

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

Case ID ██████████
Client ID # ██████████
Request #152220

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2020, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action indicating that he was approved for continuing eligibility for Medicaid under the HUSKY C – Long Term Care ("LTSS") program and his patient liability amount will be \$1,454.87 effective ██████████ 2019.

On ██████████ 2020, ██████████, the Community spouse ("CS") requested an administrative hearing to contest the Department's determination of the community spousal allowance ("CSA") amount used to determine the patient liability.

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

On ██████████ 2020, Attorney for the CS requested a phone hearing.

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 via telephone.

The following individuals were present at the hearing:

[REDACTED], Community Spouse
 [REDACTED], Attorney for the Community Spouse
 Felicia Andrews, Department Representative
 Swati Sehgal, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department correctly calculated the Community Spousal Allowance and Community Family Allowance used to determine the Appellant's Applied Income.

FINDINGS OF FACT

1. The Appellant is the institutionalized spouse and he is a resident of [REDACTED] [REDACTED] (the "facility"), a skilled nursing facility. (Hearing Summary)
2. The Appellant is married to CS, and they are parents of [REDACTED] years old [REDACTED] and [REDACTED] years old [REDACTED]. (Hearing Record)
3. The CS resides at [REDACTED], Connecticut with their two children. (Hearing Summary, CS's Testimony)
4. On [REDACTED], 2020, the Department granted the Appellant's application for Husky C Long Term care effective [REDACTED] 2019. (Hearing Summary)
5. The Appellant receives a monthly gross unearned income from Social Security Administration ("SSA") of \$2522.00. (Hearing Summary, Exhibit 4: Social Security Statement)
6. The Appellant's both children receive monthly gross unearned income from Social Security Administration ("SSA") of \$620.00 each. (Exhibit 4)
7. The CS works fulltime for [REDACTED] and earns a gross monthly income of \$5953.35 (\$2769.00 bi-weekly wages X 2.15). (Exhibit 3: Wages Stubs, Hearing Summary)

8. The CS's monthly rent payment is \$1,950.00, and the monthly homeowner's renters' insurance payment is \$24.00. (Exhibit 5: Homeowners Renters Insurance and Lease Agreement)
9. The CS pays for her utilities. (Exhibit 5, and Hearing Summary)
10. The Department used the standard utility allowance of \$736.00 in the calculation of the Appellant's total shelter costs. (Hearing Summary, Exhibit 1: Community Spousal Allowance Calculation)
11. The Appellant pays a monthly private medical insurance premium of \$629.92. (Hearing Summary and Exhibit 1)
12. Effective [REDACTED] 2019, the minimum monthly needs allowance ("MMNA") is capped at \$3,160.50 per month. (Exhibit 1)
13. On [REDACTED] 2020, the Department determined the Appellant's monthly Community Spousal Allowance ("CSA") amount is \$0.00. (Exhibit 1)
14. The Department determined the Community Family Allowance of \$290.00 a month. (Exhibit 2: Community Family Allowance Calculation)
15. On [REDACTED] 2020, the Department sent the Appellant the NOA indicating that he is eligible for LTSS benefits effective [REDACTED] 2019, and his monthly patient liability is \$1454.87 effective [REDACTED] 2019.
16. 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.

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 is the equivalent of 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 A2d 712 (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") is 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 the 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. The Department correctly determined that the Appellant's monthly gross income is \$2522.00.
7. 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.
8. UPM § 5035.25 provides that for residents of long term care facilities (LTCF) and those individuals receiving community-based (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
9. 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.
10. 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.

11. 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
12. Uniform Policy Manual (“UPM”) § 5035.30(A)(1) provides that the 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.
13. **The Department correctly allowed the deduction for a personal fund allowance of \$60.00 and medical insurance premium of \$629.92 a month.**
14. UPM § 5035.25(B)(2) provides a monthly deduction for LTFC units of a Community Spouse Allowance (“CSA”), when appropriate; (Cross-Reference 5035.30)
15. 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 the court order for the purpose of providing necessary spousal support.
16. 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 principal and interest; real estate taxes; real estate insurance; required maintenance fees charged by condominiums or cooperatives except for those amounts for utilities and the Standard Utility Allowance (“SUA”) used in the SNAP program for the community spouse.
17. 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.
18. **The Department correctly determined that the CS’s earned income as \$5953.35 (\$2769.00 biweekly income x 2.15).**
19. The 2019 Poverty Guidelines for the 48 Contiguous States and the District of Columbia for a household of 2 equals \$16,910.00. [Federal Register/Vol. 84, No. February 1, 2019]

