

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly calculated the Appellant's applied income payable to the long-term care facility.

FINDINGS OF FACT

1. The Appellant, referred to as the Institutionalized Spouse ("IS"), is a recipient of Medicaid and a resident of [REDACTED], Connecticut. (Hearing summary; Testimony)
2. The Appellant has a spouse who lives in the community ("Community Spouse"). (Hearing summary, Testimony)
3. In [REDACTED] 2021, the IS's gross monthly Social Security benefit increased from \$2,358.60 to \$ 2,389.50. (Exhibit 1: Application dated [REDACTED] 2020, Exhibit 3: Notice of Action dated [REDACTED]/2021, Hearing summary)
4. The IS's Medicare B premium is paid under the Qualified Medicare Beneficiary program. (Department's Testimony)
5. The Community Spouse ("CS") is employed at [REDACTED]; her gross monthly income from employment is \$4,273.00. (Hearing summary; Exhibit 2: Community Spousal Allowance Calculation Sheet, CS's Pay Stubs and Mortgage Statement)
6. The CS has a monthly mortgage obligation of \$1,459.79. (Exhibit 2, Hearing Summary, Appellant's Testimony)
7. The CS's monthly mortgage amount includes property tax and homeowner's insurance obligation. (CS's Testimony)
8. The CS was allowed a standard utility allowance of \$736.00 per month. (Hearing Summary)
9. The issuance of this decision is timely under Connecticut General Statutes 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] 2021. Therefore, this decision is due not later than [REDACTED] 2021. (Hearing Record)

CONCLUSIONS OF LAW

1. Connecticut General Statutes § 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 is the equivalent of a state regulation and, as such, carries the force of law.” *Bucchere vs. Rowe*, 43 Conn. Supp. 175,178 (1994) (citing Conn. Gen. Stat § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601,573 A.2d 712 (1990)).
3. 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.
4. Uniform Policy Manual (“UPM”) § 5045.20 provides that 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 § 5035.25 provides that for the resident of long term care facilities (LTCF) and those individuals receiving community-based services (CBS) when the individual has a spouse living in 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.
6. UPM § 5045.20 B (1) (a) provides that the amount of income to be contributed in LTC 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.
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.

The Department correctly determined the IS’s monthly income of \$2,389.50.00.

8. 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.

9. Connecticut General Statutes § 17b-272 provides for that 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.

The Department correctly allowed the Appellant a PNA of \$60.00.

10. UPM § 5035.25 (B) (2) provides for a monthly deduction from the income of assistance units in LTCF's a CSA when appropriate; (Cross Reference 5035.30)
11. UPM § 5035.25 (B) (4) provides a monthly deduction for LTFC units for Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for the Department or any other third party.

The Department correctly determined that the Appellant's Medicare premium is paid by the Department.

12. 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 benefit of the CS.
13. 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 court order for the purpose of providing necessary spousal support.

The Department determined that the CS's monthly gross income is \$4273.00.

14. UPM § 5035.30 (B) (2) (a) (b) provides that the MMNA is the amount which is equal to the sum of the amount of the community spouse's excess shelter costs as calculated in section 5035.30 (B) (3) and 150 percent of the monthly poverty level for a unit of two persons.
15. UPM § 5035.30 (B)(3) provides 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.

16. UPM § 5035.30 (B)(4) provides the community spouse's monthly shelter cost includes: a. rental costs or mortgage payments, including principal 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) is used in the FS program for the community spouse.
17. 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.
18. 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.
19. 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 the 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 Department correctly determined that the CS is not eligible for CSA. See the table below:

Shelter Costs:	Amount
Mortgage	\$ 1459.79
Home Insurance	0.00

Property Tax	0.00
Standard Utility Allowance	+ 736.00
Total shelter costs:	\$ 2195.79
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>- 646.50</u>
Excess shelter costs:	\$ 1549.20
Plus 150% of the FPL for two:	<u>+2,155.00</u>
Equals the MMNA	\$3704.29
Maximum MMNA	\$3216.00
Community Spouse's Income	- \$4273.00
Community Spouse Allowance	\$0.00

The Appellant's monthly Applied Income effective [REDACTED] 2021 as calculated by the Department is \$2298.60.

\$2358.60	IS's income
-\$60.00	Personal needs Allowance
\$2298.60	Applied Income

The Appellant's monthly Applied Income effective [REDACTED] 2021 as calculated by the Department is \$2329.50.

\$2389.50	IS's income
-\$60.00	Personal needs Allowance
\$2329.50	Applied Income

The Department correctly determined that the Applied Income changed to \$2329.50 in [REDACTED] 2021.

DISCUSSION

The regulations are clear that a Medicaid recipient who is residing in a long-term care facility must contribute to the cost of his or her care. This is referred to as "applied income." In calculating the amount of that contribution, the regulations allow for deductions based on specific conditions. The Department correctly calculated the Applicant's gross income sources and deducted the \$60.00 standard personal needs allowance.

The Department correctly determined that the community spouse does not qualify for community spousal allowance. Although the community spouse has incurred household expenses that are causing her financial duress, it is not the 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.

DECISION

The Appellant's appeal is denied.


Swati Sehgal
Hearing Officer

Cc: Patricia Ostroski, Social Services Operations Manager, R. O. 52, New Britain
Bryant grimes, Fair Hearing Liaison, 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, law, and 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 06105-3725.

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, if 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 06105-3725. 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.