

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT06105-3730

██████████ 2017  
SIGNATURE CONFIRMATION

REQUEST #820689

CLIENT ID ██████████

NOTICE OF DECISION

PARTIES

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PROCEDURAL BACKGROUND

On ██████████ 2017, the Department of Social Services (the “Department” or “DSS”) sent ██████████ (the “Appellant” and “Institutionalized Spouse”) a Notice of Approval granting the Appellant’s application for medical assistance, effective ██████████ 2017. The notice stated that the amount of the Community Spouse Allowance (“CSA”) was \$1,420.13 per month, and that the Appellant must pay \$3,219.48 per month towards the cost of his care, effective ██████████ 2017.

On ██████████, 2017, the Appellant’s representative, ██████████ ██████████, requested an administrative hearing on behalf of the Appellant and ██████████ (the “Community Spouse”), to seek an increase in the CSA as determined by the Department.

On ██████████ 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a Notice of Administrative Hearing scheduling an administrative hearing for ██████████ 2017 @ ██████████

OLCRAH granted the Appellant’s Representative’s request for a continuance.

On ██████████ 2017, in accordance with Connecticut General Statutes § 17b-60, § 17b-61 and § 4-176e to § 4-184, inclusive, OLCRAH held an administrative hearing to address the amount of the CSA as determined by the Department.

The following individuals were present at the hearing:

██████████, Community Spouse

████████████████████, Counsel for the Appellant/Community Spouse  
Marilyn F. Phillips, Representative for the Department  
Hernold C. Linton, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Community Spouse (“CS”) needs additional income diverted from the Institutionalized Spouse (“IS”) to meet her Minimum Monthly Needs Allowance (“MMNA”), due to exceptional circumstances causing significant financial duress.

### **FINDINGS OF FACT**

1. On ██████████, 2016, the Appellant was admitted to Bridgeport Hospital. (Hearing Summary)
2. On ██████████ 2016, the Appellant/IS became a resident of the Ludlow Center for Health and Rehabilitation, which is a long-term care facility (“LTCF”). (Hearing Summary; Dept.’s Exhibit #1: Admission Notice)
3. The Appellant’s spouse resides in the community. (Hearing Summary)
4. On ██████████ 2016, the Department received the Appellant’s application for Medicaid coverage to pay for his costs of long-term care (“LTC”). (Hearing Summary; Dept.’s Exhibit #2: W-1 LTC)
5. On ██████████ 2017, the Department determined that the combined total of the Appellant and Community Spouse’s non-exempt assets was \$120,340.41 as of the date of institutionalization (“D.O.I.”) of ██████████, 2016. (Hearing Summary; Dept.’s Exhibit #5: ██████████/17 Assessment of Spousal Assets-Notification of Results)
6. The Department determined that the Community Spouse's spousal share of the non-exempt assets (“CSPA”) was \$60,170.21 as of the D.O.I. (Dept.’s Exhibit #5)
7. The Department determined that the Appellant's share of the non-exempt assets was \$1,600.00 as of the D.O.I. (Hearing Summary; Dept.’s Exhibit #5)
8. The Department determined that the total maximum combined non-exempt assets allowed as of D.O.I. was \$61,770.21 (\$60,170.21, maximum CSPA allowed; plus \$1,600.00, Appellant’s portion). (Dept.’s Exhibit #5)
9. On ██████████ 2017, the Community Spouse purchased an annuity for \$56,000.00 from Nationwide Insurance Company. (Hearing Summary)

10. The Department determined that the couple spent down their total combined non-exempt assets to less than \$61,770.21 on [REDACTED] 2017. (Hearing Summary)
11. On [REDACTED] 2017, the Department granted the Appellant Medicaid coverage, effective [REDACTED] 2017, to pay for his LTC, with a calculated applied income of \$3,219.48 per month. (Hearing Summary, Dept.'s Exhibit #6: [REDACTED]/17 Notice of Approval)
12. On [REDACTED] 2017, the Department denied the Appellant's application for Medicaid coverage for the month of [REDACTED] 2016, due to the value of his combined non-exempt assets exceeded the allowable asset limit for the program. (Dept.'s Exhibit #7: [REDACTED]/17 Notice of Denial)
13. The Department is diverting the Appellant's applied income to cover unpaid medical expenses of \$5,508.26, which is owed to the facility for the month of [REDACTED] 2016. (Hearing Summary; Dept.'s Exhibit #6; Dept.'s Exhibit #17: [REDACTED]/17 Statement)
14. The Department determined the Community Spouse's MMNA as \$2,564.00, effective [REDACTED] 2017. (Hearing Summary; Dept.'s Exhibit #9: Community Spouse Allowance Calculation)
15. The Department determined that the Community Spouse is eligible for a CSA of \$1,420.13 per month, effective [REDACTED] 2017 to meet her needs. (Hearing Summary; Dept.'s Exhibit #6; Dept.'s Exhibit #9)
16. The Community Spouse is seeking an increase in the MMNA and CSA due to her claim of having exceptional circumstances resulting in additional monthly expenses that are causing significant financial duress. (Appellant Representative's Testimony; Appellant's Exhibit A: Memorandum of Law)
17. The Community Spouse is not seeking an increase in the Community Spouse Protected Amount ("CSPA"). (Appellant Representative's Testimony; Appellant's Exhibit A)
18. Effective [REDACTED] 2017, the Community Spouse has monthly shelter costs of \$1,162.25. (Dept.'s Exhibit #9)
19. The Department determined that the Community Spouse has a calculated MMNA of \$2,564.00, effective [REDACTED] 2017. (Dept.'s Exhibit #9)
20. Effective [REDACTED] 2017, the Community Spouse is receiving \$772.90 in monthly gross Social Security ("SSA") benefits. (Hearing Summary; Dept.'s Exhibit #9)

