

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

██████████ 2023
Signature confirmation

Case: ██████████
Client: ██████████
Request: 212972

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2023, the Department of Social Services (the “Department”) issued a *Notice of Action* to ██████████ (the “Appellant”), a participant in the HUSKY-C Medicaid program, informing him that the Community Spouse Allowance allocated to his wife equaled \$2,464.22 per month.

On ██████████, 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received a hearing request filed by ██████████, the Appellant’s attorney-in-fact, postmarked ██████████, 2023.

On ██████████ 2023, the OLCRAH scheduled an 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 Appellant and his wife were unable to participate in the administrative hearing due to physical frailty. The following individuals participated by telephone conferencing:

██████████, Appellant Representative (attorney-in-fact)
Amanda Guillmette, Department Representative
Eva Tar, Hearing Officer

The hearing record closed ██████████ 2023.

STATEMENT OF ISSUE

The issue was whether the Department correctly calculated the Community Spouse Allowance of the Appellant's wife to equal \$2,464.22 per month.

FINDINGS OF FACT

1. The Appellant is married to [REDACTED] (the "wife"). (Appellant Representative Testimony)
2. The Appellant is a resident of [REDACTED], a skilled nursing facility. (Exhibit 3) (Appellant Representative Testimony)
3. The Appellant receives HUSKY-C Medicaid coverage associated with residents of skilled nursing facilities. (Exhibit 4)
4. The Appellant's most recent HUSKY-C Medicaid certification period ran from [REDACTED] 2022 through [REDACTED] 2023. (Exhibit 9)
5. The Medicaid payment rate at [REDACTED] is \$7,642.00 per month. (Exhibit 9)
6. On [REDACTED] 2023, the Department received the Appellant's completed *Renewal of Eligibility* form. (Exhibits 3 and 5)
7. The Appellant grosses \$2,293.90 per month in Social Security benefits. (Exhibit 4)
8. The Appellant grosses \$1,732.00 per month in [REDACTED]. (Exhibit 3)
9. The Appellant grosses \$1,144.84 per month in an [REDACTED] pension. (Exhibit 3)
10. The Appellant pays \$164.90 per month for his Medicare B premium. (Exhibit 9)
11. The Appellant pays \$63.50 per month for his [REDACTED] premium. (Exhibit 5)
12. The wife grosses \$1,008.00 per month in Social Security benefits. (Department Representative Testimony)
13. The wife has about \$15,000.00 in a checking account that does not generate income. (Appellant Representative Testimony)
14. The wife lives in a three-bedroom, three-bathroom home owned by the Appellant Representative. (Appellant Representative Testimony) (Dept. Exhibit 3)
15. The wife lives alone. (Appellant Representative Testimony)

16. The wife pays \$950.00 per month in rent. (Dept. Exhibit 3)
17. The wife pays \$23.63 per month in renter's insurance. (Dept. Exhibits 5 and 7)
18. The wife is not supporting a disabled adult child. (Appellant Representative Testimony)
19. The wife receives home- and community-based services under the State Funded Home Care for Elders program, a program funded by the State of Connecticut and administered by the Department. (Dept. Exhibit 10)
20. The State Funded Home Care for Elders program pays for 97 percent of the fees charged for the wife's home care services through [REDACTED]; the wife is responsible for paying three percent of the fees charged for her home care services. (Dept. Exhibit 10)
21. The wife paid [REDACTED] [REDACTED] [REDACTED] \$140.71 ([REDACTED] 2022), \$116.18 ([REDACTED] 2022), \$128.96 ([REDACTED] 2023), and \$117.98 ([REDACTED] 2023¹) for home care services. (Dept. Exhibit 8)
22. On [REDACTED] 2023, the Department issued a *Notice of Action* to the Appellant designating his Patient Liability Amount to be paid to the skilled nursing facility to equal \$2,266.37 after the deductions of a \$75.00 personal needs allowance, a \$164.90 Medicare B premium, a \$62.24 health care premium, and a \$2,464.22 Community Spouse Allowance. (Dept. Exhibit 4)
23. The Department's [REDACTED] 2023 calculation of the wife's Community Spouse Allowance did not incorporate the wife's renter's insurance premium as verification of the amount of that premium was provided to the Department after [REDACTED] 2023. (Dept. Exhibit 7)
24. Connecticut's Standard Utility Allowance ("SUA") equaled \$921.00 per month. (Dept. Exhibit 9)
25. One hundred and fifty percent of the Federal Poverty Level for two equals \$2,288.75. (Dept. Exhibit 9)
26. Connecticut General Statutes § 17b-61 (a) provides: "The Commissioner of Social Services or the commissioner's designated hearing officer shall ordinarily render a final decision not later than ninety days after the date the commissioner receives a request for a fair hearing pursuant to section 17b-60...."

