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Superior Court of Connecticut,
Judicial District of New Britain.

Phyllis HARGROVE,
v.
COMMISSIONER OF SOCIAL SERVICES.

No. CV020516243. | June 27, 2003.

Attorneys and Law Firms

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AAG Richard Lynch and AAG Eileen Meskill, Hartford, for Ct. Commissioner Dept. Social Services.

Opinion

OWENS, J.

***1** This is an administrative appeal from a final decision of the State of Connecticut Department of Social Services brought pursuant to General Statutes §§ 17b-61 and 4-183.

The plaintiff, Phyllis Hargrove, appeals a decision by the department of social services in which the department found she was ineligible to receive a community spouse monthly income allowance (CSA)[1] through the Medicaid program. The record reveals the following facts. The plaintiff's husband, Vernon Hargrove, became eligible for Medicaid benefits in February 2001. As a result of her spouse's eligibility, the plaintiff received a CSA from the defendant, Patricia Wilson-Coker, commissioner of social services, but on March 5, 2002, the CSA was removed from the Medicaid benefits the plaintiff and her husband were receiving because the defendant found that the plaintiff's gross income exceeded her minimum monthly maintenance needs allowance (MMNA).[2] The plaintiff disputed the defendant's recalculation and requested an administrative hearing. The hearing was held on May 30, 2002, and on June 19, 2002, the hearing officer, Robert D. Lilling, upheld the defendant's decision finding that the plaintiff was ineligible for a CSA. On July 1, 2002, the plaintiff made a request for reconsideration. The request was denied on July 19, 2002.

The plaintiff now brings this administrative appeal, which she filed in the Superior Court, judicial district of New Britain, and requests that the decision rendered by the hearing officer be vacated and set aside.

General Statues § 17b-61(b) provides in relevant part: "The applicant for such hearing, if aggrieved, may appeal therefrom in accordance with section 4-183." Subsection 4-183(a) provides in part that: "A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section." "It is well settled that '[p]leading and proof of aggrievement are prerequisites to a trial court's jurisdiction over the subject matter of an administrative appeal ... It is [therefore] fundamental that, in order to have standing to bring an administrative appeal, a person must be aggrieved." (Citation omitted.) *Haffis v. Zoning Commission*, 259 Conn. 402, 409, 788 A.2d 1239 (2002).

"The fundamental test for determining [classical] aggrievement encompasses a well-settled twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as is the concern of all the members of the community as a whole. Second, the party claiming aggrievement must successfully establish that the specific personal and legal interest has been specially and injuriously affected by the decision ... Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest ... has been adversely affected." (Internal quotation marks omitted.) *Seymour v. Seymour*, 262 Conn. 107, 110, 809 A.2d 1114 (2002).
***2** In this case, the plaintiff was deprived of a specific personal interest when she was denied Medicaid benefits, and therefore, is aggrieved, This court has jurisdiction over the subject matter of this appeal.[3]

STANDARD OF REVIEW

"We begin by articulating the applicable standard of review in an appeal from the decision of an administrative agency. 'Judicial review of [an administrative agency's] action is governed by the [Uniform Administrative Procedure Act at § 4-166 et seq.] [UAPA] ... and the scope of that review is very restricted ... *New Haven v.*

Freedom of Information Commission, 205 Conn. 767, 773, 535 A.2d 1297 (1988). With regard to questions of fact, it is neither the function of the trial court nor of this court to retry the case or to substitute its judgment for that of the administrative agency. *Griffin Hospital v. Commission on Hospitals & Health Care*, 200 Conn. 489, 496, 512 A.2d 199, appeal dismissed, 479 U.S. 1023, 107 S.Ct. 781, 93 L.Ed.2d 819 (1986). Judicial review of the conclusions of law reached administratively is also limited. The court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion ... *Id.* Although the interpretation of statutes is ultimately a question of law ... it is the well established practice of this court to accord great deference to the construction given [a] statute by the agency charged with its enforcement ... *Id.* Conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. *New Haven v. Freedom of Information Commission*, *supra*, at 774.' (Citation omitted; internal quotation marks omitted.) *State Board of Labor Relations v. Freedom of Information Commission*, 244 Conn. 487, 493-94, 709 A .2d 1129 (1998)." *Cadlerock Properties Joint Venture, L.P. v. Commissioner of Env. Protection*, 253 Conn. 661, 668-69, 757 A.2d 1 (2000), cert. denied, 531 U.S. 1148, 121 S.Ct. 1089, 148 L.Ed.2d 963 (2001).

