

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

██████████ 2019
Signature confirmation

Case: ██████████
Client: ██████████
Request: 134234

NOTICE OF DECISION

PARTY

██████████
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PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (the "Department") issued a *Notice of Action* to ██████████ (the "Appellant") regarding changes to his applied income due to the long-term care facility in which he resided, effective ██████████ 2019.

On ██████████ 2019, ██████████, the Appellant's wife, faxed a request for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") for an increase to her Community Spouse Allowance ("CSA"), a deduction from the Appellant's applied income that was due to the long-term care facility toward his cost of care.

On ██████████ 2019, the OLCRAH issued a notice scheduling an administrative hearing for ██████████ 2019. The OLCRAH granted the Appellant's wife's request for a postponement of the administrative hearing.

On ██████████ 2019, 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 Appellant's wife represented the Appellant's interests at the administrative hearing, as the Appellant was unable to participate due to mental frailty. The following individuals participated in the proceedings:

██████████, Appellant's representative (wife)
Noel Lord, Department's representative (by telephone)
Jessica Gomez, Department's observer
Eva Tar, Hearing Officer

The administrative hearing record closed [REDACTED] 2019.

STATEMENT OF ISSUE

The issue to be decided was whether the Department correctly calculated the Appellant's wife's monthly CSA to be \$2,095.14 per month, effective [REDACTED] 2019.

FINDINGS OF FACT

1. The Appellant was an institutionalized individual receiving long-term care Medicaid coverage. (Department's Exhibit R)
2. Effective [REDACTED] 2019, the Appellant grossed \$1,978.50 per month in Social Security benefits. (Department's Exhibit S)
3. The Appellant grossed \$676.00 per month in a private pension. (Department's Exhibit S)(Department's Exhibit D)
4. Effective [REDACTED] 2019, the Appellant's wife grossed \$832.50 per month in Social Security benefits. (Department's Exhibit T)
5. The Appellant's wife paid \$649.18 per month to her mortgage on her home. (Appellant's wife's testimony)(Department's Exhibit D)
6. The Appellant's wife's real estate taxes on her home were deferred by the Town of [REDACTED] she does not pay her real estate taxes. (Appellant's wife's testimony)
7. The Appellant's wife paid \$204.42 every two months for an [REDACTED] homeowner's insurance premium. (Department's Exhibit F)(Appellant's wife's testimony)
8. The Department calculated that the Appellant's wife's CSA to equal \$2,095.14 per month, effective [REDACTED] 2019. (Department's Exhibit U)
9. On [REDACTED] 2018, the Department issued a *Notice of Action* to the Appellant, stating that his Patient Liability Amount was \$363.86 per month, effective [REDACTED] 2019. (Department's Exhibit R)
10. Connecticut General Statutes § 17b-61 (a) provides that a final decision be issued within 90 days of a request for an administrative hearing. The OLCRAH received the Appellant's hearing request by fax on [REDACTED] 2019. This final decision was not due until [REDACTED] 2019. This decision therefore is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes provides in part that the Department of Social Services is designated as the state agency for the administration of (6) the Medicaid program pursuant to Title XIX of the Social Security Act.

2. Section 17b-261 (a) of the Connecticut General Statutes provides in part that “Any income in excess of the applicable amounts shall be applied as may be required by said federal law, and assistance shall be granted for the balance of the cost of authorized medical assistance.”

Uniform Policy Manual (“UPM”) § 5045.20 (D) provides: “Amount of Benefits Paid by Department. The difference between the assistance unit's contribution and the Medicaid rate of the LTCF or CBS is the amount of benefits paid by the department to the facility or provider organization on the unit's behalf.”

3. “The Fair Hearing official: a. determines the issue of the hearing.” UPM § 1570.25 (C)(2)(a).
4. “Assistance units who are residents of Long Term Care Facilities (LTCF) or receiving community based services (CBS) 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.

“Period for Which the Amount to be Contributed is Calculated. The amount of income to be contributed is calculated using the post-eligibility method starting with the month in which the 30th day of continuous LTCF care or receipt of community-based services occurs, and ending with the month in which the assistance unit member is discharged from the LTCF or community-based services are last received.” UPM § 5045.20 (A).

“Total gross income is reduced by post-eligibility deductions (Cross reference: 5035-“Income Deductions”) to arrive at the amount of income to be contributed.” UPM § 5045.20 (B)(1)(b).

“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 § 5035.25.

5. “Assistance unit. The assistance unit consists of one or more individuals who apply for or receive assistance together under one of the Department’s programs.” UPM § 2000.01.

“The assistance unit in AABD [Aid to the Aged, Blind, and Disabled] and MAABD [Medicaid for the Aged, Blind, and Disabled] consists of only one member. In these programs, each individual is a separate assistance unit.” UPM § 2015.05 (A).

