

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 # 201165

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ ████ 2022, the Department of Social Services (the "Department") determined the patient liability amount ("PLA") which ██████████ ██████████ (the "Applicant") must pay toward his cost of care as \$2,199.72 under the Husky C – Long Term Care Facility Residents – Spend-down Medicaid coverage ("Husky C - LTC") beginning ██████████ ████ 2022 with a Community Spousal Allowance ("CSA") of \$2,223.90.

On ██████████ ████ 2022, ██████████ ██████████ (the "Appellant"), the Applicant's Spouse requested an administrative hearing to contest the Department's determination of the PLA and the CSA.

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 OLCRAH granted.

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 via teleconference at the Appellant's request.

The following individuals called in for the hearing:

██████████, Appellant

██████████, Appellant's Daughter and Power of Attorney

██████████, Appellant's Authorized Representative, ██████████

Lauren Kimbro, Department Representative

Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Appellant qualifies for an adjustment of her CSA.

A secondary issue to be decided is whether the Department's calculation of the PLA under the Husky C - LTC program was correct.

FINDINGS OF FACT

1. On ██████████ █ 2022, ██████████ (the "facility"), a skilled nursing facility, admitted the Applicant to their facility. (Stipulated)
2. On ██████████ █ 2022, the Department granted Medicaid under the Husky C - LTC program for the Applicant effective ██████████ █ 2022 and determined the CSA as \$2,223.90 per month. (Exhibit 2: Notice of Action)
3. On ██████████ █ 2022, the Department determined the PLA as \$118.72 for ██████████ 2022 and \$2,199.72 beginning ██████████ █ 2022. (Exhibit 2: Notice of Action)
4. The Applicant receives Social Security benefits ("SSA") of \$2,251.10 per month and a pension ("pension") of \$2,622.22 per month. (Stipulated)
5. The Applicant has Medicare Part A, Medicare Part B for which he pays \$170.10 monthly premium, Medicare Part D with Humana for which he pays \$75.00 monthly premium, and medical coverage with United Health Care for which he pays \$204.60 monthly premium. (Exhibit 1: W-1-LTC Application, Exhibit 2: Notice of Action, Exhibit B: Supporting Documents, and Authorized Representative Testimony)
6. The Appellant is married to the Applicant and lives alone at home at ██████████ ██████████ ("residence"). (Hearing Record)
7. The Appellant is age ██████████-██████████ (██████████) (Exhibit 1: W-1LTC Application and Power of Attorney's Testimony)

8. The Appellant receives SSA of \$1,211.10 per month. (Stipulated)
9. The Appellant pays a mortgage of \$1,102.68 per month on her residence which includes her homeowners' insurance premium of \$121.00 per month and property taxes. (Exhibit 1: W-1-LTC Application, Exhibit A: Community Expenses Worksheet, and Power of Attorney Testimony)
10. The Appellant pays for the utilities in the home which include water, gas heat, electricity, cable, and telephone. The Appellant pays for all maintenance expenses associated with owning a home such as lawn service, snow removal, and repairs. (Power of Attorney's Testimony, Exhibit 1: W-1-LTC Application and Exhibit A: Community Expenses Worksheet)
11. The Appellant received the standard utility allowance ("SUA") of \$921.00 in place of actual utility costs to calculate the Appellant's total shelter costs. (Hearing Record)
12. The Appellant pays for the following additional expenses:
 - ██████████ Life Insurance of \$115.17 per month;
 - ██████████ Life Insurance of \$189.57 per month;
 - Health Insurance \$109.20 per month;
 - Car insurance \$166.50 per month
 - Car taxes \$29.81 per month, car maintenance and gas averaging \$100.00 per month.

