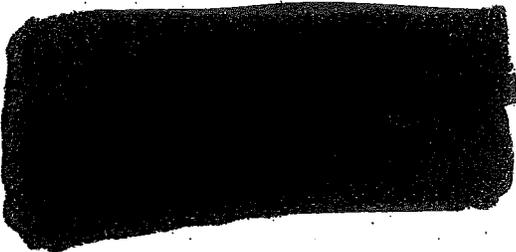




Rhode Island Executive Office of Health and Human Services
Appeals Office, 57 Howard Ave., LP Building, 2nd floor, Cranston, RI 02920
phone: 401.462.2132 fax: 401.462.0458

March 6, 2015

Docket#14-2135
Hearing Date: December 31, 2015



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided against you. During the course of the proceeding, the following issue(s) and Agency policy reference(s) were the matters before the hearing:

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS)
MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)
SECTION 0380 Resources Generally
SECTION 0392 Post-Eligibility Treatment of Income

RHODE ISLAND DEPARTMENT OF HUMAN SERVICES
SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)
SECTION 1038.20 Utility Expenses
SECTION 1008.20.25 Shelter Expense Deduction

The facts of your case, the Agency policy, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the appellants in C/o your Attorney), and Agency representatives Victoria Loveridge, Robert Palin, Deborah Castellano, and Tom Conlon.

Present at the hearing were: Your Attorney, and Agency representative Victoria Loveridge.

ISSUE: Should the Community Spouse Resource Allowance (CSRA) be expanded to include all of the couple's income-producing resources, thereby resulting in the institutionalized applicant spouse's resources to be within the Medicaid resource limits?

EOHHS Rules and Regulations:

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Executive Office of Health and Human Services Medicaid Code of Administrative Rules (MCAR)

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

DISCUSSION OF EVIDENCE:**The Agency representative testified:**

- The application for Medicaid was denied due to excess resources.
- The application was a spousal case with the applicant husband being institutionalized with his wife residing in the community.
- The institutionalized spouse had resources in the amount of \$11,080.37, which is \$7,080.37 over the Medicaid resource limit of \$4,000.00.
- Per policy 0380.40.35, the appellants' Attorney is requesting an expansion of the CSRA, which can only be determined by a fair hearing officer.
- The couple's resources at the time of institutionalization were \$34,310.08. Because the resources were low, they were not split in half and the community spouse was allowed to keep the minimum amount allowed of \$23,448.00.
- At the time of the Medicaid application in March 2014, the couple had resources totaling \$34,528.37. After subtracting the \$23,448.00 the community spouse was allowed to keep, the remaining \$11,080.37 was attributed to the institutionalized applicant spouse.
- The Agency agrees with the monthly gross income of both spouses as presented by their Attorney.
- The bank account balances and their interest as calculated by the appellants' Attorney is correct.
- The SUA regulation indicates that the \$601.00 SUA amount is an average cost of all utility expenses and lists a number of utility expenses included in that amount but it does not mean that only one item would qualify for the entire SUA amount.

- Except for her telephone, all of the community spouse's utility expenses are included in her rent. Because the appellant does not pay for her heat separate from her rent, she does not qualify for the full SUA.
- Per regulation 1038.20.05, if a household does not qualify for the SUA, they may claim any actual utility expense that is paid separately, so the Agency would allow usage of the actual telephone expense incurred by the community spouse.

The appellant's Attorney presented:

- The appellants request a hearing to appeal the Agency's decision to deny the institutionalized husband's application for Medicaid due to excess resources and to allow his wife, the community spouse, to request an expansion of the community spouse resource allowance (CSRA) to include all of the jointly held assets of the couple.
- The applicant husband became institutionalized in January 2014.
- In March of 2014 the institutionalized spouse filed an application for long term care related medical assistance benefits.
- The Agency's calculation of the couple's resources and resource attribution as they appear on the MA-4 are correct.
- In determining the CSRA, the Agency determined the spousal share to be the minimum threshold of \$23,448.00 because the amount of resources was so small that a 50% split was below the minimum amount allowed.
- The couple's resources as of March 1, 2014 were \$34,528.37. After reducing that amount by the CSRA, the attribution of the remaining \$11,080.37 to the institutionalized spouse is not disputed by the appellants.
- On October 9, 2014, DHS notified the institutionalized applicant spouse that a resource reduction was allowed per the DHS Code of Rules. To date, the institutionalized spouse has accumulated outstanding Nursing Home bills in the amount of \$12,990.00.
- Except for a small checking account, all of the couple's resources as March 1, 2014, the date of application, all are interest bearing.
- Over a period of time, all of the accounts accumulated a monthly interest at a

