

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

██████████ 2017
Signature Confirmation

Client ID # ██████████
Request # 830901

NOTICE OF DECISION

PARTY

██████████
c/o ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2017, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”, or the “institutionalized spouse” or “IS”) a notice of action (“NOA”) informing him that the portion of his income he must pay each month toward his cost of care (his “applied income” or “AI”) was increasing to \$1,848.90.

On ██████████, 2017, the Appellant’s spouse, ██████████ (the “community spouse” or “CS”) requested an administrative hearing for the Appellant to contest the Department’s determination of his applied income that he was notified of in the ██████████ 2017 NOA.

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

On ██████████ 2017, the Department issued a NOA to the Appellant informing him that his applied income was retroactively being reduced from \$1,848.90 to \$745.82.

On ██████████ 2017, the request for the hearing was withdrawn.

On ██████████, 2017, the CS asked to have the hearing request reinstated, and on ██████████ 2017, OLCRAH issued a notice rescheduling the hearing for ██████████ 2017.

On ██████████ 2017, the CS clarified that she no longer wished to contest the Department’s action described in the ██████████ 2017 NOA because the action was no

longer in force, but did wish to contest the Department's action described in the [REDACTED] 2017 NOA.

On [REDACTED] 2017, the CS withdrew her original hearing request in writing, and made a new hearing request to contest the determination described in the [REDACTED] 2017 NOA. OLCRAH granted good cause for the timeliness of the request.

On [REDACTED], 2017, in accordance with sections 17b-60, 17-61 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:

[REDACTED], Appellant's Spouse
[REDACTED], [REDACTED] daughter
[REDACTED], [REDACTED] son-in-law
Dorothea Kelson, Department's representative
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

1. The issue is whether the Department's [REDACTED] [REDACTED] 2017 calculation of the Appellant's applied income was correct; the component of the calculation being appealed is the amount of income his community spouse should be allowed to keep to maintain her home in the community (her "community spouse allowance" or "CSA").

FINDINGS OF FACT

1. The Appellant is a resident of a nursing facility, and his cost of care in the long term care facility is paid by the Medicaid program. (Hearing Record)
2. The Appellant has a spouse who resides in the community. (Hearing Record)
3. The Appellant's income in 2017 consists of Social Security in the gross amount of \$1,822.00 per month, plus [REDACTED] pension in the gross amount of \$112.00 per month, for total gross income of \$1,934.00 per month. (Hearing Record, Ex. 14: Webster Bank statement, Ex. 15: [REDACTED] Federal Credit Union statement, Ex. 5: Unearned Income screen reflecting BENDEX match)
4. In 2017, the Appellant pays a Medicare Part D premium of \$25.10 per month. (Hearing Record)
5. The community spouse's income in 2017 consists of Social Security in the gross amount of \$1,040.00 per month, plus [REDACTED] pension in the gross amount of \$194.52 per month, plus Schwab benefit in the gross amount of \$157.56 per

month, for total gross income of \$1,390.08 per month. (Ex. 12: Social Security Benefit Statement, Ex. 13: Prudential statement, Ex. 14)

6. As of ██████ 2017, the community spouse's expenses to live in the community include a rent payment of \$385.00 per month, rental insurance of \$10.41 per month, and the cost of utilities. (Ex. 10: Lease Agreement, Ex. 11: Safeco Insurance bill)
7. On ██████ 2017, the Department calculated that the community spouse was eligible for a CSA of \$1,103.08, based on documentation the CS had recently provided to the Department to verify her living expenses. (Ex. 7: Remarks screen)
8. On ██████ 2017, the Department sent a NOA to the Appellant notifying him that his applied income would change on ██████ 2017, and that the new amount of applied income was \$745.82, and that the reason for taking the action was "The amount of money we allow you to keep up your home changed". (Ex. 4: ██████ 2017 NOA)
9. On ██████ 2017, the Department also implemented the changes to the CS's CSA and the Appellant's AI retroactively for the month of ██████ 2017. (Ex. 6: Institution screens, Ex. 8: MA Financial Eligibility screens)
10. The CS does not have any additional expenses that are related to exceptional circumstances. (████████ testimony)

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. Uniform Policy Manual ("UPM") § 4000.01 provides that an Institutionalized Spouse is defined as 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; and provides that a Community Spouse is defined as 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.
3. UPM § 1500.01 provides that MCCA (Medicare Catastrophic Coverage Act) Spouses are spouses who are members of a married couple one of whom

becomes an institutionalized spouse on or after September 30, 1989, and the other spouse becomes a community spouse.

