

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

██████████ 2016
Signature Confirmation

Client ID # ██████████
Request # 726993

NOTICE OF DECISION

PARTY

██████████
c/o ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████, Representative for ██████████, (the "Appellant") a Notice of Action ("NOA") informing her that she must pay \$ 1,397.90 each month towards cost of care under the Long Term Care Medical Assistance ("LTC") program effective ██████████ 2015.

On ██████████ 2015, the Appellant's Representative requested an administrative hearing to contest the Department's calculation of the applied income amount.

On ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████ 2015.

On ██████████ 2015, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

██████████, Appellant's Daughter and Representative
Andrea Mcguire, Observer
Jacqueline Mastracchio, Department's Representative
Shelley Starr, Hearing Officer

The Appellant, [REDACTED], was not present at the hearing due to his passing on [REDACTED] 2015.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's calculation of the applied income that must be paid to the convalescent home each month was correct.

The issue regarding the Medicaid Effective Date will be addressed in a separate decision.

FINDINGS OF FACT

1. On [REDACTED] 2015, the Appellant was admitted to the Regency House (the "Facility"), a rehabilitation facility. (Hearing Summary and Department's Testimony)
2. The Appellant was 64 years old (DOB [REDACTED]51), Widowed, and had a primary medical diagnosis of Diabetes Mellitus and End Stage Renal Disease. (Exhibit 18: Yale New Haven W-10 Medical Report and Exhibit 10: Ascend document)
3. On [REDACTED] 2015, the Department received an application for Long Term Care ("LTC") Medicaid for the Appellant. (Hearing Summary and Hearing Record)
4. The Appellant's application listed [REDACTED] as the representative and daughter of the Appellant. (Exhibit 1: W-1 LTC application and Hearing Record)
5. On [REDACTED] 2015, the Appellant passed. (Testimony and Hearing Record)
6. On [REDACTED] 2015, the Department granted the Appellant's LTC application effective [REDACTED] 2015. (Testimony and Exhibit 4: Notice of Action, dated [REDACTED] 2015)
7. The facility requested a [REDACTED] 2015, financial pick up date for the Appellant's cost of care. (Exhibit 11: Email dated [REDACTED] 2015 and Hearing Record)
8. On [REDACTED] [REDACTED] 2015, the Department sent the Appellant's representative a Notice of Approval for Long Term Care Medicaid

indicating that beginning the month of [REDACTED] 2015, the Applied income, the portion of income each month that you pay the nursing facility is \$1,397.90.(Exhibit 5: Notice of Approval dated [REDACTED] 2015)

9. On [REDACTED] 2015, the Appellant was approved for a short term admission to the facility. (Testimony and Exhibit 6: Case Narrative)
10. Effective [REDACTED] [REDACTED] 2015, the Appellant receives monthly Social Security of \$1,457.90. (Exhibit 9: MA Financial Eligibility (“MAFI”) printouts and Testimony)
11. The Appellant’s only source of income was Social Security. (Hearing Record)
12. The Department allows a Personal Needs Allowance (“PNA”) income deduction in the amount of \$60.00 per month. (Exhibit 5: Notice of Approval of Long Term Care, dated [REDACTED] 2015 and Exhibit 9: MA Financial Eligibility (“MAFI”) screens)
13. Prior to his admission in the facility, the Appellant resided with his daughter in the community. (Hearing Record and Testimony)
14. There is no evidence in the record that the Appellant was responsible for shelter expenses prior to his admission to the facility. (Hearing Record, Exhibit 1: W-1LTC application, Exhibit 16: Bank Statements)
15. The Department did not allow a rental diversion income deduction from the monthly applied income calculated at \$1,397.90 per month. (Exhibit 5: Notice of Approval of Long Term Care Medicaid and Exhibit 9: MAFI printouts)
16. Effective [REDACTED] 2015, the Appellant’s applied income equaled \$1,397.90 (Gross Income of \$1,457.90, minus \$60 PNA = \$1,397.90). (Exhibit 5: Notice of Approval for Long Term Care Medicaid and Exhibit 9: MAFI printouts)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes, authorizes the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual (“UPM”) § 5005 (C) provides that the Department computes applied income by subtracting certain disregards and deductions, as described in this section, from counted income.