Exhibit A: Community Expenses Worksheet and Exhibit 1: W-1-LTC Application

13. In ██████ 2015, the Appellant received a diagnosis of Stage 4 ER+ PR + HER2 breast cancer with diffuse bone metastases. Her oncologist prescribed Ibrance, a breast cancer fighting drug made by Pfizer. The cost of Ibrance was minimal at first, \$50.00 per month, but rose to over \$14,000.00 monthly in the last seven years. Ibrance is covered by the Appellant's private medical insurance, except for the \$800.00 co-pay which the Appellant is responsible to pay. The Appellant receives financial assistance through Pfizer which pays the \$800.00 co-pay, but this program is set to expire on ██████████ ██████ 2022. The Appellant reapplies for these funds regularly but is concerned if the Pfizer grant funds are not available, she will be forced to pay \$800.00 or more to continue her cancer treatment on Ibrance. (Power of Attorney's Testimony, Exhibit A: Community Expenses Worksheet, and Exhibit 3: Yale Cancer Center)

14. The Appellant is seeking to divert additional funds from the Applicant effectively lowering the PLA and increasing the CSA to include the \$800.00 co-pay she must pay for Ibrance, if she loses the Pfizer financial assistance. (Power of Attorney's Testimony)
15. 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] [REDACTED] 2022. However, the hearing, which was originally scheduled for [REDACTED] [REDACTED] 2022, was rescheduled at the request of the Appellant which caused a [REDACTED]-day delay. Because this [REDACTED]-day delay resulted from the Appellant's request, this decision is not due until [REDACTED] [REDACTED] 2022.

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statute ("Conn. Gen. Stats.") 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. 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)

3. "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))

4. 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.

5. Department policy provides for the following definitions:

“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 an institutionalized spouse.

The Department correctly determined the Appellant a community spouse.

6. Department policy 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 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 principal 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.

UPM § 5035.30(B)

The 2022 Poverty Guidelines for the 48 Contiguous States and the District of Columbia for a household of 2 equals \$18,310.00. [Federal Register/Vol. 87, No. 14/January 21, 2022]

One hundred fifty percent (150%) of the federal poverty level ("FPL") for two equals \$2,288.75. [$\$18,310.00 \text{ FPL for } 2 / 12 \text{ months} = \$1,525.8333 \times 150\% = \$2,288.75$]

Thirty percent (30%) of 150% of the FPL equals \$686.63. [$\$2,288.75 \times 30\% = \686.625]

For the period October 1, 2021 through September 30, 2022, the standard utility allowance for Connecticut equals \$783.00. (United States Department of Agriculture, Food and Nutrition Service SNAP SUA Table FY2022, December 16, 2021)

Beginning October 1, 2022, the standard utility allowance increased to \$921.00. (United States Department of Agriculture, Food and Nutrition Service SNAP SUA Table FY2022, November 2022)

Section 1924 of the Social Security Act provides for spousal impoverishment standards.

Effective January 1, 2022, the maximum monthly maintenance needs allowance under the Spousal Impoverishment Standards equals \$3,435.00. (Department of Health & Human Services, Centers for Medicare and Medicaid Services, CMCS Informational Bulletin, November 23, 2021, Deputy Administrator and Director, Center for Medicaid and CHIP Services (CMCS))

The Department incorrectly determined the Appellant's monthly shelter costs as \$2,388.68. The Appellant's real estate taxes and homeowner's insurance are included in her monthly mortgage payment. Additionally, the Department calculated the shelter costs for ██████████ 2022 through ██████████ 2022 using the incorrect SUA. The correct monthly shelter costs are \$1,885.68 increasing to \$2,023.68 beginning ██████████ 2022.

$\$1,102.68$ mortgage, real estate tax, & homeowner's insurance +
 $\$783.00$ standard utility allowance = $\$1,885.68$ shelter costs

Effective ██████████ 2022:

$\$1,102.68$ mortgage, real estate tax, & homeowner's insurance +
 $\$921.00$ standard utility allowance = $\$2,023.68$ shelter costs

The Department incorrectly determined the excess shelter costs as \$1,702.05. The correct excess shelter cost equals \$1,199.05 increasing to \$1,337.05 beginning ██████████ 2022.

$\$1,885.68$ shelter cost - $\$686.63$ 30% of 150% of FPL for 2 = $\$1,199.05$
 excess shelter costs

Effective ██████████ 2022:

$\$2,023.68$ shelter cost - $\$686.63$ 30% of 150% of FPL for 2 = $\$1,337.05$
 excess shelter costs

The Department correctly determined the MMNA as \$3,435.00, the maximum allowed.

$\$1,199.05$ excess shelter costs + $\$2,288.75$ 150% of FPL for 2 =
 $\$3,487.80$

Effective ██████████ 2022:

$\$1,337.05$ excess shelter costs + $\$2,288.75$ 150% of FPL for 2 =
 $\$3,625.80$

The MMNA is capped at \$3,435.00 if the sum of the Appellant's excess shelter costs and 150% of the FPL exceeds \$3,435.00.

