

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

██████████ 2023  
Signature Confirmation

Client ID ██████████  
Case ID ██████████  
Request # 203760

**NOTICE OF DECISION**

**PARTY**

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

**PROCEDURAL BACKGROUND**

On ██████████ 2022, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action listing his patient liability amount ("PLA") as \$994.81 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 \$1,297.88.

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

On ██████████ 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings ("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 AREP's request.

The following individuals were present at the hearing:

██████████ Appellant's Power of Attorney  
Mario Ponzio, Department Representative  
Lisa Nyren, Fair Hearing Officer

Neither the Appellant or Appellant's Spouse participated in the administrative hearing due to their age and medical conditions.

### **STATEMENT OF THE ISSUE**

The issue is whether the Appellant's spouse qualifies for an increase in the CSA under Husky C – LTC beginning [REDACTED] 2022.

A secondary issue is whether the Department's [REDACTED] 2022 calculation of the PLA under the Husky C - LTC program beginning [REDACTED] 2022 was correct.

### **FINDINGS OF FACT**

1. The Appellant is married to [REDACTED] [REDACTED] (the "Appellant's spouse"). (AREP Testimony)
2. The Appellant's spouse is age [REDACTED]-[REDACTED] ([REDACTED] (AREP Testimony)
3. The AREP is the daughter of the Appellant and the Appellant's spouse. (AREP Testimony)
4. On [REDACTED] [REDACTED] 2022, [REDACTED] (the "facility"), a skilled nursing facility, admitted the Appellant to their facility. (Stipulated)
5. Beginning [REDACTED] [REDACTED] 2022, the Appellant receives Medicaid benefits under the Husky C - LTC program which pays for his care at the facility. (Department Representative Testimony)
6. Under Husky C - LTC, a resident in a facility must contribute toward their cost of care. The PLA is the amount a resident must contribute/pay. (Hearing Record)
7. The Appellant receives the following sources of income monthly totaling \$2,367.70 per month:
  - Social Security benefits ("SSA") \$1,505.00
  - [REDACTED] pension ("state pension") \$554.57
  - [REDACTED] pension ("NT-pension") \$250.98
  - [REDACTED] pension ("SP-pension") \$57.15

(Stipulated)

8. The Appellant has Medicare Part A and Part B coverage. The Appellant's state pension plan reimburses him for the Medicare Part B monthly premium of \$170.10. (Exhibit 3: Pension Stub)

9. The Appellant's spouse receives the following sources of income monthly totaling \$1,813.41 per month:

- Social Security benefits ("SSA") \$1,454.00
- █████ pension ("D-pension") \$73.65
- █████ pension ("A-pension") \$285.76

(Stipulated)

10. The Appellant's spouse owns her residence where she resides alone. She does not pay a mortgage but pays homeowner's insurance of \$269.99 per month and property taxes of \$318.18 per month. She pays all the utilities in the home which continue to increase in cost. (Hearing Record)

11. The Appellant's spouse received the standard utility allowance ("SUA") of \$921.00 in place of actual utility costs to calculate her total shelter costs under the CSA. (Hearing Record)

12. Beginning █████ 2022, the Department calculated the CSA as \$1,297.88 per month. Minimum Monthly Needs Allowance ("MMNA"). Federal Poverty Level ("FPL"). (Exhibits 10 & 13: Community Spousal Allowance and Exhibit 15: Notice of Action)

- Property Tax \$318.18
- Plus Homeowner's Insurance \$269.99
- Plus SUA \$921.00
- Equals Total Shelter Costs \$1,509.17
- Minus 30% of \$2,288.75 \$686.63
- Equals Excess Shelter Cost \$822.54
- Plus 150% FPL for 2 \$2,288.75
- Equals MMNA \$3,111.29
- Minus Gross Income \$1,813.41
- Equals CSA \$1,297.88

