

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

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

**NOTICE OF DECISION**

**PARTY**

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

**PROCEDURAL BACKGROUND**

On ██████████ 2018 the Department of Social Services (the "Department") sent ██████████ ██████████ (the "Appellant") a Notice regarding ██████████ ██████████ (institutionalized spouse) stating that he must pay \$3411.85 each month in applied income toward the cost of his long term care.

On ██████████ 2018, the Appellant requested an administrative hearing to contest the Department's calculation of the applied income.

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

On ██████████ 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:

██████████, Appellant  
██████████, Appellant's cousin  
Jessica Gomez, Department's Representative  
Almelinda McLeod, Hearing Officer

The hearing record remained open for the submission of additional evidence. The record closed on ██████████, 2018.

## **STATEMENTS OF THE ISSUE**

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

## **FINDINGS OF FACT**

1. Since [REDACTED], 2016, the Appellant had been institutionalized continuously in a long term care facility. (Hearing record)
2. Effective [REDACTED], 2016, the combined total of the Appellant and the Community Spouse's non-exempt assets was \$166,768.47 as of the DOI. (Exhibit 8, Spousal Assessment Worksheet)
3. The spousal share of the assets was \$83,384.24 as of the DOI (½ of the couple's combined non-exempt assets). (Exhibit 8)
4. The Community Spouse Protected Amount ("CSPA") was \$83,384.24 as of the date of institutionalization ("DOI"). (Exhibit 8 and hearing record)
5. In [REDACTED] 2016, the Appellant had monthly gross unearned income of \$6007.02 from Social Security \$1,132.00, Pension \$4,568.52 and Pension 2/ Annuity \$306.50. (Exhibit 4 and Exhibit 7, Notice of Approval for Long Term Care Medicaid, Applied Income chart)
6. The Appellant's Medicare Part B premium, which is deducted from his Social Security benefit, is \$134.00. (Exhibit 4 and Exhibit 7)
7. The Community Spouse ("CS") resides in her own condo in the community. (Hearing record)
8. Effective [REDACTED] 2017, the CS has a monthly income in Social Security of \$548.00. (Department's and Appellant testimony and Exhibit 10, Community Spousal Allowance Calculation)
9. The CS has Medicare Part B expense of \$1272.00 annually, which is deducted from her Social Security benefit - converted at \$106.00 monthly (\$1272.00 div. by 12 months) (Exhibit E, Appellant's Social Security statements)
10. Effective [REDACTED] 2017, the CS had excess monthly shelter costs \$954.33. (\$1555.08 shelter costs; minus 30% of 150%FPL [\$2002.50] \$600.75 for two people as of [REDACTED] 2017.) (Exhibit 10-Community Spousal Allowance calculator.)
11. Effective [REDACTED] 2017, the CS' Monthly Minimum Needs Allowance ("MMNA") is \$2956.83. (\$954.33 excess shelter cost, plus \$2002.50 -150%FPL for two persons as

of ██████████ 2017. ( Exhibit 10)

- 12. On ██████████, 2017, the Department issued a notice to the Appellant that effective ██████████ 2016, the Applied income (“A.I.”) the Appellant owed to the long term facility would be \$3754.19 per month and that the Community Spousal Allowance (“CSA”) is \$2058.83. ( Exhibit 4, Notice of Approval for Long Term Care Medicaid)
- 13. The Appellant has a Long Term Care (“LTC”) Insurance policy with Transamerica with a pick up date from ██████████ 2017 to ██████████ 16, 2017 (date the LTC benefits expired). (Exhibit 2, Transamerica LTC policy and Exhibit 2A- e-mail dated ██████████/17)
- 14. On ██████████ 2018, the Community Spouse (“CS”) sent e-mail to the Department to include shelter expenses that were not initially calculated into the A.I. (Hearing summary)
- 15. On ██████████, 2018, the Department reviewed the expenses and updated the case using the following expenses:

|   |          |
|---|----------|
| Condo Fees                                | \$350.00 |
| Home Insurance                            | \$50.58  |
| Real Estate Taxes                         | \$456.50 |
| Standard Utility Allowance (“SUA”)        | \$698.00 |
| [-United Illuminating-electric- \$300.00] |          |
| [-Ever Source Gas bill - \$129.00]        |          |
| [- Sewer tax bill - \$ 17.00]             |          |
| [-Water bill - \$ 30.00]                  |          |

. (Department’s and Appellant testimony & Exhibit 10, CSA Calculation)

- 16. On ██████████ 2018, the Department issued a revised notice to the Appellant that the A.I. owed to the Long term facility would be \$3411.85 effective ██████████ 2017 and that the adjusted CSA was \$2408.83. (Exhibit 7, Revised Notice of Approval for Long Term Care Medicaid)
- 17. On ██████████ 2018, the community spouse requested a hearing because she wanted the Department to consider other shelter expenses as she needs more in the community spousal allowance, (“CSA”).
- 18. In addition to the above mentioned expenses (See finding of fact #11) the Appellant submitted bills for automobile insurance, motor vehicle taxes, Frontier communications-Voice, internet and TV, Cell phone bill, Lifeline services, Home security with ADT, Grocery receipts, Co-pays from Rite –Aid dated ██████████ to ██████████, various receipts for car repairs, Life Insurance payments, American Home Shield Home warranty for appliances , two Doctor’s letters ( ██████████, MD and ██████████ ██████████h, MD.) indicating that because of the Appellant’s health she requires more usage of electricity and a letter requesting donations from ██████████ ██████████ ██████████. ( Exhibit B, Appellants monthly expenses)