DISCUSSION

"Our analysis begins with an overview of the Medicaid program. The program, which was established in 1965 as Title XIX of the Social Security Act and is codified at 42 U.S.C. § 1396 et seq. (Medicaid act), is a joint federal-state venture providing financial assistance to persons whose income and resources are inadequate to meet the costs of, among other things, medically necessary nursing facility care. *Atkins v. Rivera*, 477 U.S. 154, 156, 106 S.Ct. 2456, 91 L.Ed.2d 131 (1986); *Harris v. McRae*, 448 U.S. 297, 301, 100 S.Ct. 2671, 65 L.Ed.2d 784 (1980); *State v. Tuchman*, 242 Conn. 345, 347-48, 699 A.2d 952 (1997); *Burinskas v. Dept. of Social Services*, 240 Conn. 141, 148, 691 A .2d 586 (1997). The federal government shares the costs of Medicaid with those states that elect to participate in the program, and, in return, the states are required to comply with requirements imposed by the Medicaid act and by the secretary of the Department of Health and Human Services. *Atkins v. Rivera*, *supra*, at 156-57. Specifically, participating states are required to "develop a plan, approved by the secretary of health and human services, containing reasonable standards ... for determining eligibility for and the extent of medical assistance" to be provided. *Burinskas v. Dept of Social Services*, [240 Conn. 141, 148, 691 A.2d 586 (1997)]; *Ross v. Giardi*, 237 Conn. 550, 555, 680 A.2d 113 (1996); see also 42 U.S.C. § 1396a(a)(17)." *Ahern v. Thomas*, 248 Conn. 708, 713, 733 A.2d 756 (1999).

***3** " 'Connecticut has elected to participate in the Medicaid program and has assigned to the department [of social services] the task of administering the program. General Statutes [§ 17b-260] ... The department, as part of its uniform policy manual, has promulgated regulations governing the administration of Connecticut's Medicaid system. See General Statutes § 17b-260.' (Citations omitted; internal quotation marks omitted.) *Burinskas v. Dept. of Social Services*, [*supra*, 240 Conn. at 148].

"In 1988, Congress enacted the Medicare Catastrophic Coverage Act of 1988 (MCCA). Pub.L.No. 100-360, 102 Stat. 683 (1988), codified at 42 U.S.C. § 1396r-5. 'The objective of the MCCA was to protect married couples when one spouse is institutionalized in a nursing home, so that the spouse who continues to reside in the community is not impoverished and has sufficient income and resources to live independently. See H.R.Rep. No. 100-105(II), 100th Cong., 2d Sess. at 65 (1988), reprinted in 1988 U.S.C.C.A.N. 857, 888. Prior to 1988, the Medicaid eligibility rules required couples to deplete their combined resources before the institutionalized spouse was eligible for benefits, often leaving the community spouse financially vulnerable. The MCCA attempted to strike a balance between preventing impoverishment of the community spouse by excluding minimum amounts of resources and income for that spouse from eligibility considerations, and preventing a financially solvent institutionalized spouse from receiving Medicaid benefits by ensuring that income was not completely transferred to the community spouse.' *Chambers v. Ohio Dept. of Human Services*, 145 F.3d 793, 798 (6th Cir.), cert. denied, 525 U.S. 964, 119 S.Ct. 408, 142 L.Ed.2d 331 (1998); see *Burinskas v. Dept of Social Services*, *supra*, 240 Conn. at 148-49.

" 'In addition, under the [MCCA], a community spouse is entitled to a "minimum monthly maintenance needs allowance" ... 42 U.S.C. § 1396r-5(d)(3); Uniform Policy Manual (1992) § 5035.30(B)(2) .' *Burinskas v. Dept. of Social Services*, *supra*, 240 Conn. at 149. The minimum needs allowance 'is an amount that ensures that the community spouse has income significantly above the poverty level.' *Chambers v. Ohio Dept of Human Services*, *supra*, 145 F.3d at 798. Effective July 1, 1992,

the minimum needs allowance is equal to 150 percent of the official poverty line, plus an additional shelter allowance. 42 U.S.C. § 1396r-5(d)(3)(B); *Burinskas v. Dept of Social Services, supra,* 240 Conn. at 149 n. 9.

"If either spouse is dissatisfied with the defendant's determination of the resource allowance, that spouse is entitled to a fair hearing. 42 U.S.C. § 1396r-5(e)(2)(A)(v). 'The statutory provision for revising the community spouse resource allowance is set out in 42 U.S.C. § 1396r-5(e)(2)(C).' *Chambers v. Ohio Dept of Human Services, supra,* 145 F.3d at 798; see also Uniform Policy Manual (1989) § P-1570.30 (outlining procedure for hearing officer to adjust resource allowance)." *O'Callaghan v. Commissioner of Social Services*, 53 Conn.App. 191, 195-97, 729 A.2d 800 (1999).

***4** In this case, the "Reason For Hearing" as stated by the defendant asserts: "On March 8, 2002, the Appellant, Phyllis Hargrove (Community Spouse) requested an administrative hearing to contest the Department's calculation of her Community Spouse Allowance (CSA). Pursuant to said request a hearing was held on Thursday, May 30, 2002 (postponed from April 4, 2002 and April 28, 2002), in accordance with the Connecticut General Statutes Section 17b-60, 17b-61 and 4-176e to 4-184." (Record, June 19, 2002 Hearing Decision, p. 1.) The "Statement Of Issue" addressed by the defendant in its final decision stated: "At issue is whether the Department was correct when it determined the Appellant was ineligible for a Community Spouse Allowance (CSA)." (Record, June 19, 2002 Hearing Decision, p. 1.)

