

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 #111302

NOTICE OF DECISION
PARTY

██████████
c/o ██████████
██████████
██████████ ██████████

PROCEDURAL BACKGROUND

On ██████████ 2017, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a notice stating that effective ██████████, 2018 he must pay \$2005.83 each month in applied income toward the cost of his long-term care.

On ██████████ 2017, 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:

██████████ the Appellant
██████████ the Appellant's Spouse, living in the community ("CS")
██████████, Business Officer Manager, ██████████ Health Care
Barbara Brunner, Department's Representative
Maureen Foley-Roy, 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 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. (record)
2. On [REDACTED] 2017, the Department sent a notice to the Appellant that effective [REDACTED] 2018, the applied income the Appellant owed to the long term care facility would be \$2005.83 per month (Exhibit 7: Notice of Action for Long Term Care Medicaid dated [REDACTED]/2017)
3. In [REDACTED] of 2018, the Appellant's gross Social Security benefit increased to \$1731 per month. (Exhibit 2a: SVES printout, Appellant)
4. The Appellant's Medicare B premium, which is deducted from his Social Security benefit, is \$134 per month. (Appellant's testimony)
5. The Appellant also receives a gross pension benefit of \$1182.48 per month. (Exhibit 2b: Pension statement, Appellant)
6. In 2017 the Appellant had a monthly deduction of \$265 for "retiree medical" from his pension. (Exhibit 2b)
7. In [REDACTED] of 2018, the Appellant's retiree medical expense increased to \$268 per month. (Appellant's Exhibit C: Pension Stub/Appellant)
8. In [REDACTED] of 2018, the Community Spouse's ("CS") gross Social Security benefit increased to \$1,418.00 per month. (Exhibit 3a: SVES Title II printout for CS)
9. The CS receives a gross pension benefit of \$784.09 per month. (Exhibit 3b: Pension statement, CS)
10. The CS's Medicare B premium, which is deducted from her Social Security benefit, is \$134 per month. (Appellant's testimony)
11. In 2017 the CS had a monthly deduction of \$265 for "retiree medical" from her pension. (Exhibit 2b)
12. In [REDACTED] of 2018, the CS's retiree medical expense increased to \$268 per month. (Appellant's Exhibit D: Pension Stub/CS)

13. The Appellant's spouse lives in her own home in the community. (Community spouse's testimony)
14. The mortgage on the CS's home has been paid off. She pays \$159.14 per month for homeowner's insurance. (Exhibit 5: Shelter Expenses Listing from Eligibility Document)
15. The Appellant had been paying \$3934.17 per year in property taxes. Beginning in [REDACTED] 2017, the Appellant got an additional break on her property taxes from the town of [REDACTED] and she now pays \$3775.26 per year (\$314.60 monthly) in property taxes. (Exhibit 1a: Department's calculation of applied income and Community Spouse's testimony)
16. In addition, the CS pays for all of the maintenance and upkeep of the home, including, but not limited to, trash removal, snow plowing, lawn mowing and repairs. Currently, there is a leak in the kitchen and the CS is looking into having the roof repaired. (CS testimony)
17. The CS also pays all the expense of maintaining her car and visits the Appellant in the facility each day. (CS testimony)
18. The CS is generally healthy and independent with her activities of daily living. Her medical expenses are covered by her medical insurance with the exception of dental expenses. (CS 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 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 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.

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.

3. Effective [REDACTED] of 2018, the Appellant's total monthly gross income is \$2913.48.(Social Security benefit of \$1731 + pension benefit of \$1182.48)
4. 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.

5. 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 coinsurance costs when not paid by the Department or any other third party.

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

The Department correctly allowed deductions for the Appellant's secondary health insurance premium.

6. UPM § 5035.30 (B) (2) provides the 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.

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. (Emphasis added)

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 |
|--|-------------------------|
| Taxes/Property Insurance | \$473.74 |
| Standard Utility Allowance | \$ 798.00 |
| Total shelter costs: | <u>\$1201.74</u> |
| Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two (\$2,030)] | -\$ 609 |
| Excess shelter costs: | \$592.74 |
| Plus 150% of the FPL for two: | \$2030 |
| Equals the MMNA | \$2622.74 |

7. 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 | \$2622.74 |
| Community Spouse’s Income | \$2202.09 |
| Community Spouse Allowance | \$420.65 |

8. Effective [REDACTED] 2018, the Appellant’s applied income is \$2030.83 per month. (Gross income \$2913.48 [\$1731 SSA + \$1182.48 pension] - \$60 (PNA) - \$134 (Medicare Premium) - \$268 (Retiree Medical) - \$420.65 (CSA))

DISCUSSION

[REDACTED] confusion and frustration regarding the constantly changing applied income is understandable. The amount is not only affected by changes that they are aware of, 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. And the regulations are nuanced, in that they allow for consideration of medical insurance premiums for the Appellant, but not for the community spouse.

The undersigned has calculated the community spouse allowance and the applied income using the figures presented at this hearing (including the \$3 increase in the Appellant’s retiree medical premium) and currently in effect per the regulations.

DECISION

The Appellant’s appeal is **DENIED**.

Maureen Foley-Roy
Hearing Officer

Cc: Carol Sue Shannon, Danbury Operations Manager
Barbara Brunner, DSS Danbury

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.