

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3730

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

Client ID ██████████  
Request #765759

**NOTICE OF DECISION**

**PARTY**

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

**PROCEDURAL BACKGROUND**

On ██████████, 2016, the Department of Social Services (the "Department") sent, ██████████ (the "Appellant") an Assessment of Spousal Assets Notification of Results.

On ██████████, 2016, the Appellant requested an administrative hearing to contest the Department's determination.

On ██████████, 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████, 2016.

On ██████████, 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 following individuals were present at the hearing:

██████████, Appellant's Spouse, Power of Attorney ("POA")  
██████████, Appellant's Daughter, Power of Attorney ("POA")  
██████████, Appellant's Representative  
Joseph Jack, Department's Representative  
Miklos Mencseli, Hearing Officer

The Appellant was not present.

The hearing officer held the record open for the Department for the submission of additional evidence. On [REDACTED], 2016, the hearing officer closed the record. On [REDACTED], 2016, the hearing officer received a request from the Appellant's representatives for additional time to review the Department's submission and provide a response.

On [REDACTED], 2016, the hearing officer granted the request to hold the record open. On [REDACTED], 2016, the hearing officer closed the record.

A separate decision will be issued regarding the amount of applied income.

### **STATEMENT OF THE ISSUE**

The issue is whether, [REDACTED], (the "Community Spouse") needs additional assets protected, from the Appellant's share of assets, to produce additional income to meet her needs in the community.

### **FINDINGS OF FACT**

1. On [REDACTED], 2016, the Appellant applied for Medicaid Home Care Services (W01). (Summary)
2. On [REDACTED], 2016, the Appellant was admitted to the Curtis Home and the Application converted to an application for Long Term Care ("LTC") Medicaid. (Exhibit 10: Department's Case Narrative screen printout)
3. The Department determined the Appellant's date institutionalization (the date of institutionalization ["DOI"]) to be [REDACTED], 2013. (Exhibit 13: spousal assessment worksheet)
4. The Appellant's spouse lives in the community. (Summary, Testimony)
5. A Community Spousal Assessment was done to determine the total value of the assets as date of institutionalization. (Exhibit 12: W-1-SAN assessment of spousal assets)
6. The combined total of the Appellant and the Community Spouse's non-exempt assets was \$471,079.18 as of the DOI. (Summary, Exhibit 12)
7. The spousal share of the assets was \$235,539.59 as of the DOI (½ of the couple's combined non-exempt assets). (Summary, Exhibit 12)
8. The Community Spouse Protected Amount ("CSPA") maximum amount was \$115,920.00, as of the DOI, \$119,220.00 as of [REDACTED], 2015. (Exhibit 13)

9. The Appellant was granted Medicaid eligibility effective [REDACTED], 2016 (date of application). (Exhibit 6: Notice of Approval for Long)
10. The Appellant's gross monthly social security income amount is \$2,617.90. (Exhibit 1: Social Security Benefit Statement)
11. The Appellant receives a gross monthly pension amount of \$891.00. (Exhibit 3: AFTRA pension check)
12. The Appellant pays \$161.33 monthly medical premiums for supplemental insurance. (Exhibit 3)
13. The Appellant's spouse's gross monthly social security benefit amount is \$945.90 (Exhibit 2: Social Security Benefit Statement)
14. The Appellant's monthly cost for Medicare part B insurance premium is \$104.90. (Exhibit 1)
15. The Appellant's spouse monthly cost for Medicare part B insurance premium is \$104.90. (Exhibit 2)
16. The Appellant pays \$785.87 monthly mortgage amount. (Exhibit 8: Community Spouse Allowance Calculation)
17. The Appellant pays \$931.08 monthly for home owners insurance. (Exhibit 8)
18. The Appellant' spouse property tax monthly property tax is \$1,730.61. (Exhibit 4: real Estate Tax Bill with attached letter)
19. The Appellant's spouse is responsible to pay for utilities. (Testimony)
20. The Appellant has two TIAA-CREF accounts, [REDACTED] and [REDACTED]. (Exhibit 1: TIAA-CRFF contracts)
21. Both accounts are retirement accounts. The Department determined the funds in the accounts are considered available to the Appellant. (Exhibit 11: email dated [REDACTED]-16 from Department's Office of Legal Counsel)
22. The Department determined that fund [REDACTED] monthly average will be \$1,802.99 (Gross Payment is \$21,635.88 / 12 months = \$1,802.99) (Summary, Exhibit 10)
23. The Department determined that fund [REDACTED] monthly average will be \$1,225.52 (Gross Payment is \$14,706.26 / 12 months = \$1,225.52) (Summary, Exhibit 10)

24. The Appellant's representatives provided a letter that stipulates the TIAA-CREF funds will be distributed in 10 annual payments. (Summary)
25. The funds from the accounts will not be available until [REDACTED] 2016. (Appellant's Exhibit packet 1: dated [REDACTED]-16)
26. The Appellant's spouse has credit card debit. The Appellant's Representatives provided credit card statements. (Appellant Exhibit Packet 2: dated [REDACTED]-16)
27. The Appellant's spouse's has expenses associated with living in the community (Appellant Exhibit Packet 2: dated [REDACTED]-16)
28. The hearing record is devoid of medical evidence to support the Appellant's spouse's claim of exceptional circumstances. (Record)

### **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 § 5050.13(A) provides income from Social Security and Veteran's Benefits are treated as unearned income in all programs.
5. UPM § 5050.09 A & B provides payments received by the assistance unit from annuity plans, pensions and trusts are considered unearned income. When the payments are received less frequently than monthly, each payment is averaged forward over the number of months for which it was intended to obtain an amount of gross monthly income. (Cross Reference: 5050.53 – Intermittent Income)
6. UPM § 5050.53 provides for treatment of intermittent income.

