

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

April [REDACTED]  
Signature Confirmation

Client ID #: [REDACTED]  
Case #: [REDACTED]  
Request #: 209958

**NOTICE OF DECISION**

**PARTY**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**PROCEDURAL BACKGROUND**

On [REDACTED] 2022, the Department of Social Services (the "Department") sent [REDACTED], the Institutionalized Spouse (the "Appellant" and "IS"), a Notice of Action ("NOA") notifying him of the continued approval for medical coverage under the Husky C Long Term Care Facility Residents ("Husky C-LTC") medical program listing the Community Spousal Allowance ("CSA") as \$1,374.75 for December 2022, and \$1,515.96, effective [REDACTED] 2023.

On [REDACTED] 2023, [REDACTED] the Appellant's community spouse (the "Spouse" or "CS"), requested an administrative hearing to contest the Department's determination of the CSA.

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

On [REDACTED], 2023, OLCRAH, at the Spouse's request, issued a notice rescheduling the administrative hearing for [REDACTED] 2023.

On [REDACTED] 2023, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an in person administrative hearing with the [REDACTED] Regional office.

The following individuals participated in the hearing:

██████████, Appellant's spouse  
 ██████████, Appellant's daughter/Authorized Representative  
 Rosemary Longo, Department's Representative (Observer)  
 Amanda Guillemette, Department's Long Term Support Service Representative  
 Amy MacDonough, Fair Hearing Officer

The Appellant/IS did not participate in the hearing due to being institutionalized.

The hearing record remained open for the CS and the Department to submit additional evidence. The Department provided said information on ██████████ 2023. The Appellant provided said information on ██████████, 2023. On ██████████ 2023, as agreed upon by both parties, the record closed.

### **STATEMENT OF THE ISSUE**

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

The secondary issue is whether the Department correctly calculated the CSA.

### **FINDINGS OF FACT**

1. The Appellant/IS is ██████ years old [DOB: ██████████] and has been a resident of ██████████ Connecticut (the "facility") for the last four years. *(CS' Testimony)*
2. The ██████████ [DOB: ██████████] and resides at home in the community. *(CS' Testimony)*
3. On ██████████ 2022, the CS submitted a renewal form ("W1ER") for the Appellant/IS' Husky C-LTC program. *(Hearing summary; Exhibit 8: Notice of Renewal of Eligibility)*
4. The Appellant/IS receives gross Social Security Benefits ("SSA") of \$2,290.00 monthly. As of ██████████ 2023, his SSA increased to \$2,489.00 monthly. *(Hearing Summary; CS' Testimony; Exhibit 3: Notice of Action)*
5. The CS receives gross Social Security Benefits ("SSA") of \$1147.00 monthly. As of ██████████ 2023, her SSA increased to \$1247.00 monthly. *(Hearing Summary; CS' Testimony)*