The Appellant was the sole member of his Medicaid assistance unit.

6. UPM § 5035.25 (B) provides for post-eligibility deductions for LTCF Units with Community Spouses. “The following monthly deductions are allowed from the income of assistance units in LTCF's:
 1. a personal needs allowance 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;

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;
5. costs for medical treatment approved by a physician which are incurred subsequent to the effective date of eligibility and which are not covered by Medicaid;
6. expenses for services provided by a licensed medical provider in the six month period immediately preceding the first month of eligibility providing the following conditions are met:
 - a. the expenses were not for LTCF services, services provided by a medical institution equivalent to those provided in a long term care facility, or home and community-based services, when any of these services were incurred during a penalty period resulting from an improper transfer of assets; and
 - b. the recipient is currently liable for the expenses; and
 - c. the services are not covered by Medicaid in a prior period of eligibility.”

The expenses identified as allowable deductions in UPM § 5035.25 (B) were those expenses that are directly incurred by the Medicaid assistant unit member.

The Appellant’s wife’s expenses arising from her personal medical premiums were not allowable deductions from the Appellant’s applied income, as outlined by UPM § 5035.25 (B), as she is not a member of his assistance unit.

7. “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.” UPM § 5035.30 (B)(1).

“The community spouse's monthly shelter cost includes: a. rental costs 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. Standard Utility Allowance (SUA) used in the FS program for the community spouse.” UPM § 5035.30 (B)(4).

In the relevant period, Connecticut’s SUA equaled \$736.00 per month.

For the purposes of a CSA calculation, the Appellant’s wife’s allowable shelter costs equaled \$1,487.39. [\$649.18 (mortgage) plus \$102.21 (home owner’s insurance, pro-rated monthly) plus \$736.00 (SUA)]

8. “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 Federal Poverty Level for a unit of two persons.” UPM § 5035.30 (B)(3).

In 2019, one hundred percent of the Federal Poverty Level for two equaled \$16,910.00 per year in the 48 contiguous states and the District of Columbia. Federal Register, Doc. 2019-00621, filed [REDACTED]

One hundred and fifty percent of the Federal Poverty Level for two equaled \$25,365.00 per year, or \$2,113.75 per month.

For the purposes of a CSA calculation, the Appellant's wife's excess shelter costs equaled \$853.27. [\$1,487.39 minus \$634.12 (30 percent of 150 percent of the Federal Poverty Level for two, per month)]

9. "An institutionalized spouse applying for Medicaid and having a spouse living in the community shall be required, to the maximum extent permitted by law, to divert income to such community spouse in order to raise the community spouse's income to the level of the minimum monthly needs allowance, as described in Section 1924 of the Social Security Act...." Conn. Gen. Stat. § 17b-261 (g).

"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 section 5035.30 B.3.; and b. 150 percent of the monthly poverty level for a unit of two persons." UPM § 5035.30 (B)(2).

"The MMNA may not exceed the greatest of either: a. the maximum MMNA; or b. an amount established through a Fair Hearing." UPM § 5035.30 (B)(5).

10. "The [Fair 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." UPM § 1570.25 (D)(3).

"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." UPM § 1570.25 (D)(3)(d).

"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 the institutionalized spouse)." UPM § 1570.25 (D)(3)(a).

The Appellant's wife did not have "exceptional circumstances," as the term is defined by UPM § 1570.25 (D)(3)(a).

11. "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." UPM § 1570.25 (D)(3)(c).

The Appellant's wife's mortgage payments, utility costs, real estate insurance, lawn maintenance, and personal medical premiums are factored into the MMNA calculation; they did not cause her significant financial duress.

The Appellant's wife's MMNA equaled \$2,967.02. [\$853.27 (excess shelter costs) plus \$2,113.75 (150 percent of Federal Poverty Level for two)]

The Appellant's wife's CSA equaled \$2,134.52. [\$2,967.02 (MMNA) minus \$832.50 (Appellant's wife's gross monthly income)]

The Department incorrectly calculated the Appellant's wife's monthly CSA to be \$2,095.14 per month, effective [REDACTED] 2019. The Appellant's wife's monthly CSA equaled \$2,134.52 per month, effective [REDACTED] 2019.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department will update its records to incorporate the Appellant's wife's CSA to equal \$2,134.52 per month, effective [REDACTED] 2019. The Department will adjust the Appellant's applied income due to the long-term care facility accordingly.
2. Within 14 calendar days of the date of this decision, or [REDACTED] 2019, documentation of compliance with this order is due to the undersigned.

Eva Tar - electronic signature
Eva Tar
Hearing Officer

Cc: [REDACTED]
Noel Lord, DSS-Stamford
Fred Presnick, DSS-Bridgeport
Yecenia Acosta, DSS-Bridgeport/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 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 Legal Counsel, Regulations, and Administrative Hearings, 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 his 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.