The treatment of intermittent income described in this section involves both earned and unearned income. Some intermittent payments which are sporadically received are distinguished from lump sums on the basis of their probable recurrence.

- A. The following types of payments exemplify income which is considered intermittent:
    1. payment of money earned over a past period greater than a calendar month;
    2. advance payments made subject to contractual agreements for expenses in a future period greater than one month;
    3. payments made at intervals greater than one month subject to arrangements made between the payor and payee including, but not limited to, benefits from insurance settlements, payments of dividends and interest, and payments from pensions and annuities;
    4. receipt of income from sporadic short-term employment.
  - B. Income which is received intermittently is considered in relation to whether the payment is:
    1. one of a series of contracted payments to be received over a period of time from a particular source; or
    2. a single payment with no relationship to any former or subsequent payment.
  - C. The amount of the payment is prorated over a period of time in the following situations:
    1. when the income was earned over a past period of time, the payment is averaged retroactively over the number of months in which it was earned;
    2. when the income is paid subject to an employment agreement which provides for periodic advances to cover future needs, the payment is averaged by the number of months for which it is intended;
    3. when the income consists of unearned income paid on installment basis either resulting from the nature of the source or pursuant to an agreement between the payor and payee, the payment is averaged over the number of months the amount is intended to cover.
7. The Department correctly calculated the Appellant's monthly income from his retirement accounts by averaging the payments over a 12 month period.

8. The Department correctly determined that the Appellant's monthly gross income is \$6,537.41 (\$2,617.90 + \$891.00 + \$1,802.99 + \$1,225.50 = \$6,537.41)
9. 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.
10. UPM § 5035.25 (B) (1) provides a monthly deduction for LTFC units of 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.
11. Conn. Gen. Stat. § 17b-272. **(Formerly Sec. 17-134m). Personal fund allowance.** Effective July 1, 2011, the Commissioner of Social Services shall permit patients residing in nursing homes, chronic disease hospitals and state humane institutions who are medical assistance recipients under sections 17b-260 to 17b-262, inclusive, 17b-264 to 17b-285, inclusive, and 17b-357 to 17b-361, inclusive, to have a monthly personal fund allowance of sixty dollars.
12. UPM § 5035.25 (B) (4) provides a monthly deduction for LTFC units of Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for the Department or any other third party.
13. UPM § 5035.25 (B) (2) provides a monthly deduction for LTFC units of a Community Spouse Allowance ("CSA"), when appropriate; (Cross Reference 5035.30)
14. 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.
15. 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.
16. 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.

17. 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.
18. 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.
19. 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.
20. 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.
21. The cost associated with auto repairs, gas for the car, groceries, clothing, gifts and contributions are not considered exceptional circumstance.
22. The Appellant's spouse's credit card debt and community living expenses are not exceptional circumstances.
23. The Appellant's spouse did not prove that she has exceptional circumstances that threaten her ability to remain in the community.

24. The Department correctly determined that the Appellant's CSA is \$2,034.60. See table below:

	AMOUNT
<b>Shelter Costs:</b>	
Mortgage / Rent	\$785.87
Property Taxes	\$1,730.61
Property Insurance	\$931.08
Standard Utility Allowance	<u>+708.00</u>
<b>Total shelter costs:</b>	\$4,155.56
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$597.38</u>
<b>Excess shelter costs:</b>	\$3,558.19
Plus 150% of the FPL for two:	<u>+\$1,991.25</u>
<b>Equals the MMNA</b>	\$5,549.44
<b>Maximum MMNA</b>	<b>(\$2,980.50)</b>
<b>Community Spouse's Income</b>	<u>-\$945.90</u>
<b>Community Spouse Allowance</b>	\$2,034.60

25. The Department correctly determined the Appellant's community spouse allowance is \$2,034.60

### DISCUSSION

The Appellant's spouse did not provide clear and convincing evidence that she is under significant financial duress as a result of exceptional circumstances. The expenses related to credit card debt and living expenses are not considered exceptional circumstances.

In the case of Richard A. Hogberg ET AL. v. Department of Social Services, (AC 30720), the Connecticut Superior Court affirmed the trial courts position that, "the "exceptional circumstances" provision was not intended to insure community spouses against indebtedness. Instead, the purpose of the provision is to provide additional income for those community spouses suffering from extraordinary or unusual circumstances that make it financially stressful to continue living independently in the community". The Appellant's spouse did not meet the burden of proof that she has exceptional circumstances.



**DECISION**

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

A handwritten signature in black ink, appearing to read "Miklos Mencseli". The signature is written in a cursive style with a horizontal line underneath the name.

Miklos Mencseli  
Hearing Officer

C: E. Tyler Nardine, Operations Manager, DSS R.O. #50 Middletown

### **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.