4. As of [REDACTED] 2017, the Appellant and his wife were MCCA Spouses as defined by the Medicaid program; the Appellant was an Institutionalized Spouse (IS) and his wife was a Community Spouse (CS).
5. 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 the 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(B) provides that 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.
6. UPM § 5035.30(A)(1) provides that the Community Spouse Allowance (CSA) 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(B) provides that:

1. The CSA 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.

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. Standard Utility Allowance (SUA) used in the FS program for the community spouse.

5. The MMNA may not exceed the greatest of either:
 - a. The maximum MMNA; or
 - b. An amount established through a fair hearing.

7. The CS's MMNA calculation, based on the circumstances that existed as of [REDACTED] 2017, is reflected in the chart below. The 2017 Poverty Guidelines are published in the Federal Register, Vol. 82, No. 19, pp. 8831-8832, Tuesday, January 31, 2017.

\$385.00	Rent
+ \$10.41	Rental Property Insurance
+ \$698.00	Standard Utility Allowance (SUA)
= \$1,093.41	Total Shelter Expenses
- \$600.75	30% of 150% of FPL for 2 persons (\$2002.50)
= \$492.66	Excess Shelter Cost
+ \$2,002.50	150% of FPL for 2 persons
= \$2,495.16	Minimum Monthly Needs Allowance (MMNA)

8. UPM § 1570.25(D)(4) discusses the ability of a Fair Hearing Official to increase a community spouse's MMNA previously calculated by the Department if the previously calculated MMNA is not sufficient to meet the CS's monthly needs due to the existence of exceptional circumstances resulting in significant financial duress.

There is no evidence of the existence of exceptional circumstances causing significant financial duress for the CS; the CS's MMNA, as calculated according to the method described in UPM § 5035.30(B)(2) and set out in Conclusion of Law #7, is sufficient to meet her monthly needs.

9. The CS's total monthly income, for purposes of calculating her CSA, was \$1,392.08 effective [REDACTED] 2017.

The CS's Community Spouse Allowance effective [REDACTED] 2017 was equal to the difference between her total monthly income of \$1,392.08 and her MMNA of \$2,495.16.

The Department was correct when, on [REDACTED] 2017, it calculated that the CS's CSA was \$1,103.08 effective [REDACTED] 2017. The CS's MMNA of \$2,495.16, minus her total monthly income of \$1,392.08, equaled \$1,103.08.

10. The Appellant's total monthly income, for purposes of calculating his applied income, was \$1,934.00 effective [REDACTED] 2017.

The Appellant's applied income effective [REDACTED] 2017, is calculated in the chart below. The calculation incorporates the new CSA for his community spouse of \$1,103.08 that became effective [REDACTED] 2017.

\$1,934.00	Appellant's Total Monthly Income
- \$60.00	Personal Needs Allowance (eff. [REDACTED]/17 after annual COLAs)
- \$25.10	Medicare Part D Premium
- \$1,103.08	Community Spouse Allowance
= \$745.82	Applied Income

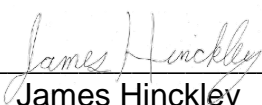
The Department was correct when, on [REDACTED] 2017, it calculated that the Appellant's Applied Income was \$745.82 effective [REDACTED] 2017.

DISCUSSION

The portion of an institutionalized spouse's income that a community spouse is entitled to keep is based, in part, on the cost of the spouse's living arrangement at home. When the Appellant's spouse moved, and the rent for her new residence was less than the housing costs associated with her old residence, the Department was required to adjust her CSA accordingly.

DECISION

The Appellant's appeal is DENIED.



James Hinckley
Hearing Officer

cc: Lisa Wells, SSOM, New Haven
Brian Sexton, SSOM, New Haven
Cheryl Stuart, SSPM, New Haven

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.