

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 #146699

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2019 the Department of Social Services (the "Department") sent ██████████ (the "Recipient") a notice stating that effective ██████████ 2019 he must pay \$3,635.63 each month in Patient Liability Amount ("PLA") toward the cost of his long-term care.

On ██████████, 2019, ██████████, (the "Appellant") spouse and Power of Attorney for ██████████, requested an administrative hearing to contest the Department's calculation of the PLA.

On ██████████, 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") erroneously dismissed the hearing request.

On ██████████ 2019 and ██████████ 2019, OLCRAH issued notices 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:

██████████, the Appellant, spouse of the Recipient residing in a skilled nursing facility

██████████, the daughter of the Appellant and Recipient
Gary Sardo, DSS Fair Hearing Liaison, D. O. #40, Norwich

Kenneth Smiley, DSS Fair Hearing Liaison, D.O. 42, Willimantic, via telephone conference call, Department's Representative
Maureen Foley-Roy, Hearing Officer

The hearing officer held the hearing record open for the submission of additional evidence. The hearing officer received additional evidence from both the Appellant and the Department and the record closed on [REDACTED] 2019.

STATEMENT OF THE ISSUE

The issue is whether the Department was correct when it determined that the Recipient's PLA would increase to \$3,635.63, effective [REDACTED] 2019.

FINDINGS OF FACT

1. The Recipient is a recipient of Medicaid and resides in a long-term care facility. Prior to his current residence, the Recipient was living in another long-term care facility and prior to that, he spent 8 months in the VA hospital. (Hearing record & Appellant's testimony)
2. On [REDACTED], 2018, the Appellant completed a renewal of eligibility form for the Recipient's Medicaid coverage and returned it to the Department. (Exhibit 1: Renewal of Eligibility form)
3. In [REDACTED] of 2019, the Recipient's gross Social Security benefit was \$1,603.50 per month. (Exhibit 12: RSDI printout)
4. The Recipient's Medicare B premium, which the Social Security Administration deducts from his Social Security benefit, is \$135.50 per month. (Hearing Summary)
5. The Recipient receives a gross pension benefit of \$1,371.00 per month from the U.S. Military Defense Finance and Accounting ("DFAS"). (Exhibit 2: DFAS Retiree Account Statement)
6. The Recipient also receives a distribution from an annuity in the amount of \$11,448.00 annually, which translates to \$954.00 per month. (Exhibit 3 Statement of Annuity paid)
7. The Appellant works at [REDACTED] [REDACTED]. She works between 30 and 40 hours per week. She is most likely to work 40 hours for the months from October through December. (Appellant's testimony and Exhibit 4: Wage Stubs)
8. From [REDACTED] 2018 through [REDACTED] 2019, the Appellant earned an average of \$615.38 in gross wages each week. (Exhibit 4)

9. The Appellant lives in her own home with her adult daughter. Her mortgage payment is \$1,095.34 monthly, which includes the taxes, and homeowner's insurance. (Exhibit 6: Mortgage Statement and Appellant's testimony)
10. The Appellant has recently received a bill from the VA. It is the first bill that she has received from them. The VA has advised her that it is the Recipient's portion of what he must pay for his stay there in 2017. (Appellant's testimony and Appellant's Exhibit A: VA statement dated [REDACTED])
11. The Appellant's spouse was previously a resident at the [REDACTED] facility and as of [REDACTED] 2019, the Appellant had an outstanding balance of \$33,919.06 due for his care at that facility. (Exhibit D: Statements from [REDACTED])
12. On [REDACTED] 2019, the Department sent a notice to the Appellant that effective [REDACTED] [REDACTED], 2019, the PLA the Appellant owed to the long-term care facility would be \$3,635.63 per month. (Exhibit 15: Notice dated June 10, 2019)
13. On [REDACTED], 2019, the Department sent a notice to the Appellant that effective [REDACTED] 2019, the PLA the Appellant owed to the long-term care facility would be \$3,218.63 per month. (Exhibit 16: Notice of Action dated [REDACTED], 2019)
14. The Department made its determination of the PLA prior to the Appellant's receipt of the VA bill and without consideration of the money owed to the [REDACTED] Facility. (Hearing Record)
15. As of [REDACTED] 2019, the Appellant owes \$8,933.32 in PLA to the facility where her spouse currently resides. (Appellant's Exhibit B: [REDACTED] [REDACTED])

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. "The Department's uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v Rowe*, 43 Conn Supp. 175 178 (194) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d712(1990)).
3. 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.

4. UPM § 5035.25 provides that for resident of **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. (Emphasis added)

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. (Emphasis added)

Effective [REDACTED] of 2019, the Recipient's total monthly gross income is \$3,928.00 (Social Security benefit of \$1,603.00 + pension benefit of \$1,371.00 + annuity income of \$954.00)

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 deductions for a 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 deductions for the Appellant's Medicare health insurance premiums.

7. 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 \$3,160.00.

Shelter Costs:	AMOUNT
Mortgage	\$1,095.34
Standard Utility Allowance	\$736.00
Total shelter costs:	<u>\$1,831.34</u>
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two (\$2057.50)]	-\$617.25
Excess shelter costs:	\$1,214.09
Plus 150% of the FPL for two:	\$2,057.50
Equals the MMNA	\$3,271.59
Equals the allowable MMNA (capped at \$3160)	\$3,160.00

8. 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	\$3,160.00
Community Spouse's Income (\$615.38 X 4.3)	\$2,646.13
Community Spouse Allowance	\$513.87

9. 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.

10. Effective [REDACTED] of 2019, the Recipient's PLA is \$3,218.63 per month. (Gross income \$3,928.00 - \$60.00 (PNA) - \$135.50 (Medicare B Premium)-- \$513.87 (CSA))

DISCUSSION

The regulations define the calculations and various factors, which influence the PLA, including the CSA, which in turn has its own determining factors. The calculations and some of the factors (such as the federal poverty level and the standard utility allowance) are matters of law and not something that the Appellant would be aware of as affecting the benefit level. The Appellant disagreed with the Department's using gross income and not allowing for student loans in calculating the applied income, but the regulations require the Department to count the gross income and do not allow for deductions for student loans.

The sudden rise in the PLA dismayed the Appellant. It appears that the previous PLA was an error in that the Department was not counting all of the Recipient's income. The average cost of skilled nursing care is \$12,851.00 per month and Medicaid is paying for the bulk of the Recipient's care. The Recipient is expected to pay a portion of his own expenses (known as Patient Liability Amount) as set in the regulations.

DECISION

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



Maureen Foley-Roy,
Hearing Officer

Cc: Tyler Nardine, Cheryl Stuart, Operations Managers, DSS, Norwich
Ken Smiley, DSS Fair Hearing Liaison, Willimantic

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.