13. Beginning █████ 2022, the Department determined the Appellant's PLA as \$994.81 per month. (Exhibits 9 & 12: LTSS Patient Liability Amounts and Exhibit 15: Notice of Action)

- Appellant's Total Gross Income: \$2,367.70
- Minus \$75.00 Personal Needs Allowance ("PNA") \$75.00
- Minus CSA \$1,297.88

- Equals PLA \$994.81

14. The Appellant's spouse has numerous medical conditions, which include diabetes, TIA's aka mini-strokes, atrial fibrillation, bladder incontinence, arthritis, signs of dementia, and a brain aneurysm. Her medical conditions require additional assistance for her to remain in the community. The Appellant's spouse uses a walker for mobility but has fallen in the past resulting in broken ribs. (AREP Testimony)

15. The Appellant's spouse employs an aide for two hours per week on Tuesdays and Saturdays to assist her around the home and provide transportation and assistance with shopping and medical appointments. The Appellant's spouse incurred the following charges between [REDACTED] 2022 through [REDACTED] 2022 as listed in the chart below. (AREP Testimony and Exhibit A: Supporting Documents)

Month	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Hours	18.0	14.0	16.0	18.0	18.0	16.0	21.5	19.0
Total Paid	\$450	\$350	\$400	\$450	\$450	\$400	\$537.50	\$475

16. The Appellant's spouse receives hot lunch delivered meals five days a week through the [REDACTED]. The program is sponsored with Title II funds through the [REDACTED] with a suggested donation of \$3.00 per day for the home delivered meals. Beginning [REDACTED] 2022, she receives both lunch and dinner home delivered meals 7 days per week at a suggested donation of \$6.00 per day or \$180.00 per month. (AREP Testimony, Exhibit A: Supporting Documents, and Exhibit B: Home Delivered Meals)

17. Due to the risk of falling, the Appellant's spouse pays for an urgent response system through [REDACTED]. She pays for the following services on two devices: safety device [REDACTED] Ultimate Health & Safety Package and cell phone Basic Health & Safety Package. Reference chart for monthly 2022 monthly urgent response system charges between [REDACTED] 2022 through [REDACTED] 2022. (AREP Testimony and Exhibit A: Supporting Documents)

Months	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Ultimate Plan	\$36.97	\$36.96	\$36.96	\$37.00	\$37.00	\$37.00	\$40.77	\$40.77
Basic Plan	\$24.99	\$24.99	\$24.99	\$24.99	\$24.99	\$24.99	\$24.99	\$24.99
Total costs	\$61.96	\$61.95	\$61.95	\$61.99	\$61.99	\$61.99	\$65.76	\$65.76

18. The AREP on behalf of the Appellant's spouse is seeking an increase in the CSA allowing the Appellant's spouse to remain in her home resulting in a decrease in the Appellant's PLA. (AREP Testimony)

19. 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 AREP requested an administrative hearing on [REDACTED] [REDACTED] 2022. However, the close of the hearing record, which had been anticipated to close on [REDACTED] [REDACTED] 2022, did not close for the admission of evidence until [REDACTED] [REDACTED] 2022 at the AREP's request resulting in an [REDACTED]-day delay. This final decision is not due until [REDACTED] [REDACTED] 2023 and therefore timely.

### **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 Appellant (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 receive such services.”

“A 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.”

UPM § 5000.01

**The Department correctly determined the Appellant an institutionalized spouse.**

**The Department determined the Appellant’s spouse a community spouse.**

6. 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 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.