The defendant made the following findings of fact:

1. The Appellant's husband (Vernon Hargrove, Institutionalized Spouse) is a resident of a long-tern care facility. (Exhibit 1: Fair Hearing Summary.)

2. On March 5, 2002, the Department recalculated the Appellant's Community Spouse Allowance (CSA) for the year 2002. The Department determined that the Appellant was ineligible for a CSA and the Appellant requested an administrative hearing to contest said determination. (Exhibit 1: Fair Hearing Summary; Hearing Record.)

3. The Appellant works forty (40) hours per week and earns $14.00 per hour. The Appellant has total gross monthly earned income in the amount of $2,408.00. (Exhibit 1: Appellant's Pay Stub from Medical Oncology & Hematology, P.C.)

4. The Appellant has no income-producing assets. (Testimony of Appellant.)

5. The Appellant paid an additional amount of money to the lending institution that holds the mortgage on her condominium during the first four months of the year 2002. The Appellant paid an additional $816.45 in January and an additional $383.24 in February, March and April. The Appellant made these additional payments in order to avoid foreclosure on her condominium. These additional payments did not constitute part of the monthly principal and interest portion of a mortgage payment as set out in UPM Section 5035.30(B)(4)(a). (Exhibit A: page 49 and 50; Hearing Record.)

6. The Appellant had a monthly shelter cost which amounts to $1,027.73. This shelter cost is comprised of a monthly mortgage payment, including principal, interest, taxes and insurance ($590.73), a condominium fee ($150.00) and a standard utility allowance ($287.00). (Exhibit 1: Fair Hearing Summary; Stipulation of Department and Appellant.)

7. The Appellant was entitled to a monthly shelter deduction (30% of 150% of the Federal Poverty Level for Two) in the amount of $435.38. (Exhibit 1: Fair Hearing Summary; Stipulation of Department and Appellant.)

8. The Appellant has an excess shelter cost in the amount of $592.35. (Finding 6 *minus* Finding 7; Exhibit 1: Fair Hearing Summary.)

9. As of January 1, 2002, the income allowed for a household of two, based on 150% of the Federal Poverty Level (FPL), was $1,451.25. (UPM Sec. 5035.30(B)(2)(b)(3).)

***5** 10. The Appellant (Community Spouse) does not have any exceptional circumstances resulting in significant financial duress. (Hearing Record.)

11. The Appellant's monthly excess shelter cost ($592.35) plus the 150% of FPL for a household of two ($1,451.25) equals $2,043.60. (Finding 8 *plus* finding 9; Exhibit 1: Fair Hearing Summary.)

12. As of January 1, 2002, the maximum MMNA a Community Spouse may receive if no exceptional circumstances resulting in significant financial duress exist is $2,232.00. (UPM Section 5035.30(B)(5)(a).)

13. The Appellant's MMNA is $2,043.60. (Finding 10, 11, 12; Exhibit 1: Fair Hearing Summary.)

14. The Appellant's total gross monthly earned income ($2,408.00) exceeds her MMNA ($2,043.60) by $364.40. (Finding 3 *minus* finding 13.)

15. The Appellant is ineligible for a monthly Community

Spouse Allowance (CSA). (Hearing Record.)

(Record, June 19, 2002 Hearing Decision, p. 2 & 3.)

The plaintiff alleges four claims of error that this court addresses in the following order: (1) Uniform Policy Manual (2001) § 1570.25(D)(3)(a) circumvents 42 U.S.C. § 1396r-5(e)(2)(B) (2000) contrary to congressional intent; (2) the defendant erroneously found that the plaintiff did not suffer from "exceptional circumstances"; (3) the defendant's use of gross income was improper because it included mandatory income tax withholdings; and (4) Uniform Policy Manual § 1570.25(D)(3) is invalid because it was not promulgated in accordance with the UAPA.

I.

The plaintiff argues that the defendant, in its interpretation of 42 U.S.C. § 1396r-5(e)(2)(B) (2000) and more specifically, in its implementation of Uniform Policy Manual (2001) § 1570.25(D)(3)(a), limits the circumstances which constitute "exceptional circumstances" contrary to congressional intent, thereby, exceeding the authority granted to the states by Congress. The court must first, therefore, address whether the defendant's enactment of Uniform Policy Manual § 1570.25(D)(3)(a) is a permissible construction of what constitutes "exceptional circumstances" as stated in 42 U.S.C. § 1396r-5(e)(2)(B) (2000).

The pertinent section of 42 U.S.C. § 1396r-5(e)(2)(B) provides that a revision of the MMNA may be permitted: "[i]f either such spouse establishes that the community spouse needs income, above the level otherwise provided by the minimum monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance in subsection (d)(2)(A) of this section, an amount adequate to provide such additional income as is necessary." The plaintiff concedes that congress has yet to adopt a specific definition for what constitutes "exceptional circumstances ."