On [REDACTED] 2023, the OLCRAH received the Appellant's [REDACTED] 2023 postmarked hearing request. This hearing decision therefore would have become due by no later than [REDACTED] 2023. This final decision is timely.

¹ The date of the wife's check # [REDACTED] to [REDACTED] contains a typo. (Dept. Exhibit 3)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes in part designates the Department of Social Services as the State agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

“The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program....” Conn. Gen. Stat. § 17b-262.

“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)).

Section 1570.25 C.2.c. of the Department’s Uniform Policy Manual (“UPM”) provides that the fair hearing official determines the issue of the hearing.

In Connecticut, the Department has the authority to administer the Medicaid program and make regulations governing the same.

2. “Community Spouse. 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.

As her home care services are paid by a State-funded program, the wife is not receiving home- and community-based services under a Federally funded Medicaid waiver.

The wife is a community spouse, as the term “community spouse” is defined at UPM § 5000.01.

3. Section § 17b-261 (g) of the Connecticut General Statutes 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....”

The Department correctly determined that the wife, as a community spouse, is eligible to receive a portion of the Appellant’s monthly income to meet her Minimum Monthly Needs Allowance.

4. “For residents 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.” UPM § 5035.25.

“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.” Conn. Gen. Stat. § 17b-272.

UPM § 5035.25 B. provides for post-eligibility deductions for LTCF Units with Community Spouses:

The following monthly deductions are allowed from the income of assistance units in LTCF's:

1. a personal needs allowance of \$50.00, which, effective July 1, 1999 and annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration.
2. a Community Spouse Allowance (CSA), when appropriate; (Cross Reference 5035.30)
3. a Community Family Allowance (CFA), when appropriate; (Cross Reference 5035.35)
4. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for the Department or any other third party;
5. costs for medical treatment approved by a physician which are incurred subsequent to the effective date of eligibility and which are not covered by Medicaid;
6. expenses for services provided by a licensed medical provider in the six-month period immediately preceding the first month of eligibility providing the following conditions are met:
 - a. the expenses were not for LTCF services, services provided by a medical institution equivalent to those provided in a long-term care facility, or home and community-based services, when any of these services were incurred during a penalty period resulting from an improper transfer of assets; and
 - b. the recipient is currently liable for the expenses; and
 - c. the services are not covered by Medicaid in a prior period of eligibility.

UPM § 5035.25 B.

As a Medicaid recipient who resides in a nursing home, the Appellant is entitled to a personal needs allowance of \$75.00 per month as a deduction from his applied income, or patient liability amount, due to the skilled nursing home.

Section 5035.25 B.2. of the Uniform Policy Manual permits the Appellant to divert a portion of his monthly income to the wife as a Community Spouse Allowance.

Section 5035.25 B.4. of the Uniform Policy Manual permits the Appellant to use a portion of his monthly income to pay for the Appellant's personal health insurance

premiums, deductibles and coinsurance costs not paid by the Department or any other third party.

5. “The CSA [Community Spouse Allowance] 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. (Cross Reference 5035.25)” UPM § 5035.30 A.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.” UPM § 5035.30 B.1.

“The community spouse's monthly shelter cost includes: a. rental costs or mortgage payments, including principal and interest; and b. real estate taxes; and c. real estate insurance; and d. required maintenance fees charged by condominiums or cooperatives except those amounts for utilities; and e. Standard Utility Allowance (SUA) used in the FS [Food Stamps/Supplemental Nutritional Assistance Program/SNAP] program for the community spouse.” UPM § 5035.30 B.4.

