

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

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

Client ID # ██████████
Request # 113985

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2017, the Department of Social Services (the “Department”) sent ██████████, (the “Appellant”) a Notice of Action (“NOA”) informing him that he must contribute \$248.59 per month toward the cost of convalescent care to the nursing facility beginning ██████████ 2018.

On ██████████ 2018, ██████████ (“POA”), Power of Attorney for the Appellant, requested an administrative hearing to contest the Department’s calculation of the amount of money the Appellant must contribute to the nursing facility toward his cost of his care under the Medicaid program.

On ██████████ 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2018.

On ██████████ 2018, ██████████ (the “Attorney”), attorney for the POA and ██████████ ██████████, (“Spouse”), the Appellant’s spouse, requested a continuance that OLCRAH granted.

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

On [REDACTED] 2018, the Attorney on behalf of the Spouse and POA requested a continuance that OLCRAH granted.

On [REDACTED] 2018, the OLCRAH issued a notice scheduling the administrative hearing for [REDACTED] 2018.

On [REDACTED], 2018, 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 [REDACTED] 2018 hearing:

[REDACTED] Appellant's Spouse
[REDACTED], Power of Attorney for the Appellant and Spouse
[REDACTED], Attorney for the Spouse and POA
Ryan Barganier, Department Representative
Lisa Nyren, Fair Hearing Officer

On [REDACTED] 2018, the OLCRAH required a continuance because the [REDACTED] 2018 hearing recording failed leaving no stenographic or mechanical record of the hearing as required under Connecticut General Statute § 17b-60.

On [REDACTED] 2018, the OLCRAH issued a letter scheduling the administrative hearing for [REDACTED] 2018.

On [REDACTED], 2018, the Attorney on behalf of the Spouse and POA requested a continuance which OLCRAH granted.

On [REDACTED], 2018, the OLCRAH issued a letter scheduling the administrative hearing for [REDACTED] 2018.

On [REDACTED] 2018, the Attorney on behalf of the Spouse and POA requested a continuance which OLCRAH granted.

On [REDACTED], 2018, the OLCRAH issued a letter scheduling the administrative hearing for [REDACTED] 2018.

On [REDACTED] 2018, 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 September 19, 2018 hearing:

[REDACTED] Power of Attorney for the Appellant
[REDACTED] Attorney for the Appellant and his Spouse
Rachel Figueroa, Department Representative
Lisa Nyren, Fair Hearing Office

On [REDACTED] 2018, the Attorney on behalf of the Spouse and POA requested the record remain open for the submission of additional evidence. OLCRAH granted the request for a continuance. The record scheduled to close on [REDACTED] 2018.

On [REDACTED] 2018, the Attorney on behalf of the Spouse and POA requested a continuance through [REDACTED] 2018 for the submission of additional evidence. OLCRAH granted the Attorney's request for a continuance. The record scheduled to close on [REDACTED] 2018.

On [REDACTED] 2018, the Attorney on behalf of the Appellant requested a continuance through [REDACTED] 2018 for the submission of additional evidence. OLCRAH granted the Attorney's request for a continuance. The record scheduled to close on [REDACTED] 2018.

On [REDACTED] 2018, the record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly calculated the amount of money the Appellant must pay toward his cost of care at the nursing facility under the Medicaid Long Term Care ("LTC") Program effective [REDACTED] 2018.

FINDINGS OF FACT

1. The Appellant is a recipient of Medicaid under the Long Term Care ("LTC") Program. (Hearing Record)
2. On [REDACTED] 2013, the Appellant appointed [REDACTED] ("Spouse"), his spouse, and [REDACTED] ("POA"), his daughter as his Power of Attorney(s). (Exhibit A: Hearing Documents pages 14, 15, & 24)
3. On [REDACTED], 2013, the Spouse appointed the POA as her Power of Attorney. (Exhibit A: Hearing Documents pages 16 & 17)
4. The Appellant receives gross social security benefits ("SSA") of \$1,752.00 per month from the Social Security Administration. (Exhibit A: Hearing Documents page 85)
5. The Department pays the Appellant's Medicare Part B premium under the Medicare Savings Program. (Exhibit 6: Community Spousal Allowance and Applied Income Calculation)