21. Effective [REDACTED] 2017, the Community Spouse is receiving \$370.97 in monthly gross annuity income from Nationwide Insurance Company. (Hearing Summary; Dept.'s Exhibit #9)
22. Effective [REDACTED] 2017, the Community Spouse has total monthly gross unearned income of \$1,143.87 (\$772.90, SSA; plus \$370.97, additional unearned income). (Hearing Summary; Dept.'s Exhibit #9)
23. The Community Spouse is 67 years of age, and is able to complete her activities of daily living ("ADL's") without assistance. (Appellant Representative's Testimony)

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Uniform Policy Manual ("UPM") § 1570.25(D)(3) provides that the 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.
3. UPM § 1570.25(D)(3)(a) provides that 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 institutionalized spouse).
4. UPM § 1570.25(D)(3)(b) provides that 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.
5. UPM § 1570.25(D)(3)(c) provides that 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.
6. UPM § 1570.25(D)(3)(d) 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.
7. The Community Spouse does not have exceptional circumstances that are severe and unusual as such, prevent her from taking care of her activities of daily living, or directly threaten the community spouse's ability to remain in the community.
8. Because the Community Spouse does not have exceptional circumstances, the additional monthly expenses that she claimed as causing significant financial duress could not be considered or allowed.
9. The Community Spouse is not eligible for an increase in her MMNA due to exceptional circumstances resulting in significant financial duress.
10. UPM § 5035.30(B) provides for the calculation of the Community Spouse Allowance ("CSA") and 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
    - e. The Standard Utility Allowance ("SUA") used in the Supplemental Nutrition Assistance ("SNAP") program is used for the community spouse.
11. Effective [REDACTED] 2017, the Community Spouse has monthly shelter costs of \$1,162.25, (\$375.92, property taxes; plus \$88.33, insurance; \$698.00, Standard Utility Allowance).
  12. Effective [REDACTED] 2017, the Community Spouse has excess monthly shelter costs of \$561.50, (\$1,162.25, shelter costs; minus \$600.75, 30% of \$2,002.50, 150% of the Federal Poverty Level for two persons as of [REDACTED]/17).
  13. Effective [REDACTED] 2017, the Community Spouse has a calculated MMNA of \$2,564.00, (\$561.50, excess shelter costs; plus \$2,002.50, 150% of the Federal Poverty Level for two persons as of [REDACTED]/17).
  14. Effective [REDACTED] 2017, the maximum MMNA allowed is \$3,022.50.

15. Effective [REDACTED] 2017, the Community Spouse's calculated monthly income deficit or CSA is \$1,420.13 (\$2,564.00, MMNA; minus \$1,143.87, Community Spouse's income).
16. UPM § 5035.25 provides that 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.
17. UPM § 5035.25(B) provides that the following monthly deductions are allowed from the income of assistance units in LTCF's:
  - a. a personal needs allowance ("PNA") of \$60.00, which is effective July 1, 2016 and annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration;
  - b. Community Spouse Allowance (CSA), when appropriate; (Cross Reference 5035.30)
  - c. a Community Family Allowance (CFA), when appropriate; (Cross Reference 5035.35)
  - d. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for the Department or any other third party;
18. As of [REDACTED] 2017, the Community Spouse's total income is insufficient to meet her needs in the community.
19. Effective [REDACTED] 2017, the Community Spouse is eligible to receive \$1,420.13 in diversion of the Institutionalized Spouse's income to meet her needs as her MMNA exceeds her total monthly income.
20. The Department correctly determined that the Appellant/Institutionalized Spouse is eligible for medical assistance under the Medicaid program, effective [REDACTED] 2017.

### **DISCUSSION**

The Department acted correctly in its determination of the Appellant's eligibility. However, the regulations allow the Hearing Officer to increase the MMNA if it has been established that the Community Spouse's significant financial duress is a direct result of exceptional circumstances. In this case, the additional monthly expenses claimed by the Community Spouse is not a direct result of exceptional circumstances as defined in the regulation.





### **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.