

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3730

██████████ 2017  
Signature Confirmation

Client ID # ██████████  
Request #806430

NOTICE OF DECISION

PARTY

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

On ██████████, 2016, the Department of Social Services (the "Department") sent ██████████ ("Appellant") a Notice of Applied Income stating that she must pay \$1477.00 per month towards the cost of her care effective ██████████ 2016.

On ██████████ 2017, the Appellant requested an administrative hearing to contest the determination of the amount of applied income that she has to pay towards her care.

On ██████████ 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings, ("OLCRAH") sent a Notice of Administrative Hearing scheduling a hearing for ██████████ 2017.

On ██████████ 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings, ("OLCRAH") sent a Notice of Administrative Hearing rescheduling a hearing for ██████████ 2017. The hearing was scheduled to be held at the facility, Pendleton Health & Rehabilitation.

On ██████████ 2017, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals were present at the hearing:

[REDACTED], Appellant  
 [REDACTED], Appellant's Spouse  
 Marion Hensch, Social Worker, Pendleton Health & Rehabilitation  
 Elizabeth Clark, Department's Representative  
 Miklos Mencseli, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department correctly determined the amount of the Appellant's monthly applied income effective for [REDACTED] 2016.

### **FINDINGS OF FACT**

1. The Appellant was admitted to Pendleton Health & Rehabilitation with a short term approval until [REDACTED] 2015. (Exhibit 3: Ascend level of care approval)
2. On [REDACTED] 2015, the Appellant was approved for long term permanent stay at the facility. (Exhibit 4)
3. The Appellant receives \$1537.00 per month in gross Social Security Administration benefits. Effective for [REDACTED] 17 the gross monthly amount increased to \$1442.00. (Exhibit 4: Department's SVES verification)
4. At the time of her admittance the Department did not determine a Community Spouse Allowance as it was unaware of the Appellant's community spouse and a spousal assessment was not completed. (Testimony)
5. The Appellant receives a monthly allowable deduction of \$60.00 as her personal needs allowance (PNA).
6. The Appellant pays a monthly rental amount for an apartment in the community.
7. The Department is allowed to give up to a 6 (six) maximum for the cost of maintaining a home in the community. (Summary, Testimony)
8. The Department calculated the Appellant's applied income as \$827.00 per month (\$1537.00 total income - \$60.00 PNA - \$650.00 shelter deduction equals \$827.00). (Exhibit 5: notice dated [REDACTED]-16)
9. The Appellant has continually resided at the facility except for hospital admittance and re-admittance to the facility. (Exhibit 3, Testimony)
10. The Appellant's rental diversion period should have ended in [REDACTED] 2016. (Summary)

11. The Department did not remove the rental diversion until [REDACTED] 2016. (Summary)
12. Effective for [REDACTED] 2016, the Department removed the Appellant's \$650.00 deduction as she had received her six (6) months of rental diversion. (Summary, Exhibit 5, Testimony)
13. The Department recalculated the Appellant's applied income as \$1477.00 per month (\$1537.00 total income - \$60.00 PNA equals \$1477.00). (Exhibit 5: notice dated [REDACTED]-16)
14. On [REDACTED] 2016, the Department sent Appellant a Notice of Applied income stating that she must pay \$1477.00 per month towards the cost of her care effective [REDACTED] 2016. (Exhibit 5: notice dated [REDACTED] 16)
15. The Appellant has \$150.00 a month deducted from her gross monthly Social Security benefits due to an Internal Revenue Services (IRS) penalty. (Exhibit 8: Bank of America (BOA) bank statement dated [REDACTED], 2016)
16. The \$150.00 deduction is credited to the Appellant's spouse, [REDACTED] [REDACTED] on the bank statement. It is listed as IRS, USATAXPYMT. (Exhibit 8)
17. The Appellant and her spouse filed joint tax returns. The Appellant's spouse just recently retired and did not have a federal income source for the IRS to recover the penalty from. (Testimony)
18. The Appellant is working with Money Follows the Person (MFP) for placement in the community. The Appellant wants to be out of the facility in 30 days. (Testimony)

### CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes ("CGS") authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Uniform Policy Manual ("UPM") Section 5000.01 provides the following definitions:

**Available income** is all income from which the assistance unit is considered to benefit, either through actual receipt or by having the income deemed to exist for its benefit.

**Applied income** is that portion of the assistance unit's countable income that

remains after all deductions and disregards are subtracted.

