

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 # 770868

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) granting his application for Long Term Care (“LTC”) Medicaid assistance, with an applied income (“AI”) amount of \$3,307.19 and a Community Spouse Amount (“CSA”) of \$907.68.

On ██████████ 2016, the Appellant requested an administrative hearing to contest the Department’s decision to grant LTC assistance with an AI of \$3,307.19 per month.

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 Power of Attorney (“POA”)
Michael Briggs, Eligibility Services Specialist, Department’s Representative
Edward Carter, Eligibility Services worker, Department’s Representative
Roberta Gould, Hearing Officer

STATEMENTS OF THE ISSUE

The issue is whether the Appellant's Applied Income of \$3,307.79 and CSA amount of \$907.68 are correct.

FINDINGS OF FACT

1. On [REDACTED] 2004, the Appellant and Community Spouse quit claimed property located at [REDACTED] [REDACTED] [REDACTED] to [REDACTED], [REDACTED], and [REDACTED]. (Exhibit 14: Property Deed and Hearing summary)
2. On [REDACTED] 2015, the Appellant entered [REDACTED] Medical Center. (Hearing summary)
3. The Appellant was admitted to [REDACTED] Center from [REDACTED] Medical Center. (Hearing summary)
4. On [REDACTED] 2016, the Appellant applied for LTC Medicaid. (Exhibit 1: W-1LTC application form and Hearing summary)
5. The Appellant is married to [REDACTED], the Community Spouse. (Hearing record)
6. The Community Spouse is [REDACTED] years old. (Hearing record)
7. The Community Spouse receives a gross monthly Social Security benefit of \$897.90. (Exhibit 11: Social Security benefit statement and Hearing summary)
8. The Community spouse receives a gross monthly [REDACTED] pension of \$37.44. (Exhibit 12: [REDACTED] pension statement and Hearing summary)
9. The Appellant receives a gross monthly Social Security benefit of \$479.10. (Exhibit 9: Social Security benefits statement and Hearing summary)
10. The Appellant receives a gross monthly [REDACTED] pension of \$3,010.00. (Exhibit: 10: U.S. Retirement Operations Center notice and Hearing summary)
11. The Appellant pays \$117.10 for a monthly Medicare B Premium. (Exhibit 3 Notice of Approval for LTC Medicaid)
12. The Appellant pays \$ 244.61 for private health insurance premium. (Exhibit 3)
13. The Community spouse resides at [REDACTED]. (Hearing record)
14. The Community spouse is unable to remain in her own home because she suffers from progressive dementia, has fallen down the stairs on several occasions, and is

unable to care for herself, prepare meals or take required medications. (Exhibit 28: Letter from Dr. [REDACTED] dated [REDACTED]/16, Exhibit 29: Letter from Dr. [REDACTED] [REDACTED] dated [REDACTED]/16 and POA's testimony)

15. The Community Spouse's monthly boarding fee for [REDACTED] is \$3,000.00. (Exhibit 13: Invoices for [REDACTED] and Hearing summary)
16. The Appellant and the Community Spouse retain life use of property located at [REDACTED] [REDACTED] [REDACTED] (Exhibit 14 and Hearing summary)
17. The owners of property located at [REDACTED] [REDACTED] [REDACTED] are unwilling and unable to sell or purchase the life use of the property located at [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Exhibit 16: Letters from [REDACTED], [REDACTED], and [REDACTED]; and Hearing summary)
18. The property located at [REDACTED] [REDACTED] [REDACTED] has a market value of \$720,000.00. (Exhibit 15: [REDACTED] Department of finance notice of property value)
19. The value of the Appellant's life interest in the property located at [REDACTED] [REDACTED] [REDACTED] [REDACTED] is \$88,142.40. (Exhibit 7: Life Use calculation worksheet and Hearing summary)
20. The value of the Community Spouse's life interest in the property located at [REDACTED] [REDACTED] [REDACTED] is \$125,348.40. (Exhibit 7 and Hearing summary)
21. The property located at [REDACTED] [REDACTED] [REDACTED] is not an available asset to the Appellant or the Community Spouse. (Hearing summary)
22. The property located at [REDACTED] [REDACTED] [REDACTED] is a two-family home being rented to one tenant since [REDACTED] of 2015, for \$2,850.00 per month. (Exhibit 17: Lease agreement and POA's testimony)
23. The monthly insurance premiums for the property located at [REDACTED] [REDACTED] [REDACTED] [REDACTED] are \$173.49. (Exhibit 18: State Farm homeowners insurance bill and Hearing summary)
24. The monthly property taxes for the property located at [REDACTED] [REDACTED] [REDACTED] are \$381.55. (Exhibit 19: Property tax bill and Hearing summary)
25. The monthly gas bill for the property located at [REDACTED] [REDACTED] [REDACTED] is \$24.68. (Exhibit 26: Gas bill)
26. The monthly water bill for the property located at [REDACTED] [REDACTED] [REDACTED] is \$233.92. (Exhibit 26: Water bill)

