

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

Case # ██████████
Client ID # ██████████
Request # 211561

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2023, the Department of Social Services (the “Department”) determined the patient liability amount (“PLA”) that ██████████ ██████████ (the “Institutionalized Spouse/IS”) must pay toward his cost of care as \$2,261.21 for ██████████ 2023 and \$2,617.56 for ██████████ 2023 on-going, under the Husky C-Long Term Care Facility Residents-Under Special Income Level Medicaid coverage (“Husky C-LTC”) with a Community Spousal Allowance (“CSA”) of \$192.97 for ██████████ 2023 and \$61.43 for ██████████ 2023 on-going.

On ██████████, 2023, ██████████ (the “Community Spouse/CS”), the Applicant’s spouse, requested an administrative hearing to contest the Department’s determination of the PLA and CSA.

On ██████████ 2023, 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.

The following individuals were present at the hearing:

██████████, Appellant

██████████, Appellant's Attorney
 Vanessa Vazquez, Department's Representative
 Alisha Richardson, Fair Hearing Officer

The hearing record remained open to allow the Department to submit additional documentation. Documentation was received from the Department on ██████████, 2023, and the Appellant's Representative response was received on ██████████, 2023. The hearing record closed on ██████████, 2023.

STATEMENT OF THE ISSUE

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

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

FINDINGS OF FACT

1. The Applicant is ██████████ [DOB: ██████████]. (Appellant's Testimony)
2. Beginning ██████████ 2018, the IS received Medicaid benefits under the Husky C-Home and Community Based Services program ("W01"). (CS's Exhibit A: Memorandum)
3. On ██████████, 2022, the IS was admitted to ██████████ (the "Facility"), a skilled nursing facility, with the diagnosis of ██████████. (CS Exhibit B: ██████████ NOA and Hearing Record)
4. On ██████████ 2022, ██████████ ("██████████"), the Department's contractor that administers approval of nursing home care, sent the IS a Notice of Action ("NOA") approving short-term nursing facility level of care ("NFLOC") for 90 days. (Exhibit A)
5. On ██████████ 2022, ██████████ sent the IS an NOA approving short-term NFLOC for 180 days. (Exhibit B)
6. On ██████████, 2023, the IS submitted a renewal of eligibility for W01 Medicaid benefits for himself. (Exhibit 5: Renewal Notice and Hearing Summary)
7. On ██████████, 2023, the Department mailed the IS a Proofs We Need notice ("VCL") requesting that the IS submits by ██████████, 2023, proof of the following: ██████████ checking account statement, verification of

- pooled trust contributions, verification of medical premiums and [REDACTED] savings account statement. The VCL provided examples of proof that would be acceptable to the Department. (Exhibit 14: Proofs We Need [REDACTED]/2023)
8. On [REDACTED], 2023, the Department mailed the IS a VCL requesting that the IS submit by [REDACTED], 2023, proof of the following: Proof of gross earnings for CS, checking account balance, proof of medical expenses, and proof of savings account balance. The VCL provided examples of proof that would be acceptable to the Department. (Exhibit 15: Proofs We Need [REDACTED]/2023)
 9. The Department received the following items from [REDACTED], 2023, VCL notice: [REDACTED] checking account statement, [REDACTED] savings account statement, Pool Trust contributions, property tax bill, homeowners insurance policy, CS's wage stubs, SSA income for IS, and SSA income for CS. (Exhibit 9,16, 17, 18, 19, 20, 21, and 22)
 10. The IS receives Social Security benefits ("SSA") of \$2,918.90 monthly. (Exhibit 19: SSA Adjustment)
 11. The IS has Medicare Part B for which he pays a \$164.90 monthly premium. (Exhibit 19)
 12. The CS is married to the IS and lives alone at home at [REDACTED], Connecticut ("Residence"). (CS's Testimony and Exhibit 5)
 13. The CS is [REDACTED] [DOB: [REDACTED]]. (CS's Testimony and Exhibit 5)
 14. The CS receives SSA benefits of \$1,165.00 per month (Exhibit 20: SSA Adjustment)
 15. The CS is employed with [REDACTED] She is paid biweekly. (Exhibit 9: Wage Stubs)
 16. The CS only works during the 10-month school year and does not receive income from her employer during summer, winter, and spring school breaks. (CS's Representative Testimony and Exhibit A)
 17. The CS submitted four consecutive biweekly wage stubs to the Department. The chart below lists the date and gross amount of each wage stub submitted:

Date of Wage Stub	Gross Amount of Wage Stub
[REDACTED] 2022	\$1,088.64
[REDACTED], 2022	\$1,209.80

██████████ 2023	\$846.72
██████████, 2023	\$907.20

18. The CS has medical, dental, and vision coverage with her employer, for which she pays \$146.66, \$6.49, and \$1.07 biweekly. (Exhibit 9)
19. The CS pays a property tax of \$518.91 per month and homeowners' insurance of \$194.67 monthly on her residence. (Exhibit 21: Property Tax Bill and Exhibit 22: Homeowners Insurance)
20. The CS received the standard utility allowance ("SUA") of \$921.00 instead of actual utility costs to calculate the total shelter costs. (Exhibit 12: CSA calculation)
21. The Department calculated the CSA as follows: \$588.77 (shelter cost) + \$921.00 (SUA) = \$1,509.77 (shelter expense) - \$686.63 (\$2,288.75 (150% of FPL for 2 individuals) x .30) = \$823.14 (excess shelter expense) + \$2,288.75 (150% of FPL for 2 individuals) = \$3,111.89 (Minimum Monthly needs Allowance) - \$3050.46 (CS's Income) = \$61.43 (CSA). (Exhibit 12: CSA calculation)
22. The Department calculated the PLA as follows: \$2,918.90 (Social Security) - \$75.00 (Personal Needs Allowance) - \$164.90 (Medicare Part B premium) = \$2,679.00 - \$61.43 (CSA) = \$2,617.56 (Exhibit 13: PLA calculation)
23. On ██████████ 2023, the third-party Cigna Medical Premium medical expense of \$224.81 was removed as the IS no longer pays this expense. (Exhibit 11: Case Note dated ██████/2023)
24. On ██████████ 2023, the Department sent the IS a NOA approving the Husky C-Long Term Care Medicaid assistance effective ██████████ 2023. The monthly PLA is determined to be \$2,261.21 and the monthly CSA is \$192.97 for ██████████ 2023. The PLA for ██████████ 2023 and ongoing is determined to be \$2,617.56 due to the removal of a third-party medical expense and the CSA is \$61.43. (Exhibit 10: NOA ██████/2023)
25. At the time of this hearing, the IS remains institutionalized at the facility. The IS has not been discharged since the initial admission on ██████████, 2022. (Hearing Record)
26. 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 hearing request was received on ██████████ 2023; therefore, this decision is due no later than ██████████, 2023.

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes ("Conn. Gen. Stat.") authorizes the Commissioner of the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.

The Department has the authority to administer the Medicaid Program.

2. Conn. Gen. Stat. § 17b-261(g) provides 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.
3. "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)).
4. UPM § 5000.01 provides for the definition of Institutionalized Spouse and states 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.
5. UPM § 5000.01 provides for the definition of Community Spouse and states 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.

The Department correctly determined the Applicant as the institutionalized spouse.

The Department correctly determined the Appellant as the community spouse.

6. UPM § 5000.01 provides for the definition of Available Income and states Available income is all income from which the assistance unit is considered to benefit, either through actual receipt or by having the income deemed to exist for its benefit.
7. UPM § 5050.13(A)(1) provides for Social Security and Veterans' Benefits. Income from these sources is treated as unearned income in all programs.
8. UPM § 5005(A) provides for consideration of income, the Department counts the assistance unit's available income, except to the extent that it is specifically excluded. Income is considered available if it is: 1. received directly by the assistance unit; or 2. received by someone else on behalf of the assistance unit and the unit fails to prove that it is inaccessible; or 3. deemed by the Department to benefit the assistance unit.

The Department correctly determined that the IS's Social Security of \$2,918.90 per month and the CS's Social Security of \$1,165.00 per month are available unearned income.