With respect to the calculation of the Community Spouse Allowance, the wife’s rental obligation, renter’s insurance, and the Standard Utility Allowance are permitted shelter costs.

With respect to the calculation of the Community Spouse Allowance, other expenses including but not limited to trash collection, electricity, utilities, medical premiums, medical expenses incurred arising from general frailty or age, life insurance, telephone, and improvements or maintenance of the residence are not permitted shelter costs.

With respect to the calculation of the Community Spouse Allowance, the monthly shelter costs of the wife equaled \$1,894.63. [\$950.00 (rent) plus \$23.63 (renter’s insurance) plus \$921.00 (SUA)]

6. “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 percent of 150 percent of the monthly poverty level for a unit of two persons.” UPM § 5035.30 B.3.

The Federal Poverty Levels for the 48 contiguous states and the District of Columbia are published at 88 Fed. Reg. 3424, 3425 (January 19, 2023).

For the purposes of the Community Spouse Allowance calculation, the excess shelter costs of the wife equaled \$1,208.01. [\$1,894.63 minus \$686.62 (30 percent of 150 percent of the Federal Poverty Level for two, per month)]

7. Section 5025.05 B. of the Department's Uniform Policy Manual addresses the conversion of income received to monthly amounts under the Prospective Budgeting System. Subsection B.1. of this section provides: "If income is received on a monthly basis, a representative monthly amount is used as the estimate of income."

With respect to the calculation of the Community Spouse Allowance, the gross monthly income of the wife equaled \$1,008.00 (Social Security).

8. "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." UPM § 5035.30 B.2.

"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.5.

The MMNA of the wife equaled \$3,496.76. [\$1,208.01 (excess shelter cost) plus \$2,288.75 (150 percent of Federal Poverty Level for two)]

9. "The [Fair Hearing] official increases the community spouse's MMNA previously determined by the Department if either MCCA spouse establishes that the community spouse has exceptional circumstances resulting in significant financial duress, and the MMNA previously calculated by the Department is not sufficient to meet the community spouse's monthly needs as determined by the hearing official." UPM § 1570.25 D.3.²

"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.d.

10. "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 the institutionalized spouse)." UPM § 1570.25 D.3.a.

"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." UPM § 1570.25 D.3.b.

The wife has established that she has exceptional circumstances, as the term "exceptional circumstances" is contemplated at UPM § 1570.25 D.3.a.; the wife

² Section P-1570.26 of the Department's Uniform Policy Manual provides guidelines for determining exceptional circumstances and significant financial duress.

requires home care services to delay her institutionalization and remain in the community.

11. Section 17b-342 (i)(1) and (2) of the Connecticut General Statutes provides:

(1) The Commissioner of Social Services shall, within available appropriations, administer a state-funded portion of the program for persons (A) who are sixty-five years of age and older; (B) who are inappropriately institutionalized or at risk of inappropriate institutionalization; (C) whose income is less than or equal to the amount allowed under subdivision (3) of subsection (a) of this section; and (D) whose assets, if single, do not exceed one hundred fifty per cent of the federal minimum community spouse protected amount pursuant to 42 USC 1396r-5(f)(2) or, if married, the couple's assets do not exceed two hundred per cent of said community spouse protected amount...

(2) Except for persons residing in affordable housing under the assisted living demonstration project established pursuant to section 17b-347e, as provided in subdivision (3) of this subsection, any person whose income is at or below two hundred per cent of the federal poverty level and who is ineligible for Medicaid *shall contribute three per cent of the cost of his or her care. Any person whose income exceeds two hundred per cent of the federal poverty level shall contribute three per cent of the cost of his or her care in addition to the amount of applied income determined in accordance with the methodology established by the Department of Social Services for recipients of medical assistance. Any person who does not contribute to the cost of care in accordance with this subdivision shall be ineligible to receive services under this subsection.* Notwithstanding any provision of sections 17b-60 and 17b-61, the department shall not be required to provide an administrative hearing to a person found ineligible for services under this subsection because of a failure to contribute to the cost of care.

