

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

■■■ ■■ 2022
Signature Confirmation

Client ID ■■■■■
Case ID ■■■■■
Request 189847

NOTICE OF DECISION

PARTY

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■■■■■
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PROCEDURAL BACKGROUND

The Department of Social Services (the "Department") determined ■■■■ ■■■■ ("Appellant") ineligible for a community spousal allowance ("CSA") under ■■■■ ■■■■ ("Applicant") Husky C - Long Term Care medical benefits.

On ■■■■ ■■ 2022, the Appellant requested an administrative hearing to contest her ineligibility for a CSA and request an increase in the minimum monthly needs allowance (MMNA) as calculated by the Department.

On ■■■■ ■■ 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ■■■■ ■■ 2022.

On ■■■■ ■■ 2022, the Appellant requested a continuance which was granted by OLCRAH.

On ■■■■ ■■ 2022, the OLCRAH issued a notice scheduling the administrative hearing for ■■■■ ■■ 2022.

On ■■■■ ■■ 2022, 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:

■■■■■ ■■■■ Appellant
Jessica Gomez, Department Representative
Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's denial of a CSA under the Husky C program was correct.

A secondary issue is whether the Appellant's MMNA previously calculated by the Department is not sufficient to meet the Appellant's needs in the community.

FINDINGS OF FACT

1. The Appellant is married to [REDACTED] [REDACTED] ("Applicant"). (Appellant's Testimony and Exhibit 1: W-1 LTC Application)
2. On [REDACTED] [REDACTED] 2021, Probate Court appointed [REDACTED] [REDACTED] [REDACTED] as the Applicant's Conservator of the Estate. The Conservator chose not to attend the administrative hearing. (Exhibit 2: Court of Probate and Exhibit 13: Email Chain)
3. On [REDACTED] [REDACTED] 2021, [REDACTED] [REDACTED] [REDACTED] (the "facility"), a skilled nursing facility, admitted the Applicant to their facility. (Exhibit 3: Assessment Pro-Admission)
4. Effective [REDACTED] [REDACTED] 2021, the Applicant qualified for Medicaid under the Husky C – Long Term Care Facility Residents Eligible Under Special Income Level ("Husky C") program. (Exhibit 1: W-1 LTC Application and Exhibit 11: Notice of Action)
5. The Appellant resides at [REDACTED] ("home property"). The Appellant owns the home property and pays a monthly mortgage of \$1,407.31. The mortgage includes homeowner's insurance and property taxes. On [REDACTED] [REDACTED] 2021, the mortgage company received the Appellant's mortgage payment late charging her an overdue fee of \$75.90 which was added to the mortgage payment due [REDACTED] [REDACTED] 2021 totaling \$1,483.21. (Appellant's Testimony and Exhibit 4: Shelter Expenses)
6. The Department calculated the Appellant's monthly mortgage payment, including homeowner's insurance and property taxes, as \$1,483.21. The Department included a late charge of \$75.90 which was added to the Appellant's mortgage payment for [REDACTED] 2021. \$1,407.31 monthly mortgage + \$75.90 late fee = \$1,483.21. (Department Representative's Testimony, Exhibit 4: Shelter Expenses and Exhibit 9: Community Spousal Allowance)

7. The Appellant is an account manager for [REDACTED] (the "employer") earning \$1,801.92 bi-weekly. The Appellant receives separate pay for other job duties she performs for the employer as needed. Refer to chart below. PD = Pay Date, Gross = Gross Wages (Exhibit 5: Paystubs, Exhibit 7: Additional Documents, and Exhibit 10: Pay Period Summary)

PD	Gross	PD	Gross	PD	Gross	PD	Gross
[REDACTED]/21	\$1,801.92	[REDACTED]/21	\$1,801.92	[REDACTED]/21	\$1,801.92	[REDACTED] 21	\$1,801.92
[REDACTED]/21	\$2,000.00	[REDACTED]/21	\$2,000.00	[REDACTED]/21	\$2,000.00	[REDACTED]/21	\$1,000.00
[REDACTED]/21	\$1,801.92	[REDACTED]/21	\$1,801.92	[REDACTED]/21	\$1,801.92	[REDACTED]/21	\$1,801.92
[REDACTED]/21	\$2,000.00	[REDACTED]/21	\$2,200.00	[REDACTED]/21	\$1,000.00	[REDACTED]/21	\$1,000.00
Total	\$7,603.84	Total	\$7,803.84	Total	\$6,603.84	Total	\$5,603.84