20. **The Department correctly determined 150% of the federal poverty level (“FPL”) for two as \$2,113.75 (\$16,910.00, FPL for 2 people/ 12 [months] = \$1,409.16 x 150%)**
21. **The Department correctly determined 30% of 150% of the FPL for two people is \$634.13 (\$2,113.75 x 30%).**
22. **The Department correctly determined the Appellant’s monthly shelter costs are \$2710.00 (\$1950.00, rent + \$24.00 renter insurance + \$736.00 standard utility allowance)**
23. **The Department correctly determined the Appellants MMNA is \$3,160.50 (\$2710.00 total shelter cost - \$634.13, 30% of FPL for two people = \$2075.87 + \$2,113.75, 150% of FPL for two people=\$4189.62. The MMNA is capped at \$3,160.50 if the sum of the Appellant’s shelter costs and 150% of the FPL exceeds \$3,160.50.**
24. **The Department correctly determined the CSA as \$0.00 because the CS’s gross income of \$5953.35 exceeded the MMNA of \$3,160.**
25. UMP § 5035.35 (A) provides that Community Family Allowance:
1. CFA is used as an income deduction in the calculation of the post-eligibility applied income of an institutionalized spouse (IS) when any of the following individuals are living with the community spouse (CS):
 - a. A minor child of either spouse or
 - b. A child, parent or sibling who is legal tax dependent of either parent
 2. For the purpose of using a CFA, the Department considers a CS to include a spouse receiving home and community-based services under a Medicaid waiver
26. UMP § 5035.35 (B) provides calculations for Community Family Allowance. The Department calculates the CFA deduction for each eligible family member By:
1. subtracting the gross monthly income of each eligible family member from 150 percent of the monthly poverty level for a unit of two persons; and
 2. multiplying the result of Step 1 by 33 1/3%.
27. **The Department correctly determined that the Appellant’s children receive in total \$1240.00 a month in SSA benefits (\$620+\$620).**
28. **The Department correctly determined 150% of the federal poverty level (“FPL”) for two as \$2,113.75.**

29. **The Department correctly determined that the gross countable income is \$873.75 (\$2113.75, 150% of FPL - \$1240.00, children's monthly SSA amount)**
30. **The Department correctly determined the CFA of \$290.95 (\$873.75 x .333).**
31. 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 relatives (other than an institutionalized spouse). Significant financial duress is an expense or set of expenses that: directly arises from the exceptional circumstances described in subparagraph an above, and is not already factored into the MMNA, and cannot reasonably be expected to be met by the community spouse's income and assets.
32. 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.
33. UPM § 1570.25(D)(4) provides that 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.
34. **The Appellant's living expenses and monthly needs do not fall within the criteria outlined in regulation as "exceptional circumstances". The CS is employed full time and does not have a medical condition that prevents her from completing any activities of daily living or threaten her ability to remain in the community or provide constant and essential care to his or her disabled child, sibling or other immediate relatives.**
35. **The Appellant's monthly applied income is \$1541.13 (\$2522.00 SSA, gross income - \$629.92 Medical Insurance Premium-\$60.00 PNA-\$290.95 CFA)**
36. **The Department calculated the applied income as \$1454.87 a month.**

DISCUSSION

The Department correctly determined that the CS's monthly income of \$5953.35 exceeds the Minimum Monthly Need Allowance of \$3216.00, therefore does not qualify for CSA. The CS argued that for her to work full time she needs to utilize daycare, summer camps, after school care for her children, therefore those expenses should be taken onto consideration. Regulations only allow the hearing process to increase the community spouse allowance if the community spouse can show that she has exceptional circumstances. The CS'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 relatives".

The undersigned calculated the Appellant's monthly applied income and community spouse allowance using the figures presented at the hearing and found the Department did make some small computation errors when calculating the applied income of the Appellant. The Appellant's monthly applied income comes up to \$1541.13 and the Department calculated it to be \$1454.87. The Department is encouraged to correct the amount of Applied Income.

DECISION

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



Swati Sehgal
Hearing Officer

Pc: Rachel Anderson, Operations Manager, DSS R.O. # 20, New Haven
Lisa Wells, Operations Manager, DSS R.O. #20, New Haven
Felicia Andrews Fair Hearings Liaison, DSS R.O. # 20, 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.