6. The CS also receives \$850.00 monthly from rental income, and \$63.25 monthly from dividend income. As of [REDACTED] 2022, the rental income increased to \$950.00 monthly. *(Hearing summary; CS' Testimony; Exhibit 6: Rental Income Letter from Tenant; Exhibit 11: Dividend Income Verification; Exhibit A: Supporting Documents)*
7. On [REDACTED] 2023, the Department corrected an error in the calculation of the CS' rental income. The Department allowed for self-employment deductions and determined the countable rental income as \$233.33 per month. *(Department's Testimony; Exhibit 12: 2021 Tax Return)*
8. The CS pays the following monthly expenses: mortgage of \$1153.09; [REDACTED] Public Utilities budget amount of \$375.00; and health insurance premium \$282.50. *(Hearing Record; Department's Testimony; CS' Testimony; Exhibit 7: Mortgage Statement; Exhibit 10: Health Insurance Premium bill; Exhibit 13: Copies of bills-Norwich Public Utilities)*
9. The Department used a Standard Utility Allowance ("SUA") of \$921.00 in place of actual utility costs when calculating the Appellant's total shelter costs. *(Department's Testimony)*
10. The CS does not pay for any additional dental or vision insurance and does not pay for any at home medical services for herself. She does not receive or require any in home care to assist with her activities of daily living. *(CS' Testimony)*
11. There is no evidence in the hearing record that the CS 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 IS). *(Hearing Record)*
12. The CS is active on the Medicare Savings Program through the Department, which pays for her Medicare part A and part B premium. *(Department's Testimony)*
13. The CS has incurred the following expenses for the upkeep of her home:
  - [REDACTED]/2022, [REDACTED] Heating system cleaning- \$420.66
  - [REDACTED]/2023, [REDACTED] No heat, service call- \$995.50
  - [REDACTED]/2022, [REDACTED] Installation Hydronic Package - \$1,470.86
  - [REDACTED]/2022, [REDACTED] LLC, Tree removal - \$2,127.00
  - [REDACTED]/2022, Unknown, Relit Pilot - \$63.81
  - [REDACTED]/2022, [REDACTED] Miscellaneous - \$36.94
  - [REDACTED]/2022, [REDACTED] Miscellaneous - \$101.52
  - [REDACTED]/2023, [REDACTED] 2<sup>nd</sup> floor work - \$500.00

*(Exhibit 13: Copies of Bills; Exhibit A; Exhibit B: Supporting Documents)*

14. The CS' home was built in [REDACTED] and will continue to require maintenance to upkeep the property due to the age of the home. (*CS' Testimony*)
15. The CS is not disputing the income the Department is using or the Department's calculations but is requesting an increase in the CSA due to recent and ongoing maintenance repairs to the home she resides in in the community. (*CS' Testimony; Department's Testimony*)
16. The issuance of this decision is timely under section 17b-61(a) of the Connecticut General Statutes, which requires that the agency issue a decision within 90 days of the request for an Administrative Hearing. The Appellant requested an administrative hearing on [REDACTED] 2023. The hearing record remained open for the submission of evidence by both parties. The hearing record closed on [REDACTED] 2023. With the 21 delay days due to rescheduling and holding the record open, this decision is due no later than [REDACTED] 2023.

### **CONCLUSIONS OF LAW**

1. Section 17b-2(6) of the Connecticut General Statute 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.

**The Department has the authority to administer the Medicaid program.**

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 § 5000.01 provides for definitions and states:

Institutionalized Spouse: 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.

Community Spouse: A community spouse is an individual who resides in the community, who does not receive home and community based services under 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 Department correctly determined the Appellant as the IS.**

**The Department correctly determined the Appellant's spouse as the CS.**

4. Section 17b-261(g) of the Connecticut General Statute provides for 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.

UPM § 5035.30(A)(1) provides for the use of Community Spouse Allowance (CSA) and states 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.

UPM § 5045.20 provides for post-eligibility treatment of income and states 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. For LTCF cases only, the amount to be contributed is projected for a six month period.

UPM § 5045.20(B)(1)(a) provides for the amount of income to be contributed in LTCF cases and states 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 for the amount of income to be contributed in LTCF cases and states total gross income is reduced by post-eligibility deductions (Cross reference: 5035-“Income Deductions”) to arrive at the amount of income to be contributed.

UPM § 5050.13(A)(1) provides for Social Security and Veterans’ Benefits. Income from these sources is treated as unearned income in all programs.

UPM § 5050.09(A) provides for Annuity, Pension and Trust payments. Payments received by the assistance unit from annuity plans, pensions and trusts are considered unearned income.

