

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

[REDACTED], 2020
Signature Confirmation

Client ID # [REDACTED]
Case # [REDACTED]
Request # 152097

NOTICE OF DECISION

PARTY

[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED], 2019, the Department of Social Services (the "Department") sent [REDACTED] (the "Appellant") a Notice of Action informing him that his Long Term Care ("LTC") Medicaid patient liability amount is \$1,287.89 for [REDACTED] 2019 and \$1,313.89 for [REDACTED] 2020 and ongoing months.

On [REDACTED] 2020, the Appellant, by his spouse, [REDACTED], requested an administrative hearing to contest the Department's determination of the applied income amount.

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, 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:

[REDACTED], Appellant's spouse
[REDACTED], Administrator, [REDACTED]
Marta Karwowski, Department's Representative, via telephone
Garfield White, Department Observer
Shelley Starr, Fair Hearing Officer

The Appellant, [REDACTED], was not present due to his institutionalization.

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 [REDACTED] (the "Community Spouse"). (Hearing Record, Spouse's Testimony)
2. In [REDACTED] of 2017, the Appellant was admitted to [REDACTED] (the "facility") for long term care, where he currently resides. (Hearing Record)
3. On [REDACTED] 2017, the Appellant applied for Long Term Care ("LTC") Medicaid. (Hearing Record, Exhibit 7: Case Notes)
4. On [REDACTED] 2018, the Department granted LTC benefits with a financial pick-up date of [REDACTED], 2017, with contributing monthly applied income or patient liability amount ("PLA") owed to the facility each month by the Appellant. (Hearing Record)
5. In [REDACTED] r 2019, the Appellant's LTC renewal was processed. There is no indication that the Department requested and verified the community spouses' current shelter expenses when processing the latest LTC renewal. (Department's Testimony; Exhibit 7: Case Notes entry [REDACTED]/20)
6. In [REDACTED] 2019, a system-generated update reflected an increase in the Appellant's [REDACTED]. In 2019, the Appellant received a gross monthly [REDACTED] of \$1,064.50. Effective [REDACTED] 2020, the Appellant's [REDACTED] increased to \$1,081.60. (Hearing Summary; Exhibit 4: Patient Liability Amount; Hearing Record)
7. In 2019 and 2020, the Appellant has received a \$2,138.03 gross monthly [REDACTED] from the [REDACTED]. (Hearing Record; Exhibit 3: [REDACTED] pension statement dated [REDACTED]/19)
8. In 2019, the community spouse received gross monthly [REDACTED] of \$1,106.00. In [REDACTED] 2020, her gross [REDACTED]

- increased to \$1,124.00. (Hearing record, Community spouse's pension stub)
9. The Appellant is responsible for a monthly [REDACTED] insurance premium of \$135.50 in 2019 and \$144.60 in 2020. In addition, he is responsible for private premiums of \$259.44 per month in both 2019 and 2020. (Hearing Record; Exhibit 3: [REDACTED] statement dated [REDACTED]/19)
 10. The community spouse is not responsible for monthly rent or mortgage. (Spouse's Testimony; Hearing Record)
 11. The community spouse is responsible for property taxes for the property known as [REDACTED] (Exhibit 2: 2019 Real Estate Tax Bill ; Exhibit 5: Community Spousal Allowance; Hearing Record)
 12. The community spouse is responsible for homeowner's insurance that was not applied in the latest calculation of the community spouse's expenses and spousal allowance. (Hearing Record)
 13. The Department credited the Standard Utility Allowance of \$736.00 in the calculation of the community spouse's shelter costs in the months of [REDACTED] 2019 and [REDACTED] 2020. (Hearing Record, Exhibit 5: Community Spouse Allowance worksheet [REDACTED] 2019 and [REDACTED] 2020)
 14. The community spouse has incurred recent expenses including the repair of her home furnace, the replacement of her home roof, car repair, and stove replacement. She pays for monthly lawn care and maintenance of approximately \$100.00 per month. (Community Spouse's Testimony)
 15. The community spouse is paying \$150.00 monthly payments to [REDACTED] for prior outstanding [REDACTED] bills incurred totaling over \$7,000.00. (Community Spouse's Testimony)
 16. The community spouse incurred knee replacement surgery in [REDACTED] of 2019, however, she is independent and able to drive her vehicle. (Community Spouse's Testimony)
 17. The Community Spouse does not require assistance with any activities of daily living. (Community Spouse's Testimony)
 18. The Department calculated the Appellant's [REDACTED] 2019 applied income as \$ 1,287.89 and \$1,313.89 from [REDACTED] 2020, and ongoing months. (Exhibit B: Notice of Action, [REDACTED]/19)