maximum of \$17.69, but once the total joint resources (TJR) are reduced by the \$4,000.00 that the applicant spouse is allowed to keep, the proportionate share of the interest generated by the remaining resources is \$3.54. Therefore, the interest generated by the jointly held assets that the community spouse is asking to retain is \$3.54.

- The community spouse's total monthly gross income is \$662.48 and is comprised of a Social Security benefit and an annuity.
- The institutionalized spouse's total monthly gross income is \$1,858.86 and is comprised of a Social Security benefit, a Veteran's pension, and a private pension.
- After reducing the institutionalized spouse's income by his \$50.00 personal needs allowance and his Medicare Part B premium of \$104.90, he has a net monthly income of \$1,703.96.
- The community spouse's total monthly shelter costs, comprised of a rent of \$572.00 and the DHS Utility Allowance of \$601.00, total \$1,173.00. After subtracting the DHS shelter allowance of \$581.63, she is left with an excess shelter allowance of \$591.37.
- Adding the excess shelter allowance to the minimum monthly maintenance needs allowance (MMMNA) of \$1,938.75 results in a MMMNA of \$2,530.12 for the community spouse.
- When considering only the community spouse's gross income of \$662.48, she has a MMMNA shortfall of \$1,867.64.
- If the community spouse is allowed to take all of the institutionalized spouse's gross income totaling \$1,858.86, she still has a MMMNA shortfall of \$8.78.
- If the community spouse is allowed to retain the TJRs which earn a monthly interest of \$3.54, she would still have a MMMNA shortfall of \$5.24.
- The community spouse lives in subsidized housing and her heat and cooling costs are included in her rent. Her cable and telephone bills are her only other expenses.
- Medicaid regulation 0392.15.20.10 defines the excess shelter allowance and specifically the standard utility allowance (SUA), which it states is allowed regardless of the actual utility costs if the community spouse incurs utility costs.

- Regulation 0392.15.20.10 refers to the SNAP regulation 1038.20.05 and the SNAP regulation states what costs are included in the SUA. The basic service fee for one telephone is included in the SUA so the submission of the community spouse's telephone bill is sufficient utility expense under the SNAP regulation to qualify for the full amount of the SUA, regardless of the amount of the telephone bill.
- Per the regulation, SUA is not restricted to only heating and/or cooling. Based on both the Medicaid and SNAP regulations pertaining to shelter costs and the SUA, only one utility expense is necessary to receive the entire SUA amount.
- While the institutionalized spouse is allowed to retain \$4,000.00 and still be Medicaid eligible, the appellants are requesting that the CSRA be expanded to include all of the TJR except the \$1,269.57 in the non-income producing account.
- If the CSRA is expanded, the institutionalized spouse will be eligible for long term care related medical assistance benefits as of March 1, 2014 with retroactive benefits back to December 1, 2013.
- Alternatively, if the community spouse is deemed ineligible for the expanded CSRA, the appellants request that the institutionalized applicant spouse be allowed to reduce resources according to regulation 0338.30 in order to qualify for benefits March 1, 2014.

FINDINGS OF FACT:

- The applicant/institutionalized spouse applied for Medicaid benefits in March 2014.
- The applicant's first month of continuance institutionalization was January 2014.
- The couple's total joint resources (TJR) as of January 1, 2014 were \$34,310.08, resulting in a CSRA (community spouse resource allowance) of \$23,448.00.
- As of March 1, 2014 the couples TJR were \$34,528.37 and \$11,080.37 of those resources were attributed to the applicant/institutionalized spouse.
- On October 9, 2014, the Agency sent the appellants' Attorney an MA-4 (Notice of Resource Attribution) informing her as to how the couple's resources were attributed as of the month of institutionalization and as of the month of application for Medicaid.

