

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

██████████ 2018
SIGNATURE CONFIRMATION

REQUEST #117227

CLIENT ID ██████████
CASE ID ██████████

NOTICE OF DECISION

PARTIES

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PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (the “Department” or “DSS”) sent ██████████ (the “Appellant” and “Institutionalized Spouse”) a Notice of Approval for Long Term Care Medicaid stating the Appellant’s application for medical assistance was granted, effective ██████████ 2018. The notice stated that the amount of the Community Spouse Allowance (“CSA”) was \$2,285.78 per month, and that the Appellant must pay \$6,266.38 per month towards the cost of his care, effective ██████████ 2018.

On ██████████ 2018, 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 ██████████ 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a Notice of Administrative Hearing scheduling an administrative hearing for ██████████ 2018 @ 1:00 PM.

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:

[REDACTED] Daughter of Appellant and Community Spouse
 [REDACTED], Son of Appellant and Community Spouse
 Tammy Ober, Representative for the Department
 Jacquelyn Camposano, Representative for the Department (By Telephone)
 Hernold C. Linton, Hearing Officer

The hearing record was closed [REDACTED] 2018.

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 [REDACTED] 2017, the Appellant/IS became a resident of the [REDACTED] [REDACTED] which is a long-term care facility ("LTCF"). (Hearing Summary; Dept.'s Exhibit #1: W-1LTC)
2. The Appellant's spouse resides in the community. (Hearing Summary)
3. On [REDACTED] 2018, the Department granted the Appellant's application for Medicaid coverage, effective [REDACTED] 2018, to pay for his costs of long-term care ("LTC"). (Hearing Summary; Dept.'s Exhibit #5: [REDACTED]/18 Notice of Approval for Long Term Care Medicaid)
4. The Department determined the CS's MMNA as \$2,894.74, effective [REDACTED] 2018. (Hearing Summary; Dept.'s Exhibit #3: CSA Calculation)
5. The Department determined that the CS is eligible for a CSA of \$2,285.78 per month, effective [REDACTED] 2018 to meet her needs. (Hearing Summary; Dept.'s Exhibit #3)
6. Effective [REDACTED] 2018, the Appellant has total monthly unearned income of \$8,731.16 (\$666.00, SSA benefits; plus \$1,273.52, VA benefits, and \$6,791.64, pension income). (Hearing Summary)
7. The Department determined the Appellant's monthly applied income as \$6,266.38, effective [REDACTED] 2018. (Hearing Summary; Dept.'s Exhibit #3)
8. The CS is seeking an increase in the MMNA and CSA due to 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)

9. The CS is not seeking an increase in the Community Spouse Protected Amount ("CSPA"). (Appellant Representative's Testimony)
10. The CS's shelter costs are as follows: \$0.00, mortgage payment; \$423.12, property taxes, and \$322.66, homeowner's insurance. (Dept.'s Exhibit # 3)
11. The CS is responsible for paying for her heat. (Dept.'s Exhibit #3)
12. Effective [REDACTED] 2018, the CS is receiving \$609.00 in monthly gross Social Security ("SSA") benefits. (Hearing Summary; Dept.'s Exhibit #3)
13. On [REDACTED] 2018, the Department conducted a post hearing review of its calculation of the CSA and determined the revised CSA to be \$2,774.78 per month, effective [REDACTED] 2018. (Dept.'s Exhibit #7: Email dated [REDACTED] 18)
14. The CS is [REDACTED] years of age (DOB [REDACTED]) and is not able to complete her activities of daily living ("ADLs") without assistance as she is very frail. (Appellant Representative's Testimony)
15. The CS is diagnosed with Alzheimer's disease, glaucoma in her left eye, hearing loss in her left ear and her right ear, and chronic congestive heart failure. (Appellant's Exhibit A: Medical Records from Dr. Campos)
16. The CS had a small stroke in [REDACTED] 2017, and has not been able to drive since. (Appellant's Exhibit A)
17. The CS has difficulty with walking and standing, and uses a walker for assistance. (Appellant's Exhibit A)
18. The CS resides with and cares for an adult disabled son who is dealing with mental health issues, including schizophrenia. (Appellant's Exhibit A)
19. The CS is also diagnosed with Urinary Incontinence which requires her to wear adult disposable diapers, arthritis which makes her unable to open doors, jars, and to button her clothes. (Appellant's Exhibit B: Letter from Dr. Campos)
20. On [REDACTED] 2017, the CS was discharged home with a 24 hour care plan for necessary supervision due to the significance of her cognitive dysfunction. (Appellant's Exhibit C: [REDACTED] 17 Discharge Summary from Dr. O'Keefe)

