

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

████████████████████
SIGNATURE CONFIRMATION

CASE ID # ██████████
CLIENT ID # ██████████
REQUEST # 204293

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ the Department of Social Services (the “Department”) sent ██████████ (the “Applicant”), a Notice of Action (“NOA”) indicating the amount of his income that he must contribute to the cost of his long-term care.

On ██████████ ██████████ (the “Appellant”) requested an administrative hearing to contest the Department’s calculation of the Appellant’s applied income.

On ██████████ the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the hearing for ██████████

On ██████████ Attorney ██████████ the Appellant’s Authorized Representative (“AREP”), requested to reschedule the administrative hearing.

On ██████████ OLCRAH issued a notice rescheduling the administrative hearing for ██████████

On [REDACTED] the Department's Hartford regional office failed to call the Appellant and her AREP into the administrative hearing.

On [REDACTED] OLCRAH issued a notice rescheduling the administrative hearing for [REDACTED]

On [REDACTED] the AREP requested to reschedule the administrative hearing.

On [REDACTED] OLCRAH issued a notice rescheduling the administrative hearing for [REDACTED]

On [REDACTED] the AREP requested to reschedule the administrative hearing.

On [REDACTED] OLCRAH issued a notice rescheduling the administrative hearing for [REDACTED]

On [REDACTED] in accordance with sections 17b-60, 17b-61, and 4-176e to 4-184, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals participated in the hearing:

[REDACTED] the Appellant

[REDACTED] Appellant's daughter

[REDACTED] Appellant's AREP

Shanita Stephenson, Department's Representative via telephone

Agatha Okeke, Department's Observer

Sara Hart, Hearing Officer

The Applicant was not present at the administrative hearing due to his institutionalization.

STATEMENT OF THE ISSUE

The first issue is whether the Appellant qualifies for an adjustment of her CSA and MMNA due to exceptional circumstances.

A secondary issue is whether the Department correctly calculated the Applicant's Patient Liability Amount ("PLA") under the HUSKY C LTSS program.

FINDINGS OF FACT

1. On [REDACTED] the Applicant submitted an application to the Department requesting HUSKY C LTSS Medicaid. (*Exhibit 1: W1LTC, Hearing Record*)
2. The Applicant has been a resident of [REDACTED] since [REDACTED] [REDACTED] (*Hearing Record*)
3. [REDACTED] is the Applicant's spouse and resides in the community. (*Hearing Record*)
4. The Applicant's gross monthly Social Security ("SSA") benefit equals \$2,080.10. (*Hearing Record*)
5. The Applicant's monthly Medicare B premium equals \$170.00. (*Hearing Record*)
6. The Department began paying the Applicant's Medicare B premium under the Qualified Medicare Beneficiary program effective [REDACTED] (*Exhibit 11: NOA [REDACTED]*)
7. The Appellant's monthly gross income consists of a \$1,139.10 SSA benefit, a \$137.48 [REDACTED] pension, and a \$351.03 [REDACTED] pension. (*Exhibit 1B; Spouse's Testimony*)
8. The Appellant does not pay a mortgage. (*AREP's Testimony*)
9. The Appellant's annual property tax equals \$3,215.19. (*Exhibit 4: [REDACTED] Taxpayer information*)
10. The Appellant's annual homeowner's insurance policy expense equals \$1,214.79. (*Exhibit 5: [REDACTED] Policy*)
11. The Department calculated the Appellant's monthly shelter cost as \$369.16. (*Exhibit 6: PLA*)
12. The Appellant was allowed a monthly standard utility allowance ("SUA") of \$783.00 beginning in [REDACTED] and \$921.00, effective [REDACTED] (*Exhibit 6*)
13. On [REDACTED] the Department issued a NOA to the Applicant approving his HUSKY C LTSS coverage with an effective date of [REDACTED] and indicating that his PLA equaled \$786.20 effective [REDACTED] through [REDACTED] \$708.32 effective [REDACTED] through [REDACTED] and \$570.32 effective [REDACTED] through [REDACTED] (*Exhibit 11: NOA, [REDACTED]*)