- On October 9, 2014, the Agency send the applicant/institutionalized spouse, in c/o his Attorney, a notice informing him that his Medicaid application had been denied for the month of March 2014 because his resources in the amount of \$11,080.37 exceeded the standard resource limit of \$4,000.00.
- On November 7, 2014, a request for hearing was filed on behalf of the institutionalized applicant spouse and the non-applicant community spouse to request an increase in the community spouse resource allowance (CSRA) and to appeal the denial of the institutionalized spouse's Medicaid application.
- An Administrative Hearing scheduled for December 1, 2014 was rescheduled at the request of the appellants' Attorney.
- The Administrative Hearing was convened on December 31, 2014.
- The institutionalized applicant's monthly income consists of a Social Security benefit of \$1,192.90, a Veteran's Pension of \$277.00, and a private pension of \$388.96, for a total monthly gross income of \$1,858.86
- Under the post-eligibility treatment of income formula, \$1,808.86 of the institutionalized spouse's income can be allocated to the community spouse.
- The community spouse's monthly income consists of a Social Security benefit of \$552.90, an annuity of \$109.58, and the \$1,808.86 that can be allocated from the institutionalized spouse, for a total monthly income of \$2,471.34.
- The community spouse pays a monthly rent of \$572.00.
- The community spouse's heating and cooling costs are included in her rent.
- The appellant incurs a monthly telephone bill in the amount of \$34.88.
- At time of application in March 2014, the Standard Utility Allowance (SUA) was \$601.00.
- The community spouse's monthly shelter costs, consisting of her rent of \$572.00 and her telephone bill of \$34.88 results in an excess shelter allowance of \$25.25.
- At the time of application, the basic spousal allowance was \$1,938.75.

- The community spouse's excess shelter allowance of \$25.25 added to the basic spousal allowance of \$1,938.75 results in a minimum monthly maintenance needs allowance (MMMNA) of \$1,964.00.
- The community spouse's MMMNA does not exceed her total monthly income.

CONCLUSION:

The issue to be decided is whether the Community Spouse Resource Allowance (CSRA) should be expanded to include all of the couple's income-producing resources, thereby resulting in the institutionalized applicant spouse's resources to be within the Medicaid resource limits.

The appellants are a married couple. The applicant husband became institutionalized in January 2014 and applied for Medicaid in March 2014. His non-applicant wife resides in the community. As of January 1, 2014, the first moment of the month of in which the husband became institutionalized, the couple's countable resources totaled \$34,310.08 and \$23,448.00 was attributed to the community spouse as the CSRA (community spouse resource allowance). As of March 1, 2014, the first moment of the month of application, the couple's countable resources totaled \$34,528.37. Based upon the CSRA of \$23,448.00, the remaining amount of \$11,080.37 was attributed to the institutionalized spouse/applicant thereby rendering him ineligible for Medicaid because such amount exceeded the program's \$4,000.00 resource limit.

The appellants' Attorney argues that the community spouse's total monthly income falls short of her calculated MMMNA (Minimum Monthly Maintenance Needs Allowance) of \$2,530.12. The couple thereby requests that the CSRA be increased to include all of the couple's total joint income-producing resources to provide additional income to the community spouse, specifically monthly interest income in the amount of \$3.54, to raise the community spouse monthly income closer to her MMMNA. She further argues that the institutionalized applicant spouse would then be Medicaid eligible because the couple's non-income producing resources retained by him are less than \$4,000.00.

Per the Medicaid Code of Administrative Rules (MCAR), a Hearing Officer has the authority to raise the CSRA if the community spouse's existing monthly income is below the MMMNA. An amount of resources which would generate income equal to the difference between the MMMNA and all income available to the community spouse can then be allocated to the community spouse. The community spouse's existing income includes the monthly income allowance that the institutionalized spouse can make available to the community spouse under the post-eligibility treatment of income formula.

The Agency argues that the appellants' attorney miscalculated the community spouse's MMMNA. The Agency maintains that because the community spouse does not pay for heat separate from her rent, she does not qualify for use of the Standard Utility Allowance (SUA) of \$601.00, but instead may claim the actual cost of her telephone. The Agency argues that the SUA amount is the average cost of all the listed utility expenses and that incurring only one of the listed utility expenses does not qualify for the entire SUA amount.