**Counted income** is that income which remains after excluded income is subtracted from the total of available income.

**Deductions** are those amounts which are subtracted as adjustments to counted income and which represent expenses paid by the assistance unit.

**Disregards** are those amounts which are subtracted as standard adjustments to countable income and which do not represent expenses paid by the assistance unit.

**Gross unearned income** is the total amount of counted unearned income before disregards are subtracted from it.

**Unearned income** is income which does not constitute compensation for work or services performed or business conducted and includes returns from capital investments when the individual is not actively involved in the production of the income.

3. UPM § 5050.13(A) (1) provides payments from Social Security are treated as countable unearned income in determine eligibility in all programs.
4. UPM § 5050.66 provides for Recoupment Withholdings, Reductions in Income due to Recovery of Overpayments and Benefit Reductions.

#### C. Reduction in Income due to Recovery of Overpayments - AABD, MAABD

When money is withheld from an income source to recoup an overpayment, the amount of income to be counted is the amount the household would receive if no withholding had occurred unless:

1. the income was received concurrently with AABD or MAABD assistance at the time the overpayment occurred; and
  2. the overpaid amount was included in determining AABD or MAABD eligibility.-
5. The Department is correct to use the Appellant's gross Social Security income with the \$150.00 withholding included to determine her applied income amount.
  6. UPM Section 5005.C provides that the Department computes applied income by subtracting certain disregards and deductions, as described in this section, from counted income.
  7. UPM Section 5005.D provides that the Department uses the assistance unit's applied income to determine income eligibility and to calculate the amount of benefits.

8. The Department correctly determined the applicant's total monthly gross unearned income as \$1537.00.
9. UPM Section 5035.20.B provides that 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 of 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 per month if the arrangement was Level 1 Housing; or
  - (3) \$400 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

10. Conn. Gen. Stat. § 17b-272. **(Formerly Sec. 17-134m). Personal fund allowance.** Effective July 1, 2011, the Commissioner of Social Services shall permit patients residing in nursing homes, chronic disease hospitals and state humane institutions who are medical assistance recipients under sections 17b-260 to 17b-262, inclusive, 17b-264 to 17b-285, inclusive, and 17b-357 to 17b-361, inclusive, to have a monthly personal fund allowance of sixty dollars.

11. The Department correctly provided a \$60.00 personal needs allowance (PNA) deduction.

12. The Department correctly determined the Appellant was eligible for the six (6) month deduction of the cost of maintaining a home in the community.

13. The Department correctly determined the Appellant was eligible for the maximum deduction of \$650.00.
14. The Department correctly removed the Appellant's \$650.00 deduction effective for [REDACTED] 2016 as she received the deduction for the maximum six (6) month period of [REDACTED] 2015 through [REDACTED] 2016.
15. UPM Section 5045.20 provides that assistance units who are residents of Long Term Care Facilities (LTCF) or receiving community based services (CBS) are responsible for contributing a portion of their income toward the cost of their care. For LTCF cases only, the amount to be contributed is projected for a six month period.
16. As a resident of a LTCF, the applicant is responsible for contributing a portion of her income towards the monthly cost of her care.
17. UPM Section 5045.20.A provides that the amount of income to be contributed is calculated using the post-eligibility method starting with the month in which the 30th day of continuous LTCF care or receipt of community-based services occurs, and ending with the month in which the assistance unit member is discharged from the LTCF or community-based services are last received.
18. UPM Section 5045.20.B.1.b provides 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.
19. The Department is correct to calculate the Appellant's applied income as \$1477.00 effective for [REDACTED] 2016.

### **DISCUSSION**

The Department correctly determined the Appellant's applied income amount. The Department accurately calculated the Appellant's allowable deductions. The Department can allow only a maximum six (6) deduction for the rental diversion. The Appellant should have received the six (6) month diversion until [REDACTED] 2016. In fact the Appellant received the rental diversion until [REDACTED] 2016, beyond the six (6) month allowance per the Department's policy.

### **DECISION**

The Appellant's appeal is denied

A handwritten signature in black ink, appearing to read "Miklos Mencseli". The signature is written in a cursive style with some loops and flourishes.

Miklos Mencseli  
Hearing Officer

C: Cheryl Parsons, Operations Manager, Norwich #40

### **RIGHT TO REQUEST RECONSIDERATION**

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue Hartford, CT 06105.

### **RIGHT TO APPEAL**

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 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.