The Centers for Medicare and Medicaid Services (CMS) have provided some insight for determining what constitutes "exceptional circumstances" in their State Medicaid Manual, "a publication of the Department of Health and Human Services that explains to the states how the [CMS apply] statutory and regulatory provisions in administering the Medicaid program ..." *Skindzier v. Commissioner of Social Services*, 258 Conn. 642, 654, 784 A.2d 323 (2001). In its State Medicaid Manual, CMS provides: "Pending publication of regulations, a reasonable definition [for exceptional circumstances] is: Circumstances other than those taken into account in establishing maintenance standards for spouses. An example is incurment by community spouses for expenses for medical, remedial and other support services which contribute to the ability of such spouses to maintain themselves in the community and in amounts that they could not be expected to pay from amounts already recognized for maintenance and/or amounts held in resources." Department of Health and Human Services, Centers for Medicare & Medicaid Services, State Medicaid Manual (State Medicaid Manual) § 3701.1.

***6** "Connecticut has elected to participate in the Medicaid program and has assigned to the department [of social services] the task of administering the program. General Statutes § 17b-2; see *Burinskas v. Dept. of Social Services, supra*, 240 Conn. at 148; *Ross v. Giardi, supra*, 237 Conn. at 555-56. Pursuant to General Statutes §§ 17b-262 and 17b-10, the department has developed Connecticut's state Medicaid plan and has promulgated regulations that govern its administration. See Uniform Policy Manual, *supra*." *Ahern v. Thomas, supra*, 248 Conn. at 713-14.

The defendant interprets the term "exceptional circumstances" to mean: "those that are severe and unusual and that: (1) prevent the community spouse from taking care of his or her activities of daily living; or (2) directly threaten the community spouse's ability to remain in the community; or (3) involve the community spouse's providing constant and essential care for his or her disabled child, sibling or other immediate relative (other than institutionalized spouse)."[4] Uniform Policy Manual, *supra*, § 1570.25(D)(3)(a).

" 'If a statute's meaning is plain, the [agency that administers the program] and reviewing courts must give effect to the unambiguously expressed intent of Congress.' (Internal quotation marks omitted.) *Holly Farms Corp. v. National Labor Relations Board*, 517 U.S. 392, 398, 116 S.Ct. 1396, 134 L.Ed.2d 593 (1996); *Chevron U.S.A, Inc. v. Natural Resources Defense Council, Inc.*, [467 U.S. 837, 842-43, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)].

" '[I]f [however] the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute ... If the agency's reading fills a gap or defines a term in a reasonable way in light of [Congressional] design, we give that reading controlling weight, even if it is not the answer the court would have

reached if the question initially had arisen in a judicial proceeding.' (Citation omitted; emphasis added; internal quotation marks omitted.) *Regions Hospital v. Shalala*, [522 U.S. 448, 457, 118 S.Ct. 909, 139 L.Ed.2d 895 (1998)]; *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., supra*, 467 U.S. at 843. '[W]e must sustain the [agency's] approach so long as it is based on a permissible construction of the statute.' (Internal quotation marks omitted.) *Auer v. Robbins*, 519 U.S. 452, 457, 117 S.Ct. 905, 137 L.Ed.2d 79 (1997); *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., supra*, at 843. 'When the legislative prescription is not free from ambiguity ... [c]ourts ... must respect the judgment of the agency empowered to apply the law to varying fact patterns ... even if the issue with nearly equal reason [might] be resolved one way rather than another ...' (Citations omitted; internal quotation marks omitted.) *Holly Farms Corp. v. National Labor Relations Board, supra*, 517 U.S. at 398-99."

***7** " 'We accord deference to agencies under *Chevron*, not because of a presumption that they drafted the provisions in question, or were present at the hearings, or spoke to the principal sponsors; but rather because of a presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows.' *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 740-41, 116 S.Ct. 1730, 135 L.Ed.2d 25 (1996); *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., supra*, 467 U.S. at 843-44. 'Judicial deference to an agency's interpretation of ambiguous provisions of the statutes it is authorized to implement reflects a sensitivity to the proper roles of the political and judicial branches.' *Pauley v. BethEnergy Mines, Inc.*, 501 U.S. 680, 696, 111 S.Ct. 2524, 115 L.Ed.2d 604 (1991). Deference, moreover, is particularly warranted in cases in which we are required to interpret the Medicaid act, a statutory scheme that 'is among the most intricate ever drafted by Congress.' *Schweiker v. Gray Panthers, supra*, 453 U.S. at 43; *Ross v. Giardi, supra*, 237 Conn. at 564. 'In a statutory area as complicated as this one, the administrative authorities are far more able than [the courts] to determine congressional intent in the light of experience in the field.' (Internal quotation marks omitted.) *Ross v. Giardi, supra*, at 564; *Lukhard v. Reed*, 81 U.S. 368, 383-84, 107 S.Ct. 1807, 95 L.Ed.2d 328 (1987) (Blackmun, J., concurring); *Mowbray v.. Kozlowski*, 914 F.2d 593, 598-99 (4th Cir.1990)." *Ahern v. Thomas, supra*, 248 Conn. at 718-20.