The record establishes that the community spouse pays a monthly rent of \$572.00, which includes heating and cooling costs. A monthly telephone bill is the only utility cost the community spouse incurs separate from her rent. The appellants' Attorney argues that per the Medicaid regulation pertaining to the excess shelter allowance and the SNAP regulation pertaining to the SUA which it refers to, the SUA is not restricted to heating and/or cooling costs. She further argues that per the regulations the community spouse's telephone bill is an allowable utility expense and only one allowable utility expense is necessary to receive the entire SUA amount regardless of the actual amount of the expense.

Per the MCAR, a community spouse's MMMNA consists of the basic allowance of \$1,966.25 and an excess shelter allowance, if the community spouse's shelter expenses exceed \$581.63 per month. Per the MCAR, only rent, mortgage, real estate taxes, home insurance, condominium maintenance fees, and utility costs can, be considered when determining the excess shelter allowance. The MCAR further stipulates that if utility costs are incurred, a standard utility allowance (SUA), as stated in the SNAP (Supplemental Nutrition Assistance Program) manual section 1038.20.05, is used regardless of the actual utility costs. The SUA at the time of the appellants' Medicaid application was \$601.00.

Further review of the MCAR regulation pertaining to the community spouse allocation and excess shelter allowance though finds that while these regulations stipulate that the SNAP SUA is to be utilized if the community spouse incurs utility costs regardless of the actual utility cost incurred, the MCAR regulations do not specifically define utility costs. Further review of the specific SNAP regulation 1038.20.05 that the MCAR references, finds that the \$601.00 SUA is intended to be a monthly average of all utility costs incurred, including the cost of heating and/or cooling, cooking fuel, electricity, or gas not used to heat or cool, the basic service fee of one telephone, water, sewerage, and trash collection. Section 1038.20 titled Utility Expenses further stipulates that when calculating utility expenses, the SUA is utilized only when a household is billed for heating and/or cooling costs or has received or is expected to receive a LIHEAA (low income home energy assistance act) payment. A household that does not qualify for use of the SUA may claim actual non-heating/non-cooling utility expenses or may claim the standard telephone allowance of \$22.00, which represents the expense of a basic service charge for one telephone. SNAP regulation 1038.20.05 also refers to SNAP regulation

1008.20.25.05 for further information. SNAP regulation 1008.20.25.05 titled Standard Utility Allowance, clearly states that the SUA includes a heating and/or cooling component, thereby indicating again that such costs must be incurred to qualify for the SUA. Regulation 1008.20.25.15 further stipulates that a household must verify that they are billed for the cost of heating or cooling to qualify for the SUA. Per 1008.20.25.10 titled Standard Telephone Allowance, the telephone allowance or the actual cost of a telephone is available only to households that are not eligible for the SUA, thereby further indicating and confirming that a telephone bill alone is not sufficient to qualify for the use of the SUA. In summary, while the MCAR stipulates that the SNAP SUA is to be utilized if a community spouse incurs utility costs regardless of the actual utility cost incurred, the SNAP regulations which the MCAR refers clearly stipulate that the utility cost incurred must be a heating and/or cooling cost. While the SNAP regulations do acknowledge that a telephone bill is considered a utility expense and such expenses are included in the calculation of the SUA, they stipulate that a telephone bill alone does not qualify for use of the SUA, though would qualify for a telephone expense deduction under the SNAP rules. As the MCAR does not clearly define utility expenses/costs but instead refers to the SNAP regulations, the SNAP definition and rules for usage of the SUA must be thereby be utilized. The community spouse's monthly telephone bill thereby does not qualify her for usage of the \$601.00 SUA when determining her MMMNA. The community spouse pays a monthly rent of \$572.00 and the Agency has agreed, based on the SNAP regulations, to allow usage of her monthly \$34.88 telephone expense. As the community spouse's total monthly shelter expenses of \$606.88 exceed the standard shelter allowance of \$581.63, she qualifies for an excess shelter allowance of \$25.25, which when added to the basic spousal allowance of \$1,938.75, results in a MMMNA of \$1,964.00.

The community spouse receives monthly income consisting of a \$552.90 Social Security benefit and a \$109.58 annuity. The institutionalized spouse receives monthly gross income totaling \$1,858.86. Under the post-eligibility treatment of income formula, the institutionalized spouse is allowed to retain \$50.00 for his personal needs prior to the deduction of the spousal allowance from his income. Therefore, \$1,808.86 of the institutionalized spouse's income can be made available to the community spouse. When this amount is added to the community spouse's gross monthly income, the community spouse has a total monthly income of \$2,471.34.

