

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

██████████ 2018  
Signature Confirmation

██████████  
Request #107560

NOTICE OF DECISION  
PARTY

██████████  
██████████  
██████████  
██████████

PROCEDURAL BACKGROUND

██████████, 2017, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") stating that effective ██████████ 2017 he must pay \$2934.27 each month in applied income toward the cost of his long-term care.

██████████ 2017, the Appellant's representative, attorney ██████████, requested an administrative hearing to contest the Department's calculation of the applied income.

██████████, 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████

██████████, the Appellant's representative requested a continuance of the hearing.

██████████, 2018, OLCRAH issued a notice rescheduling the administrative hearing for ██████████ 2018.

██████████ 2018, the Appellant's representative requested a continuance of the hearing.

██████████, 2018, OLCRAH issued a notice rescheduling the administrative hearing for ██████████ 2018.

██████████ 2018, 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:

██████████, the Appellant's Spouse, living in the community ("CS")  
 ██████████, Appellant's Representative  
 Sayaka Miyakoshi, Department's Representative (via telephone)  
 Jason Bezzini, Department's representative  
 Veronica King, Hearing Officer

The hearing officer held the hearing record open for the submission of additional evidence. The record closed on ██████████ 2018.

### **STATEMENT OF THE ISSUE**

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

### **FINDINGS OF FACT**

1. The Appellant is a recipient of Medicaid and resides in a long term care facility. (Hearing Record)
2. ██████████, 2016, the Department sent a notice to the Appellant that he was eligible for Medicaid, long term care services effective ██████████ 2016. In addition the notice stated that the applied AI that the Appellant owed to the long term care facility would be \$2,972.69 per month (Exhibit H: Notice of Approval for Long term Care Medicaid, ██████████/16)
3. ██████████ of 2016, the community spouse allowance ("CSA") was \$1,923.10. (Exhibit H)
4. ██████████, 2017, the Department received diversion to the facility in the amount of \$7,815.21. The AI for ██████████/16 and ██████████/16 was adjusted to \$0 and ██████████/17 adjusted to \$1,102.86 to pay for diversion. Effective ██████████/17, the AI was adjusted back to \$2,972.69 per month and CSA remained as \$1,923.10. (Exhibit E: Hearing Summary-Additional Documents – ██████████/18, Exhibit F: Narrative screen print and Exhibit I: Institution screen prints)
5. ██████████ f 2017, the CSA was 1,923.10 and the AI was \$2,972.69. (Exhibit I)

6. ██████████ 2017, the CSA was 1,923.10 and the AI was \$2,972.69. (Exhibit K: MA- LTSS Patient Liability Amount )
7. ██████████, 2017, the Department processed the redetermination for the Medicaid long term care services. While processing, the Department became aware the new eligibility system was incorrectly calculating the CSA and AI amounts. The Department mistakenly issued a NOA showing incorrect amount of AI \$1,917.27 for ██████████ 2017, J█████████ 2017 and ██████████ 2017. (Exhibit E, Exhibit L: Case Notes and Exhibit M: Notice of Action, ██████████/17)
8. ██████████, 2017, the Department issued a NOA to the Appellant stating that the applied AI that the Appellant owed to the long term care facility would be \$2,934.27 per month. (Exhibit A: NOA, ██████████/17)
9. ██████████ of 2017, the Appellant's gross Social Security benefit was \$2,553.00 per month. (Exhibit A)
10. The Appellant also receives a gross pension benefit of \$2,559.77 per month. (Exhibit A and Hearing Record)
- ████████████████████ of 2017, the Appellant's Medicare B premium, which is deducted from his Social Security benefit, was \$113 per month. (Exhibit D: MA- LTSS Patient Liability Amount)
12. The Appellant pays \$15.99 per month for Humana vision medical insurance and \$27.99 per month for Humana dental medical insurance. (Appellant's Exhibit 2: Mail in redetermination form, ██████████/17 and Exhibit 3: Expenses statements)
13. The Appellant's spouse lives in her own home in the community. (Hearing Record)
14. The Community Spouse ("CS") pays monthly mortgage of \$1,136.02 (taxes and insurance included). (Exhibit C: Mortgage statement)
15. ██████████ 2017, the CS's gross Social Security benefit was \$1,017.00 per month. (Exhibit A: Notice of Action, ██████████/17)
16. The CS's Medicare B premium is deducted from her Social Security benefits every month. She also pays medical insurance premiums and co-payments for herself. (Hearing Record and Exhibit 1)
17. In addition, the CS pays for all of the maintenance and upkeep of the home, including all house expenses and repairs. (Hearing Record and Appellant's Exhibit 1: Expenses schedules)

18. The CS owed over \$30,000.00 in credit cards debts. ( Hearing Record and Exhibit 1)
19. The CS also pays all the expense of transportation to visit the Appellant in the facility. (Hearing Record)
20. The CS is generally healthy and independent with her activities of daily living. (Hearing 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 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 § 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.
5. ■■■■■ of 2017, the Appellant's total monthly gross income was \$5,112.77.(Social Security benefit of \$2,553 + pension benefit of \$2,559.77)
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.

