

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105

██████████ 2022  
Signature confirmation

Case ██████████  
Client: ██████████  
Request: 193057

**NOTICE OF DECISION**

**PARTY**

██████████  
██  
██  
██

**PROCEDURAL BACKGROUND**

On ██████████, the Department of Social Services (the “Department”) issued a *Notice of Action* to ██████████ (the “Appellant”) designating his Patient Liability Amount due to the skilled nursing facility to equal \$1,244.08 per month effective ██████████ 2022, after the deductions of a \$75.00 personal needs allowance and a \$1,039.42 Community Spouse Allowance.

On ██████████ 2022, ██████████ the Appellant’s Representative and wife, faxed a request for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”), asking for assistance with her financial obligations.

On ██████████ 2022, the OLCRAH scheduled an 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 participated:

██████████, Appellant’s Representative (wife)  
██████████ Appellant’s Witness  
Saya Miyakoshi, Department’s Representative  
Eva Tar, Hearing Officer

The hearing record closed ██████████ 2022.

### STATEMENT OF ISSUE

The issue was whether the Department correctly calculated the monthly Community Spouse Allowance of the Appellant's Representative to be \$1,039.42 per month.

### FINDINGS OF FACT

1. The Appellant and the Appellant's Representative are married. (Appellant's Witness Testimony)
2. The Appellant's Representative lives in her home in the community. (Appellant's Representative Testimony)
3. The Appellant resides at the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Appellant's Representative Testimony)
4. The Appellant receives Medicaid coverage as a resident of a long-term care facility. (Department's Exhibit 1/Attachment A and Exhibit 5/Attachment E)
5. Effective [REDACTED] the Appellant grosses \$1,682.00 per month in Social Security benefits. (Department Exhibit 3/Attachment C)
6. The Appellant grosses \$676.50 per month in a lifetime pension through the [REDACTED] [REDACTED] (Department Exhibit 3/Attachment C)
7. The Appellant's Representative grosses \$525.00 per week in wages from [REDACTED] [REDACTED] (Department Exhibit 7, Attachment G) (Appellant's Witness Testimony)
8. The Appellant's Representative does not collect Social Security benefits. (Appellant's Witness Testimony)
9. The Appellant's Representative pays \$989.67 per month to her mortgage on her home in the community. Real estate taxes and homeowner's insurance are included in the mortgage payment. (Appellant's Representative Testimony)
10. The Appellant's Representative is not paying for a helper or caregiver for services provided in her home. (Appellant's Representative Testimony)
11. The Appellant's Representative is not supporting a disabled adult child. (Appellant's Representative Testimony)
12. The Appellant and/or the Appellant's Representative do not have unpaid medical bills for which they are making payments. (Appellant's Representative Testimony)
13. Connecticut's Standard Utility Allowance ("SUA") equaled \$783.00 per month. (Department Exhibit 6/Attachment F)
14. One hundred and fifty percent of the Federal Poverty Level for two equaled \$2,177.50. (Department Exhibit 6/Attachment F)

15. On [REDACTED] 2022, the Department issued a *Notice of Action* to the Appellant designating his Patient Liability Amount due to the skilled nursing facility to equal \$1,244.08 effective [REDACTED] 2022, after the deductions of a \$75.00 personal needs allowance and a \$1,039.42 Community Spouse Allowance. (Department Exhibit 5/Attachment E)
16. In calculating the Community Spouse Allowance, the Department determined that the Appellant's Representative had a Minimum Monthly Needs Allowance ("MMNA") of \$3,296.92. (Department Exhibit 6/Attachment F)
17. Connecticut General Statutes § 17b-61 (a) provides: "The Commissioner of Social Services or the commissioner's designated hearing officer shall ordinarily render a final decision not later than ninety days after the date the commissioner receives a request for a fair hearing pursuant to section 17b-60...." On [REDACTED] 2022, the OLCRAH received the Appellant's hearing request. This hearing decision therefore would have become due by no later than [REDACTED] 2022. This final decision is timely.

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes in part designates the Department of Social Services as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

"The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program...." Conn. Gen. Stat. § 17b-262.

"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)).

**In Connecticut, the Department has the authority to administer the Medicaid program and make regulations governing the same.**

2. Section 17b-261 (a) of the Connecticut General Statutes, as amended at the 2022 Supplement to the General Statutes of Connecticut addresses when medical assistance shall be provided for any otherwise eligible person, and provides in part: "Any income in excess of the applicable amounts shall be applied as may be required by said federal law, and assistance shall be granted for the balance of the cost of authorized medical assistance...."

Section 5045.20 of the Department's Uniform Policy Manual ("UPM") provides: "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...."

**The Department correctly determined that as a Medicaid long-term care recipient, the Appellant was liable to contribute a portion of his income toward his cost of his care in the skilled nursing facility.**

3. "Community Spouse. 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.