In conclusion, the community spouse has a MMMNA of \$1,964.00 and monthly income totaling \$2,471.34. As her existing income exceeds her MMMNA, she has failed to demonstrate that she needs any of the couple's income producing resources. The appellants' request for an expansion of the CSRA is thereby denied. As the expansion of the CSRA has been denied, the institutionalized applicant spouse retains the \$11,080.37 allocated to him and the denial of his March 2014 Medicaid application due to excess resources stands. In accordance with the MCAR, the institutionalized spouse retains the

right to establish Medicaid eligibility on the basis of a resource reduction within 30 days of this final Agency action.

A handwritten signature in black ink, appearing to read "Debra L. DeStefano". The signature is fluid and cursive, with the first name "Debra" and last name "DeStefano" clearly distinguishable.

Debra L. DeStefano
Appeals Officer

APPENDIX

MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)

0380 RESOURCES GENERALLY

0380.05 RESOURCE LIMITS

REV:06/1994

For MA Resource eligibility to exist, the institutionalized individual's countable resources cannot exceed the following basic limits:

- o For Categorically Needy eligibility - \$2000
- o For Medically Needy eligibility - \$4000

The evaluation of resources of an institutionalized individual with a community spouse first determines:

- o The total joint resources of a couple;
- o The spousal share of resources; and,
- o The community spouse resource allowance.

The computation of the community spouse resource allowance is based on the couple's total joint resources and the spousal share of those resources as of the first moment of the month in which the period of continuous institutionalization begins.

Except for the community spouse resource allowance, the total joint resources of a married couple with an institutionalized spouse are deemed available to the institutionalized spouse for purposes of MA eligibility.

Each determination of eligibility (new, reopening or redetermination) requires a review of resources, which includes sending three bank statements (AP-91). Resources are also reviewed at the time of a reported change, or when information is received which indicates a change has occurred, or that unreported resources may exist (Income Eligibility Verification System match, etc.)

Resources must be verified by a review of documents related to the resource, with copies of the documentation kept for the case file.

0380.40 COUNTABLE RESOURCES, INSTITUTIONAL SPOUSE

REV:06/1994

The evaluation of resources of an institutionalized spouse with a community spouse first determines:

- o The total joint resources of the couple; then,
- o The spousal share of the resources; and,
- o The community spouse resource allowance.

The computation of the community spouse resource allowance is based on the couple's total joint resources at the beginning of the period of continuous institutionalization. The total joint resources of the married couple with an institutionalized spouse are deemed available to the institutionalized spouse for the purpose of eligibility determination.

0380.40.10 Spousal Share

REV: 06/1994

The spousal share is equal to one-half of the value of the couple's total joint resources as of the beginning of a period of continuous institutionalization. The value of the spousal share remains fixed at the value computed as of the beginning of the period of continuous institutionalization, regardless of changes in resources which may occur between the beginning period of institutionalization and the time of the Medicaid eligibility determination.

0380.40.15 Community Spouse Resource Allowance

REV: 01/2014

The community spouse resource allowance, to the extent such resources are available, is equal to the greater of:

- \$ 23,448; or
- The spousal share, up to a maximum of \$ 117,240.

0380.40.35 Fair Hearing

REV: 06/1994

If either the institutionalized spouse or the community spouse is dissatisfied with the spousal share of the joint resources, the attribution of resources, or the determination of the community spouse resource allowance, and if an application for Medical Assistance has been made on behalf of the institutionalized spouse, the dissatisfied spouse is entitled to a fair hearing. Section 1924 (e) (2) (C) of the Social Security Act provides State Hearing Officers authority to raise the community spouse resource allowance (CSRA) under certain circumstances. If either the community spouse or the institutionalized spouse establishes that the community spouse resource allowance is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, an amount adequate to provide such a minimum monthly maintenance needs allowance (under the post-eligibility formula) shall be substituted for the current community spouse resource allowance. In determining how much more income must be generated by the additional resources in order to raise the community spouse's income to the minimum maintenance allowance, the Hearing Officer considers the community spouse's existing income. Existing income for this purpose includes the monthly income allowance which the institutionalized spouse has made available to the community spouse under the post-eligibility formula. There

can be no substitution for the current community spouse resource allowance if the institutionalized spouse does not actually make a monthly income allowance available to the community spouse under the post-eligibility formula. The additional resource(s) above the CSRA which may be protected under this section of the Social Security Act must be income producing. To be protected, the income producing resource must be providing a reasonable rate of return. The hearing must be held within thirty days of receipt by the agency of a written request for a hearing.