This court finds that the defendant's interpretation of what constitutes "exceptional circumstances" does not circumvent federal law or congressional intent, and is, therefore, a permissible construction. Particularly, Uniform Policy Manual § 1570.25(D)(3)(a), merely attempts to clarify the circumstances in which "exceptional circumstances" may arise, in an effort to fill in the gaps of a federal law that allows the defendant some deference in its interpretation. See generally *Ahern v. Thomas, supra*, 248 Conn. at 708. In general terms, CMS provides that "exceptional circumstances" include expenses "other than those taken into account in establishing maintenance standards ... [such as] expenses for medical, remedial and other support services which contribute to the ability of such spouses to maintain themselves in the community and in amounts that they could not be expected to pay from amounts already recognized for maintenance ... State Medicaid Manual, *supra*, § 3701.1. Uniform Policy Manual §§ 1570.25(D)(3)(a)(1) through (3) follow the circumstances that are to be considered "exceptional" as suggested by CMS by providing for those expenses that could prevent or threaten a community spouse from taking care of his or her daily activities or maintaining themselves in the community, which may include expenses for medical, remedial, and other support services.

***8** The defendant did not narrow the federal rule by adopting Uniform Policy Manual §§ 1570.25(D)(3)(a)(1) through (3) because each subsection still captures a broad range of circumstances that could be considered "exceptional." For instance, Uniform Policy Manual § 1570.25(D)(3)(a) provides in relevant part that "[e]xceptional circumstances are those that are severe and unusual and ... prevent the community spouse from taking care of his or her activities of daily living." The language "activities from daily living" could include numerous factual scenarios. Similarly, a community spouse's ability to remain in the community may be factored on several different circumstances. In any case, Uniform Policy Manual § 1570.25(D)(3)(a) allows broad discretion in its application.

More importantly, "when [Congress] left ambiguity in [the] statute meant for implementation by ... [the department of social services], [it] understood that the ambiguity would be resolved, first and foremost, by the [department of social services], and desired the [department of social services rather than the courts] to possess whatever degree of discretion the ambiguity allows." *Ahern v. Thomas, supra*, 248 Conn. at 719; see also *Smiley v. Citibank (South Dakota), N.A., supra*, 517 U.S. at 740-41; *Chevron U.S.A, Inc. v. Natural Resources Defense Council, Inc., supra*, 467 U.S. at 843-44. This court must sustain the regulation because it is a permissible construction of the statute, especially where,

as here, the statute is ambiguous in that it does not expressly define what constitutes "exceptional circumstances," thereby, providing the defendant deference in its interpretation. See *Ahern v. Thomas, supra*, 248 Conn. at 718-20; see also *Auer v. Robbins, supra*, 519 U.S. at 457; *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., supra*, 467 U.S. at 843.

II.

Now, that this court has found that Uniform Policy Manual § 1570.25(D)(3)(a) does not circumvent 42 U.S.C. §§ 1396r-5(e)(2)(B), the court must also address whether the defendant's decision was based on a reasonable interpretation of Uniform Policy Manual § 1570 .25(D)(3)(a). The plaintiff argues that the hearing officer erroneously found that she did not suffer from "exceptional circumstances." The plaintiff maintains that both her age, i.e. being twenty-two years younger than her husband, and the threat of foreclosure of her condominium constituted "exceptional circumstances" that resulted in significant financial distress. The defendant responds in its brief that the "[plaintiff has] failed to show that her age and the fact she works and has tax deductions resulted from unusual conditions that threatened her independence." (Defendant's Brief, March 14, 2003, p. 16.)

As stated earlier in this decision, when reviewing decisions made by administrative agencies, "[the court] must decide, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily or illegally, or abused its discretion ... Even as to questions of law, [t]he court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. Conclusions of law reached by the administrative agency must stand if the court determines that they resulted *from a correct application of the law* to the facts found and could reasonably and logically follow from such facts." (Emphasis added in original; internal quotation marks omitted.) *Burinskas v. Dept. of Social Services*, 240 Conn. 141, 147, 691 A.2d 586 (1997); see also *Southern New England Telephone Co. v. Dept. of Public Utility Control*, 261 Conn. 1, 13, 803 A.2d 879 (2002) ("[A]n agency's factual and discretionary determinations are to be accorded considerable weight by the courts ..." (internal quotation marks omitted)).

***9** In this case, the hearing officer concluded that the "[plaintiff] has failed to establish that exceptional circumstances resulting in significant financial duress exist [and][t]herefore, any calculation of a CSA must be done in accordance with 5035.30(B)(1)(2). That is, the [plaintiff's] gross monthly income of $2,408.00 must be compared to her MMNA of $2,0473.60, which is comprised of her excess shelter cost ($592.35) and the 150 percent monthly poverty level of two persons ($1,451.25). Accordingly, because the [plaintiff's] gross monthly income ($2,408.00) exceeds her MMNA ($2,043.60) the [plaintiff] is ineligible for a CSA." (Record, June 19, 2002 Hearing Decision, p. 7.)