PD	Gross	PD	Gross	PD	Gross
[REDACTED]/21	\$1,801.92	[REDACTED]/22	\$1,801.92	[REDACTED]/22	\$1,913.46
[REDACTED]/21	\$1,000.00	[REDACTED]/22	\$2,025.00	[REDACTED]/22	\$1,913.46
[REDACTED]/21	\$1,801.92				
[REDACTED]/21	\$1,000.00				
[REDACTED]/21	\$4,300.00				
[REDACTED]/21	\$1,801.92				
Total	\$11,705.76	Total	\$3,826.92	Total	\$3,826.92

8. The Department determined the Appellant's gross monthly earnings as referenced in chart below. (Exhibit 5: Paystubs, Exhibit 7: Additional Documents, Exhibit 9: Community Spousal Allowance, and Exhibit 10: Pay Period Summary)

Months	[REDACTED] 2021	[REDACTED] 2021	[REDACTED] 2022	[REDACTED] 2022
Gross Income	\$7,803.84	\$8,903.84	\$3,826.92	\$3,826.95

9. The Appellant pays for utilities in the home which includes electricity provided by [REDACTED] [REDACTED] [REDACTED] ("electric company"), water provided by [REDACTED] [REDACTED] [REDACTED] ("water company"), sewer use charges by the [REDACTED] [REDACTED] ("water pollution control authority"), cable by [REDACTED] [REDACTED] ("cable company"), home heating oil from [REDACTED] [REDACTED] ("oil company"), and telephone charges. Additionally, the Appellant must pay for snow removal and landscaping charges. (Exhibit 4: Shelter Expenses, Exhibit 7: Additional Documents, and Appellant's Testimony)
10. The Appellant received the standard utility allowance of \$783.00 in place of actual utility costs to calculate the Appellant's total monthly shelter costs. (Department Representative's Testimony and Exhibit 9: Community Spousal Allowance)

11. The Appellant incurs the following personal expenses: cost of gasoline, car loan of \$606.46 for a truck purchased in ██████████ 2018, \$286.00 per month car insurance, \$350.00 per month for long-term care insurance for self, and \$93.04 Applicant's life insurance premium from ██████████ ██████████ to cover future burial expenses. (Appellant's Testimony)
12. The Appellant receives medical coverage through the employer with no cost to her. (Appellant's Testimony)
13. The Applicant receives social security disability ("SSDI") of \$1,403.10 per month beginning ██████████ 2022. In 2021, the Applicant's SSDI equaled \$1,324.50. (Department Representative's Testimony and Exhibit 11: Notice of Action)
14. The minimum monthly needs allowance equals \$2,177.50. The Maximum monthly needs allowance equals \$3,259.50. Beginning ██████████ ██████████ 2022, the maximum monthly needs allowance increased to \$3,435.00. (Exhibit 9: Community Spousal Allowance and Department Representative's Testimony)
15. The Department determined the Appellant did not qualify for a community spousal allowance because the community spouse's gross monthly income exceeds the maximum monthly needs allowance. (Department Representative's Testimony and Exhibit 9: Community Spousal Allowance)
16. The Appellant is seeking a community spousal allowance to continue to reside in her home in the community after her secondary position with the employer was eliminated resulting in a decrease in monthly income. (Appellant's Testimony)
17. 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 ██████████ ██████████ 2022. However, the hearing which was originally scheduled for ██████████ ██████████ 2022 was rescheduled to ██████████ ██████████ 2022 at the request of the Appellant causing a ██████████-day delay. Because this ██████████-day delay resulted from the Appellant's request, this decision is not due until ██████████ ██████████ 2022, and therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statute (“Conn. Gen. Stat.”) provides as follows:

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 of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department.” Conn. Gen. Stat. § 17b-261b
3. State statute provides as follows:

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)

4. The department’s uniform policy manual is the equivalent of a 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 A.2d 712(1990))
5. Section 5035.30(A)(1) of the Uniform Policy Manual (“UPM”) provides as follows:

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.

6. Department policy provides for the following definitions:

Deductions are those amounts which are subtracted as adjustments to counted income and which represent expenses paid by the assistance unit.

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 received such services.

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 § 5000.01

The Department correctly determined the Applicant as the institutionalized spouse.

The Department correctly determined the Appellant as the community spouse.

7. Department policy provides for the calculation of the community spousal allowance as follows:
 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 5035.30B.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 costs 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.

