

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

██████████, 2020
Signature Confirmation

██████████
Request # 149066

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Approval for Long Term Care ("LTC") Medicaid with a patient monthly liability amount of \$1,344.54 from ██████████ through ██████████ 2019.

On ██████████, 2019, the Appellant requested an administrative hearing to contest the Department's determination of the applied income amount.

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

On ██████████ 2019, the Appellant requested a continuance which OLCRAH granted.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2020.

On ██████████ 2020, 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:

██, POA
 ██, Appellant's son
 Darlene Rogers, Department's Representative
 Thomas Monahan, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's calculation of the Community Spousal Allowance ("CSA") and the Appellant's applied monthly income under the Medicaid LTC program is correct.

FINDINGS OF FACT

1. The Appellant is married to ██ (the "Community Spouse"). (Hearing Record, Exhibit H: LTC application)
2. The Appellant entered ██ Health Care (the "facility") on ██████████ 2019. (Hearing Record)
3. The Appellant applied for LTC Medicaid on ██ 2019. (Hearing record, Exhibit H: LTC application)
4. The Department granted Medicaid under the Long Term Care ("LTC") program for the Appellant effective ██ 2019, with a ██ 2019, facility pick-update and applied income beginning ██ 2019.. (Hearing record, Exhibit B: Notice of Action, ██)
5. In 2019, the Appellant received gross monthly social security benefits of \$2,288.50. (Hearing record, Exhibit E: Appellant's social security statement)
6. In 2019, the community spouse received gross monthly social security benefits of \$1,085.50. (Hearing record, Exhibit D: Department's social security benefit match)
7. In 2019, the community spouse received a gross monthly pension benefit of \$645.42. (Hearing record, Community spouse's pension stub)
8. The monthly rent for the community spouse is \$150.00. (Exhibit F: rent expenses statement)

9. The Department credited the Appellant the standard utility allowance of \$736.00 in the calculation of the community spouse's shelter costs. (Hearing record, Exhibit A: Community Spouse Allowance worksheet)
10. The community spouse has monthly bills totaling more than \$4,000.00 dollars which include medical bills from 2017 and 2018, credit card payments and loan payments for herself and her spouse. (Hearing record, Appellant's Exhibit 1: Expenses list)
11. The community spouse does not need assistance with her activities of daily living. (Community spouse's testimony)
12. The community spouse does not care for a disabled family member in the community (Community spouse's testimony)
13. The Appellant pays a monthly Medicare supplement insurance premium of \$248.75. (Hearing record, Exhibit A: Community spouse allowance work sheet)
14. The Department calculated the Appellant's applied income to be \$1,344.54 from [REDACTED] 2019 through [REDACTED] 2019. (Exhibit B: Notice of Action, [REDACTED]/19)
15. Effective [REDACTED], 2019, the minimum monthly needs allowance ("MMNA") is capped at \$3,160.50 per month. (Exhibit A: Community spouse allowance work sheet)
16. Effective [REDACTED] 2019, the Department calculated a monthly community spouse allowance of \$634.70. (Hearing record, Exhibit A: Community spouse allowance work sheet)
17. The Appellant is seeking a reduction in his monthly applied income to offset other bills. (Hearing record)
18. 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] 2020.

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. The Department's Uniform Policy Manual ("UPM") is the equivalent of 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)).
4. 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.
5. 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.
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. The Appellant's total monthly gross income is his Social Security benefit of \$2,288.50.00 in 2019.
8. UPM § 5035.25 (B) (1) provides a monthly deduction for LTCF 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.

9. Connecticut General Statutes § 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.
10. UPM § 5035.30(A)(1) provides that the Community Spouse Allowance (“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.
11. UPM § 5000.01 defines deductions as those amounts which are subtracted as adjustments to counted income and which represent expenses paid by the assistance unit.
12. 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 receive such services.
13. UPM § 5000.01 defines community spouse as an individual who resides in the community, who does not receive 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.
14. The Department correctly determined the Appellant as the institutionalized spouse.
15. The Department correctly determined the Appellant’s spouse as the community spouse.
16. UPM § 5035.25 (B) (2) provides a monthly deduction for LTCF units of a Community Spouse Allowance (“CSA”) when appropriate; (Cross Reference 5035.30)
17. UPM § 5035.25 (B) (4) provides a monthly deduction for LTCF units of Medicare and other health insurance premiums, deductibles, and

coinsurance costs when not paid by the Department or any other third party.

18. The Department correctly allowed deductions for personal fund allowance, and the Medicare supplement insurance premium paid by the Appellant.

19. 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 a 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.

20. The Department correctly determined that the Appellant's CSA as follows:

[REDACTED] 2019-[REDACTED] 2019	AMOUNT
Shelter Costs:	
Rent	\$150.00
Standard Utility Allowance	\$736.00
Total shelter costs	\$886.00
Less base shelter costs [30% of 150% of Federal Poverty level	\$634.13

for 2	
Excess Shelter costs	\$251.87
Plus 150% of the FPL for 2	<u>\$2,113.75</u>
Equals MMNA	\$2,365.62
Less Community Spouse's income	<u>\$1,730.92</u>
Community Spouse Allowance	634.70

21. 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.
22. 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.
23. 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.
24. The community spouse's situation does not meet the criteria for exceptional circumstances as monthly household expenses are already factored into the MMNA. The community spouse's medical condition does not prevent her from completing activities of daily living or threaten her ability to remain in the community. Although the community spouse's

household expenses and overdue medical bills exceed her income causing her financial duress, it is not a direct result of exceptional circumstances as described in regulation.

25. The Appellant's monthly applied income from [REDACTED] 2019 through [REDACTED] 2019 is \$1,345.05 (\$2,288.50 gross income - \$248.75 insurance premium -\$60 PNA- \$634.70 CSA).


DISCUSSION

The Department correctly determined the Appellant's applied income and there are no exceptional circumstances that allow an increase in the CSA.

The Appellant's son submitted a list of monthly expenses for the Appellant and his spouse. One of the expenses listed was money owed to [REDACTED] Healthcare Center. LTC Medicaid was granted effective [REDACTED] 2019 at the request of the facility. It is unclear if what is owed to the facility is the applied income or another expense. The Appellant may submit verification of the outstanding facility charges for the Department to review.

DECISION

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


Thomas Monahan
Fair Hearing Officer

C: Peter Bucknall, Operations Manager, Waterbury Regional Office
Jamel Hilliard, Operations Manager, Waterbury Regional Office
Darlene Rogers, Hearing Liaison

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.