The transcript of the hearing reveals that the hearing officer did consider whether the plaintiff suffered from "exceptional circumstances." In fact, the plaintiff made it clear that she was "seeking to have a finding of exceptional circumstances resulting in significant financial duress." (Record, May 30, 2002 Transcript, p. 107, ¶ 4-6.) The first issue addressed concerned the extra payments the plaintiff made on her mortgage. She testified that her normal mortgage payment was $590.73 per month, but that in January 2002, she paid $1407.18, and in February, March and April, she paid $973.97. When asked why she was paying these amounts, she responded "[b]ecause I had to catch up." (Record, May 30, 2002 Transcript, p. 109, ¶ 4.) The hearing officer then remarked "[s]o, in other words, in January [through April] the amount that exceeds $590.73 is some kind of a payment in arrears, towards arrearage that had accrued." (Record, May 30, 2002 Transcript, p. 110, ¶ 6-9.) The plaintiff's attorney responded "[s]he was in foreclosure. She was behind." (Record, May 30, 2002 Transcript, p. 110, ¶ 10-11.)

The hearing officer also considered whether the plaintiff's age constituted an "exceptional circumstance." The plaintiff testified that she was fifty-five and that her husband was seventy-seven years old. The plaintiff's attorney explained "[t]hat in itself is exceptional, Mr. Lilling. This is unusual. Exceptional is defined as unusual or out of the ordinary. It's not typical for us to find a community spouse of an institutionalized spouse who has such a disparity in age. It is also not usual for to find a community spouse who is working." (Record, May 30, 2002 Transcript, p. 117, ¶ 12-18.)

In considering whether the plaintiff fell within one of the three "exceptional circumstances" provided in Uniform Policy Manual § 1570.25(D)(3)(a) because of the threatened foreclosure or her age, the plaintiff's attorney conceded that "[the plaintiff] is perfectly capable of handling activities of daily living. She's working full time." (Record, May 30, 2002 Transcript, p. 121, ¶ 1-2.) He further explained that "her situation doesn't threaten her ability to remain in the community. [But][i]t does threaten her ability to remain in her condominium ..."

(Record, May 30, 2002 Transcript, p. 121, ¶ 4-6.) These remarks are inconsistent with the definitions that constitute "exceptional circumstances" as stated in Uniform Policy Manual §§ 1570.25(D)(3)(a)(1) and (2). Therefore, the only other question remaining for the hearing officer to consider was whether the plaintiff satisfied Uniform Policy Manual § 1570.25(D)(3)(a)(3), which "[involves] the community spouse's providing constant and essential care for his or her disabled child, sibling or other immediate relative (other than institutionalized spouse)." The records fails to indicate that the plaintiff has provided any such care to another. Therefore, this court concludes that the hearing officer acted in accordance with Uniform Policy Manual § 1570.25(D)(3)(a).

III.

***10** The plaintiff also argues that the defendant's use of her gross income was improper for calculating the amount of income available to her because it included mandatory income tax withholdings. This court disagrees with the plaintiff's argument because "the Supreme Court ... [in *Heckler v. Turner*, 470 U.S. 184, 200-02, 105 S .Ct. 1138, 84 L.Ed.2d 138 (1985)] ... considered a similar issue in the context of the Aid to Families with Dependant Children program ... and concluded that mandatory tax withholdings are available income ..." *Whitehouse v. Ives*, 736 F.Sup. 368, 374 (Me.1990); see also *Ross v. State, Dept of Human Services*, 469 N.W.2d 739, 742 (Minn.App.1991) (pursuant *Heckler v. Turner, supra*, "income tax ... withholdings may validly be included in a recipient's earned income to determine his eligibility for medical assistance"). Furthermore, our Connecticut Supreme Court has explained that "[t]he principle of availability 'has served primarily to prevent the States from conjuring fictional sources of income and resources by imputing financial support from persons who have no obligation to furnish it or by overvaluing assets in a manner that attributes nonexistent resources to recipients.' *Heckler v. Turner*, [*supra*, 470 U.S. at 2003 (holding that mandatory tax withholdings are 'available' for social security purposes) ..." *Clark v. Commissioner*, 209 Conn. 390, 403-04, 551 A.2d 729 (1988). Accordingly, this court concludes that the defendant may construe available income as including mandatory tax withholdings.

IV.

Finally, the plaintiff argues that the defendant's regulations encompassed in UP-01-04, which include Uniform Policy Manual § 1570.25(D)(3), were not adopted in conformance with Connecticut General Statutes. In particular, the plaintiff argues that the notice was improper, pursuant § 4-168(1), and untimely, pursuant § 17b-10. The defendant responds that the court is limited in its review to the evidence on the record, and furthermore, that the plaintiff has failed to sustain her burden of proof.

The plaintiff has filed additional evidence addressing the issue of whether the defendant provided her with adequate notice by including copies of the defendant's notice of intent to amend dated May 12, 1998, Uniform Policy Manual updates dated March 6, 2001, and a letter by the defendant discussing the Uniform Policy Manual updates for UP-01-04. During the original hearing, however, the plaintiff only made two statements addressing this issue. First, the plaintiff stated: "I would point out to you that at page 27 we have what is purportedly the new policy, new 1570.25 as a result of UP-01-04 which was effective February 13, ′01 but was published on May 23, ′01. So we do have some problem with the efficacy and validity of these regulations." (Record, May 30, 2002 Transcript, p. 120, ¶ 4-5.) The plaintiff later asserted that "it is our position that [the policy manual sections under UP-01-04 effective February 13, 2001] are invalid, that they have not been properly adopted by the Department." (Record, May 30, 2002 Transcript, p. 139, ¶ 19-21.)