**The Department correctly determined the CS has Social Security income of \$1,147.00 and that the Social Security income increased to \$1,247.00, effective [REDACTED] 2023.**

**The Department correctly determined the CS has dividend income of \$63.25 monthly.**

5. UPM § 5050.69(A) provides for rental income for AFDC, AABD, FMA, and MAABD and states:
  1. Income received by the assistance unit from renting property to someone else is treated as:
    - a. earned self-employment income under the AFDC and AABD programs;
    - b. unearned self-employment income under the Medicaid programs unless the income is derived from a business enterprise.
  2. The total self-employment income earned each month is reduced by the following self-employment deductions when they are incurred:
    - a. Labor (wages paid to an employee or work contracted out);
    - b. Interest paid to purchase income producing property;
    - c. Insurance premiums;
    - d. Taxes, assessments, and utilities paid on income producing property;
    - e. Service and repair of business equipment and property;
    - f. Rental of business equipment and property;
    - g. Advertisement;
    - h. Licenses and permits;
    - i. Legal or professional fees;
    - j. Business supplies;
  3. When the rental property is:
    - a. Part of the home-occupied property of the assistance unit; only the expenses associated with the rented portion are considered as a deduction;
    - b. Not part of home-occupied property, the expenses are considered in total;
  4. The gross earned income which remains after consideration of self-employment expenses is reduced by all appropriate deductions and disregards;
  5. The remaining amount of money is applied income.

**The Department correctly determined the countable rental income as \$233.33 (\$2,800.00 Rental real estate from 2021 taxes / 12 months = \$233.33 per month) based on the CS' tax forms. The CS did not dispute these calculations.**

6. Title 7 of the Code of Federal Regulations ("C.F.R.") § 273.9(d)(6)(iii)(A) provides for standard utility allowance and states with FNS approval, a State agency may develop the following standard utility allowances (standards) to be used in place of actual costs in determining a household's excess shelter deduction: an individual standard for each type of utility expense; a standard utility allowance for all utilities that includes heating or cooling costs (HCSUA); and, a limited utility allowance (LUA) that includes electricity and fuel for purposes other than heating or cooling, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash

collection. The LUA must include expenses for at least two utilities. However, at its option, the State agency may include the excess heating and cooling costs of public housing residents in the LUA if it wishes to offer the lower standard to such households. The State agency may use different types of standards but cannot allow households the use of two standards that include the same expense. In States in which the cooling expense is minimal, the State agency may include the cooling expense in the electricity component. The State agency may vary the allowance by factors such as household size, geographical area, or season. Only utility costs identified in paragraph (d)(6)(ii)(C) of this section must be used in developing standards.

**The Department correctly used the standard utility allowance (“SUA”) of \$921.00 to calculate the CS’ shelter costs.**

7. 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, [REDACTED] 2022*)

The 2023 Poverty Guidelines for the 48 contiguous States and the District of Columbia for a household of 2 equals \$19,720.00. (*Federal Register/Vol. 88, No. 12/Thursday, [REDACTED] 2023/Notices*)

UPM § 5035.30(B) provides for the calculation of CSA and states:

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 provided 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 5035.30 B.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 5035.30 B.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 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.
5. The MMNA may not exceed the greatest of either:
  - a. the maximum MMNA; or

b. an amount established through a Fair Hearing.

**150% of the Federal Poverty Level (“FPL”) for a household of two is \$2288.75 for █████ 2022 through █████ 2023. (\$18,310.00 FPL for 2 / 12 months = \$1,525.83 x 150% = \$2,288.75)**

**30% of 150% of the FPL is \$686.63 for █████ 2022 through █████ 2023. (\$2,288.75 x 30% = \$686.63)**

**The Department correctly determined the shelter costs as \$2,074.09 (\$1,153.09 mortgage + \$921.00 SUA = \$2074.09)**

**The Department correctly determined the excess shelter costs as \$1,387.46. (\$2074.09 shelter expense – \$686.63 30% of 150% of FPL for 2 = \$1,387.46)**

**The Department correctly determined the MMNA as \$3,676.21 for 2022. (\$1,387.46 excess shelter cost + \$2,288.75 150% of FPL for 2 = \$3,676.21); however, the maximum MMNA is capped at \$3,435.00 for 2022.**

**The Department correctly determined the MMNA as \$3,676.21 for 2023. (\$1,387.46 excess shelter cost + \$2,288.75 150% of FPL for 2 = \$3,676.21). The maximum MMNA is capped at \$3,715.50 as of █████ 2023.**

8. UPM § 1570.25(D)(3) provides for non-administrative duties of Fair Hearing Official and states 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 of set of expenses that:
    1. directly arise 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 person property taxes;
  5. real estate, life and medical insurances;
  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.