19. Effective [REDACTED] 2019, the minimum monthly needs allowance (“MMNA”) is capped at \$3,160.50. Effective [REDACTED], 2020, the minimum monthly needs allowance (“MMNA”) is capped at 3,216.00 per month. (Hearing Record)
20. In [REDACTED] of 2019, the Department calculated a monthly community spousal allowance of \$1,424.65 and \$1,406.65 effective [REDACTED] of 2020. (Hearing Summary; Exhibit 5: Community Spousal Allowance)
21. On [REDACTED] 2019, the Department issued a Notice of Action notifying the Appellant that the Patient Liability Amount is \$1,287.89 for [REDACTED] of 2019 and \$1,313.89 for [REDACTED] 2020 and ongoing [REDACTED] months. (Hearing Summary; Exhibit 1 Notice of Action dated [REDACTED] 2019)
22. On [REDACTED] 2020, the Appellant, through his spouse, requested an administrative hearing appealing the spousal allowance and liability amount based on the [REDACTED] 2019, Notice of Action. (Appellant’s Exhibit A: Fair Hearing Request received [REDACTED] 2020, based on [REDACTED] 19 Notice of Action.)
23. The community spouse is having difficulty meeting all of her expenses with her monthly income. She believes more of her expenses should be considered in the calculation of her spousal allowance. (Community Spouse’s Testimony; Hearing Request)
24. At the time of the hearing, the facility is owed approximately \$43,000.00 in unpaid applied income. (Hearing Record; Administrator’s Testimony; Exhibit 7: Case Notes)
25. The Department is unaware of any claimed exceptional circumstances. (Department’s Testimony; Hearing Record)
26. 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] 2020. Therefore, this decision is due not later than [REDACTED], 2020, and is timely.

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. 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.

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.

8. 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.
9. 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.
10. UPM § 5000.01 defines an 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.

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.

11. UPM § 5035.25 (B) (2) provides a monthly deduction for LTCF units of a Community Spouse Allowance ("CSA") when appropriate; (Cross Reference 5035.30)
12. 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.

13. 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.

The Department did not correctly determine the Appellant's CSA for [REDACTED] 2019 and [REDACTED] 2020 as they did not consider the community spouse's current real estate taxes and insurance premium.

14. 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.

15. 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.
16. 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.

The community spouse did not demonstrate that she has exceptional circumstances as described in regulation.

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 knee replacement that occurred in [REDACTED] of 2019, does not prevent her from completing activities of daily living or threaten her ability to remain independent in the community. Although the community spouse has incurred recent household expenses and repairs that is causing her financial duress, it is not a direct result of exceptional circumstances as described in regulation.

17. Connecticut General Statutes §17b-261(r) provides for the determination of applied income. (a) For purposes of this section, "applied income" means the income of a recipient of medical assistance, pursuant to section 17b-261, that is required, after the exhaustion of all appeals and in accordance with state and federal law, to be paid to a nursing home facility for the cost of care and services.

UPM § 5045.00 provides for the post-eligibility treatment of income. 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. (A) The amount of income to be contributed is calculated using the post-eligibility method starting with the month in which the 30th

day of continuous LTCF care or receipt of community-based services occurs, and ending with the month in which the assistance unit member is discharged from the LTCF or community-based services are last received.

DISCUSSION

In order to increase the MMNA, a finding of exceptional circumstances that are severe and unusual must exist. Based on the testimony and evidence presented, the Appellant's medical condition does not prevent her from completing her activities of daily living or threaten her ability to remain in the community. Although the Appellant has incurred household expenses that are causing her financial duress, it is not a direct result of exceptional circumstances. Her household expenses are factored into the MMNA calculation in accordance with regulation and do not meet the criteria for an increase to the MMNA.

It appears that after the submission of the Appellant's hearing request the Department recognized that at the time of the latest redetermination, not all of the community spouse's most recent shelter costs were factored into their calculations; which warrants a modification. Accordingly, the Department must take appropriate further action.

DECISION

The Appellant's appeal is **REMANDED** to the Department for further action.

ORDER

1. The Department shall verify and apply the recent applicable shelter cost expenses of the Community Spouse in the calculation of the Community Spouse Allowance.
2. The Department shall recalculate the [REDACTED] 2019 and J [REDACTED] 2020, Community Spouse Allowance and Patient Liability Amount, and send proper notification of the modifications based on the recalculations.
3. The Department shall provide proof of compliance with this order no later than [REDACTED] 2020.

Shelley Starr
Fair Hearing Officer

Pc: Musa Mohamud, DSS, Hartford Regional Office
Judy Williams, DSS, Hartford Regional Office
Jessica Carroll, DSS, Hartford Regional Office
Jay Bartolomei, DSS, Hartford Regional Office
Marta Karwowski, DSS, Manchester Regional Office

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.