

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVE.
HARTFORD, CT 06105-3725

██████████
Signature Confirmation

Client ID # ██████████
Request # 137653

NOTICE OF DECISION

PARTY

██████████
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██████████
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PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) on behalf of ██████████ (the “Spouse”) a Notice of Approval for Long Term Care (“LTC”) Medicaid listing the community spousal allowance (“CSA”) as \$327.50 effective ██████████ 2019.

On ██████████ 2019, the Appellant requested an administrative hearing to contest the Department’s determination of the CSA.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2019.

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 following individuals were present at the hearing:

██████████, Appellant
Trish Gethers, Department Representative
Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's calculation of the Community Spousal Allowance under the Medicaid LTC program was correct.

FINDINGS OF FACT

1. The Appellant is married to [REDACTED] (the "Spouse"). (Hearing Record)
2. The Appellant resides at home in the community. (Hearing Record)
3. On [REDACTED] 2018, [REDACTED] (the "facility"), a skilled nursing facility, admitted the Spouse to their facility for a short term stay. In [REDACTED] 2019, the Spouse was deemed permanently institutionalized and transitioned to long term at the facility. (Hearing Summary, Exhibit 1: Notice of Approval for Long Term Care Medicaid, Exhibit 2: Notice of Action and Department Representative's Testimony)
4. The Department granted Medicaid under the Long Term Care ("LTC") program for the Spouse effective [REDACTED] 2019 after discontinuing her Medicaid under the Husky C Individual Receiving Home and Community Based Services ("Husky C") program effective [REDACTED] 2019. (Exhibit 1: Notice of Approval for Long Term Care Medicaid and Exhibit 2: Notice of Action)
5. The Department determined the Spouse eligible for a CSA of \$327.50 per month. (Exhibit 1: Notice of Approval for Long Term Care Medicaid and Exhibit 3: CSA Calculation of Applied Income)
6. The Appellant receives \$2,833.00 ("SSD") disability benefits per month from the Social Security Administration. (Hearing Record)
7. The Spouse receives \$893.00 ("SSA") benefits per month from the Social Security Administration. (Hearing Record)
8. The Spouse receives a pension of \$76.20 ("pension") per month. (Hearing Record)
9. The Appellant pays a monthly mortgage of \$2,126.00 per month which includes homeowners insurance and property taxes effective [REDACTED] 2018. (Appellant's Testimony and Exhibit A: Community Expenses Worksheet)
10. The Department calculated the Appellant's monthly mortgage payment and property taxes as \$2,200.46 using information on file from the

Spouse's Husky C medical benefits. (Department Representative's Testimony and Exhibit 3: CSA Calculation of Applied Income)

11. The Department calculated the Appellant's monthly homeowner's insurance cost as \$73.08 using information on file from the Spouse's Husky C medical benefits. (Department Representative's Testimony and Exhibit 3: CSA Calculation of Applied Income)
12. The Appellant pays for the utilities in the home which includes electricity, water, oil heat, sewer, cable and telephone. (Appellant's Testimony and Exhibit A: Community Expenses Worksheet)
13. The Appellant received the standard utility allowance of \$736.00 in place of actual utility costs to calculate the Appellant's total shelter costs. (Department Representative's Testimony and Exhibit 3: CSA Calculation of Applied Income)
14. Effective [REDACTED] 2019, the minimum monthly needs allowance ("MMNA") is capped at \$3,160.50 per month. (Exhibit 3: CSA Calculation of Applied income and Department Representative's Testimony)
15. The Appellant pays for car insurance on two cars. (Appellant's Testimony)
16. Effective [REDACTED] 2017, the Appellant has medical benefits under Medicaid which pays for his medical appointments and medication to manage his medical condition which includes diabetes, high blood pressure, and cholesterol. (Appellant's Testimony)
17. The Appellant owes \$126,000.00 to [REDACTED] for a 60 day inpatient stay in 2017 prior to Medicaid coverage. (Appellant's Testimony)
18. The Appellant incurred \$25,000.00 in credit card debt because household expenses exceeded the household's income after losing his job. (Appellant's Testimony)
19. The Appellant on behalf of his Spouse is seeking an increase in the CSA to continue to reside in his home in the community.
20. The issuance of this decision is timely under Connecticut General Statute § 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED] 2019. Therefore, this decision is due not later than [REDACTED] 2019.

