

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3730

██████████, 2019
Signature Confirmation

Client ID # ██████████
Request #131750

NOTICE OF DECISION
PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a notice stating that effective ██████████ 2018, she must pay \$729.66 each month in applied income ("AI") toward the cost of her long-term care.

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

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

On ██████████ 2018, the Appellant requested a continuance which the OLCRAH granted.

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
Noel Lord, Department's Representative
Thomas Monahan, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department was correct when it determined that the Appellant's liability amount (AI) was \$729.66 per month effective [REDACTED] going forward.

FINDINGS OF FACT

1. The Appellant is a recipient of Long Term Care Medicaid and resides at [REDACTED] (the "facility"). (Appellant's testimony)
2. The Appellant entered the facility in [REDACTED]. (Appellant's testimony)
3. The Appellant's spouse lives in the community at [REDACTED]
4. On [REDACTED] 2018, the Department sent a notice to the Appellant that, the AI the Appellant owed to the long term care facility effective [REDACTED] 2018 was \$729.66 per month (Exhibit J: Notice of Action, [REDACTED])
5. On [REDACTED], 2018, the Department sent a notice to the Appellant that, the AI the Appellant owed to the long term care facility was \$643.76 per month effective [REDACTED] 2018. (Exhibit D: Notice of Action, [REDACTED])
6. In [REDACTED] 2018 the Appellant's monthly gross Social Security benefit was \$2,137.00. (Exhibit I: Department's Social Security match)
7. In [REDACTED] the Appellant's monthly gross pension benefit was \$1,304.95. (Exhibit G: Department's Unearned Income Details)
8. In [REDACTED] the Appellant's spouse's gross Social Security benefits were \$798.00 per month. (Exhibit H: Bank statement)
9. In [REDACTED] the Appellant paid \$134.00 monthly for her Medicare Part B premium. (Hearing record)
10. The Appellant pays \$312.19 per month for private medical insurance. (Hearing record)
11. The Appellant and her spouse pay \$1,700.00 per month in rent for their apartment in the community. (Appellant's testimony, Exhibit E: Community Spouse Allowance calculation)
12. The Department allows a Community Spouse Allowance ("CSA") of \$2,292.00 per month to be diverted to the Appellant's spouse in the

community. The CSA for [REDACTED] 2018 is \$2,292.00 (Exhibit E Community Spouse allowance calculation, Exhibit N: Patient Liability calculation)

13. The Appellant requests that her applied income be zero so that she can afford to maintain the Apartment in the community. (Appellant's testimony)
14. The Appellant needs more money to pay for her medications, light bill, phone and a monthly medical bill for her prosthetic leg. (Appellant's testimony)
15. The Appellant's husband suffered a stroke but is able to complete his activities of daily living in the community. He receives help in preparing meals. (Hearing record)

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.

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.

4. Effective [REDACTED], the Appellant's total monthly gross income is \$3,441.95.(Social Security benefit of \$2,137.00+ pension benefit of \$1,304.95)

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 a \$60.00 deduction for the Appellants 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 a \$446.19 (\$134.00 Med Part B + \$312.19 private med Insurance) deduction 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	\$1,700.00
Standard Utility Allowance	\$ 736.00
Total shelter costs:	<u>\$2,436.00</u>
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two (\$2,030)]	-\$ 609.00
Excess shelter costs:	\$1,827.00
Plus 150% of the FPL for two:	\$2030.00
Equals the MMNA (capped at \$3090)	\$3090.00

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 (Capped)	\$3090.00
Community Spouse's Income	-\$798.00
Community Spouse Allowance	\$2,292.00

10. UPM 1570.25(D)(3) provides for increasing the community spouse's MMNA if it is established 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 financial. a. Exceptional circumstances are those that are severe and unusual and that: prevent the community spouse from taking care of his or her activities of daily living; or directly threaten the community spouse's ability to remain in the community; or 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).
11. **The community spouse does not have exceptional circumstances allowing for an increase in the MMNA.**
12. In [REDACTED] 2018, the Appellant's AI is \$643.76 per month. (Gross income \$3,441.95 (Social Security benefit \$2,137.00+ pension benefit \$1,304.95) - \$60 (PNA) - \$134 (Medicare B Premium) - \$312.19 (Medical insurance Premium) - \$2,292.00 (CSA).

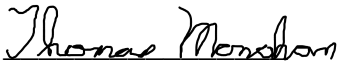
DISCUSSION

The Appellant does not meet the criteria for an increase in her MMNA because she does not have exceptional circumstances resulting in financial distress for the community spouse. Household bills are not exceptional circumstances. The Appellant testified that her spouse is able to complete his activities of daily living which include

bathing, dressing eating, transferring and mobility. He does require help in food preparation.

DECISION

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


Thomas Monahan
Hearing Officer

C: Yecenia Acosta, Operations Manager, DSS Stamford
Noel Lord, Hearing Liaison, Stamford

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.