0392 POST-ELIGIBILITY TREATMENT OF INCOME

0392.05 OVERVIEW

REV:06/1994

Institutionalized Medical Assistance recipients are required to apply their income toward the cost of institutional care. Once Categorically Needy or Medically Needy eligibility has been established, and the applicant has been determined eligible for payment of institutional care services, a determination is made of the amount of income that the institutionalized individual must allocate to the cost of care. The individual may protect certain prescribed amounts of income for specific needs. ONLY the prescribed amounts for the specific purposes may be protected. ALL of the institutionalized individual's remaining income must be used to reduce the Medical Assistance payment for institutional care. The applicant's income, protected amounts, and allocation to the cost of care are computed on a monthly basis. The policy in this section applies to individuals who reside in Nursing Facilities and Public Medical Facilities. See Section 0396 for the specific post-eligibility policies which apply to individuals who receive home and community based services under a Waiver. For eligibility determination purposes, children receiving Medical Assistance under the "Katie Beckett" provisions are considered to be institutionalized. However, "Katie Beckett" eligible children are not subject to the post-eligibility process since only regular covered medical services are provided.

0392.15 INCOME APPLIED TO COST OF CARE

REV:06/1994

For each month in which Medical Assistance is requested to pay for the individual's institutional care, the individual must contribute his/her income to pay for institutional services, deducting only certain allowable amounts. The individual's income remaining after allowable deductions is paid to the institution as his/her contribution to the cost of the institutional care. Such income is known as APPLIED INCOME. The Medical Assistance payment to the institution is reduced by the applied income amount. The calculation of applied income starts with the individual's gross income, which includes the deduction and disregard amounts which were subtracted from gross income in the determination of eligibility. To determine applied income, certain allowable

deductions are subtracted from the recipient's gross income. The deductions, and the order in which they are subtracted from the recipient's gross income are:

- o Personal Needs Deduction (Regular) or \$90 Reduced Pension Deduction;
- o Personal Needs Deduction (Expanded);
- o Personal Needs Deduction (Guardian and Legal);
- o Community Spouse Allowance;
- o Community Dependent Allowance;
- o Medical Insurance Premiums;
- o Medical/Remedial Items;
- o Home Maintenance Deduction;
- o First/Last Month Institutionalization Expenses.

0392.15.20 Community Spouse Allocation

REV: 01/2014

Rhode Island is an income first state in which the income is first examined as part of the allocation. If the institutionalized individual has a community spouse, the individual may wish to allot an amount to the community spouse for his/her support. In reviewing for eligibility, DHS must consider all the income of the institutionalized spouse that could be made available to a community spouse has been made available before DHS allocates to the community spouse an amount of resources adequate to provide the difference between the minimum monthly maintenance needs allowance and all income available to the community spouse. This is applicable to individuals who became institutionalized individuals on or after February 8, 2006. Reference is made to applying this Section to fair hearings, as found in Section 0380.40.35. The amount of the community spouse allocation is based on the income already available to the community spouse. Thus, the calculation of this allocation is preceded by a determination of the community spouse's income. If the institutionalized individual has a community spouse and other community dependents, s/he may choose in addition to the community spouse and can allocate only to his/her dependents. The maximum amount that may be taken from an institutionalized individual's income for the support of a spouse and dependents in the community is \$ 2,931.00 per month, except:

- In the case of a court order for spousal support; or
- In the case of a court order or a finding by an administrative hearing.

The allocation to community spouse is based upon the gross income otherwise available to the community spouse. The income of the community spouse is determined in the same manner as gross income for purposes of eligibility determination. No disregards or deductions are applied to the community spouse's gross income in determining the allocation from the institutionalized spouse.

0392.15.20.05 Calculation of Community Spouse Allocation

REV: 08/2013

The calculation of the community spouse allowance considers the following:

- The community spouse's gross income; and
- The spouse allowance which consists of two parts, the basic allowance and the excess shelter allowance.

