

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 #142807

**NOTICE OF DECISION**

**PARTY**

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

**PROCEDURAL BACKGROUND**

On ██████████ 2019, the Department of Social Services (the "Department") sent ██████████ (the "Applicant") and her husband ██████████, (the "Appellant") a Notice of Action ("NOA") with the amount of applied income that she must pay toward her cost of long term care.

On ██████████ 2019, the Appellant requested an administrative hearing to contest the Department's calculation of the applied income and Community Spouse Allowance ("CSA").

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

On ██████████ 2019, an attorney representing the Appellant requested a reschedule of the administrative hearing.

On ██████████, 2019, OLCRAH issued a Notice rescheduling 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, Applicant's Spouse  
 Stefania Smith, Department's Representative, participated by telephone  
 Saya Miyakoshi, Department's Observer  
 Marci Ostroski, Hearing Officer

The Applicant was not present at the administrative hearing due to her institutionalization at a long term care facility.

### **STATEMENT OF THE ISSUE**

The issue is whether the Department has correctly calculated of the amount of the Community Spouse Allowance used in the calculation of applied income that the Applicant is responsible to pay toward the cost of her long-term care.

### **FINDINGS OF FACT**

1. On ██████████ 2019, the Applicant was admitted to ██████████, the Applicant submitted an application for Medicaid. (Hearing Summary)
2. The Applicant's spouse, the Appellant, lives in the community. (Hearing Summary, Appellant's Testimony)
3. The Applicant's gross Social Security benefit amount is \$1825.50 (Ex. 3: Social Security statement; ██████████)
4. The Applicant's monthly cost for Medicare B premiums is \$135.50. (Ex. 3: Social Security statement; ██████████)
5. The Applicant's ██████████ gross monthly pension amount is \$1254.93. (Ex. 5: ██████████ letter and pension statement)
6. The Appellant's gross monthly Social Security benefit amount is \$2029.10. The Department used \$2028.50 as the Appellant's income in its eligibility calculation. (Ex. 4: Social Security statement; ██████████, Hearing summary, Ex. 7: Notice of Action, ██████████19)
7. The Appellant's monthly cost for Medicare B premiums is \$135.50. (Ex. 4: Social Security statement; ██████████)
8. The Appellant's mortgage payment includes principal and interest as well as his property taxes and homeowners insurance. His monthly payment is \$2217.03. (Ex. 2: Mr. ██████████ mortgage statement)

9. On [REDACTED] 2019, the Department granted Medicaid benefits for the Applicant under the HUSKY C Long Term Care program with an effective date of [REDACTED] 2019. (Ex. 6: Notice of Action; [REDACTED]/19)
10. On [REDACTED] 2019 the Department sent the Applicant a Notice of action which stated that she was responsible to pay \$3020.43 toward the cost of her long term care beginning [REDACTED] 2019. (Ex. 6: Notice of Action; [REDACTED]/19)
11. The Appellant contacted the Department regarding the calculation and the Department recalculated the CSA and applied income. (Department's testimony)
12. On [REDACTED] 2019, the Department determined the Appellant's applied income to be \$1888.43 effective [REDACTED] 2019, and submitted a new notice to the Applicant. (Ex. 7: Notice of Action; [REDACTED]/19)
13. The Appellant has reported monthly expenses from his mortgage, utilities, copays for his prescriptions, credit card bills, and the IRS. (Appellant's testimony)
14. The issuance of this decision is timely under section 17b-61(a) of Connecticut General Statutes, 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. This decision, therefore, was due no later than [REDACTED], 2019. The hearing, however, which was originally scheduled for [REDACTED] 2019, was rescheduled for [REDACTED] 2019, at the request of the Appellant, which caused a 10-day delay. Because this 10-day delay resulted from the Appellant's request, this decision is not due until [REDACTED] 2019, and is therefore timely. (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. "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 (1994) (citing Conn. Gen. Stat. § 17b-10; [Richard v. Commissioner of Income Maintenance](#), 214 Conn. 601, 573 A.2d 712 (1990))
3. Uniform Policy Manual ("UPM") § 5045.20 pertains to 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.

4. 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.
5. The Department correctly determined that the Applicant's monthly gross income is \$3080.43 (1825.50+1254.93).
6. 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.
7. 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.
8. Conn. Gen. Stat. § 17b-272. **(Formerly Sec. 17-134m). Personal fund allowance.** 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.
9. 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 for the Department or any other third party.
10. The Department correctly allowed the deduction for personal fund allowance in the amount of \$60.00, but failed to deduct the Applicant's Medicare B premium of \$135.50.
11. UPM § 5035.25(B)(2) provides a monthly deduction for LTFC units of a Community Spouse Allowance ("CSA"), when appropriate; (Cross Reference 5035.30)
12. UPM § 5035.30 (B)(1)(a)(b) provides that the calculation of the CSA is equal to the greater of the following: the difference between the Minimum Monthly Needs Allowance ("MMNA") and the community spouse gross monthly income; or the amount established pursuant to court order for the purpose of providing necessary spousal support.

