

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 #118390

NOTICE OF DECISION  
PARTY

██████████  
Re: ██████████  
██████████ ██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████, the Department of Social Services (the "Department") sent ██████████ a notice stating that effective January of 2018 he must pay \$2285.93 each month in applied income ("AI") toward the cost of his long-term care.

On ██████████ ██████████, (the "Appellant") spouse and Power of Attorney for ██████████ requested an administrative hearing to contest the Department's calculation of the AI.

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

On ██████████, 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, spouse of ██████████, Medicaid recipient residing in a skilled nursing facility  
Saya Miyakoshi, Department's Representative  
Maureen Foley-Roy, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department was correct when it determined that the Appellant's spouse's liability amount (AI) would increase to \$2,285.93 effective ██████████ 1, 2018.

### **FINDINGS OF FACT**

1. The Appellant is a recipient of Medicaid and resides in a long term care facility. (record)
2. On [REDACTED], the Department sent a notice to the Appellant that effective [REDACTED], the AI the Appellant owed to the long term care facility would be \$2285.93 per month (Exhibit A: Notice of Action for Long Term Care Medicaid dated 12/9/2017)
3. In [REDACTED] of 2018, the Appellant's spouse's gross Social Security benefit increased to \$1557 per month. (Exhibit C: Benefit Amount Letter)
4. In [REDACTED] of 2018, the Appellant's gross Social Security benefit increased to \$758.50 per month. (Exhibit A and Appellant's testimony)
5. The Appellant's spouse's Medicare B premium, which is deducted from his Social Security benefit, is \$134 per month. (Exhibit C)
6. The Appellant's spouse's Medicare D premium is \$42.40 per month. (Exhibit C)
7. The Appellant's spouse also receives a gross pension benefit of \$3343.14 per month from [REDACTED]. (Exhibit D: Pension statement)
8. The Appellant receives a pension of \$150.59 per month. (Exhibit A and Appellant's testimony)
9. The Appellant's spouse pays a United Healthcare premium of \$239.50 per month. (Hearing summary)
10. The Appellant pays \$970 per month in rent. (Appellant's testimony)
11. The Department allows a Community Spouse Allowance ("CSA") per month to be diverted to the Appellant from her spouse in the nursing home. The CSA is currently \$2113.41 and will be revisited at the next redetermination. (Department's summary representative's testimony)

### **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 provides that 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 § 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.

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. (Emphasis added)

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. (Emphasis added)

4. Effective January of 2018, the Appellant’s total monthly gross income is \$4900.14.(Social Security benefit of \$1557+ pension benefit of \$3343.14)
5. 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 provides for that 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.

**The Department correctly allowed deductions for a PNA.**

6. 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.

**The Department correctly allowed deductions for the Appellant’s Medicare and secondary health insurance premiums.**

7. UPM § 5035.25 (B) (2) provides a monthly deduction for LTFC units of a CSA, when appropriate; (Cross reference 5035.30)

**The Department correctly allowed a deduction for the Appellant's CSA**

8. 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.

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.

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.

The CS's MMNA equals \$3090.

Shelter Costs:	AMOUNT
Rent	\$970
Standard Utility Allowance	\$ 728
<b>Total shelter costs:</b>	<b><u>\$1698</u></b>
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two (\$2,030)]	-\$ 609
<b>Excess shelter costs:</b>	<b>\$1089</b>
Plus 150% of the FPL for two:	\$2030
Equals the MMNA (capped at \$3090)	\$3090

9. UPM § 5035.30 (B) (1) provides the calculation of the CSA is equal to the greater of the following: a. the difference between 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	\$3090
Community Spouse's Income	-\$909.09
Community Spouse Allowance	\$2180.91

10. Effective [REDACTED] of 2018, the Appellant's spouse's AI is \$2243.33 per month. (Gross income \$4900.14 [\$1557 SSA + \$3343.14 pension] - \$60 (PNA) - \$134 (Medicare B Premium)-42.40(Medicare D Premium) - \$239.50 (Retiree Medical) - \$2180.91 (CSA))

### DISCUSSION

Because the Appellant requested this hearing, the undersigned has calculated the CSA and the AI using the figures presented at this hearing and currently in effect, per the regulations. There are a number of factors which influence the AI, including the CSA, which in turn has its own determining factors. Some of these factors (such as the federal poverty level and the standard utility allowance) are matters of law and not something that the Appellant would be aware of as affecting the benefit level.

When the Department last reviewed the eligibility, the CSA and AI were determined based upon the information at that time. The Department reviews these factors when granting and at periodic redeterminations. Unless a change is reported to the Department, the CSA and AI will remain the same. However, as the Department's representative testified at the hearing, some changes are automated. Because of the Department's ability to auto match with Social Security, the Appellant's spouse's increased Social Security amount became known to the Department and the AI was automatically recalculated using the new figure. However, the new calculation did not take into account new premium amounts. There was also no evidence that a new CSA was calculated using the Appellant's increased Social Security benefit amount. Per the representative's testimony, those figures would not have been reviewed until the next redetermination and the recalculations with the new figures would be done at that time. However, since the Appellant requested a hearing on the changed AI, the Department should have requested updated figures for calculating a new CSA and a new AI to ensure that both were accurate in accordance with the regulations.

While there are numbers of factors affecting the CSA and AI, the Appellant's main concern in requesting this hearing (tax withholding and liability) is **not** one of them. The regulations are clear in that the Department determines eligibility based on gross income. New regulations regarding tax withholding on pensions went into effect this year. However, as the Department's representative testified at the hearing, nursing home residents may waive this new withholding requirement. Any further questions that the Appellant has regarding her taxes would more appropriately directed to her accountant or the Department of Revenue Services.

**DECISION**

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

**ORDER**

The Department is to recalculate the AI in accordance with the figures set forth in COL #10 (above) effective [REDACTED] 2018. Compliance with this order is due by [REDACTED] 2018 and shall consist of proof that the Applied Income was recalculated effective [REDACTED] 2018.



Maureen Foley-Roy,  
Hearing Officer

Cc: Tricia Morelli, Operations Manager, DSS Manchester  
Saya Miyakoski, DSS Fair Hearing Liaison, Manchester

### **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.