9. UPM § 5025.10(A) provides for income received less frequently than monthly. The Department prorates payments over a period of time in the following situations:
 1. When the income was earned over a past period of time, the payment is averaged retroactively over the number of months in which it was earned;
 2. When the income is paid subject to an employment agreement which provides for periodic advances to cover future needs, the payment is averaged by the number of months for which it is intended;
 3. When the income consists of unearned income paid on installment basis either resulting from the nature of the source or pursuant to an agreement between the payor and payee, the payment is averaged over the number of future months the amount is intended to cover.

The Department incorrectly determined the CS's earned income as \$1,885.46. The CS is employed with [REDACTED] and is paid for a period shorter than one year. Therefore, her income should be averaged over the months in which it is earned. The correct earned income equals \$1,461.60.

$\$846.72 + \$907.20 = \$1,753.92 \times 10 = \$17,539.20/12 = \$1,461.60$
(Averaged Earned Monthly Income)

10. Conn. Gen. Stat. § 17b-261r(b) 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.

11. UPM § 5035.15P provides for Community Spouse Allowance (CSA).

1. Determine the community spouse's gross monthly income.
2. Subtract the community spouse's gross monthly income from the MMNA (Cross Reference P-5035.10).
3. Use, as the CSA, the greater of either the amount which results from step 2 or the amount ordered by a court, for court orders rendered prior to October 1, 1992.
4. Use, as the CSA, the greater of either the amount which results from step 2 or the amount ordered by a court other than a probate court, for court orders rendered on or after October 1, 1992. See step 5.
5. If a probate court order calls for a higher amount than that computed in step 2, do not allow the higher amount unless the order specifically states that the higher amount is needed to prevent financial duress. See step 6.
6. Allow the amount specified but make a referral to the Attorney General as soon as assistance is granted for a possible appeal of the probate court order.

12. UPM § 5035.30(A) provides for the use of CSA. 1. 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.

B. 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 5035.30 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.
13. The United States Department of Health and Human Services (“HHS”) issued a notice Effective [REDACTED], 2023, updating the 2023 Poverty Guidelines for the 48 Contiguous States and the District of Columbia. The Poverty Guidelines for a household of two is \$19,720.00. See [Federal Register :: Annual Update of the HHS Poverty Guidelines.](#)
14. One hundred fifty percent (150%) of the federal poverty level (“FPL”) for two equals \$2,465.00 ($\$19,720.00 \text{ FPL for } 2 / 12 \text{ months} = \$1,643.3333 \times 150\% = \$2,465.00$)
15. Thirty percent (30%) of 150% of the FPL equals \$739.50. ($\$2,465.00 \times 30\% = \739.50)
16. The United States Department of Agriculture Food and Nutrition Services issued guidance pertaining to changes to the Standard Utility Allowance (“SUA”). Effective [REDACTED] 2022, through [REDACTED], 2023, the Standard Utility Allowance in the State of Connecticut equals \$921.00 monthly. See [Standard Utility Allowances | Food and Nutrition Service \(usda.gov\).](#)
17. HHS, Centers for Medicare & Chip Services (“CMCS”) [REDACTED], 2022, Informational Bulletin, provided an update to the 2023 SSI and Spousal Impoverishment Standards. Effective [REDACTED], 2023, the maximum monthly maintenance needs allowance under spousal impoverishment rules equals \$3,715.50 and the minimum monthly needs allowance equals \$2,288.75. See [Spousal Impoverishment | Medicaid.](#)

The Department incorrectly determined the CS's monthly shelter cost as \$588.77. The correct shelter expense equals \$713.58 (\$518.91 (property tax) + \$194.67 (homeowners' insurance) = \$713.58).

$\$713.58$ (property tax and homeowners' insurance) + $\$921.00$ SUA = $\$1,634.58$ shelter cost

The Department incorrectly determined the excess shelter costs as \$823.14. The correct excess shelter cost equals \$895.08.

$\$1,634.58$ (shelter cost) - $\$739.50$ (30% of 150% of FPL for 2) = $\$895.08$ excess shelter cost.

The Department incorrectly determined the Minimum Monthly Needs Allowance ("MMNA") as \$3,111.89. The correct MMNA equals \$3,360.08.

