

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 # 207550

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2022, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Approval for medical coverage under the Husky C Long Term Care Facilities Residents ("Husky C - LTC") medical program listing the community spousal allowance ("CSA") as \$1,603.90 effective ██████████ 2022.

On ██████████ 2022, ██████████ (the "Spouse"), the Appellant's spouse requested an administrative hearing on behalf of the Appellant to contest the Department's determination of the CSA.

On ██████████ 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2023.

On ██████████ 2023, 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's Spouse
██████████ Representative for the Appellant
and Spouse
Felicia Andrews, Department Representative
Lisa Nyren, Fair Hearing Officer

The record remained open for the submission of additional evidence from the Appellant. On [REDACTED] [REDACTED] 2023, the hearing officer received additional information from the Appellant and forwarded to the Department. On [REDACTED] [REDACTED] 2023, the record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Appellant qualifies for an increase in the CSA under the Husky C – LTC program beginning [REDACTED] [REDACTED] 2022.

FINDINGS OF FACT

1. The Appellant is married to the Spouse. (Stipulated)
2. The Spouse resides at home in the community. (Stipulated)
3. On [REDACTED] [REDACTED] 2022, [REDACTED] (the “facility”), a skilled nursing facility, admitted the Appellant to their facility. (Stipulated)
4. The Department granted the Appellant medical coverage under the Husky C - LTC program effective [REDACTED] [REDACTED] 2022. (Exhibit 2: Notice of Action)
5. The Spouse receives gross Social Security Benefits (“SSA”) of \$1,831.10 monthly. Beginning [REDACTED] [REDACTED] 2023, SSA increased to \$1,989.90 monthly. (Stipulated)
6. The Spouse pays the following monthly expenses:
 - Rent \$1,100.00, effective [REDACTED] [REDACTED] 2022 rent increased \$1,600.00
 - Renter’s insurance \$351.00 annually, \$29.25/month
 - Spectrum Internet and Telephone \$99.98;
 - Eversource electricity \$63.78;
 - Home heating fuel - oil;
 - GM Financial Car loan \$277.42;
 - Geico Car insurance \$91.66;
 - Life insurance \$280.64.
 - Gasoline for car
 - Groceries/food
 - Credit card debt

(Exhibit 1: CSA Calculation, Exhibit 3: Residential Lease, Exhibit 5: Updated Lease and Exhibit A and B: Supporting Documents)

7. The Spouse pays for the following medical premiums and expenses:

- Medicare Part B \$170.10 (\$164.90 effective 1/1/23);
- Medicare Prescription Plan \$35.30
- [REDACTED] & Personal Health [REDACTED] \$210.25;
- [REDACTED] \$44.00
- Monthly prescription costs vary from \$54.34 [REDACTED] 2022, \$14.31 [REDACTED] 2022, \$38.48 [REDACTED] 2023
- One time purchase eyeglasses, \$204.99 [REDACTED] 2023

(Exhibit A and B: Supporting Documents)

8. The Spouse was diagnosed with cancer and requires medication for treatment. The medication is covered by the Appellant's insurance except for her co-pay. However, the Appellant receives financial assistance from the drug company and does not incur any additional costs for this medication. (Spouse's Testimony)
9. One hundred fifty percent (150%) of the Federal Poverty Level for two (2) equals \$2,288.75. (Exhibit 1: CSA Calculation)
10. The minimum monthly needs allowance ("MMNA") is capped as \$3,435.00 as determined by state regulations. (Department Representative's Testimony)
11. The Department uses a standard utility allowance ("SUA") of \$921.00 in place of actual utility costs when calculating the Appellant's total shelter costs. SUA includes such utility costs heat, electricity, and telephone. (Department Representative's Testimony)
12. The Department calculated the CSA as \$1,603.90.

\$1,100.00 Rent + \$29.26 Rent Insurance + \$921.00 SUA = \$2,050.25
Total Shelter Costs

\$2,288.75 FPL for 2 x 30% = \$686.63

\$2,050.25 Total Shelter Costs - \$686.63 30% FPL = \$1,363.62 Excess
Shelter Costs

\$1,363.62 Excess Shelter Costs + \$2,288.75 150% FPL for 2 = \$3,652.37
calculated MMNA

\$3,435.00 MMNA Cap - \$1,831.10 Appellant's gross income = \$1,603.90
CSA

(Exhibit 1: CSA Calculation and Exhibit 2: Notice of Action)

13. The Spouse is seeking an increase in the CSA so that she may continue to afford to reside in her apartment in the community. (Hearing Record)
14. 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 close of the hearing record, which had been anticipated to close on [REDACTED] [REDACTED] 2023, did not close for the admission of evidence until [REDACTED] [REDACTED] 2023 at the Appellant's request. Because this [REDACTED]-day delay in the close of the hearing record arose from the Appellant's request, 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 institutionalized spouse (IS) only when the IS makes the allowance available to the community spouse (CS) or for the sole benefits of the CS.

“Deductions as those amounts which are subtracted as adjustments to counted income and which represent expenses paid by the assistance unit.” UPM § 5000.01

5. Department policy provides for the definitions of the following:

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 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 Appellant as the institutionalized spouse.

The Department correctly determined the Spouse as the community spouse.

6. Department policy provides for the calculation of CSA 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 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 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/ Friday January 21, 2022]

The Department correctly determined 150% of the federal poverty level ("FPL") for two as \$2,288.75. [\$18,310.00 FPL for 2 / 12 months = \$1,525.833 x 150% = \$2,288.75]

The Department correctly determined 30% of 150% of the FPL as \$686.63. [\$2,288.75 x 30% = \$686.625]

The Department correctly determined the Appellant's monthly shelter costs as \$2,050.25. (\$1,100.00 rent + \$29.25 renter's insurance + \$921.00 standard utility allowance = \$2,050.25)¹

The Department correctly determined the excess shelter costs as \$1,363.62. (\$2,050.25 shelter costs - \$686.63 30% of 150% of FPL for 2 = \$1,363.62)

The Department correctly determined the MMNA as \$3,435.00, the maximum allowed. (\$1,363.62 excess shelter costs + \$2,288.75 150% of FPL for 2 = \$3,652.37) 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.

¹ The increase in rent from \$1,100 to 1,600 monthly does not impact the MMNA as the Spouse received the maximum allowed without the application of the \$1,600 rent. (\$1,600 rent + \$29.25 insurance + \$921 SUA = \$2,550.25 shelter - \$686.63 30% of FPL = \$1,863.62 + \$2,288.75 = \$4,152.37, capped at \$3,435.00.

The Department correctly determined the CSA as \$1,603.90. (\$3,435.00 MMNA - \$1,831.10 Appellant's gross income = \$1,603.90)

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 § 1500.01

The Spouse’s request for an increase in the CSA is denied. The Spouse failed to establish she meets the criteria for exceptional circumstances resulting in financial duress. Under department policy monthly household expenses such as rent, insurance, and utility costs are already factored into the MMNA. Medical expenses reflecting the normal frailties of old age such as insurance premiums and co-pays are also included under the MMNA. The Spouse’s medical condition does not prevent her from completing activities of daily living or threaten her ability to remain in the community. Although the Spouse’s cost of living has increased as household expenses continue to rise with the increase in cost of goods and services, 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: [REDACTED]

[REDACTED]
Sarah Chmielecki, SSOM RO #20
Tim Latifi, SSOM RO #20
Ralph Filek, DSS RO #20
Felicia Andrews, 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.