***11** There are two reasons why this court should not address this issue. First, this issue is not reviewable by the court because the hearing officer did not properly hear argument on the matter. "Specifically, we note that the appellant generally must raise the issue before the board in order to preserve it for appellate review; compare *Cleveland v. U.S. Printing Ink Inc.*, 218 Conn. 181, 188-87 n. 4, 588 A.2d 194 (1991), with *Fellin v. Administrator, Unemployment Compensation Act*, 196 Conn. 440, 446, 493 A.2d 174 (1985); *and must ensure that the factual record has been adequately developed for review. Hall v. Gilbert & Bennett Mfg. Co., supra*, 241 Conn. at 306-08." (Emphasis added.) *Rayhall v. Akim Co.*, 263 Conn. 328, 340 n. 13 (2003). " 'A lack of pertinent factual findings and legal conclusions will render a record inadequate ... Similarly, ambiguity in a record can render it inadequate.' (Citation omitted.) *State v. Salerno*, 36 Conn.App. 161, 165, 649 A.2d 801 (1994), appeal dismissed, 235 Conn. 405, 666 A.2d 821 (1995)." *State v. Gasser*, 74 Conn.App. 527, 535, 812 A.2d 188, cert. denied, 262 Conn. 954, 818 A.2d 781 (2003). Here, the plaintiff simply asserted conclusory statements and failed to adequately develop its argument on the record. The plaintiff did not present any evidence specifically addressing this issue or cite to the relevant statutory

authority. Furthermore, the hearing officer did not make any determinations or findings of fact. "It is well known that 'an appellate court is under no obligation to consider a claim that is not distinctly raised at the trial level. Practice Book § 60-5; *Yale University v. Blumenthal*, 225 Conn. 32, 36 n. 4, 621 A.2d 1304 (1993) ...' (Internal quotation marks omitted.) *Burnham v. Karl & Gelb, P.C.*, 252 Conn. 153, 170-71, 745 A.2d 178 (2000). This rule applies to appeals from administrative proceedings as well. See *Dragan v. Connecticut Medical Examining Board*, 223 Conn. 618, 632, 613 A.2d 739 (1992); *Jutkowitz v. Dept. of Health Services*, 220 Conn. 86, 95, 596 A.2d 374 (1991)." *Towbin v. Board of Examiners of Psychologists*, 71 Conn.App. 153, 175-76, 801 A.2d 851, cert. denied, 262 Conn. 908, 810 A.2d 277 (2002). It is the view of this court that by merely raising the issue without providing a substantive argument or evidence, the plaintiff did not preserve it for review.

Second, the plaintiff has failed to seek permission from the court to introduce the notices and letter, which were not included in the record. Section 4-183(h) provides in pertinent part that: "If, before the date set for hearing on the merits of an appeal, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court." Furthermore, our Supreme Court has held that "[a]n appeal from an administrative tribunal should ordinarily be determined upon the record of that tribunal, and only when that record fails to present the hearing in a manner sufficient for the determination of the merits of the appeal, or when some extraordinary reason requires it, should the court hear the evidence." (Internal quotation marks omitted.) *Pet v. Department of Health Services*, 228 Conn. 651, 679, 638 A.2d 6 (1994). The plaintiff has not provided any argument, let alone an extraordinary reason why should this court should now allow the additional evidence. Nor has the plaintiff provided an explanation for her failure to present the evidence at the hearing. Therefore, it is unnecessary for this court to address this issue.[5] Accordingly, the plaintiff's request to vacate the defendant's decision is denied.

Footnotes

1 A community spouse monthly income allowance is defined as: "an amount by which-(A) except as provided in subsection (e) of this section, the minimum monthly maintenance needs allowance (established under and in accordance with paragraph (3)) for the spouse, exceeds (B) the amount of monthly income otherwise available to the community spouse (determined without regard to such an allowance)." 42 U.S.C. §§ 1396r-5(d)(2)(A)-(B) (2000).

2 The federal rules regarding the minimum monthly maintenance needs allowance provides in relevant part: "(A) ... 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 ... of 1/12 of the income official poverty line ... for a family unit of 2 members; plus (ii) an excess shelter allowance (as defined in paragraph (4)) ... For purposes of subparagraph (A)(i), the "applicable percent" described in this paragraph, effective as of ... July 1, 1992, is 150 percent ... The minimum monthly maintenance needs allowance established under subparagraph (A) may not exceed $1,500 (subject to adjustment under subsections (e) and (g) of this section) ... "In paragraph (3)(A)(ii), the term "excess shelter allowance" means, for a community spouse, the amount by which the sum of-(A) the spouse's expenses for rent or mortgage payment (including principal and interest), taxes and insurance and, in the case of a condominium or cooperative, required maintenance charge, for the community spouse's principal residence, and (B) the standard utility allowance ... or, if the State does not use such an allowance, the spouse's actual utility expenses, exceeds 30 percent of the amount described in paragraph (3)(A)(i), except that, in the case of a condominium or cooperative, for which a maintenance charge is included under subparagraph (A), any allowance under subparagraph (B) shall be reduced to the extent the maintenance charge includes utility expense ... If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall be not less than the amount of the monthly income so ordered." 42 U.S.C. §§ 1396r-5(d)(3)(A)-(C) (2000).