Connecticut General Statutes § 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 (\$60.00).

7. 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 by the Department or any other third party.
8. The Department correctly allowed deductions for \$60 personal fund allowance.
9. The Department correctly allowed deduction for \$113.00 Medicare B premium.
10. The Department incorrectly did not allow deductions for the Appellant's secondary health insurance premiums. (\$15.99 vision + \$27.99 dental= \$43.98 per month)
11. UPM § 5035.25 (B) (2) provides a monthly deduction for LTFC units of a Community Spouse Allowance ("CSA"), when appropriate; (Cross reference 5035.30)
12. UPM § 5035.30 (B) (2) provides the Minimum Monthly needs Allowance ("MMNA") is that amount which is equal to the sum of: a. the amount of the community spouse's excess shelter costs as calculated in section 5035.30 (B) (3) and b. 150 percent of the monthly poverty level for a unit of two persons.
13. UPM § 5035.30 (B) (3) provides 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.
14. UPM § 5035.30 (B) (4) provides the community spouse's monthly shelter cost includes: a. rental cost 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 Program for the community spouse.
15. UPM § 5035.30 (B) (5) provides the MMNA may not exceed the greatest of either: a. the maximum MMNA; or b. an amount established through a Fair Hearing.
16. UPM § 1570.25 (D) (3) provides the Fair Hearing official increases the community spouse's MMNA previously determined by the Department if either MCCA spouse establishes 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. a. 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' providing constant and essential care for his or her disabled child, sibling or other immediate relative (other than

institutionalized spouse). b. Significant financial duress is an expense or set of expenses that: (1) directly arises from the exceptional circumstances described in subparagraph above; and (2) is not already factored into MMNA; and (3) cannot reasonably be expected to be met by the community spouse's own income and assets.

17. UPM § 1570.25 (D) (3) (c) 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: (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 frailties of old age.
18. The Appellant's spouse does not have exceptional circumstances resulting in financial duress as the cost of maintaining her home is already factored into the MMNA.

The CS's MMNA equals \$2622.74.

Shelter Costs:	AMOUNT
Mortgage	\$1,136.02
Standard Utility Allowance	\$ 698
<b>Total shelter costs:</b>	<b><u>\$1,834.02</u></b>
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two (\$2,029.50)]	-\$ 608.85
<b>Excess shelter costs:</b>	<b>\$1,225.17</b>
Plus 150% of the FPL for two:	\$2,029.50
Equals the MMNA (Capped at \$3,022.50)	\$3,254.67

19. UPM § 5035.30 (B) (1) provides the calculation of 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.

MMNA	\$3,022.50
Community Spouse's Income	\$1,017.00
Community Spouse Allowance	\$2,005.50

20. In [REDACTED] of 2017, the Appellant's applied income is \$2,890.29 per month. (Gross income \$5,112.77 - \$60 (PNA) - \$113 (Medicare Premium) - \$43.98 (Medical insurance premiums) - \$2,005.50 (CSA))
21. In [REDACTED] of 2017, the Department incorrectly calculated the Appellant's AI as \$2,934.27 per month.

### **DISCUSSION**

[REDACTED] confusion and frustration regarding the notices of action informing the amount of the applied income is understandable. The amount of the applied income is not only affected by changes, such as increases to Social Security income and medical insurance premiums, but also regulation changes, such as the Federal Poverty limit and the standard utility allowance.

The Appellant's representative testified that she understands how the applied income and the community spouse allowance are calculated, her argument it's that the community spouse has high expenses and she has over \$30,000.00 in credit cards debt. She provided schedules and statements showing the CS's monthly payments to mortgage, utilities, several credit cards, department store credit cards, her medical insurance premiums and other expenses. The AI regulations allow for consideration of medical insurance premiums for the Appellant, but not for the community spouse. Unfortunately, the regulations regarding the ability of a Fair Hearing Officer to increase the CS's MMNA based on exceptional circumstances resulting in significant financial duress are very specific and the expenses cited by the representative are not considered exceptional circumstances by regulations.

The undersigned has calculated the community spouse allowance and the applied income using the figures presented at this hearing (including the Appellant's \$43.98 medical insurance premiums) and determined that in [REDACTED] of 2017 the Department failed to allow the \$43.98 deduction into the AI calculation.

**DECISION**

The Appellant's appeal is **DENIED** in regards to the Appellant's request of increased of the MMNA based on exceptional circumstances resulting in significant financial duress.

The Appellant's appeal is **GRANTED** in regards to the amount of the Applied Income.

**ORDER**

1. The Department shall recalculate the Appellant's AI with the \$43.88 allowable deduction effective [REDACTED] of 2017.
2. Compliance is due no later than [REDACTED] 2018 and the Department shall provide the undersigned with proof of compliance.

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Veronica King  
Hearing Officer

Cc: Musa Mohamud, Judy Williams and Jessica Carroll, DSS Operations Manager,  
Hartford DO#10  
Sayaka Miyakoshi, DSS Representative  
[REDACTED]



### **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, law, and 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.