19. The Appellant has many medical issues and the electric bill escalated as a result. The Appellant has had a budget plan with the United Illuminating Electric Co since [REDACTED] 2017 and pays from \$295.00 to \$299.00 per month. ( Appellants testimony and Exhibit F, Electric Bills)
20. In addition to the monthly bills, the Appellant also submitted for this administrative hearing other expenses for consideration. Amongst them, the Appellant has a Chase Home Equity line of credit used to pay off the [REDACTED] center and to meet her monthly expenses, Unpaid Medical expenses which include Ambulance services from [REDACTED] to [REDACTED] 16, collections on an unpaid Ambulance service account for [REDACTED] /17, work order for the Appellant's chair lift and a letter from Transamerica indicating the Appellant has an overpayment obligation of \$5,138.40 issued [REDACTED] [REDACTED], 2017. (Exhibit D, Appellant's Unpaid Medical bills.)
21. [REDACTED], 2018, the Department reviewed the list and bills submitted and determined that none of the other shelter bills submitted met the criteria of acceptable shelter costs; thus the CSA did not change. (Hearing summary)

#### 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") § 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.

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 is 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.

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.

**Effective [REDACTED] 2017, the Appellant's total monthly gross income is \$6014.68. (\$1132.00 Social Security + \$4568.52 Pension + \$314.16 Pension 2/ Annuity)**

3. 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.

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.

UPM § 5035.25 (B) (2) provides a monthly deduction for LTFC units of a Community Spouse Allowance (“CSA”), when appropriate; (Cross reference 5035.30)

UPM § 5035.25 (B) (4) provides a monthly deduction for LTFC units of Medicare and other health insurance premiums, deductibles , and co-insurance costs when not paid by the Department or any other third party.

**The Department correctly allowed deductions for personal fund allowance, CSA and Medicare premium B premium.**

4. UPM § 5035.30 (B) (2) provides for the calculation of the Community Spouse Allowance (“CSA”) and MMNA and states: 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.

UPM §5035.30 (B) (3) provides 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.

UPM § 5035.30 (B) (4) provides 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. Effective October 1, 2016, the SUA is \$698.00.

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.

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 expected to be met by the community spouse's own income and assets.

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.

**The Appellant's CS does not have exceptional circumstances resulting in financial duress as the cost of maintaining her home is already factored into the MMNA.**

5. Effective [REDACTED] r 2017, the Community Spouse's MMNA was \$2956.83 as shown in the table below.

|   | AMOUNT           |
|---|------------------|
| Shelter Costs:  |                  |
| Condo Fees  | \$350.00         |
| Property Taxes  | \$456.50         |
| Home owners Insurance   | \$50.58          |
| Standard Utility Allowance  | \$698.00         |
|   |                  |
|   |                  |
| <b>Total shelter costs:</b>   | \$1555.08        |
| Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two (\$2030.00)] [\$2030x.30] | <u>-\$600.75</u> |
| <b>Excess shelter costs:</b>  | \$954.33         |
| Plus 150% of the FPL for two:   | <u>\$2002.50</u> |
| <b>Equals the MMNA</b>  | \$2956.83        |

10. 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                       | \$2956.83 |
| Community Spouses’ Income  | \$ 548.00 |
| Community Spouse Allowance | \$2408.83 |

11. Effective [REDACTED] 2017, the Appellant’s applied income is \$3411.85 per month. (Gross income \$6,014.68 [\$1132.00 Social Security + \$4,568.52 Pension + \$314.16 Pension 2/ Annuity] - \$60.00 Personal Needs Allowance (“PNA”) - \$134.00 Medicare B premium- \$2408.83 Spousal Allowance)

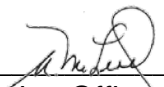
**DISCUSSION**

The CS wanted the Department to consider other expenses in order to re-calculate the MMNA. The regulation rules that provides for the ability of a Fair Hearing officer to increase the CS’ MMNA based on exceptional circumstances that results in significant financial duress are very specific. The documents provided by the Appellant did not meet the criteria for exceptional circumstance as is required by regulations.

The undersigned has calculated the community spousal allowance and the applied income using the figures presented at this hearing and finds no error in the Department’s calculation of the CSA. The Department is upheld.

**DECISION**

The Appellant’s appeal is **DENIED**.

  
\_\_\_\_\_  
Hearing Officer

CC: Fred Presnik, SSOM Bridgeport Regional Office  
Yecenia Acosta, SSOM Bridgeport Regional Office  
Tim Latifi, SSOM, Bridgeport Regional Office  
Jessica Gomes, Fair Hearing Liaison, Bridgeport Regional Office

### **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 06105-3730.

### **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 06105-3730. 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.