

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

[REDACTED], 2020
Signature Confirmation

Client ID # [REDACTED]
Request # 151373

NOTICE OF DECISION

PARTY

[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED], 2019, the Department of Social Services (the "Department") issued a notice of action ("NOA") to [REDACTED] (the "Appellant") informing him that his Patient Liability (or "Applied Income") owed monthly toward his cost of care was \$618.95 effective [REDACTED] 2019.

On [REDACTED], 2020, the Appellant, by his spouse, [REDACTED], requested an administrative hearing to appeal the Department's determination of his Applied Income, because he disputed the portion of income that was set aside as his spouse's Community Spouse Allowance ("CSA").

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

On [REDACTED] 2020, in accordance with sections 17b-60, 17-61 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:

[REDACTED], Appellant's Community Spouse
[REDACTED], Community Spouse's daughter
Anne-Kaye Allen, Department's representative, via telephone
Michael Briggs, Department's representative, via telephone

Glenn Guerrero, local office Hearing Liaison, monitoring only
James Hinckley, Hearing Officer

The hearing record was reopened on [REDACTED] 2020 to accept additional information from the Department. The record remained open until [REDACTED], 2020 to allow time for the Appellant to respond to the new information. The Appellant provided no response and on [REDACTED], 2020, the hearing record closed.

STATEMENT OF THE ISSUE

1. The issue is whether the Department correctly determined the amount of the Appellant's Applied Income and, specifically, whether it correctly determined the portion of his income required to be set aside for the needs of his Community Spouse.

FINDINGS OF FACT

1. On [REDACTED] 2019, the Appellant entered a nursing facility. (Hearing Record)
2. On [REDACTED], 2019, the Appellant applied for Medicaid. (Hearing Record)
3. As of [REDACTED], 2019, the Appellant had a spouse who lived in the community (his Community Spouse" or "CS"). She continues to live in the community. (Hearing Record)
4. On [REDACTED], 2019, the Department notified the Appellant that it had completed an assessment of his and his wife's assets. It determined that the CS was entitled to a Community Spouse Protected Amount ("CSPA") of \$25,284.00. This meant that no portion of the couple's \$6,348.23 in total assets would count against the asset limit in determining the Appellant's Medicaid eligibility. (Ex. 2: W-1656 Notice to the Institutionalized Spouse of Eligibility for Medicaid, Ex. 4: W-0015 Notice of Assessment of Spousal Assets)
5. On [REDACTED], 2019, the Department notified the Appellant that his CS qualified for a CSA of \$1,357.01. This meant that in determining how much the Appellant had to contribute monthly toward his cost of care, a deduction of \$1,357.01 would be allowed from his income as long as the CSA was actually given to his community spouse to be used for her needs. (Ex. 2)
6. In 2019, the Appellant received regular income of \$1,860.00 monthly from Social Security and \$175.97 monthly from [REDACTED] pension, for total monthly income of \$2,035.97. (Ex. 10: [REDACTED] pension stub, Hearing Record)

7. In 2019, the CS received regular income of \$1,339.50 monthly from Social Security and \$244.11 monthly from [REDACTED] pension, for total monthly income of \$1,583.61. (Ex. 9: [REDACTED] pension stub, Hearing Record)
8. As of [REDACTED] 2019, the Appellant received the full amount of his Social Security benefit because he did not have to pay for Medicare Part B; he qualified for a Medicare Savings Program that paid the premium. The Appellant had no other private medical insurance. (Hearing Record)
9. In 2019, the CS's monthly rent was \$725.00. (Ex. 11: Rent Verification Letter)
10. The CS did not, and does not, have expenses that are extraordinary or unusual. She is independent, owns a car and drives, and does not require assistance with any activities of daily living. She does not require the services of homemakers or home health aides. (CS's testimony, Hearing Record)
11. On [REDACTED], 2019, the Department issued a NOA to the Appellant informing him that, based on his and his spouse's circumstances, his Patient Liability for [REDACTED] 2019 was \$618.95. (Ex. 13: [REDACTED], 2019 NOA)

CONCLUSIONS OF LAW

1. The Department is the state agency that administers the Medicaid program pursuant to Title XIX of the Social Security Act. The Department may make such regulations as are necessary to administer the medical assistance program. Conn. Gen. Stat. § 17b-2; Conn. Gen. Stat. § 17b-262
2. The Department's Uniform Policy Manual ("UPM") "is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 177 (1994) (citing Conn. Gen. Stat. 17-3f(c) [now 17b-10]; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A. 2d 712(1990)).
3. "An institutionalized spouse is 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." UPM § 4000.01
4. "A community spouse is 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." UPM § 4000.01
5. **The Appellant is an institutionalized spouse. The Appellant's wife is a community spouse.**

