

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 #773550

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") with the amount of applied income that he must pay toward his cost of long term care.

On ██████████ 2016, the Appellant requested an administrative hearing to contest the Department's calculation of the Community Spouse Allowance.

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
██████████, Appellant's Daughter
Natosha Douglas, Department's Representative
Marci Ostroski, Hearing Officer

The Appellant was not present.

STATEMENT OF THE ISSUE

The issue is whether the Department has correctly calculated of the amount of the Community Spouse Allowance used in the calculation of applied income that the Appellant is responsible to pay toward the cost of his long-term care.

FINDINGS OF FACT

1. On [REDACTED] 2016 the Appellant submitted an application for Medicaid. (Hearing Summary)
2. On [REDACTED] 2016, the Department granted the Appellant Long Term Care ("LTC") Medicaid assistance. (Ex. 15: Notice of Action [REDACTED] 16)
3. The Appellant's spouse lives in the community. (Summary, Testimony)
4. The total value of the Appellant's and spouse's assets as of the date of institutionalization was less than the minimum Community Spouse Protected amount. All the assets were protected for the Community Spouse. (Summary)
5. The Appellant's gross Social Security benefit amount is \$564.80 (Ex. 5: Social Security statement; [REDACTED])
6. The Appellant's monthly cost for Medicare B premiums is \$105.80. (Ex. 5: Social Security Statement; [REDACTED])
7. The Appellant's [REDACTED] gross monthly pension amount is \$4628.71. (Ex. 6: [REDACTED] Civil Service Commission letter and pension statement)
7. The Appellant's spouse's gross monthly social security benefit amount is \$700.90. (Ex. 4: Social Security statement; [REDACTED])
8. The Appellant's spouse's monthly cost for Medicare B premiums is \$104.90. (Ex. 4: Social Security statement; [REDACTED])
9. The Appellant's mortgage principal and interest is \$517.40 per month. (Ex. 7: Wells Fargo mortgage statement)
10. The Appellant has a second mortgage with Ditech. His payment is \$750.10 per month. (Ex. 8: Ditech loan statement, Appellant's spouse's testimony)
11. The Appellant's monthly property tax amount is \$504.55 (The twelve month charge is \$6054.58 /12 months equals \$504.55). (Ex. 10: Real Estate Tax bill)
12. The Appellant's monthly property insurance amount is \$136.50 (The total

charges for the year equal \$1,638.00 / 12 months equals \$136.50). (Ex. 10: Hartford Insurance Company statement)

13. On [REDACTED] 16 the Department granted LTC benefits for the Appellant with an effective date of [REDACTED] 15. (Ex. 13 Notice of Action [REDACTED] 16)
14. The Department determined the Appellant's applied income to be \$2,749.01 (gross income of \$5193.51-\$60.00 personal needs allowance -104.90 Medicare B premium- \$2279.60 Spousal allowance). (Ex. 13: Notice of Approval for Long Term Care Medicaid)

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. The Department correctly determined that the Appellant's monthly gross income is \$5193.51.
5. 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.
6. 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.
7. 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.

8. 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.
9. The Department correctly allowed deductions for personal fund allowance, and Medicare B premium however the amount used was incorrect. The correct Medicare part B premium is 105.80.
10. UPM § 5035.25 (B) (2) provides a monthly deduction for LTFC units of a Community Spouse Allowance (“CSA”), when appropriate; (Cross Reference 5035.30)
11. 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.
12. 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.
13. 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.
14. 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.
15. The Department correctly determined that the Appellant’s CSA is \$2279.60
See table below:

| | AMOUNT |
|--|-------------------|
| Shelter Costs: | |
| Mortgage | \$1267.40 |
| Property Taxes | \$504.55 |
| Property Insurance | \$136.50 |
| Standard Utility Allowance | \$708.00 |
| Total shelter costs: | \$2616.45 |
| Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two (1991.25)] | <u>-\$597.38</u> |
| Excess shelter costs: | \$2019.08 |
| Plus 150% of the FPL for two: | <u>\$1991.25</u> |
| Equals the MMNA | \$4010.33 |
| Maximum MMNA | \$2,980.50 |
| Community Spouse's Income | <u>-\$700.90</u> |
| Community Spouse Allowance | \$2279.60 |

16. The Appellant's monthly applied income is \$2748.11 (\$5193.51 gross income (\$4628.71 pension + \$564.80 SSA) - \$105.80 Medicare B premium - \$60.00 PNA - 2279.60 CSA)
17. 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.
18. 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.

19. 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.
20. The Appellant's spouse did not demonstrate she has exceptional circumstances resulting in financial duress.
21. The Department's determination of the Community Spouse Allowance is upheld.


DISCUSSION

The Department did make some small computation errors when calculating the applied income of the Appellant however the calculation of the community spouse allowance was correct. The Department gave double credit for the Appellant's property tax and property insurance in its calculation and also gave credit for the standard Medicare B premium of \$104.90 rather than the actual premium the Appellant is paying of \$105.80. The Department is encouraged to correct the Medicare B premium to \$105.80.

Regulations do allow the hearing process to increase the community spouse allowance if the community spouse can show that she has exceptional circumstances. The Appellant's spouse did not provide clear and convincing evidence that she is under significant financial duress as a result of exceptional circumstances; therefore the hearing officer has no ability to increase the community spouse allowance. The expenses the Appellant's spouse testified to are all considered to be included in the Minimum Monthly Needs Allowance as outlined in regulations and would not be classified as "exceptional".

DECISION

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


Marci Ostroski
Hearing Officer

CC: Poonam Sharma, Fred Presnick, Yesenia Acosta, Operations Managers,
Natosha Douglas, Hearing Liaison, DSS R.O. #30 Bridgeport

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.