13. UPM § 5035.30(B)(2)(a)(b) provides that the MMNA is the amount which is equal to the sum of the amount of the community spouse's excess shelter costs as calculated in section 5035.30 B. 3. and 150 percent of the monthly poverty level for a unit of two persons.
14. UPM § 5035.30(B)(3)(4)(a)(b)(c)(d)(e) provides that 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. The community spouse's monthly shelter cost includes: rental cost or mortgage payments, including principle and interest; real estate taxes; real estate insurance; required maintenance fees charged by condominiums or cooperatives except those amounts for utilities and the Standard Utility Allowance ("SUA") used in the SNAP program for the community spouse.
15. UPM § 5035.30(B)(5)(a)(b) provides that the MMNA may not exceed the greatest of either the maximum MMNA or an amount established through a Fair Hearing.
16. UPM § 1570.25(D)(3)(a)(1)(2)(3)(b)(1)(2)(3) provides that 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. 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). Significant financial duress is an expense or set of expenses that: directly arises from the exceptional circumstances described in subparagraph a above; and is not already factored into the MMNA; and cannot reasonably be expected to be met by the community spouse's own income and assets.
17. UPM § 1570.25(D)(3)(c)(1)(2)(3)(4)(5)(6)(7) provides expenses that are factored into the MMNA, and thus do not generally qualify as causing significant financial duress, include, but are not limited to: shelter costs such as rent or mortgage payments; utility costs; condominium fees; real estate and personal property taxes; real estate, life and medical insurance; expenses for the upkeep of a home such as lawn maintenance, snow removal, replacement of a roof, furnace or appliance; medical expenses reflecting the normal frailties of old age.

18. UPM § 1570.25(D)(4) 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.
19. The Appellant's living expenses and monthly needs do not fall within the criteria outlined in regulation as "exceptional circumstances".
20. The Appellant's CSA is \$1131.40. See table below:

	AMOUNT
Shelter Costs:	
Mortgage	\$2217.03
Property Taxes	Included above
Property Insurance	included above
Standard Utility Allowance	<u>\$736.00</u>
<b>Total shelter costs:</b>	\$2953.03
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two (\$2057.50)]	<u>-\$617.25</u>
<b>Excess shelter costs:</b>	\$2335.78
Plus 150% of the FPL for two:	<u>\$2057.50</u>
<b>Equals the MMNA</b>	\$4393.28
<b>Maximum MMNA</b>	<b>\$3160.50</b>
<b>Community Spouse's Income</b>	<u>-\$2029.10</u>
<b>Community Spouse Allowance</b>	\$1131.40

21. The Applicant's monthly applied income is \$1753.53 (\$3080.43 (1825.50 SSA+1254.93 pension). gross income -\$135.50 Medicare B premium-\$60.00 PNA-\$1131.40 CSA)

### **DISCUSSION**

The Department did make some small computation errors when calculating the applied income of the Applicant and the calculation of the community spouse allowance. Though the Department's summary states that the Applicant received a deduction for her Medicare B premium, it does not appear to have been calculated. There was also a slight discrepancy in the Appellant's Social Security income.

The Appellant testified during the administrative hearing that he has many expenses and is unable to cover the cost of the applied income based on his expenses

Regulations only allow the hearing process to increase the community spouse allowance if the community spouse can show that he has exceptional circumstances. The Appellant's expenses do not fall into the regulatory category of "exceptional circumstances"; events 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" (UPM § 1570.25(D)(3)(a)(1)(2)(3)(b)(1)(2)(3)). The hearing officer, therefore, has no ability to increase the community spouse allowance. The expenses the Appellant's spouse testified to are all considered to be included in the Minimum Monthly Needs Allowance as outlined in regulations and would not be classified as "exceptional".

### **DECISION**

The Appellant's appeal is **GRANTED**

### **ORDER**

1. The Department will adjust the Appellant's gross income to 2029.10 and will allow the credit of \$135.50 toward the Applicant's Medicare B premium expense.
2. The Department will adjust the Applicant's applied income to \$1753.53 retroactive to [REDACTED] 2019.
3. Compliance with this order is due ten days from the date of this decision, [REDACTED] 2019.

\_\_\_\_\_  
*Marci Ostroski*  
Marci Ostroski  
Hearing Officer

CC: Trish Morelli Operations Manager, DSS, Manchester  
Rachel Anderson, Lisa Wells, Cheryl Stuart, Operations Managers, DSS,  
New Haven  
Stefania Smith, Hearing Liaison, DSS New Haven

### **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.