3 The plaintiff also timely filed this action and properly served the defendant pursuant § 4-183(c), which provides in pertinent part: "Within forty-five days after mailing of the final decision under section 4-180 or, if there is no mailing, within forty-five days after personal delivery of the final decision under said section, a person appealing as provided in this section shall serve a copy of the appeal on the agency that rendered the final decision at its office or at the office of the Attorney General in Hartford and file the appeal with the clerk of the superior court for the judicial district of New Britain or for the judicial district wherein the person appealing resides or, if that person is not a resident of this state, with the clerk of the court for the judicial district of New Britain ... Service of the appeal shall be made by (1) United States mail, certified or registered, postage prepaid, return receipt requested, without the use of a state marshal or other officer, or (2) personal service by a proper officer or indifferent person making service in the same manner as complaints are served in ordinary civil actions, If service of the appeal is made by mail, service shall be effective upon deposit of the appeal in the mail." The defendant's final decision was issued on June 19, 2002, and the plaintiff served the defendant a copy of her appeal by certified, postage paid, return receipt requested on July 30, 2001. The plaintiff also

filed her appeal with clerk of the court for the judicial district of New Britain on July 31, 2001.

4 The Uniform Policy Manual continues: "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 ... Expenses that are factored into the MMNA, and thus do not generally qualify as causing significant financial duress, include, but are not limited to: (1) shelter costs such as rent or mortgage payments; (2) utility costs; (3) condominium fees ... In order to increase the MMNA, the Fair Hearing Officer must find that the community spouse's significant financial duress is a direct result of the exceptional circumstances that affect him or her." Uniform Policy Manual, *supra*, § 1570.25(D)(3)(b) and (c).

5 Nevertheless, it is the opinion of this court that the plaintiff's contention is without merit. Section 4-168 provides in relevant part that: "an agency, prior to adopting a proposed regulation, shall: (1) Give at least thirty days' notice by publication in the Connecticut Law Journal of its intended action. The notice shall include (A) either a statement of the tents or of the substance of the proposed regulation or a description sufficiently detailed so as to apprise persons likely to be affected of the issues and subjects involved in the proposed regulation, (B) a statement of the purposes for which the regulation is proposed, (C) a reference to the statutory authority for the proposed regulation and (D) when, where and how interested persons may present their views on the proposed regulation ..." Subsection 4-168(h) provides that: "No regulation adopted after October 1, 1985, is valid unless adopted in substantial compliance with this section." (Emphasis added.)
In this case, on May 12, 1998, the defendant published in the *Connecticut Law Journal* a "Notice of Intent to Amend Regulations" pursuant to subsection (a) of § 4-168. (Plaintiff's Supplemental Brief, Attachments, p. 2.) UP-01-04 became effective on February 13, 2001, and therefore, notice was given well within thirty days of adopting the new regulation. Furthermore, the notice provided in pertinent that: "Under Section 17b-10 of the Connecticut General Statutes, the Department has been revising the Uniform Policy Manual (UPM) over the past several years to comply with federal and federal/state mandates ... [T]he Department has approximately 130 proposed regulations pending at various stages ... [and] each of these proposed regulations have been the subject of separate Law Journal notices and public hearings ... The Commissioner of Social Services intends to withdraw all such pending regulations and instead combine them into one proposed regulation, which represents the current policy under which the Department is operating in its policy manual." This language provided an adequate statement of the terms and purpose for the proposed regulation so as put those persons likely to be affected on notice, as well as, made reference to the applicable statutory authority. Moreover, the notice provided that, "[a] copy of the complete text of this regulation is available at no cost upon request ... [and that] persons wishing to present their views regarding this regulation may do so at a public hearing to be held ... on June 18, 1998 ..." Accordingly, this court finds that the defendant substantially complied with the statutory mandates of § 4-168.
The plaintiff further argues that the defendant failed to publish UP-01-04 within twenty days, as required pursuant to § 17b-10. Section § 17b-10 provides in relevant part: "The Department of Social Services shall prepare and routinely update state medical services and public assistance manuals and general assistance manuals ... After May 23, 1984, the department shall adopt in regulation form in accordance with the provisions of chapter 54, any new policy necessary to conform to a requirement of a federal or joint state and federal program administered by the department ... but the department may operate under such policy while it is in the process of adopting the policy in regulation form, provided the Department of Social Services prints notice of intent to adopt the regulations in the Connecticut Law Journal within twenty days after adopting the policy." In this case, the administrative hearing was held on May 30, 2002, and the hearing officer's decision was released June 19, 2002. UP-01-04 became effective on February 13, 2001. Here, the defendant was not operating "under such policy while ... in the process of adopting [new] policy ..." but was operating pursuant to a policy that was already in effect. Accordingly, the plaintiff's argument is unfounded because, in this case, the above quoted language of § 17b-10 was inapplicable.

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