6. The Appellant receives a pension from [REDACTED] (“pension”) totaling \$327.88 per month. ($\$50.00 + \$257.88 + \$20.00 = \327.88) (Exhibit A: Hearing Documents page 88)
7. The Spouse receives gross social security benefits (“SSA”) of \$875.00 per month from the Social Security Administration. (Exhibit A: Hearing Documents page 85)
8. The Department pays the Spouse’s Medicare Part B premium under the Medicare Savings Program. (Exhibit A: Hearing Documents page 89)
9. The Appellant receives a personal needs allowance of \$60.00 per month. (Department Representative’s Testimony)
10. The Department determined the Appellant entitled to a community spousal allowance deduction of \$1,771.29. Reference chart below. (Exhibit 6: Community Spousal Allowance and Applied Income Calculation)

Property Tax	+ \$278.71	MMNA	\$2,629.29
+ Homeowner’s Insurance	+ \$248.70	- Community Spouse Gross Income(SSA)	-\$858.00
+ Standard Utility Allowance	+ \$708.00	= Community Spousal Allowance (CSA)	\$1,771.29
= Total Shelter Costs	= \$1,235.41		
- 30% of 150% FPL for 2 (2015)	\$597.38		
= Excess shelter costs	= \$638.04		
150% FPL for 2	+ \$1,991.25		
Minimum Monthly Needs Allowance (MMNA)	\$2,629.29		

11. On [REDACTED] 2017, the Department determined the Appellant must pay \$248.59 per month toward his cost of care effective January 1, 2018 and issued a notice to the Appellant. The notice stated, “Although Medicaid pays for most of your nursing home costs or the cost of your home care services, you are required to pay some of your income towards the cost of your care. The Patient Liability Amount is the portion of your income that you must pay each month.” Patient Liability Amount for the benefit period [REDACTED] 2018 through [REDACTED] 2018 is \$248.59. Reference chart below. (Exhibit 1: Notice of Approval and Exhibit 6: Community Spousal Allowance and Applied Income Calculation)

Pension	\$327.88
+ SSA	\$1,752.00
= Gross Income	\$2,079.88
- PNA	\$60.00
Net Income	\$2,019.88

- CSA	\$1,771.29
= Applied Income(Cost of Care) AI	\$248.59

12. The Spouse is [REDACTED] years old and suffers from the effects of a stroke, renal issues, difficulty breathing, dementia, visually impaired, and loss of hearing. The Spouse ambulates with the use of a wheelchair and requires full time care. (Hearing Record)
13. The Spouse could not attend the administrative hearing on [REDACTED] 2018 due to poor health. [REDACTED] admitted the Spouse for short term rehabilitation after a recent fall that caused a brain bleed. (POA's Testimony)
14. Effective [REDACTED], 2013, the Department increased the minimum monthly needs allowance by \$400.00 from \$2,205.68 to \$2,605.68 as a result of a fair hearing decision dated [REDACTED] 2014. The hearing officer granted exceptional circumstances for the Spouse due to the out of pocket costs she incurs for the purchase of [REDACTED] at \$400.00 per month as prescribed by her physician. (Exhibit 5: Fair Hearing Decision)
15. The Spouse owned property located at [REDACTED], Connecticut ("former residence") and [REDACTED], Connecticut ("current residence"). (POA's Testimony and Exhibit A: Hearing Documents pages 91-95 & 111 - 116)
16. On [REDACTED] 2017, the Spouse sold her former residence for [REDACTED] and moved to her current residence where she resides with the POA. (Exhibit A: Hearing Documents pages 114-116 and POA's Testimony)
17. On [REDACTED] 2018, the Spouse quit-claimed her current residence to the POA and retained life use. (Exhibit A: Hearing Documents pages 109, 110 and POA's Testimony)
18. On [REDACTED] 2018, the Spouse established a special needs trust with some of the monies from the sale of her home. (Exhibit A: Hearing Documents pages 118 – 129)
19. The Spouse pays a caregiver \$20.00 per hour for six (6) hours per week to assist her with bathing, dressing, meals, mobility, companionship, and general housekeeping. (Exhibit A: Hearing Documents page 102 and POA's Testimony)
20. For the period [REDACTED] 2017 through [REDACTED] 2018, the Spouse received home health services, physical therapy, and skilled nursing visits from the [REDACTED] and [REDACTED] which were billed under Medicare. (Exhibit A: Hearing Documents pages 103 - 106)