**The 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 CS' expenses as indicated in Finding of Fact #13 does not meet the criteria for exceptional circumstances. In addition, the expenses for the upkeep and regular maintenance of the home are already factored into the MMNA. The CS is not entitled to an increase in the MMNA because there are no exceptional circumstances.**

**The Department incorrectly determined the CS' CSA for ██████████ 2022 as \$1932.50. The CS' CSA for the month of ██████████ 2022 is outlined below:**

Shelter Costs:	Amount
Mortgage	\$1,153.09
Standard Utility Allowance	+\$921.00
<b>Total Shelter Costs:</b>	<b>\$2,074.09</b>
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	<u>-\$686.63</u>
<b>Excess shelter costs:</b>	\$1,387.46
Plus 150% of the FPL for two:	<u>+\$2,288.75</u>
<b>Equals the MMNA</b>	\$3,676.21
<b>Maximum MMNA</b>	\$3,435.00
<b>Community Spouse's Income</b>	<u>-\$1,443.58</u>
<b>Community Spouse Allowance</b>	\$1,991.42

**The Department incorrectly determined the CS' CSA for ██████████ 2023 as \$2131.50. The CS' CSA for the month of January 2023 is outlined below:**

Shelter Costs:	Amount

Mortgage	\$1,153.09
Standard Utility Allowance	+\$921.00
<b>Total Shelter Costs:</b>	\$2,074.09
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	-\$686.63
<b>Excess shelter costs:</b>	\$1,387.46
Plus 150% of the FPL for two:	+\$2,288.75
<b>Equals the MMNA</b>	\$3,676.21
<b>Maximum MMNA</b>	\$3,715.50
<b>Community Spouse's Income</b>	\$1,543.58
<b>Community Spouse Allowance</b>	\$2,132.63

The Department correctly determined the CS' CSA for ██████████ 2023 and ongoing as \$2,132.63. The CS' CSA for ongoing benefits is outlined below:

Shelter Costs:	Amount
Mortgage	\$1,153.09
Standard Utility Allowance	+\$921.00
<b>Total Shelter Costs:</b>	\$2,074.09
Less base shelter costs [30% of 150% of the federal poverty level (FPL) for two]	-\$686.63
<b>Excess shelter costs:</b>	\$1,387.46
Plus 150% of the FPL for two:	+\$2,288.75
<b>Equals the MMNA</b>	\$3,676.21
<b>Maximum MMNA</b>	\$3,715.50
<b>Community Spouse's Income</b>	\$1,543.58
<b>Community Spouse Allowance</b>	\$2,132.63

### DECISION

The Appellant's appeal is **DENIED with respect to an increase in the CSA.**

The Appellant's appeal is **REMANDED to the Department to correct the CSA for the months of ██████████ 2022 and ██████████ 2023.**

**ORDER**

1. The Department must review and correct as appropriate the CS' CSA amount for the months of [REDACTED] 2022 and [REDACTED] 2023.
2. Compliance is due 10 days from the date of this hearing decision.

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Amy MacDonough  
Fair Hearing Officer

CC: Jessica Carroll, Operations Manager, DSS, [REDACTED] Regional Office  
Tonya Beckford, Operations Manager, DSS, [REDACTED] Regional Office  
Amanda Guillemette, Hearing Liaison, DSS, [REDACTED] Regional Office

### **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.