The Department correctly determined the CSA as \$2,223.90.

$\$3,435.00$ MMNA - $\$1,211.10$ Appellant's gross income = $\$2,223.90$

Although the Department incorrectly calculated the Appellant's shelter costs and excess shelter costs, there is no impact on the CSA.

7. 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 § 500

The Appellant failed to establish she has incurred significant financial duress as a direct result of her cancer diagnosis, therefore the MMNA remains as \$3,435.00, the maximum allowed. Although the Appellant’s advanced stage breast cancer diagnosis may directly threaten her ability to remain in the community, there is a lack of significant financial duress directly arising from this diagnosis due to the financial assistance the Appellant receives from Pfizer which covers the out-of-pocket cost of Ibrance. Should the Appellant lose the financial assistance provided by Pfizer, she may request a review of the CSA by the Department and submit proof of her out of pocket costs incurred.

8. State statute provides as follows:

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.

Conn. Gen. Stat. § 17b-261r(a)

State statute provides as follows:

In determining the amount of applied income, the Department of Social Services shall take into consideration any modification to the applied income due to revisions in a medical assistance recipient’s community spouse minimum monthly needs allowance, as described in Section 1924 of the Social Security Act, and any other modification to applied income allowed by state or federal law.

Conn. Gen. Stat. § 17b-261r(b)

9. Department policy provides as follows:

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 § 5034.25

“Income from these sources [SSA, SSI, V.A.] is treated as unearned income in all programs.” UPM 5050.13

“Payments received by the assistance unit from annuity plans, pensions and trust are considered unearned income.” UPM § 5050.09

Department policy provides as follows:

The deductions described below are subtracted from income:

1. Beginning with the month in which the 30th day of continuous LTCF care or the receipt of community-based services occurs; and
2. Ending with the month in which the unit member is discharged from the LTCF or community-based services are last received.

UPM § 5035.25(A)

Department policy provides as follows:

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

1. A personal needs allowance of [\$75.00], 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)

“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.” 2022 Supplement to the Conn. Gen. Stat. § 17b-272

The Department correctly determined the personal needs allowance (“PNA”) as \$75.00.

The Department incorrectly determined the Applicant’s gross monthly income for █████ 2022 as \$2,622.22, excluding the Applicant’s SSA \$2,251.10 in the Applicant’s total gross income. The Applicant’s correct gross monthly income for █████ 2022 equals \$4,873.32 resulting in the incorrect PLA as \$118.72 for █████ 2022. Refer to calculation chart below for PLA.

The Department correctly determined the Applicant’s gross monthly income as \$4,873.32 beginning █████ 2022. (\$2,251.10 SSA + \$2,622.22 pension = \$4,873.32)

The Department incorrectly determined the Applicant’s PLA as \$2,199.72. Beginning █████ 2022, the correct PLA equals \$2,124.72. The Department incorrectly excluded the Applicant’s Medicare Part D/Humana \$75.00 monthly premium as an allowable deduction when calculating the Applicant’s PLA.

Appellant Gross Income		\$4,873.32
PNA	-	\$75.00
Med B Premium	-	\$170.10
Med D Premium	-	\$75.00
United Healthcare Premium	-	\$204.60
CSA	-	\$2,223.90
PLA	=	\$2,124.72

DECISION

The Appellant's appeal request for an adjustment in the CSA under the Husky C – LTC program is denied.

The Appellant's appeal request regarding the calculation of the PLA is granted.

ORDER

1. The Department must review and correct as appropriate the Applicant's PLA to include the Applicant's Medicare Part D/Humana premium of \$75.00 as an allowable deduction beginning [REDACTED] 2022.
2. The Department must review and correct the Applicant's gross income for [REDACTED] 2022 effectively adjusting the PLA.
3. Compliance is due 14 days from the date of this hearing decision.

Lisa A. Nyren
Lisa A. Nyren
Fair Hearing Officer

CC: Rachel Anderson, SSOM RO #20
Mathew Kalarickal, SSOM RO #20
Lauren Kimbro, DSS RO #20

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.