$\$2,465.00$ (150% of FPL for 2) + $\$895.08$ (excess shelter cost) = $\$3,360.08$ MMNA.

The MMNA is capped at \$3,715.50 if the sum of the Appellant's excess shelter costs and 150% if the FPL exceeds \$3,715.50.

The Department incorrectly determined the CSA as \$61.43. The correct CSA equals \$733.48.

$\$3,360.08$ (MMNA) - $\$2,626.60$ ($\$1,165.00$ SSA + $\$1,461.60$ avg gross monthly income = $\$2,626.60$ Appellant's gross monthly income) = $\$733.48$ CSA.

CSA Calculation

	Amount
Shelter Cost	
Mortgage/Rent/Condo Fees	\$0.00
Homeowners Insurance	+\$194.67
Property Tax	+\$518.91
Standard Utility Allowance	+\$921.00
Total Shelter Cost	\$1,634.58
Less Base shelter cost [30% of 150% of the federal poverty level (FPL) for two]	-\$739.50
Excess Shelter	\$895.08
Plus 150% of FPL for two	+\$2,465.00
MMNA	\$3,360.08
Maximum MMNA	\$3,715.50
Community Spouse Income	\$2,626.60
Community Spouse Allowance	\$733.48

18. UPM § 5035.25 provides 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.
19. UPM § 5045.20 provides for Post-Eligibility treatment of Income. 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.
- A. Period for Which the Amount to be Contributed is Calculated. The amount of income to be contributed is calculated using the post-eligibility method starting with the month in which the 30th day of continuous LTCF care or receipt of community-based services occurs and ending with the month in which the assistance unit member is discharged from the LTCF or community-based services are last received.

The IS was admitted to [REDACTED] on [REDACTED], 2022.

The Department did not update the IS's case to calculate the income contribution after the 30th day of continuous LTCF services.

20. Title 42 of the Code of Federal Regulations ("C.F.R.") section 436.832(a) provides for basic rules (1) The agency must reduce its payment to an institution, for services provided to an individual specified in [paragraph \(b\)](#) of this section, by the amount that remains after deducting the amounts specified in [paragraphs \(c\)](#) and [\(d\)](#) of this section from the individual's total income. (2) The individual's income must be determined in accordance with [paragraph \(e\)](#) of this section. (3) Medical expenses must be determined in accordance with [paragraph \(f\)](#) of this section.

(b) *Applicability.* This section applies to medically needy individuals in medical institutions and intermediate care facilities.

(c) *Required deductions.* The agency must deduct the following amounts, in the following order, from the individual's total income as determined under [paragraph \(e\)](#) of this section. Income that was disregarded in determining eligibility must be considered in this process.

(1) *Personal needs allowance.* A personal needs allowance that is reasonable in amount for clothing and other personal needs of the

individual while in the institution. This protected personal needs allowance must be at least—

(i) \$30 a month for an aged, blind, or disabled individual, including a child applying for Medicaid on the basis of blindness or disability;

(ii) \$60 a month for an institutionalized couple if both spouses are aged, blind, or disabled and their income is considered available to each other in determining eligibility; and

(iii) For other individuals, a reasonable amount set by the agency, based on a reasonable difference in their personal needs from those of the aged, blind, or disabled.

(2) *Maintenance needs of spouse.* For an individual with only a spouse at home, an additional amount for the maintenance needs of the spouse. This amount must be based on a reasonable assessment of need but must not exceed the higher of—

(i) The amount of the highest need standard for an individual without income and resources under the State's approved plan for OAA, AFDC, AB, APTD, or AABD; or

(ii) The amount of the highest medically needy income standard for one person established under [§ 436.811](#).

(3) *Maintenance needs of family.* For an individual with a family at home, an additional amount for the maintenance needs of the family. This amount must—

(i) Be based on a reasonable assessment of their financial need;

(ii) Be adjusted for the number of family members living in the home; and

(iii) Not exceed the highest of the following need standards for a family of the same size:

(A) The standard used to determine eligibility under the State's Medicaid plan, as provided for in [§ 436.811](#).

(B) The standard used to determine eligibility under the State's approved AFDC plan.

