

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

REQUEST #130786

██████████ 2019
SIGNATURE CONFIRMATION

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 Action stating that the Appellant's Patient Liability Amount for the period of ██████████ 2018 through ██████████ 2018 was \$172.73, and \$164.73 per month, effective ██████████ 2018.

On ██████████ 2018, the Appellant's representative and Community Spouse ██████████, requested an administrative hearing on behalf of the Appellant, because he disagrees with the Patient Liability Amount as determined by the Department.

On ██████████ 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice of Administrative Hearing scheduling a hearing for ██████████ 2018 @ 10:00 AM.

On ██████████ 2018, 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 Patient Liability Amount as determined by the Department.

The following individuals were present at the hearing:

██████████, Appellant's Representative/Community Spouse
██████████, Witness for the Appellant/Community Spouse
Sinseara Mercado, Representative for the Department (By Telephone)
Glenn T. Guerrero, Representative for the Department
Hernold C. Linton, Hearing Officer

The closing of the record was extended to [REDACTED] 2018 for the Department to provide its calculations for the Community Spouse Allowance (“CSA”) and Minimum Monthly Needs Allowance (“MMNA”). On [REDACTED] 2018, the Department submitted its CSA Calculation sheets which were shared with the Appellant’s Representative/Community Spouse for review and response by [REDACTED] 2018. No response was received, and the record was closed on [REDACTED] 2018.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Patient Liability Amount as determined by the Department is correct.

FINDINGS OF FACT

1. On [REDACTED] 2018, the Appellant became a resident of the [REDACTED], which is a long-term care facility (“LTCF”). (Hearing Summary; Dept.’s Exhibit #1: W-1 LTC)
2. The Appellant’s spouse resides in the community. (Hearing Summary)
3. On [REDACTED] 2018, the Appellant was granted Medicaid coverage to pay for her long term care (“LTC”), with a calculated Patient Liability Amount of \$172.73 per month. (Hearing Summary, Dept.’s Exhibit #5: [REDACTED]/18 Notice of Action)
4. On [REDACTED] 2018, the Department determined the Appellant’s calculated Patient Liability Amount as \$164.73 per month, effective [REDACTED] 2018. (Dept.’s Exhibit #5)
5. The Department determined the Community Spouse’s MMNA as \$2,936.25 per month and the CSA as \$549.96 per month, effective [REDACTED] 2018. (Dept.’s Exhibit #7: CSA Calculation Sheets)
6. The Community Spouse is seeking an increase in the MMNA and CSA due to his outstanding unpaid debts resulting in additional monthly expenses that are causing him significant financial duress. (Appellant Representative’s Testimony)
7. Effective [REDACTED] 2018, the Appellant’s Medicare Part B supplemental insurance through AARP was terminated, and she no longer incurs this third party liability expense. (Appellant Representative’s Testimony; Appellant’s Exhibit A: Patient Liability Change Report)
8. The Community Spouse is responsible to pay \$740.00 per month for rent. (Appellant Representative’s Testimony; Dept.’s Exhibit #3: Rent Receipts, dated [REDACTED]/18 and [REDACTED]/18)
9. Effective [REDACTED] 2018, the Appellant receives \$1,004.00 in monthly gross Social Security (“SSA”) benefits. (Hearing Summary; Dept.’s Exhibit #5)
10. Effective [REDACTED] 2018, the Community Spouse receives \$2,152.00 in monthly gross SSA benefits. (Dept.’s Exhibit #5)

11. Effective [REDACTED] 2018, the Community Spouse receives \$234.29 in monthly gross pension income. (Dept.'s Exhibit #5)
12. Effective [REDACTED] 2018, the Community Spouse has total monthly gross unearned income of \$2,386.29. (Dept.'s Exhibit #5)
13. The Community Spouse is [REDACTED] years of age, and is able to complete his activities of daily living ("ADL's") without assistance. (Appellant 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"), 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 § 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.
4. UPM § 1570.25(D)(3)(c) provides that 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.

The Department correctly determined that effective [REDACTED], 2018, the CS has total monthly shelter costs of \$1,476.00 (\$740.00, Rent; plus \$736.00, SUA).

5. 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.
6. 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.

The Department correctly determined the Community Spouse’s total monthly unearned income as \$2,386.29 (\$2,152.00, SSA; plus \$234.29, pension income).

The Department correctly determined that effective [REDACTED] 2018, the CS’s calculated CSA is \$529.96 (\$2,916.25, MMNA; minus \$2,386.29, CS’s income) per month in accordance with the UPM.

7. 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.

The Department correctly determined that the CS has a calculated MMNA of \$2,916.25 (\$858.75, excess shelter costs; plus \$2,057.50, 150% of the Federal Poverty Level for two persons as of [REDACTED]/18), effective [REDACTED] 2018.

8. UPM § 5035.30(B)(3) provides that 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.

The Department correctly determined that effective [REDACTED] 2018, the CS has monthly excess shelter costs of \$858.75 (\$1,476.00, shelter costs; minus \$617.25, 30% of \$2,057.50, 150% of the Federal Poverty Level for two persons as of [REDACTED]/18).

9. UPM § 5035.30(B)(5) provides that the MMNA may not exceed the greatest of either:
- (a) \$3,090.00, the maximum MMNA; or
 - (b) an amount established through a Fair Hearing.

10. UPM § 1570.25(D)(3)(d) provides that 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.

The Community Spouse does not have exceptional circumstances that are severe and unusual as such, prevent him from taking care of his activities of daily living, or directly threaten the community spouse's ability to remain in the community.

The Community Spouse is not eligible for an increase in his MMNA due to exceptional circumstances resulting in significant financial duress.

11. 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 [REDACTED] 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;

The Department correctly determined that effective [REDACTED] 2018, the Appellant's Patient Liability Amount or applied income is \$414.04 (\$1,004.00, Appellant's income; minus \$60.00, PNA, and \$529.96, CSA)

DECISION

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



Hernold C. Linton
Hearing Officer

Pc: **Alejandro Arbelaez**, Social Service Operations Manager,
DSS, R.O. #62, Torrington

Fair Hearing Liaisons, DSS, R.O. #62, Torrington

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.