The BASIC ALLOWANCE to a community spouse with no other income is \$1,938.75 per month.

An EXCESS SHELTER ALLOWANCE is added to the basic spouse allowance if the community spouse's shelter expenses exceed \$581.63 per month.

0392.15.20.10 Excess Shelter Allowance

REV: 08/2013

The excess shelter allowance is the amount by which the community spouse's shelter expenses exceed \$581.63 monthly. Only shelter expenses relating to the community spouse's principal place of residence may be used to calculate the excess shelter allowance.

Shelter expenses are defined as and limited to:

- Rent;
- Mortgage payment (including principal and interest), taxes and insurance and, in the case of a condominium or cooperative, required maintenance charge;
- The STANDARD UTILITY ALLOWANCE, as updated annually in Sec. 1038.20.05 of the SNAP Manual (Standard Utility Allowance), regardless of the actual utility costs, IF utility costs are incurred by the community spouse.

If the total allowable monthly shelter expenses are less than \$581.63 there is no excess shelter allowance. The amount of shelter costs that EXCEEDS \$581.63 is the excess shelter allowance.

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

1038.20 (7 CFR 273.9) UTILITY EXPENSES

REV:10/2005

There are three methods of calculating utility expenses for households:

- * The standard utility allowance which is used only when the household is billed for heating and/or cooling costs on a regular basis or has received or expects to receive a LIHEAA payment at its current address;
- * The actual utility expenses, not including heating and/or cooling costs, which the household incurs and pays for separately. These utility amounts are then added to the rent or mortgage payments (including property taxes, insurance and local assessment) to obtain the total shelter expense; and,

* The standard telephone allowance of \$22.50, which is used for a household that incurs the expense of a basic service charge for one telephone and is not eligible to use the standard utility allowance.

1038.20.05 (7 CFR 273.9) Standard Utility Allowance

REV:11/2013

The SUA is six hundred and one dollars (\$601.00) per household per month based on an annualized (twelve-month) average of utility costs.

The standard utility allowance includes the cost of heating and/or cooling, cooking fuel, electricity, or gas not used to heat or cool the residence, the basic service fee for one telephone, water, sewerage and garbage and trash collection, refer to Section 1008.20.25.05.

1038.20.10 (7 CFR 273.9) Actual Utility Expenses

REV:06/1994

A household not qualified for the standard utility allowance may claim any actual utility expenses that it pays separately. Use of the actual utility expenses is authorized by entering the actual utility amounts in the state's electronic eligibility system.

1008.20.25 (7 CFR 273.9) Shelter Expense Deduction

REV:04/2005

REV:04/2005 Monthly shelter costs in excess of fifty percent (50%) of the household's income after all the above deductions have been allowed. The shelter deduction must not exceed the maximum provided in Section 1038.15 unless the household contains a member who is elderly or disabled as defined in Section 1010.30.05 (includes a disabled veteran or a surviving disabled spouse/child(ren) of a veteran). Such households receive an excess shelter deduction for the monthly cost that exceeds fifty percent (50%) of the household's monthly income after all other applicable deductions. The maximum shelter cost deduction is subject to change annually.

Shelter costs include only the following:

* A standard shelter expense estimate for all homeless households where all members are homeless and are not receiving free shelter throughout the calendar month.

All homeless households which incur or reasonably expect to incur shelter costs in a month shall be eligible for the estimate unless higher costs are verified, at which point the household may use actual shelter costs rather than the estimate. Homeless households which incur no shelter costs shall not be eligible for the standard estimate. The homeless household shelter estimate is located in Section 1038.17.

* Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of shelter, such as loan repayments for the purchase of a mobile home, including interest on such payments. Payments on second mortgages and home equity loans are allowable shelter costs. Payments on personal loans that are not secured by a lien on the property are not allowable costs even if the bank is listed as a beneficiary on the homeowner's insurance policy.

If a household owns a home and lot and later purchases a connecting piece of property, the mortgage payments on the new property can only be allowed as shelter costs if the new property was financed by a second mortgage or other loan secured by the home and lot.

* Property taxes, state and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

* Charges for heating, cooling, and cooking fuel; electricity; water and sewer; garbage and trash collection fees; the basic service fee for one telephone, including tax on the basic fee; and fees charged by the utility provider for initial installation of the utility. One-time deposits are not included as shelter costs. Note that the Standard Utility Allowance must be utilized instead of actual charges if the household incurs charges for heating and/or cooling expenses; see Section 1008.20.25.05.