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. [ $\$2,288.75 \times 30\% = \$686.625$ ]

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 correctly determined the Appellant Spouse's shelter costs as \$1,509.17. (\$318.18 property tax + \$269.99 homeowner's insurance + \$921.00 SUA = \$1,509.17 shelter costs)**

**The Department correctly determined the excess shelter costs as \$822.54. (\$1,509.17 shelter costs - \$686.63 30% of 150% of FPL for 2 = \$822.54 excess shelter costs)**

**The Department correctly determined the MMNA as \$3,111.29. (\$822.54 excess shelter costs + \$2,288.75 150% of FPL for 2 = \$3,625.80)**

**The Department correctly determined the CSA as \$1,297.88.**

**\$3,111.29 MMNA - \$1,813.41 Appellant Spouse gross monthly income  
= \$1,297.88 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 Appellant).
- 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 as spouses who are members of a married couple one of whom becomes an Appellant on or after September 30, 1989, and the other spouse becomes a community spouse.” UPM § 500

UPM § P-1570.26 defines in part activities of daily living as bathing, dressing, transferring, toileting, feeding, preparing meals, administering medication, ambulating, controlling bladder and bowel.

**The AREP established the Appellant’s spouse meets the criteria for exceptional circumstances with financial duress.**

**The Appellant spouse’s need for a caregiver due to her medical conditions for 4 hours per week at \$25.00 per hour is an exceptional circumstance causing financial duress because without such assistance her ability to remain in the community is threatened. (4 hours/week x \$25.00/hour x 4.3 weeks = \$430.00 monthly cost)**

**The Appellant spouse’s expense of \$65.76 per month (new monthly charges beginning [REDACTED] 1, 2022) for an emergency response system is an exceptional circumstance resulting in financial duress because without such assistance her ability to remain in the community is threatened.**

**The undersigned fair hearing officer finds that the receipt of hot lunch delivered meals affects the Appellant spouse’s activities of daily living, specifically meal preparation and feeding, which can be considered an exceptional circumstance, however the AREP failed to establish this cost of such meals result in financial duress. The program is sponsored with Title II funds through the [REDACTED] and the cost for such meals is a suggested donation of \$3.00 per meal or \$6.00 per day rather than a monthly fixed charge for the meals. Such donation supplants the costs of groceries.**

**The undersigned finds the Appellant spouse’s financial duress is a direct result of the exceptional circumstances. Beginning [REDACTED] 2022, the MMNA is adjusted to \$3,607.05 to include the costs related to the caregiver and the emergency response system as referenced above totaling \$495.76. (MMNA \$3,111.29 + \$430.00 cost of caregiver + \$65.76 cost of emergency response system = \$3,607.05)**

**Effective [REDACTED] 2022, the CSA equals \$1,793.64. (Adjusted MMNA \$3,607.05 – Appellant Spouse Income \$1,813.41 = \$1,793.64)**

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 30<sup>th</sup> 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 PNA as \$75.00**

**Effective [REDACTED] 2022, the Department correctly determined the Appellant's gross monthly income as \$2,367.70. (SSA \$1,505.00 + NT pension \$250.98 + SP pension \$57.15 + state pension \$554.57 = \$2,367.70.)**

Effective [REDACTED] 2022, the Department correctly determined the PLA as \$994.81. (Appellant monthly gross income \$2,367.70 – PNA \$75.00 – CSA \$1,297.88 = \$994.81)

However, due to the increase in the CSA as authorized by this hearing decision, the PLA is adjusted. Effective [REDACTED] 2022, the new PLA equals \$499.06. (Appellant monthly gross income \$2,367.70 – PNA \$75.00 – CSA \$1,793.64 = \$499.06 PLA)

### DECISION

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

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

### ORDER

1. Effective [REDACTED] 2022, the Department must increase the CSA from \$1,297.88 to \$1,793.64, allowing for the out of pocket costs for the emergency response system and the caregiver incurred by the Appellant's spouse.
2. Effective [REDACTED] 2022, the Department recalculate the PLA applying the new CSA of \$1,793.64 effectively reducing the PLA from \$994.81 to \$499.06, due to the increase in the CSA beginning [REDACTED] 2022.
3. Compliance is due 10 days from the date of this hearing decision.

*Lisa A. Nyren*

Lisa A. Nyren  
Fair Hearing Officer

CC: Jessica Carroll, DSS RO #40  
Mario Ponzio, 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, 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.