**For the purposes of the Medicaid long-term care program, the Appellant's Representative is a community spouse.**

4. Section § 17b-261 (g) of the Connecticut General Statutes provides: "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...."

**The Department correctly determined that the Appellant's Representative, as a community spouse, is eligible to receive a portion of the Appellant's monthly income to meet her Minimum Monthly Needs Allowance.**

5. "For 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." UPM § 5035.25.

UPM § 5035.25 B. provides for post-eligibility deductions for LTCF Units with Community Spouses:

The following monthly deductions are allowed from the income of assistance units in LTCF's:

1. a personal needs allowance 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;
2. a Community Spouse Allowance (CSA), when appropriate; (Cross Reference 5035.30)
3. a Community Family Allowance (CFA), when appropriate; (Cross Reference 5035.35)
4. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for the Department or any other third party;
5. costs for medical treatment approved by a physician which are incurred subsequent to the effective date of eligibility and which are not covered by Medicaid;
6. expenses for services provided by a licensed medical provider in the six month period immediately preceding the first month of eligibility providing the following conditions are met:
  - a. the expenses were not for LTCF services, services provided by a medical institution equivalent to those provided in a long term care facility, or home and community-based services, when any of these services were incurred during a penalty period resulting from an improper transfer of assets; and
  - b. the recipient is currently liable for the expenses; and
  - c. the services are not covered by Medicaid in a prior period of eligibility.

UPM § 5035.25 B. (emphasis added)

Section 17b-272 of the Connecticut General Statutes, at the 2022 Supplement to the Connecticut General Statutes of Connecticut provides that effective July 1, 2021: “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 seventy-five dollars.”

**As a Medicaid recipient who resides in a nursing home, the Appellant is entitled to a personal needs allowance of \$75.00 per month as a deduction from his applied income due to the skilled nursing home.**

**UPM § 5035.25 B. permits the Appellant to divert a portion of his monthly income to the Appellant’s Representative as a Community Spouse Allowance.**

6. “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 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.” UPM § 5035.30 B.4.

**For the purposes of the Community Spouse Allowance calculation, the monthly shelter costs of the Appellant’s Representative equaled \$1,772.67. [\$989.67 (mortgage) plus \$783.00 (SUA)]**

7. “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.” UPM § 5035.30 B.3.

The Federal Poverty Levels for the 48 contiguous states and the District of Columbia are published at 87 Fed. Reg. 3315, 3316 (January 12, 2022).

**For the purposes of the Community Spouse Allowance calculation, the excess shelter costs of the Appellant’s Representative equaled \$1,119.42. [\$1,772.67 minus \$653.25 (30 percent of 150 percent of the Federal Poverty Level for two, per month)]**

8. Section 5025.05 B. of the Department’s Uniform Policy Manual addresses the conversion of income received to monthly amounts under the Prospective Budgeting System. Subsection B.1. of this section provides: “If income is received on a monthly basis, a representative monthly amount is used as the estimate of income.”

“If income is received on other than a monthly basis, the estimate of income is calculated by multiplying 4.3 by a representative weekly amount that is determined as follows: a. if income is the same each week, the regular weekly income is the representative weekly amount.” UPM § 5025.05 B. 2. a.

**For the purposes of the Community Spouse Allowance calculation, the projected gross monthly income of the Appellant's Representative equaled \$2,257.50. [\$525.00 (gross weekly wages) multiplied by 4.3 weeks per month]**

9. "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 5035.30 B.3.; and b. 150 percent of the monthly poverty level for a unit of two persons." UPM § 5035.30 B.2.

**The MMNA of the Appellant's Representative equaled \$3,296.92. [\$1,119.42 (excess shelter cost) plus \$2,177.50. (150 percent of Federal Poverty Level for two)]**

10. "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." UPM § 1570.25 D.3.

"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 the institutionalized spouse)." UPM § 1570.25 D.3.a.

**The Appellant's Representative has not established that she has exceptional circumstances resulting in significant financial duress, as the term "exceptional circumstances" is contemplated at UPM § 1570.25 D.3.a.**

**The hearing officer is prohibited from increasing the MMNA of the Appellant's Representative from the amount previously determined by the Department.**

**The Appellant's Representative is eligible to receive a Community Spouse Allowance of \$1,039.42 per month. [\$3,296.92 (MMNA) minus \$2,257.50 (projected gross monthly income of Appellant's Representative)]**

**The Department correctly calculated the monthly Community Spouse Allowance of the Appellant's Representative to be \$1,039.42 per month.**

### DECISION

The Appellant's appeal is DENIED.

*Eva Tar-electronic signature*  
Eva Tar  
Hearing Officer

Cc: [REDACTED]  
Saya Miyakoshi, DSS-Manchester  
Angelica Branfalt, DSS-Manchester

### **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.