21. For the period [REDACTED] 2016 through [REDACTED] 2018, the spouse incurred out of pocket prescription costs of \$915.79 or \$38.15 per month average. (Exhibit A: Hearing Documents pages 96-98)
22. The Spouse pays \$57.00 per month for an emergency response system with advanced fall alert through [REDACTED]. In September 2018, the Spouse switched emergency response system providers and purchased a cellular duo system for \$162.40 with [REDACTED] (Exhibit B: Medical Expenses)
23. The 2016 property tax on the current residence is \$4,432.96 annually or \$369.41 per month. ($\$4,432.96 / 12 \text{ months} = 469.413333$) (Exhibit A: Hearing Documents pages 91, 92)
24. The Spouse pays homeowners insurance of \$1,009.00 annually or \$84.09 monthly. (Exhibit A: Hearing Documents page 94)
25. The Spouse is entitled to the standard utility of \$728.00. (Exhibit 6: Community Spousal Allowance and Applied Income Calculation)

CONCLUSIONS OF LAW

1. Section 17b-2(a)(6) of the 2018 Supplement to the Connecticut General Statutes provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual ("UPM") § 5035.30 provides for the use of a Community Spouse Allowance.
 - A. Use of Community Spouse Allowance
 1. The 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. (Cross Reference 5035.25)
 2. For the purpose of using a CSA, the Department considers a CS to include a spouse receiving home and community based services under a Medicaid waiver.
 - B. Calculation of CSA
 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 5035.30B.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 5035.30B.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.
3. The Department correctly determined the Appellant the institutionalized spouse or IS.
 4. The Department correctly determined the Spouse the community spouse or CS.
 5. Effective July 1, 2017, the maximum MMNA allowed is \$3,022.50.
 6. The 2017 federal poverty guidelines for a household of two is \$16,240.00 annually. [Federal Register, Volume 82, No. 19, January 31, 2017, p. 8832]
 7. The Department incorrectly calculated 150% of the Federal Poverty Level ("FPL") as \$1,991.25. The correct amount is \$2,030.00. (16,240.00 annual FPL / 12 months = \$1,353.333 per month x 150% = \$2,029.999)
 8. UPM § 5035.15(F)(6) provides in part that a standard utility allowance determined annually by the agency to reflect changes in utility costs is used to represent the total monthly utility expenses of the assistance unit if:
 - a. The assistance unit incurs heating fuel or cooling costs separately from rent or mortgage payments; and
 - b. The bill is established on the basis of individualized metering of service to the unit.
- UPM § 1530.15(F)(1)(d) provides in part that that utility costs include the following:
1. Heat;
 2. Cooking fuel;
 3. Electricity;

4. Water;
 5. Sewer charges;
 6. Garbage collection;
 7. Basic monthly charge including taxes for a telephone;
 8. Installation charges for a utility.
9. Effective October 1, 2017, the standard utility allowance is \$728.00.
10. The Department incorrectly calculated the CS monthly shelter costs as \$1,235.41. The correct monthly shelter cost is \$1,182.31. ($\369.41 property taxes + $\$84.90$ home insurance + $\$728.00$ utility allowance = $\$1,182.31$)
11. The Department incorrectly determined the CS monthly gross income as \$858.00. The correct monthly gross income of the CS is \$875.00.
12. The Department incorrectly calculated 30% of the 150% FPL for 2 as \$597.38. The correct 30 % of 150% of the FPL is \$609.00. ($\$2,030.00 \times 30\% = \609.00)
13. The Department incorrectly calculated the CS excess shelter costs as \$638.04. The correct excess shelter costs are \$573.31. ($\$1,182.31$ shelter costs - $\$609.00$ 30% of 150% of FPL = $\$573.31$)
14. The Department incorrectly calculated the MMNA as \$2,629.29. The correct MMNA is \$2,603.31. ($\573.31 excess shelter costs + $\$2,030.00$ 150% of FPL for 2 = $\$2,603.31$)
15. The Department incorrectly calculated the Appellant's CSA as \$1,771.29 per month after subtracting the MMNA from her monthly income. The correct CSA is \$1,728.31. ($\$2,603.31$ MMNA - $\$875.00$ CS gross monthly income = $\$1,728.31$)
16. UPM § 1570.25(D)(3) provides that the official increases the community spouse's MMNA previously determined by the Department if either MCCA spouse established 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.
- 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's 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 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.
- c. 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.
- d. 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.
17. The Department correctly excluded the Appellant's exceptional circumstance of the out of pocket cost of ██████████ of \$400.00 monthly as determined by the fair hearing decision dated ██████████ 2014 because the Appellant failed to substantiate she continues to incur this expense.
18. The Department correctly excluded the Appellant out of pocket prescription expenses as the monthly average of \$38.15 reflect the normal frailties of old age as outlined under departmental policy.
19. The Spouse's need for a caregiver due to her medical condition for six (6) hours per week at \$20.00 per hour is an exceptional circumstance because without such assistance the CS's ability to remain in the community is threatened. The monthly expense of \$516.00 for the caregiver is an exceptional circumstance. (6 hours/week x \$20.00/hour x 4.3 weeks = \$516.00)
20. The Spouse's expense of \$57.00 per month for an emergency response system is an exceptional circumstance because without such assistance the CS's ability to remain in the community is threatened. It is noted since the time of the hearing request and the issuance of this decision, the Spouse's provider has changed. Based on the hearing record, the new monthly monitoring charge for the emergency response system under the new provider cannot be determined.
21. Effective ██████████ 2018, the MMNA of \$2,603.31 is adjusted to \$3,119.31 to include the cost related to exceptional circumstances of \$573.00 monthly. (\$516.00 caregiver expense + \$57.00 emergency response system = \$573.00 exceptional circumstances total) Refer to chart below.