(4) *Expenses not subject to third party payment.* Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses.

21. Supplement to Conn. Gen. Stat. § 17b-272 provides for personal fund allowance. 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 applied the following deductions from the IS's income: \$75.00 personal needs allowance, and \$164.90 Medicare premium.

The Department correctly determined the IS's income as \$2,918.90 (SSA income)

The Department incorrectly determined the IS's PLA as \$2,617.56. The correct PLA equals \$1,720.71 for ██████████ 2023 and \$1,945.52 for ██████████ 2023.

PLA Calculation for ██████████ 2023

Applicant Gross Income		\$2,918.90
PNA	-	\$75.00
Medicare Part B Premium	-	\$164.90
██████████ Medical Premium	-	\$224.81
CSA	-	\$733.48
PLA	=	\$1,720.71

PLA Calculation for ██████████ 2023

Applicant Gross Income		\$2,918.90
PNA	-	\$75.00
Medicare Part B Premium	-	\$164.90
CSA	-	\$733.48
PLA	=	\$1,945.52

22. UPM § 1570.25(D)(3) provides for 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.

23. UPM § 0500 provides for the glossary of terms. 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.
24. UPM § 1570.26(2) provides in relevant part "activities of daily living as bathing, dressing, transferring, toileting, feeding, preparing meals, administering medication, ambulating, controlling bladder and bowel."

The CS's situation does not meet the criteria for exceptional circumstances as monthly household expenses are already factored into the MMNA. The CS does not have exceptional circumstances that are severe and unusual and prevent her from taking care of her

activities of daily living, threaten her ability to remain in the community, or involve her providing constant and essential care for a disabled child, sibling, or immediate relative.

DISCUSSION

The IS was admitted to [REDACTED], a skilled nursing facility, on [REDACTED] 3, 2022. Per UPM § 5045.20 (see FOF #18), residents of LTC facilities are liable for a portion of their cost of care beginning the month in which the 30th day of continuous LTCF care occurs and ending with the month in which they are discharged. Per 42 C.F.R. § 409.61(a) through 42 C.F.R. § 409.61(b) Medicare could potentially cover up to 100 days of skilled nursing facility care after discharge from a hospital. The Applicant's benefits changed from a Home and Community-Based Services program ("W01") to a Long-Term Care Facility Residents program ("L01") because he received more than 30 days of continuous long-term care at [REDACTED]. Because of the delay in converting the W01 to an L01 until [REDACTED] 2023, this essentially allowed the IS to remain on the waiver benefit through [REDACTED] 2022 and avoid contributing to his cost of care.

The Department received a renewal form for the W01 from the IS in [REDACTED] 2023 and determined that he was no longer eligible for the waiver benefit. The verification request letter issued on [REDACTED] [REDACTED], 2023, requested the documentation needed to calculate a community spouse allowance. The CS provided the verifications, and the applied income was calculated. The Department was not able to predetermine the applied income and avoid assessing the PLA in arrears.

Regarding the CSA, the Department's CSA calculation was incorrect as they did not average the CS's income and the prior year's MMNA was used in error. The Department shall take corrective measures to accurately calculate and update the CSA and PLA.

DECISION

The Community Spouse's appeal is **GRANTED** in part.

ORDER

1. The Department shall update the CS's earned income to \$1,461.60 which is the average income calculation (see FOF #9) and update the CS's MMNA to \$3,360.08 (see FOF #17) from [REDACTED] 2023, [REDACTED] 2023, and ongoing.
2. The Department shall update the CSA using the updated earned income and MMNA figures above.
3. The Department shall update the PLA to \$1,720.71 for [REDACTED] 2023 and update the PLA to \$1,945.52 for [REDACTED] and ongoing.
4. Compliance with this order shall be submitted to the undersigned no later than [REDACTED] 2023, with the submission of the revised NOA.

Alisha Richardson

Alisha Richardson
Fair Hearing Officer

CC: Brian Sexton, SSOM Middletown Regional Office
[REDACTED], Appellant's Attorney
Vanessa Vazquez, Department's Representative
Amanda Guillemette, Department's Liaison

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.