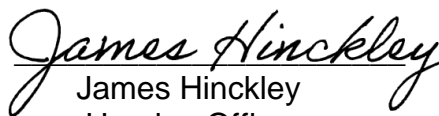
6. "The Community Spouse Allowance (CSA) is used as an income deduction in the calculation of the post-eligibility applied income of an institutionalized spouse (IS) only when the IS makes the allowance available to the community spouse (CS) or for the sole benefit of the CS." UPM § 5035.30(A)(1)
7. UPM § 5035.30(B) provides as follows:
 1. 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 5035.30 B. 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 5035.30 B. 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 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.
 5. The MMNA may not exceed the greatest of either:
 - a. The maximum MMNA; or
 - b. An amount established through a fair hearing.
8. **The 2019 Poverty Guidelines applicable to the issues of this hearing are published in the Federal Register, Vol. 84, No. 22, pp. 1167-1168, Friday, [REDACTED] 1, 2019.**
9. **In 2019, 150 percent of the monthly poverty level for a unit of two persons was \$2,113.75.**

10. In 2019, 30% of 150 percent of the monthly poverty level for a unit of two persons was \$634.13.
11. As of [REDACTED] 2019, the Standard Utility Allowance used in the SNAP (formerly FS) program was \$736.00.
12. For [REDACTED] 2019, the CS's monthly shelter cost was \$1,461.00. Pursuant to UPM § 5035.30(B)(4), the CS's rent of \$725.00, added to the SNAP Standard Utility Allowance of \$736.00, equaled her shelter cost.
13. For [REDACTED] 2019, the CS's excess shelter cost was \$826.87. Pursuant to UPM § 5035.30(B)(3), the CS's excess shelter cost was the difference between her total shelter cost (\$1,461.00) and 30% of 150 percent of the poverty level for 2 (\$634.13).
14. For [REDACTED] 2019, the correct MMNA for the CS was \$2,940.62. Pursuant to UPM § 5035.30(B)(2), the CS's MMNA was equal to her excess shelter cost of \$826.87, added to 150% of the federal poverty level for 2 persons which was \$2,113.75.
15. UPM § 1570.25(D)(3) discusses the authority of the Fair Hearing Official to increase a community spouse's MMNA previously determined by the Department when the community spouse has "exceptional circumstances resulting in significant financial duress." Exceptional circumstances are defined as "those that are severe and unusual" and are for purposes such as performance of the CS's own ADLs, for the CS to provide essential care to a close family member, or essential to the CS's ability to remain in the community. Significant financial duress is an expense or set of expenses that "directly arises from the exceptional circumstances." Expenses that are already factored into the MMNA, such as shelter and utility costs, expenses for home upkeep, and "medical expenses reflecting the normal frailties of old age" do not generally qualify as causing significant financial duress.
16. There is no evidence the CS experienced significant financial duress due to exceptional circumstances. The CS did not testify that she had any circumstances or expenses that met the requirements described in UPM § 1570.25(D)(3).
17. There is no evidence that a court order for spousal support exists.
18. The correct CSA for the CS for [REDACTED] 2019 was \$1,357.01. Pursuant to UPM § 5035.30(B)(1), the CSA was the difference between the CS's total monthly income of \$1,583.61 and her MMNA of \$2,940.62.
19. The Department was correct when it determined that the CS's [REDACTED] 2019 CSA was \$1,357.01.

20. "For residents of long term care facilities (LTCF) and those individuals receiving community-based services (CBS) when the individual has a spouse living in the 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
21. "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)..." UPM § 5035.25(B)
22. **In 2019, the personal needs allowance for LTCF residents (adjusted for annual cost of living adjustments) was \$60.00.**
23. **For [REDACTED] 2019, the Appellant's correct Applied Income was \$618.95. The Appellant's patient liability was equal to his total income of \$2,035.97, minus a personal needs allowance of \$60.00, minus his CS's CSA of \$1,357.01.**
24. **The Department was correct when it determined that the Appellant's [REDACTED] 2019 Applied Income was \$618.95.**

DECISION

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


James Hinckley
Hearing Officer

cc: [REDACTED]
Alejandro Arbelaez
Anna-Kaye Allen
Michael Briggs

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.