* The above shelter costs for the home if not actually occupied by the household because of employment away from home, illness, or abandonment of the home due to natural disaster or casualty loss. For the costs of a vacated home to be included in shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs during the absence of the household; and the home must not be leased or rented in the household's absence. Households claiming utility costs for unoccupied homes must verify the actual expenses; the standard utility allowance must be used if the household incurs heating and/or cooling expenses.

* Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs do not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source. The cost of repairs as a result of wear and tear, incidental repairs, and improvements are not allowed for homeowners, renters who work-off their rent, or other renters.

* For condominium owners, the entire condominium fee is allowable as a shelter cost.

* Adjustment of Shelter Deduction Effective October 1, 1988, and each October 1 thereafter, the maximum limit for the excess shelter expense deduction is adjusted to reflect changes in the shelter, fuel and utilities components of the housing costs in CPI-U for the twelve (12) months ending the preceding June 30.

These adjustments are based on the previous unrounded numbers, and the result rounded down to the nearest lower dollar increment.

1008.20.25.05 (7 CFR 273.9) Standard Utility Allowance

REV:04/2005

The Standard Utility Allowance (SUA) which includes a heating or cooling component must be used by households which incur heating and/or cooling costs separately and apart from their rent or mortgage.

These households include:

* Residents of rental housing who are billed on a monthly basis by their landlords for actual usage through individual metering;

* Recipients of indirect energy assistance payments (vendor payments), made under a program other than the Low Income Home Energy Assistance Act of 1981 (LIHEAA), who also incur

out-of-pocket heating or cooling expenses during any month covered by the certification period; or

* Recipients of energy assistance payments made under the Low Income Home Energy Assistance Act of 1981 (LIHEAA). These households are deemed to have incurred out-of-pocket heating or cooling costs even if heat and utilities are included in their rent. If a household received a LIHEAA payment at its current address and/or it is reasonably certain that a LIHEAA payment will be received at that address, the household is entitled to the SUA.

To qualify, the household must be billed on a regular basis for its heating or cooling costs or have received a LIHEAA payment.

A household which incurs cooling or heating fuel costs on an irregular basis, but is otherwise eligible to use the standard utility allowance, continues to use the allowance between billing periods.

A cooling cost is a verifiable utility expense relating only to the operation of air conditioning systems or room air conditioners.

A household living in a public housing unit, or other rental housing unit which has central utility meters and charges the household only for excess heating or cooling costs must use the standard utility allowance.

If the household shares utility expenses with, and lives with, another individual not participating in the SNAP, another household participating in the SNAP, or both, the household is entitled to the full Standard Utility allowance.

The current monthly standard utility allowance is found in Section 1038.20.05.

1008.20.25.10 (7 CFR 273.9) Standard Telephone Allowance

REV:04/2005

The standard telephone allowance is available to a household that is billed for the expense of a basic service charge for one telephone but is not eligible to use the standard utility allowance. If a household can demonstrate that its cost for basic service for one telephone is greater than the Standard Telephone Allowance, then the actual cost is used. If the expense is shared by separate households, each household can claim the Standard Telephone Allowance.

The current monthly standard telephone allowance is found in Section 1038.20.

1008.20.25.15 Verification for Use of the SUA

REV:02/1993

If a household is to qualify for the standard utility allowance based on incurring heating or cooling expenses, the household must be billed on a regular basis for those costs and must provide bills for one or more of the utilities used for heating or cooling for verification. The bills should be as many as are available, but at least two; copies or other documentation used for authorizing the standard utility allowance must be included in the case record and/or case notes.

If a household is to qualify for the standard utility allowance based on the receipt of LIHEAA, a confirmation letter from the Governor's Office of Heating Assistance is to be used for documentation.

When a household moves, its entitlement to the SUA is redetermined.

If the household incurs heating/cooling costs, and/or plans to apply for and receive a LIHEAA payment at the new address, the household qualifies for the SUA. This information is obtained when the change is reported; when the SUA

is authorized because there is reasonable expectation of receipt of a LIHEAA payment, a notation to that effect must be included in the case record and/or case notes.

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.