

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 # 211885

NOTICE OF RECONSIDERED DECISION

PARTY

██████████
██████████
██████████
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PROCEDURAL BACKGROUND

On ██████████ 9, 2023, the Department of Social Services (the “Department”) determined the patient liability amount (“PLA”) that ██████████ ██████████ (the “Applicant”) must pay toward his cost of care as \$4,067.63 for January 2023 on-going, under the Husky C-Long Term Care Facility Residents-Spend-down Medicaid coverage (“Husky C-LTC”) with a Community Spousal Allowance (“CSA”) of \$1,835.25.

On ██████████ 2023, ██████████ (the “Appellant”), 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
██████████, ██████████

Amanda Guillemette, Department's Representative
Alisha Richardson, Fair Hearing Officer

On June 23, 2023, the undersigned granted a reconsideration based on her own motion for the purpose of reviewing the PLA and CSA calculation.

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 [REDACTED] [DOB: [REDACTED]]. (Appellant's Testimony and Exhibit 1: Renewal Notice)
2. On [REDACTED], 2022, the Applicant was admitted to [REDACTED] [REDACTED] [REDACTED] (the "Facility"), a skilled nursing facility. (Appellant's Testimony)
3. On [REDACTED], 2023, the Department received a renewal notice for Long Term Care ("LTC") Medical assistance. (Hearing Record)
4. On [REDACTED] 2023, the Department sent the Applicant a Notice of Action approving the Husky C-Long Term Care Medicaid assistance effective [REDACTED] 2023. The monthly PLA was determined to be \$4,606.23. (Exhibit 8: NOA [REDACTED]/2023)
5. On [REDACTED], 2023, the Department sent a Notice of Action to the Applicant stating the PLA is \$4,112.31, due to the removal of an unpaid medical expense. The monthly CSA was determined to be \$1,851.41. (Exhibit 8: NOA [REDACTED] 2023)
6. The Applicant receives Social Security benefits ("SSA") of \$3,318.90 per month and a [REDACTED] pension ("pension") of \$3,378.59 per month. (Exhibit 11: Notice of Action dated [REDACTED]/2023 and Exhibit 2: [REDACTED] Statement)
7. The Applicant has Medicare Part B for which he pays a \$164.90 monthly premium and medical and dental coverage with [REDACTED], for which he pays \$518.22 and a \$42.48 monthly premium. (Exhibit 2 and Department's Testimony)

8. The Appellant is married to the Applicant and lives alone at home at [REDACTED], Connecticut ("residence"). (Appellant's Testimony)
9. The Appellant is [REDACTED] [DOB: [REDACTED]]. (Appellant's Testimony and Exhibit 1: Renewal Notice)
10. The Appellant receives SSA of \$1,313.90 per month. (Appellant's Testimony and Department's Testimony)
11. The Appellant pays a property tax of \$548.86 per month and homeowners' insurance of \$79.17 monthly on her residence. (Exhibit 3: Property Tax Bill, and Exhibit 4: Homeowners Policy)
12. The Appellant pays for the utilities in the home which include gas, electricity, water, telephone, and internet. The Appellant pays for all maintenance expenses associated with owning a home such as lawn care, snow removal, and trash removal. (Appellant's Testimony)
13. The Appellant received the standard utility allowance ("SUA") of \$921.00 in place of actual utility costs to calculate the Appellant's total shelter costs. (Hearing Record and Exhibit 16: [REDACTED] Community Spouse Calculation)
14. On [REDACTED] 2023, the Department updated the following for the Applicant: homeowners' insurance premium, dental insurance premium, medical insurance premium, and the effective date of his [REDACTED] Pension. (Hearing Record)
15. The Department calculated the CSA as follows: \$626.03 (shelter cost) + \$921.00 (SUA) = \$1,547.03 (shelter expense) - \$686.63 (\$2,288.75 (150% of FPL for 2 individuals) x .30) = \$860.40 (excess shelter expense) + \$2,288.75 (150% of FPL for 2 individuals) = \$3,149.15 (Minimum Monthly needs Allowance) - \$1,313.90 (Appellant's SSA) = \$1,835.25. (Exhibit 16: [REDACTED] CSA calculation)
16. The Department calculated the PLA as follows: \$6,697.49 (\$3,318.90 (Social Security) + \$3,378.65 (Pension)) - \$75.00 (Personal Needs Allowance) - \$164.90 (Medicare Part B premium) - \$560.70 (Dental and Medical premium) = \$5,896.89 - \$1,835.25 (CSA) = \$4,061.63 (Exhibit 14: [REDACTED] PLA calculation)
17. On [REDACTED] 2023, the Department sent the Applicant a Notice of Action approving the Husky C-Long Term Care Medicaid assistance effective [REDACTED], 2023. The monthly PLA is determined to be \$4,061.63 and the monthly CSA is \$1,835.25. (Exhibit 8: NOA [REDACTED]/2023)

18. 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 [REDACTED], 2023; therefore, this decision is due no later than [REDACTED], 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. Conn. Gen. Stat. § 17b-261r(a) provides for the determination of applied income. 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.
7. 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.
8. UPM § 5000.01 provides for the definition of Applied Income and states Applied income is that portion of the assistance unit's countable income that remains after all deductions and disregards are subtracted.
9. 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.
10. UPM § 5050.13(A)(1) provides for Social Security and Veterans' Benefits. Income from these sources is treated as unearned income in all programs.
11. 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 Applicant's Social Security of \$3,318.90 per month and Pension of \$3,378.59 per month are available unearned income.