14. In [REDACTED] the AREP informed the Department that the Appellant incurred two separate expenses of \$1,824.00 and \$170.00 in September of 2022 for the cost of a replacement oil tank in her home. (*AREP's Testimony*)
15. There is no evidence in the hearing record that the Appellant requires assistance with her activities of daily living; nor is there evidence in the hearing record that she has circumstances that directly threaten her ability to remain in the community; or involve her providing constant and essential care for a disabled child, sibling or other immediate relative (other than the Applicant). (*Hearing Record*)
16. On [REDACTED] the Appellant requested an administrative hearing. (*Hearing Record*)
17. The issuance of this decision is timely under the Connecticut General Statutes § 17b-61(a), which requires that the Department issue a decision within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED] with this decision due [REDACTED]. The AREP's requests to reschedule the administrative hearing resulted in a sixty-eight-day delay, therefore, this decision is due [REDACTED]. (*Hearing Record*)

CONCLUSIONS OF LAW

1. Connecticut General Statutes Section 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 ("UPM") 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)).
3. UPM § 4000.01 defines an institutionalized spouse as 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.

UPM § 4000.01 defines 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.

The Applicant, [REDACTED] is an Institutionalized Spouse ("IS"). The Appellant, [REDACTED] is a Community Spouse ("CS").

4. 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.

UPM § 5045.20 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.

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.

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 that the Applicant's monthly gross income equals \$2,080.10.

5. 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.

2022 Supplement to Conn. Gen. Stat. § 17b-272 provides 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.

The Department correctly allowed the Appellant a PNA of \$75.00 effective [REDACTED]

6. UPM § 5035.25(B)(4) provides that Medicare and other health insurance premiums, deductibles, and coinsurance costs are allowable deductions when not paid for by the Department or any other third party.

The Department correctly allowed a deduction for the cost of the Appellant's Medicare B premium.

7. UPM § 5035.25(B)(2) provides that a Community Spouse Allowance (“CSA”) is an allowable deduction from the income of assistance units in LTCF’s when appropriate. (Cross Reference 5035.30)

UPM § 5035.30(A)(1) provides that 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 benefit of the CS.

The Department correctly determined that the Appellant’s/CS’s monthly gross income equals \$1,627.61 (\$1,139.10 SSA + \$137.48 [REDACTED] + \$351.03 [REDACTED])

8. UPM § 5035.30(B)(1) provides that the calculation of 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.

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.

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.

UPM § 5035.30(B)(4) provides the community spouse's monthly shelter cost includes: a. rental cost 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. the Standard Utility Allowance (SUA) used in the SNAP program for the community spouse.

UPM § 5035.30(B)(5) provides that 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 two is \$18,310.00 annually [*Federal Register/Vol. 87, No. 14/ Friday, January 21, 2022, page 3316*]

The Department correctly determined that 150% of the FPL for two persons equaled \$2,177.50 effective [REDACTED].

The Department correctly determined 30% of \$2,177.50 equals \$653.00.

Beginning [REDACTED], the SUA increased from \$783.00 to \$921.00. (*United States Department of Agriculture, Food and Nutrition Service SNAP SUA Table FY2022, November 2022*)

The Appellant's/CS' monthly property taxes equal \$267.93 ($\$3,215.19/12 \text{ months} = \267.93). The Appellant's/CS' monthly homeowner's insurance cost equals \$101.23 ($\$1,214.79/12 \text{ months} = \101.23).

The Department correctly determined the Appellant's/CS' shelter expenses equaled \$1,152.16 ($\$267.93 \text{ property taxes} + \$101.23 \text{ home insurance} + \783.00 SUA) for the months of [REDACTED] through [REDACTED] and \$1,290.16 ($\$267.93 \text{ property taxes} + \$101.23 \text{ home insurance} + \921.00 SUA) effective October 2022.

The Department correctly determined that the Appellant's/CS' MMNA was \$2,676.40 for the months of [REDACTED] through [REDACTED] ($\$2,177.50 + \$498.90 \text{ Excess Shelter costs}$), \$2,754.27 for the months of [REDACTED] through [REDACTED] ($\$2,288.75^1 + \$465.52 \text{ Excess Shelter costs}$), and \$2,892.27 effective [REDACTED] ($\$2,288.75 + \$603.52 \text{ Excess Shelter costs}$).

9. 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.

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.