CONCLUSIONS OF LAW

1. Connecticut General Statute (“Conn. Gen. Stats.”) § 17b-2(6) provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. State statute provides that 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. Such diversion of income shall occur before the community spouse is allowed to retain assets in excess of the community spouse protected amount described in Section 1924 of the Social Security Act. The Commissioner of Social Services, pursuant to section 17b-10, may implement the provisions of this subsection while in the process of adopting regulations, provided the commissioner prints notice of intent to adopt the regulations in the Connecticut Law Journal within twenty days of adopting such policy. Such policy shall be valid until the time final regulations are effective. [Conn. Gen. Stats. § 17b-261(g)]
3. Uniform Policy Manual (“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 benefits of the CS.
4. UPM § 5000.01 defines deductions as those amount which are subtracted as adjustments to counted income and which represent expenses paid by the assistance unit.
5. UPM § 5000.01 defines institutionalized spouse as a spouse who resides in a medical facility or long term care facility, or who receives home and community Based Services (CBS) under a Medicaid waiver, and who is legally married to someone who does not reside in such facilities or who does not received such services.
6. UPM § 5000.01 defines community spouse as an individual who resides in the community, who does not received home and community based services under a Medicaid waiver, who is married to an individual who resides in a medical facility or long term care facility or who receives home and community based services (CBS) under a Medicaid waiver.
7. The Department correctly determined the Spouse as the institutionalized spouse.

8. The Department correctly determined the Appellant as the community spouse.
9. UPM § 5035.30(B) provides for the calculation of CSA.
 1. 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.
 2. 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 5035.30B.3.; and
 - b. 150 percent of the monthly poverty level for a unit of two persons.
 3. The community spouse's excess shelter cost is equal to the difference between his or her shelter cost as described in section 5035.30B.4 and 30% of 150 percent of the monthly poverty level for a unit of two persons.
 4. 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 charge by condominiums or cooperative except those amounts for utilities; and
 - e. Standard Utility Allowance (SUA) used in the FS program for the community spouse.
 5. The MMNA may not exceed the greatest of either:
 - a. The maximum MMNA; or
 - b. An amount established through a fair hearing.
10. The 2018 Poverty Guidelines for the 48 Contiguous States and the District of Columbia for a household of 2 equals \$16,460.00. [Federal Register/Vol. 83, No. 12/January 18, 2018]
11. The Department correctly determined 150% of the federal poverty level ("FPL") for two as \$2,057.50. [$\$16,460.00 \text{ FPL for } 2 / 12 \text{ months} = \$1,371.666 \times 150\% = \$2,057.4999$]
12. The Department correctly determined 30% of 150% of the FPL as \$617.25. [$\$2,057.50 \times 30\% = \617.25]
13. The Department incorrectly determined the Appellant's monthly shelter costs as \$3,009.54. The correct monthly shelter costs are \$2,862.00.

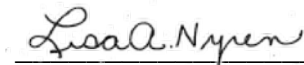
(\$2,126.00 mortgage, real estate tax, & homeowner's insurance + \$736.00 standard utility allowance = \$2,862.00)

14. The Department incorrectly determined the excess shelter costs as \$2,392.29. The correct excess shelter costs are \$2,244.75. (\$2,862.00 shelter costs - \$617.25 30% of 150% of FPL for 2 = \$2,244.75)
15. The Department correctly determined the MMNA as \$3,160.50, the maximum allowed. (\$2,244.75 excess shelter costs + \$2,057.50 150% of FPL for 2 = \$4,302.25) The MMNA is capped at \$3,160.50 if the sum of the Appellant's excess shelter costs and 150% of the FPL exceeds \$3,160.50.
16. The Department correctly determined the CSA as \$327.50. (\$3,160.00 MMNA - \$2,833.00 Appellant's gross income = \$327.50) The difference between the shelter costs as outlined under conclusion of law ("COL") #13 and the excess shelter costs outlined under COL #14 did not impact the CSA.
17. UPM § 1570.25(D)(3) provides that the 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.
 - 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's 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 a above; and
 2. Is not already factored into the MMNA; and
 3. Cannot reasonably be expected to be met by the community spouse's own income and assets.
 - c. 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.
- d. 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.
18. UPM § 500 defines MCCA Spouses as spouses who are members of a married couple one of whom becomes an institutionalized spouse on or after September 30, 1989, and the other spouse becomes a community spouse.
19. UPM § P-1570.26 defines in part activities of daily living as bathing, dressing, transferring, toileting, feeding, preparing meals, administering medication, ambulating, controlling bladder and bowel.
20. The Appellant's situation does not meet the criteria for exceptional circumstances as monthly household expenses are already factored into the MMNA. The Appellant's medical condition does not prevent him from completing activities of daily living or threaten his ability to remain in the community. Although the Appellant's household expenses and overdue medical bills exceed his income causing him financial duress, it is not a direct result of exceptional circumstances.

DECISION

The Appellant's appeal is denied.



Lisa A. Nyren
Fair Hearing Officer

CC: Fred Presnick, DSS RO #30
Yesenia Acosta, DSS RO #30
Tim Latifi, DSS RO #30
Trish Gethers, DSS RO #30

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.

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.