3. UPM § 5035.20 provides for post-eligibility deductions for LTCF/ CBS units without a community spouse and states in part:

For residents of long term care facilities (LTCF) and those individuals receiving community-based services (CBS) when the individual does not have a spouse living in the 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.

A. Durational Use of Deductions

The deductions described below are subtracted from income:

1. beginning with the month in which the 30th day of continuous LTCF care or the receipt of community-based services occurs; and
2. ending with the month in which the unit member is discharged from the LTCF or community-based services are last received.

B. Deductions For LTCF Units

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

1. for veterans whose VA pension has been reduced to \$90.00 pursuant to P.L. 101-508, and for spouses of deceased veterans whose pension has been similarly reduced pursuant to P.L. 101-508, as amended by Section 601 (d) of P.L. 102-568, a personal needs allowance equal to the amount of their VA pension and the personal needs allowance described in 2. below;
2. a personal needs allowance of \$50.00 for all other assistance units, 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;
3. an amount of income diverted to meet the needs of a family member who is in a community home to the extent of increasing his or her income to the MNIL which corresponds to the size of the family;
4. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for by Medicaid 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 eligibility.
7. the cost of maintaining a home in the community for the assistance unit, subject to the following conditions:
- a. the amount is not deducted for more than six months; and
 - b. the likelihood of the institutionalized individual's returning to the community within six months is certified by a physician; and
 - c. the amount deducted is the lower of either:
 - (1) the amount the unit member was obligated to pay each month in his or her former community arrangement; or
 - (2) \$650.00 per month if the arrangement was level 1 Housing; or
 - (3) \$400.00 per month if the arrangement was Level 2 Housing; and
 - d. the amount deducted includes the following:
 - (1) heat
 - (2) hot water
 - (3) electricity
 - (4) cooking fuel
 - (5) water
 - (6) laundry
 - (7) property taxes
 - (8) interest on the mortgage
 - (9) fire insurance premiums
 - (10) amortization

The Department correctly allowed for the deduction of the \$60.00 personal needs allowance from the Appellant's gross income.

The Department incorrectly did not allow the deduction for expenses for services provided by the long term care facility preceding the first month of the Appellant's [REDACTED] 2015, eligibility.

4. UPM § 5045.20 (B)(1)(b) provides for the amount of income to be contributed in LTCF cases and states that Total gross income is reduced by post-eligibility deductions (Cross reference: 5035-"Income Deductions") to arrive at the amount of income to be contributed.

The Department correctly determined that effective [REDACTED] 2015, the amount of income the Appellant was required to contribute to the cost of his long-term care, is \$1,397.90.

The Department incorrectly did not allow the \$1,397.90 applied income to be diverted for the medical expenses owed to the facility prior to the [REDACTED] 2015 eligibility date.

DISCUSSION

The Appellant's Representative disagreed with the Department's decision to not reduce the applied income due to the Appellant maintaining a home in the community. The regulations regarding allowing a deduction for maintaining a home in the community are very specific as to the circumstances in which such a deduction is allowed. Based on the testimony and evidence presented, I find no evidence documenting the Appellant's monthly shelter obligation or the likelihood of the Appellant returning to the community.

DECISION

The Appellant's appeal is **GRANTED IN Part AND Denied IN Part.**

ORDER

1. The Department is to adjust the Appellant's [REDACTED] 2015 and [REDACTED] 2015 Applied Income to allow the deduction for the cost for LTCF services of which the Appellant is responsible, prior to his [REDACTED] 2015, eligibility.
2. Compliance with this is order is due by [REDACTED] 2016, with the submission of the MAFI screenprints for the months of [REDACTED] 2015 and [REDACTED] 2015.


Shelley Starr
Hearing Officer

CC: Bonnie Shizume, Program Manager, DSS, R.O. #20, New Haven

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 06105-3725.

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, 55 Elm Street, 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.