21. The CS needs a personal care assistant 24/7 to help her with medication management, house work, dressing, toileting, and cooking. (Appellant's Exhibit B)
22. The CS needs in-home healthcare services in order to avoid her institutionalization. (Appellant's Exhibit C)
23. The CS receives in-home healthcare services provided by Lighthouse Home Care at an average weekly cost of \$1,374.89 in order to prevent her institutionalization. (Appellant's Exhibit D)
24. The CS incurs additional average monthly costs of \$5,912.89 for the in home healthcare services provided to her by Lighthouse Home Care that enable her to remain in the community. (See Facts # 1 to 23; Appellant's Exhibit D)

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"), Section 1570.25(D)(4) provides that the Fair Hearing official increases the CSPA if either MCCA spouse establishes that the CSPA previously determined by the Department is not enough to raise the community spouse's income to the MMNA (Cross References 4022.05 and 4025.67)
3. UPM § 1570.25(D)(4)(b) provides that for applications filed on or after 10-1-03, in computing the amount of the community spouse's income, the Fair Hearing official first allows for a diversion of the institutionalized spouse's income in all cases.
4. 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.
5. 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 (“PNA”) of \$60.00, which, effective July 1, 2009 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;

6. The Department correctly calculated the Appellant’s monthly-applied income as \$6,266.38, effective [REDACTED] 2018.

7. UPM § 5035.30(A)(1) provides that 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.

8. UPM § 5035.30(B)(1) provides that the CSA is equal to the greater of the following:

- (a) the difference between the 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.

9. The Department correctly calculated the CSA at \$2,285.78 (\$2,894.78, MMNA; minus \$609.00, CS’s income) per month in accordance with the regulation.

10. UPM § 5035.30(B)(2) provides that 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 3 below; and
- (b) 150 percent of the monthly poverty level for a unit of two persons.

11. UPM § 5035.30(B)(5) provides that the MMNA may not exceed the greatest of either:

(a) \$2,898.00, the maximum MMNA; or

(b) an amount established through a Fair Hearing.

12. Effective [REDACTED] 2018, the CS has monthly shelter costs of \$1,473.78 (\$0.00, mortgage payment; plus \$423.12, property taxes, \$322.66, homeowner's insurance, \$728.00, SUA).
13. Effective [REDACTED] 2018, the CS has monthly excess shelter costs of \$864.78 (\$1,473.78, shelter costs; minus \$609.00, 30% of \$2,030.00, 150% of the Federal Poverty Level for two persons as of [REDACTED] 18).
14. The CS has a calculated MMNA of \$2,894.78 (\$864.78, excess shelter costs; plus \$2,030.00, 150% of the Federal Poverty Level for two persons as of [REDACTED] 18), effective [REDACTED] 2018.
15. The Department correctly calculated the MMNA as \$2,894.78 per month.
16. UPM Section 1570.25(D(3) provides that the hearing 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.
 - 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. Because of the CS's illnesses, she needs 24 hours per day, seven days per week of in-home healthcare services to assist her with completing her activities of daily living, and which enable her to remain in the community. The CS's need for 24 hours per day, seven days per week of in-home healthcare services is an exceptional circumstance causing significant financial duress.
18. If not for the in-home healthcare services that she receives from Lighthouse Home Care, the CS would require institutionalization in a skilled nursing facility.
19. The average monthly cost (\$5,912.03) for 24 hours per day, seven days per week of in-home healthcare services causes the Community Spouse significant financial duress. This significant financial duress is a direct result of the Community Spouse's exceptional circumstances.
20. The Community Spouse's revised MMNA due to exceptional circumstances causing significant financial duress is \$8,806.81 (\$2,894.78, MMNA; plus \$5,912.03, additional expense)
21. The Community Spouse's monthly income of \$690.00 is insufficient to meet her revised MMNA of \$8,806.81; therefore, the Community Spouses needs a diversion of the Institutionalized Spouse's income to meet her needs in the community.
22. Effective [REDACTED] 2018, the Community Spouse's adjusted CSA is \$8,197.81, based on the increase in her MMNA (\$8,806.81, revised MMNA; minus \$609.00, CS's income), due to exceptional circumstances causing significant financial duress.

DECISION

The Appellant's appeal is **GRANTED**.

ORDER

1. Effective [REDACTED] 2018, the Department will increase the CS's MMNA to \$8,806.81, due to exceptional circumstances causing significant financial duress.
2. The Department will increase the CSA to \$8,197.81, effective [REDACTED] 2018, due to exceptional circumstances.
3. Effective [REDACTED] 2018, the Department will recalculate the Appellant's monthly applied income allowing for the increase in the CS's MMNA and CSA due to exceptional circumstances causing significant financial duress.
4. No later than thirty days from the date of hearing decision, the Department will provide to the undersigned proof of the Department's compliance with this order.

Hernold C. Linton

Hernold C. Linton
Hearing Officer

Pc: **Tyler Nardine**, Social Service Operations Manager,
DSS, R.O. #40, Norwich

Fair Hearing Liaisons, DSS, R.O. #40, Norwich

[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 06105-3725.

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.