27. The monthly cost for boiler replacement for the property located at [REDACTED] [REDACTED] [REDACTED] is \$750.00. (Exhibit 24: [REDACTED] estimate dated [REDACTED] 16)
28. The monthly cost for concrete replacement for the property located at [REDACTED] [REDACTED] [REDACTED] is \$208.33. (Exhibit 24: [REDACTED] s estimate dated [REDACTED] /16)
29. The monthly cost for drain service for the property located at [REDACTED] [REDACTED] [REDACTED] is \$16.79. (Exhibit 24: Drain service bill dated [REDACTED] /16)
30. The monthly cost for plumbing work for the property located at [REDACTED] [REDACTED] [REDACTED] is \$58.97. (Exhibit 24: [REDACTED] bull dated [REDACTED] /15)
31. The monthly cost for plumbing supplies for property located at [REDACTED] [REDACTED] [REDACTED] is \$75.11. (Exhibit 24: Plumbing supply bill dated [REDACTED] 15)
32. On [REDACTED] 2016, the Department granted the Appellant's application for Long-Term Care Medicaid assistance effective [REDACTED] 2016, with a CSA of \$907.68 and an AI amount of \$3,307.19. (Exhibit 2: Notice of Approval for Medicaid assistance dated [REDACTED] /16, Exhibit 3: Notice of Approval for Long-Term Care Medicaid dated [REDACTED] /19 and Hearing summary)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. UPM 4030.35(A)(1) provides that life use is an asset to the extent that it can be sold by the life tenant.
3. The Department was correct when it determined that the property located at [REDACTED] [REDACTED] [REDACTED] is not an available asset to the Appellant or the Community Spouse because other owners are unwilling and unable to sell the property.
4. UPM 5050.69(A)(1)(b) provides that income received by the assistance unit from renting property to someone else is treated as unearned self-employment income under the Medicaid programs unless the income is derived from a business enterprise.
5. UPM 5050.69(A)(2) provides that the total self-employment income earned each month is reduced by the following self-employment deductions when they are incurred:
 - a. labor (wages paid to an employee or work contracted out);
 - b. interest paid to purchase income producing property;
 - c. insurance premiums;
 - d. taxes, assessments, and utilities paid on income producing property;

- e. service and repair of business equipment and property;
 - f. rental of business equipment and property;
 - g. advertisement;
 - h. licenses and permits;
 - i. legal or professional fees;
 - j. business supplies.
6. The Department incorrectly determined that the Appellant and Community Spouse's self-employment income after deductions was \$2,294.96 (\$2,850.00 rental income - \$381.55 monthly taxes - \$173.49 monthly insurance).
 7. The Appellant and Community Spouse's correct self-employment income after deductions is \$1,922.84 (\$2,850.00 rental income - \$381.55 monthly taxes - \$173.49 monthly insurance - \$24.68 monthly gas - \$233.92 monthly water - \$750.00 monthly cost for boiler replacement - \$208.33 monthly cost for concrete replacement - \$16.79 monthly cost for drain service - \$58.97 monthly cost for plumbing work - \$75.11 monthly cost for plumbing supplies).
 8. Effective [REDACTED] 2016, the Appellant had gross monthly income of \$4,450.52 (\$3,010.00 Federal pension + \$479.10 SSA + \$961.42 rental income [$\$1,922.84 \div 2$]).
 9. Effective [REDACTED] 2016, the Community Spouse had gross monthly income of \$1,886.76 (\$887.90 SSA + \$37.44 Pension + \$961.42 rental income [$\$1,922.84 \div 2$]).
 8. UPM § 5035.30(B) provides for the calculation of the Community Spouse Allowance ("CSA") and Minimum Monthly Needs Allowance ("MMNA") and states:

B. Calculation of CSA

1. The CSA is equal to the greater of the following:
 - a. the difference between 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.
2. 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.

3. 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.
 4. 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
 5. The Standard Utility Allowance ("SUA") used in the Supplemental Nutrition Assistance ("SNAP") program is used for the community spouse.
9. Effective [REDACTED] 2016, the Community Spouse's MMNA was \$2,980.50 as shown in the table below:

	AMOUNT
Shelter Costs:	\$3,000.00
Property Taxes	\$ 0.00
Homeowner's Insurance	\$ 0.00
Standard Utility Allowance	<u>+\$ 708.00</u>
Total shelter costs:	\$ 3,708.00
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$ 597.38</u>
Excess shelter costs:	\$ 3,110.62
Plus 150% of the FPL for two:	<u>+\$1,991.25</u>
Equals the MMNA (capped at \$2,980.50)	\$ 2,980.50

10. Effective [REDACTED] 2016, the CSA was \$1,093.58 as shown in the table below:

Community Spouse	
Social Security	\$ 887.90
[REDACTED] Pension	\$ 37.44
½ Rental Income	\$ 961.42
Total Income	\$1,886.76
MMNA	\$2,980.50

Monthly Income	- \$1,886.76
Monthly CSA	\$1,093.58

11. UPM § 1570.25(D)(4)(b) provides that for applications filed on or after 10-1-03, in computing the amount of the community spouse's income, the Fair Hearing official first allows for a diversion of the institutionalized spouse's income in all cases.
12. As of ██████████ 2016, a portion of the Community spouse's needs are met by diverting \$1,093.58 of the Appellant's income (\$2,980.50 MMNA - \$1,886.76 total monthly income = \$1,093.58).
13. UPM § 5035.25 provides that 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.
14. UPM § 5035.25(B) provides that the following monthly deductions are allowed from the income of assistance units in LTCF's:
 1. a personal needs allowance ("PNA") of \$60.00, which, effective July 1, 2009 and annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration; (Effective July 1, 2012 = \$60.00)
 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 by 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;
15. Effective ██████████ 2016, the Appellant had total available unearned income of \$4,450.52 (\$479.10 SSA + \$3,010.00 ██████████ Pension + \$961.42 Rental Income).
16. As of ██████████ 2016, the Appellant's AI towards the cost of his long-term care was \$2,935.23 (\$4,450.52 - \$117.10 Medicare B premium - \$244.61 private health insurance premium - \$1,093.58 CSA - \$60.00 PNA).

DISCUSSION

After reviewing the evidence and testimony presented at this hearing, I find that the Department's determination of the Appellant's spouse's CSA and the Appellant's AI for long-term care must be re-calculated. In calculating the amount of rental income available to the Appellant and his Community spouse the Department must consider the rental income as self-employment income with appropriate deductions for utilities, as well as service and repair for the property located at [REDACTED] [REDACTED] [REDACTED]. The Appellant's POA had provided documentation of those costs and did so again at the administrative hearing.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department shall re-calculate the Appellant's AI effective [REDACTED] 2016, and ongoing.
2. The Department shall re-calculate the Community Spouse's CSA effective [REDACTED] 2016, and ongoing.
3. No later than [REDACTED] 2016, the Department will submit to the undersigned verification of compliance with this order.



Roberta Gould
Hearing Officer

Pc: Carol Sue Shannon, Social Services Operations Manager, DSS, Danbury
[REDACTED] Power of Attorney

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, 25 Sigourney Street, Hartford, CT 06106-5033.

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, CT06106. 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.