [REDACTED] 2015, Connecticut's SUA equaled \$708.00 per month.
15. For the purposes of a Community Spouse Allowance calculation, the Appellant's community spouse's allowable shelter costs equal \$1,586.75 in [REDACTED] 2015. [\$865.00 (rent) plus \$13.75 (monthly amount of renters insurance) plus \$708.00 (Standard Utility Allowance-SUA)]
16. 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).
17. One hundred and fifty percent of the Federal Poverty Level for two equaled \$1,991.25.
18. For the purposes of a Community Spouse Allowance calculation, the Appellant's community spouse's allowable excess shelter costs equaled \$989.37. [\$1,586.75 minus \$597.38 (30 percent of 150 percent of the Federal Poverty Level for two)]
19. 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).
20. 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).
21. Effective [REDACTED] 2015, the maximum MMNA equals \$2,980.50. UPM § P-5035.10.
22. 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).

23. 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 the institutionalized spouse). UPM § 1570.25 (D)(3)(a).
24. Significant financial duress is an expense or set of expenses that: (1) directly arises from the exceptional circumstances described in subparagraph a. above; and (2) is not already factored into the MMNA; and (3) cannot reasonably be expected to be met by the community spouse's own income and assets. UPM § 1570.25 (D)(3)(b).
25. Expenses that are factored into the MMNA, and thus do not generally qualify as causing significant financial duress, include, but are not limited to: (1) shelter costs such as rent or mortgage payments; (2) utility costs; (3) condominium fees; (4) real estate and personal property taxes; (5) real estate, life and medical insurance; (6) expenses for the upkeep of a home such as lawn maintenance, snow removal, replacement of a roof, furnace or appliance; (7) medical expenses reflecting the normal frailties of old age. UPM § 1570.25 (D)(3)(c).
26. The Appellant's community spouse's life insurance premium and Medicare B medical insurance premium is an expense that is factored into the overall calculation of her MMNA; it is not an expense that qualifies as causing significant financial duress.
27. The Appellant's community spouse's purchase of two air conditioners and a slight increase to her electric bills in warmer months are expenses that do not exceed \$708.00 per month, the standard utility allowance that is part of the overall calculation of her MMNA.
28. These Appellant's community spouse's life insurance premium, Medicare B medical insurance premium, purchase of two air conditioners and utility bills do not cause significant financial duress, as provided in UPM § 1570.25 (D).
29. 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. UPM § 1570.25 (D)(3)(d).
30. The Appellant's community spouse's MMNA equals \$2,980.50. [\$989.37 (excess shelter costs) plus \$1,991.25 (150 percent of Federal Poverty Level for two); *capped at \$2,980.50*]
31. The Appellant's community spouse's gross monthly income equals \$1,367.30. [\$1,298.90 (Social Security benefits) plus \$68.40 (Medicare B premium partial reimbursement)]

32. The Appellant did not establish by a preponderance of the evidence that the Appellant's community spouse had exceptional circumstances as described by UPM § 1570.25 (D)(3)(a).
33. The Appellant's community spouse's Community Spouse Allowance equals \$1,613.20. [\$2,980.50 (MMNA) minus \$1,367.30, (Appellant's community spouse's gross monthly income)]
34. The Department incorrectly determined that the Appellant's community spouse's Community Spouse Allowance was \$1,599.58 in [REDACTED] 2015.
35. The Appellant's community spouse is eligible for an increase in the Community Spouse Allowance beyond that calculated by the Department for [REDACTED] 2015.

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 Community Spouse Allowance equals \$1,613.20 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 20 calendar days of the date of this decision, or [REDACTED] [REDACTED] 2016, documentation of compliance with this order is due to the undersigned.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

Cc: [REDACTED], [REDACTED]
[REDACTED]
[REDACTED]
Kenneth Smiley, DSS-Willimantic (42)
Tyler Nardine, DSS-Middletown (50)

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.