¹ Effective [REDACTED], the Minimum MMNA increased to \$2,288.75; Reference CMS Informational Bulletin [REDACTED], Subject Updated [REDACTED] SSI and Spousal Impoverishment Standards

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 Appellant/CS does not have exceptional circumstances that are severe and unusual and that: prevent her from taking care of her activities of daily living; or directly threaten her ability to remain in the community; or involve her providing constant and essential care for his or her disabled child, sibling or other immediate relative (other than institutionalized spouse); therefore, the Appellant/CS' expense for a new oil tank does not meet the criteria for exceptional circumstances. In addition, the expense for the replacement of household expenses is already factored into the MMNA.

The Appellant/CS is not entitled to an increase in the MMNA because there are no exceptional circumstances.

The Department correctly determined that the Appellant's/CS' CSA for the months of [REDACTED] through [REDACTED] as outlined below:

Shelter Costs:	Amount
Property Tax	\$267.93
Homeowners Insurance	\$101.23
Standard Utility Allowance	\$783.00
Total shelter costs:	\$1,152.16
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>- \$653.25</u>
Excess shelter costs:	\$ 498.91
Plus 150% of the FPL for two:	<u>+\$2,177.50</u>
Equals the MMNA	\$2,676.41
Maximum MMNA	\$3,435.00
Community Spouse's Income	- \$1,627.61
Community Spouse Allowance	\$1,048.80 (rounded up)

The Department correctly determined the Appellant's/CS' CSA for the months of [REDACTED] through [REDACTED] as outlined below:

Shelter Costs:	Amount
Property Tax	\$267.93
Homeowners Insurance	\$101.23
Standard Utility Allowance	\$783.00
Total shelter costs:	\$1,152.16
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>- \$686.63</u>
Excess shelter costs:	\$465.53
Plus 150% of the FPL for two:	<u>+\$2,288.75</u>
Equals the MMNA	\$2,754.28
Maximum MMNA	\$3,435.00
Community Spouse's Income	- \$1,627.61
Community Spouse Allowance	\$1,126.67 (rounded up)

The Department correctly determined the Appellant's/CS' CSA effective [REDACTED] as outlined below:

Shelter Costs:	Amount
Property Tax	\$267.92
Homeowners Insurance	\$101.23
Standard Utility Allowance	\$921.00
Total shelter costs:	\$1,290.15
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>- \$686.63</u>
Excess shelter costs:	\$ 603.52
Plus 150% of the FPL for two:	<u>+2,288.75</u>

Equals the MMNA	\$2,892.27
Maximum MMNA	\$3,435.00
Community Spouse's Income	- \$1,627.61
Community Spouse Allowance	\$1,264.67 <i>(rounded up)</i>

10. 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.

The Department correctly determined the Applicant's/IS' Applied Income effective [REDACTED] as outlined below:

\$2,080.10	IS's income
-\$75.00	Personal needs Allowance
-\$170.10	Medicare B Premium
-\$1,048.80	CSA
\$786.20	Applied Income

The Department correctly determined the Applicant's/IS' Applied Income effective [REDACTED] as outlined below:

\$2,080.10	IS's income
-\$75.00	Personal needs Allowance
-\$170.10	Medicare B Premium
-\$1,126.67	CSA
\$708.33	Applied Income

The Department correctly determined the IS' Applied Income effective [REDACTED] as outlined below:

\$2,080.10	IS's income
-\$75.00	Personal needs Allowance
-\$170.10	Medicare B Premium
-\$1,264.67	CSA
\$570.33	Applied Income

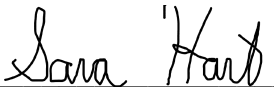
DISCUSSION

The Appellant requested an administrative hearing on [REDACTED], therefore, the Department's subsequent actions and NOAs issued after [REDACTED], were not considered in this decision. This decision addresses the Department's calculation of the Applicant's PLA at the time of the hearing request, based on the information provided to the Department at that time.

Although the community spouse has incurred a household expense that is 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**.


Sara Hart
Hearing Officer

Cc: Shanita Stephenson, Fair Hearing Liaison, Waterbury Regional Office
Katarzyna Olechowska, Operations Manager, Waterbury Regional Office
Randalynn Muzzio, Operations Manager, Waterbury Regional Office
Alex Sirios, Operations Manager, Waterbury Regional Office

RIGHT TO 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, 165 Capitol Avenue, 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.