Conn. Gen. Stat. § 17b-342 (i)(1) and (2). (emphasis added)

There is no provision in Conn. Gen. Stat. § 17b-342 (i) to waive the three percent contribution to the cost of care.

It is reasonable to conclude that the Legislature found that a three percent contribution to the cost of care would not impose an undue burden or hardship to the participants of the State Funded Home Care for Elders program, as 1) the three percent contribution is a condition of participation in that program; and 2) the Department is not required to provide an administrative hearing to a person found ineligible for services because of a failure to contribute to the cost of care.

The wife's monthly payments of three percent of the cost of her home care to [REDACTED] do not impose significant financial duress arising from her exceptional circumstances, as "significant financial duress" is contemplated at UPM § 1570.25 D.3.b.

The wife is eligible to receive a Community Spouse Allowance of \$2,488.76 per month. [\$3,496.76 (MMNA) minus \$1,008.00 (SSA)]

On ██████████ 2023, the Department incorrectly calculated the Community Spouse Allowance of the Appellant's wife to equal \$2,464.22 per month.

11. Section 17b-261 (a) of the Connecticut General Statutes addresses when medical assistance shall be provided for any otherwise eligible person and provides in part: "Any income in excess of the applicable amounts *shall be applied* as may be required by said federal law, and assistance shall be granted for the balance of the cost of authorized medical assistance...."

Section 5045.20 of the Department's Uniform Policy Manual ("UPM") provides: "Assistance units who are residents of Long-Term Care Facilities (LTCF) or receiving community-based services (CBS) are responsible for contributing a portion of their income toward the cost of their care...."

"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 § 5045.20 B.1.b.

UPM § 5035.25 B. provides for post-eligibility deductions for LTCF Units with Community Spouses.

"Amount of Benefits Paid by Department. The difference between the assistance unit's contribution and the Medicaid rate of the LTCF or CBS is the amount of benefits paid by the department to the facility or provider organization on the unit's behalf." UPM § 5045.20 D.

The Department correctly determined that as a Medicaid long-term care recipient, the Appellant was liable to contribute a portion of his income toward offsetting his cost of his care in the skilled nursing facility.

The Appellant's patient liability amount equals \$2,378.58. [\$5,170.74 (his gross income from SSA and two pensions) minus \$75.00 (personal needs allowance) minus \$2,488.76 (Community Spouse Allowance) minus \$164.90 (Medicare B premium) minus \$63.50 (Appellant's private medical insurance premium)]

DISCUSSION

The hearing officer recalculated the wife's Community Spouse Allowance as \$2,488.76 per month, based on evidence provided for the hearing record. The hearing officer's calculation utilized the wife's permitted shelter expenses compared to the wife's personal gross income from Social Security.

Although the wife has other expenses such as garbage collection, car insurance premiums, life insurance premiums, and telephone fees, the Department's regulations do not permit these expenditures to be incorporated in the Community Spouse Allowance calculation.

The wife's monthly payments to [REDACTED] are also not permissible as an expense, as the wife is participating in the State Funded Home Care for Elders program. Section 17b-342 (i)(2) of the Connecticut General Statutes requires that a State Funded Home Care for Elders program participant *shall* contribute three percent of the fees for total services rendered as a condition of participation. As the Connecticut Legislature has determined that the three percent fee is neither waivable nor subject to the hearing process, it is reasonable to conclude that the fee itself—which in the wife's case ranged from \$116.18 to \$140.71 per month during a four-month period—is not a burden to the program's participants.

The Department is directed to update its records to incorporate the \$2,488.76 Community Spouse Allowance.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department will update its records to reflect that the wife's Community Spouse Allowance equals \$2,488.76 per month, effective [REDACTED] 2023, the first month following the submission of the completed [REDACTED] 2023 *Renewal of Eligibility* form.
2. Within 14 calendar days of the date of this Decision, or [REDACTED] 2023, documentation of compliance with this Order is due to the undersigned.

Eva Tar-electronic signature

Eva Tar
Hearing Officer

Cc: [REDACTED]
Tonya Beckford, DSS-Willimantic

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.