12. 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.
13. 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.
14. Title 42 of the United States Code ("U.S.C") 1396r-5 section 1924(d)(3)(A)(i-ii) provides for the establishment of a minimum monthly needs allowance for community spouses. (A) In general.—Each State

shall establish a minimum monthly maintenance needs allowance for each community spouse which, subject to subparagraph (C), is equal to or exceeds—(i) the applicable percent (described in subparagraph (B)) of 1/12 of the income official poverty line (defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981^[288]) for a family unit of 2 members; plus (ii) an excess shelter allowance (as defined in paragraph (4)). A revision of the official poverty line referred to in clause (i) shall apply to medical assistance furnished during and after the second calendar quarter that begins after the date of publication of the revision.

15. The United States Department of Health and Human Services (“HHS”) issued a notice Effective [REDACTED], 2022, updating the 2022 Poverty Guidelines for the 48 Contiguous States and the District of Columbia. The Poverty Guidelines for a household of two is \$18,310.00. See [Federal Register :: Annual Update of the HHS Poverty Guidelines](#)
16. One hundred fifty percent (150%) of the federal poverty level (“FPL”) for two equals \$2,288.75 (\$18,310.00 FPL for 2 / 12 months = \$1,525.833 x 150% = \$2,288.75)
17. Thirty percent (30%) of 150% of the FPL equals \$686.63. (\$2,288.75 x 30% = \$686.63)
18. 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 \(usda.gov\)](#).
19. HHS, Centers for Medicare & Chip Services (“CMCS”) November 18, 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 Appellant’s monthly shelter cost as \$626.03. The correct shelter expense equals \$628.03 (\$548.86 (property tax) + \$79.16 (homeowners’ insurance) = \$628.03).

\$628.03 (property tax and homeowners’ insurance) + \$921.00 SUA = \$1,549.02 shelter cost

The Department incorrectly determined the excess shelter costs as \$860.40. The correct excess shelter cost equals \$862.39.

$\$1,549.02$ (shelter cost) - $\$686.63$ (30% of 150% of FPL for 2) = $\$862.39$ excess shelter cost.

The Department incorrectly determined the Minimum Monthly Needs Allowance ("MMNA") as \$3,149.15. The correct MMNA equals \$3,151.14.

$\$2,288.75$ (150% of FPL for 2) + $\$862.39$ (excess shelter cost) = $\$3,151.14$ 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 \$1,835.25. The correct CSA equals \$1,837.24.

$\$3,151.14$ (MMNA) - $\$1,313.90$ (Appellant's gross income) = $\$1,837.24$ CSA.

20. 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.
21. 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.

22. 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.

Applicant Gross Income		\$6,697.49
PNA	-	\$75.00
Medicare B Premium	-	\$164.90
██████ Medical Premium	-	\$518.22
██████ Dental Premium	-	\$42.48
CSA	-	\$1,837.24
PLA	=	\$4,059.65

The Department correctly applied the following deductions from the Applicant's income: \$75.00 personal needs allowance, \$164.90 Medicare premium, and \$560.70 healthcare premium deduction.

The Department correctly determined the Applicant's income as \$6,697.49 (\$3,318.90 SSA + \$3,378.59 pension = \$6,697.49)

The Department incorrectly determined the Applicant's PLA as \$4,061.63. The correct PLA equals \$4,059.65.

DISCUSSION

The United States Department of Health and Human Services allows for the Department to use a different effective date for the Poverty Guidelines. Per 42 U.S.C 1396r-5 § 1924(d)(3)(A)(ii) a revision of the official poverty line referred to in clause (i) shall apply to medical assistance furnished during and after the second calendar quarter that begins after the date of publication of the revision see (FOF #14). Although HHS issued the 2023 Poverty Guidelines on January 12, 2023, the Department's effective date for the 2023 Poverty Guidelines begins ████████, 2023.

DECISION

The Appellant's appeal is **GRANTED**

ORDER

1. The Department shall review and correct as appropriate the Appellant's CSA for the month of [REDACTED] 2023 and ongoing months to include the correct shelter expenses, excess shelter cost, and MMNA (see FOF #19).
2. The Department shall review and correct the Applicant's PLA for the month of [REDACTED] 2023 and ongoing months to include the correct CSA deduction, effectively adjusting the PLA (see FOF #21).
3. 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
Amanda Guillemette, Department's Representative

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.