

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

Client ID # ██████████
Request # 146355

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 \$918.15 for ██████████ 2018 through ██████████ 2018, and a patient liability amount of \$950.15 for ██████████ of 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 ██████████ 2019.

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

On [REDACTED] 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for [REDACTED], 2019.

On [REDACTED] 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:

[REDACTED], Appellant
 [REDACTED], Appellant’s spouse
 [REDACTED], for the Appellant
 Elizabeth Clark, Department 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 was correct.

FINDINGS OF FACT

1. The Appellant is married to [REDACTED] (the “Community Spouse”). (Hearing Record)
2. The Appellant resides at home in the community. (Hearing Record)
3. On [REDACTED], [REDACTED] (the “facility”), a skilled nursing facility, admitted the Appellant to their facility.. (Hearing Summary, Exhibit 3: Department’s facility summary, Appellant’s Exhibit B: facility notes)
4. The Department granted Medicaid under the Long Term Care (“LTC”) program for the Appellant effective [REDACTED] 2018. (Exhibit 8: Notice of Action, [REDACTED])
5. On [REDACTED] 2018, the Appellant entered the hospital. The Appellant re-entered the facility from the hospital on [REDACTED] 2018. (Hearing summary)
6. The Appellant remained at the facility before being discharged home on [REDACTED], 2019. (Hearing summary)

7. The community spouse earns gross monthly income of \$760.00 per week. (Appellant's Exhibit A: Wage statement)
8. The Appellant received social security of \$1,127.00 per month in [REDACTED] and is receiving \$1,159.00 monthly social security in [REDACTED].
9. The Appellant's Medicare part B is paid by the Department. (Exhibit 9: Notice of Action)
10. The Appellant pays a private monthly medical insurance premium of \$148.85. (Hearing record, Exhibit 10: Case notes)
11. The monthly rent for the household is \$950.00. (Exhibit 6: Rent receipts)
12. The Appellant received the standard utility allowance of \$736.00 in the calculation of the household's shelter costs. (Hearing record, Exhibit 4: Community Spouse Allowance worksheet)
13. The Department determined the Appellant and the community spouse did not qualify for a CSA while the Appellant was in the facility. (Hearing record, Exhibit 4: CSA worksheet)
14. The Department calculated the Appellant's applied income to be the following for the months she resided at the facility:

Month	AI amount
[REDACTED]	\$0.00
[REDACTED]	\$918.15
[REDACTED]	\$950.15
[REDACTED]	\$0.00

(Exhibit 9: Notice of Action, [REDACTED] 19)

15. Effective [REDACTED], 2019, the minimum monthly needs allowance ("MMNA") is capped at \$3,160.50 per month. (Exhibit 4: CSA Calculation of Applied income)
16. The Appellant is seeking a reduction in her monthly applied income while she was a resident at the facility. (Hearing record)

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. 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)).
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. 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.
6. The Appellant's total monthly gross income is her Social Security benefit of \$1,127.00 in 2018 and \$1,159.00 in 2019.
7. 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. 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.
9. 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)]

10. 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.
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 while she resided at the facility.
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, the Appellant's Medicare B premium is paid by the Department.
19. The Department correctly allowed deductions for the Appellant's secondary health insurance premium.
20. 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.
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 did not demonstrate he has exceptional circumstances causing financial distress as described in regulation.
25. The Department correctly determined that the Appellant did not qualify for a CSA. See table below:

	AMOUNT
Shelter Costs:	
Rent	\$950.00
Standard Utility Allowance	\$736.00
Total shelter costs	\$1,686.00
Less base shelter costs [30% of 150% of Federal Poverty level for 2	\$634.13
Excess Shelter costs	\$1,051.87
Plus 150% of the FPL for 2	<u>\$2,113.75</u>
Equals MMNA	\$3,165.62
Maximum MMNA allowed	\$3,160.00

Less Community Spouse's income	\$3,268.00
Community Spouse Allowance	\$0.00

26. The Appellant's monthly applied income for [REDACTED] is \$918.15 (\$1,127.00 gross income - \$148.85 insurance premium - \$60 PNA- \$0.00 CSA). The Appellant's applied income from [REDACTED] [REDACTED] \$950.15 (\$1,159.00 gross income - \$148.85 insurance premium - \$60 PNA- \$0.00 CSA).

DISCUSSION

The Department correctly determined the Appellant's applied income and that her spouse had enough income to meet his needs in the community based on departmental regulations.

The Appellant is seeking a rental diversion because she was a short term stay at the facility. A rental diversion only applies in cases where there is not a community spouse. The community spouse is employed and did not need assistance with the activities of daily living during the time his wife was in the facility and did not qualify for exceptional circumstances resulting in significant financial distress.

DECISION

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



Thomas Monahan
Fair Hearing Officer

C: Rachel Anderson, Operations Manager, New Haven Regional Office
Cheryl Stuart, Operations Manager, New Haven Regional Office
Lisa Wells, Operations Manager, New Haven Regional Office
Elizabeth Clark, 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.