UPM § 5035.30(B)

Effective October 1, 2021 through September 30, 2022, the standard utility allowance in the State of Connecticut equals \$783.00 monthly. [US Department of Agriculture, Food and Nutrition Services, SNAP SUA Table FY2022, 12/16/2021]

Effective January 1, 2021, the maximum monthly maintenance needs allowance under spousal impoverishment rules equals \$3,259.50. Effective July 1, 2021, the minimum Monthly Needs Allowance equaled \$2,177.50. [Department of Health & Human Services, Centers for Medicare and Medicaid Services, Center for Medicaid & Chip Services (CMCS) Informational Bulletin, Updated 2021 SSI and Spousal Impoverishment Standards, June 24, 2021]

Effective January 1, 2022, the maximum monthly maintenance needs allowance under spousal impoverishment rules equals \$3,435.00. The minimum Monthly Needs Allowance remains at \$2,177.50. [Department of Health & Human Services, Centers for Medicare and Medicaid Services, Center for Medicaid & Chip Services (CMCS) Informational Bulletin, 2022 SSI and Spousal Impoverishment Standards, November 23, 2021]

The Department correctly determined the Appellant's maximum monthly needs allowance as \$3,259.50 in 2021 and \$3,435.00 beginning [REDACTED] 2022, the maximum allowed under Department policy. Although the Department miscalculated the monthly mortgage as \$1,483.21, which included the mortgage late fee, there is not impact on the Department's determination of the MMNA.

Mortgage		\$1,407.31
SUA	+	\$783.00
Shelter Costs	=	\$2,190.31
30% of FPL	-	\$653.25
Excess Shelter Costs	=	\$1,537.06
150% of FPL for 2	+	\$2,177.50
Monthly Needs Allowance	=	\$3,714.56
Effective 1/1/21 MMNA capped		\$3,259.50
Effective 1/1/22 MMNA capped		\$3,435.00

The Department correctly determined the Appellant ineligible for the CSA because the Appellant's monthly gross income exceeds the maximum monthly needs allowance capped at \$3,259.50 in 2021 and \$3,435.00 in 2022. Although the Department miscalculated the Appellant's monthly gross income for ██████████ 2021, ██████████ 2021, and ██████████ 2021, there is no impact on the determination of eligibility for the CSA .

Month	██████████ 2021	██████████ 2021	██████████ 2022	██████████ 2022
Gross Income	\$5,603.84	\$11,705.76	\$3,826.92	\$3,826.92
MMNA	\$3,259.50	\$3,259.50	\$3,435.00	\$3,435.00

8. Department policy provides as follows:

The 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.

- a. Exceptional circumstances are those that are severe and unusual and that:
 1. Prevent the community spouse from taking care of his or her activities of daily living; or
 2. Directly threaten the community spouse's ability to remain in the community; or
 3. 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).
- b. Significant financial duress is an expense or set of expenses that:
 1. Directly arises from the exceptional circumstances described in subparagraph a above; and
 2. Is not already factored into the MMNA; and
 3. Cannot reasonably be expected to be met by the community spouse's own income and assets.
- c. Expenses that are factored into the MMNA, and thus do not generally qualify as causing significant financial duress, include, but are not limited to:
 1. Shelter costs such as rent or mortgage payments;
 2. Utility costs;
 3. Condominium fees;
 4. Real estate and personal property taxes;
 5. Real estate, life and medical insurance;

6. Expenses for the upkeep of a home such as lawn maintenance, snow removal, replacement of a roof, furnace or appliance;
 7. Medical expenses reflecting the normal frailties of old age.
- d. 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.

UPM § 1570.25(D)(3)

"MCCA Spouses are spouses who are members of a married couple one of whom becomes an institutionalized spouse on or after September 30, 1989, and the other spouse becomes a community spouse." UPM § 0500

Department policy defines in pertinent part "activities of daily living as bathing, dressing, transferring, toileting, feeding, preparing meals, administering medication, ambulating, controlling bladder and bowel." UPM § P-1570

The Appellant's situation does not meet the criteria for exceptional circumstances as monthly household expenses are already factored into the MMNA. The Appellant did not claim exceptional circumstances as she continues to work full time. Although the Appellant's income decreased in 2022 resulting in her inability to maintain her household expenses causing financial duress, it is not a direct result of exceptional circumstances.

DECISION

The Appellant's appeal is denied.

Lisa A. Nyren

Lisa A. Nyren
Fair Hearing Officer

CC: Tim Latifi, SSOM, DSS RO #30
Robert Stewart, SSOM, DSS RO #30
Jessica Gomez, LTSS, DSS

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, 165 Capitol Avenue, 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.