Expense		Amount
Property Tax		\$369.41
Plus Homeowner's Insurance	+	\$84.90
Plus Standard Utility Allowance	+	\$728.00
Equals Total Shelter Cost	=	\$1,182.31
Minus 30% of 150% FPL for 2	-	\$609.00
Equals Excess Shelter Costs	=	\$573.31
Plus 150% FPL for 2	+	\$2,030.00
Equals MMNA		\$2,603.31
Total Exceptional Circumstances	+	\$573.00
Equals Adjusted MMNA		\$3,176.31

22. Effective January 1, 2018, the CSA equals \$2,301.31. (\$3,176.31 adjusted MMNA - \$875.00 Spouse's gross income = \$2,301.31 deficit)
23. UPM § 5045.20 provides that 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.
24. UPM § 5050.13(A)(1) provides that income from Social Security and Veteran's benefits are treated as unearned income in all programs.
25. The Department correctly included the Appellant's SSA benefits in the calculation of applied income.
26. UPM § 5050.09(A) provides that payments received by the assistance unit from annuity plans, pensions and trusts are considered unearned income.
27. The Department correctly included the Appellant's pension in the calculation of applied income.
28. UPM § 5025.05(B)(1) provides that if income is received on a monthly basis, a representative monthly amount is used as the estimate of income.
29. The Department correctly calculated the gross SSA as \$1,752.00 per month.
30. The Department correctly calculated the gross pension as \$327.88.
31. The Department correctly determined the Appellant's gross monthly income as \$2,079.88. (\$1,752.00 SSA + \$327.88 = \$2,079.88)
32. 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, the 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 5035.35)
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 monthly 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.

State statute provides 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. [C.G.S. § 17b-272]

33. The Department correctly allowed the Personal Needs Allowance of \$60.00.
34. The Department correctly determined the monthly CSA as a valid monthly deduction, but incorrectly determined the amount of the deduction as \$1,771.29. The correct CSA deduction is \$2,301.31. Refer to conclusion of law #21 and 22.
35. Effective [REDACTED] 2018, the Department incorrectly calculated the amount of money the Appellant must pay toward the cost of his care in the nursing facility under Medicaid as \$248.59. Effective [REDACTED] 2018, the correct amount of money the Appellant must pay toward the cost of his care is \$00.00. (\$2,079.88 monthly gross income - \$60.00 PNA - \$2,301.31 CSA = [-\$281.43] Appellant's contribution toward the cost of his care under Medicaid)

DECISION

The Appellant's appeal is granted.

ORDER

1. Effective [REDACTED] 2018, the Department must compute the CSA and update the applied income in accordance with this decision.
2. Compliance is due within 14 days of the date of the decision.



Lisa A. Nyren
Fair Hearing Officer

CC: Peter Bucknall, DSS, Waterbury
Karen Main, DSS, Waterbury
Rachel Figueroa, DSS, Waterbury
Barbara Brunner, DSS Danbury

[REDACTED]
[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 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.