

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

██████████ 2018
Signature Confirmation

Client ID # ██████████
Request # 121462

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████, the Department of Social Services (the “Department”) sent ██████████ (the “Recipient”) a Notice of Action (“NOA”) informing him that effective ██████████ 2018 he must pay \$2761.00 per month in applied income towards his cost of care under the Long Term Care Medical Assistance program.

On ██████████, ██████████ ██████████ ██████████ (the “Appellant”), Counsel for the Recipient, ██████████, requested an administrative hearing to contest the Department’s calculation of the applied income amount.

On ██████████, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████.

On ██████████, the Appellant requested a continuance of the hearing in order to obtain more information from the Department.

On ██████████, OLCRAH issued a notice rescheduling the administrative hearing for ██████████.

On ██████████, the Appellant contacted OLCRAH to request a continuance of the hearing stating that he had not received notice of the hearing.

On [REDACTED], OLCRAH issued a notice rescheduling the administrative hearing for [REDACTED].

On [REDACTED], the Appellant contacted OLCRAH to request a continuance of the hearing stating that he had not received notice of the hearing.

On [REDACTED], OLCRAH issued a notice rescheduling the administrative hearing for [REDACTED].

On [REDACTED], 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:

[REDACTED] [REDACTED] [REDACTED] for the Recipient, [REDACTED], the Appellant,
[REDACTED], daughter of the Recipient
[REDACTED] son in law of the Recipient
Adessa Williams, Eligibility Worker, DSS R. O. #30. Bridgeport
Maureen Foley-Roy, Hearing Officer

The Appellant did not provide his hearing summary and attachments to this hearing officer and the Department until the day of the hearing. The hearing officer held the record open until [REDACTED] [REDACTED] 2018 to give the Department an opportunity to review the documents and adjust the applied income in accordance with the new material. The hearing record was held open until [REDACTED] [REDACTED] 2018 at the Appellant's request to give him an opportunity to review the Department's adjusted figures. The undersigned did not receive any additional information from either party subsequent to the hearing. The record closed on [REDACTED] [REDACTED] 2018.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's correctly calculated the applied income beginning in [REDACTED] of 2018 and going forward.

FINDINGS OF FACT

1. The Recipient and his spouse both reside in skilled nursing facilities. (Hearing Record)
2. In [REDACTED], the Recipient's daughter signed an agreement with the Veteran's Administration ("VA") agreeing to act as fiduciary for her father in matters of the VA. (Exhibit A: Fiduciary Agreement)

3. In [REDACTED], the Recipient was receiving a VA benefit of \$2119.00 per month; \$716 of that benefit was for Aid and Attendance. (Exhibit 2: Letter from VA dated [REDACTED] [REDACTED] 2016)
4. The Recipient receives a gross benefit of \$1794 per month from Social Security. (Department's summary, Appellant's testimony)
5. The Recipient pays a Medicare B premium of \$134 and a Medicare D premium of \$34.80 each month. (Department's summary, Appellant's testimony and Exhibit 1: Letter from Social Security dated [REDACTED] [REDACTED] 2017)
6. In [REDACTED], the VA terminated the Recipient's VA pension and charged him with overpayments. (Appellant's Exhibit B: Email from VA Appeals Team dated [REDACTED] [REDACTED] 2018)
7. The Recipient did not receive a VA benefit from [REDACTED] of 2018 through [REDACTED] of 2018. (Hearing Record, Appellant's testimony)
8. The Appellant appealed the termination of the VA benefits and the overpayments. The result of the Appeal was that the VA resumed the benefit in a revised amount. (Exhibit B)
9. Both the Department and the Appellant agree that the Recipient does not owe any applied income for the months from [REDACTED] 2018 through [REDACTED] 2018. (Appellant & representative's testimony)
10. On [REDACTED] the Department sent a notice advising that beginning in [REDACTED] of 2018 the Recipient must pay \$2671 in applied income each month toward the cost of his care in the facility. (Exhibit 5: Notice of Approval for Long Term Care Medicaid)
11. In [REDACTED] of 2018, the Recipient was awarded \$3101.00 in retroactive VA benefits. This amount reflected the VA benefits in the new amount owed to him from [REDACTED] 2018 through [REDACTED] of 2018 minus overpayments incurred from [REDACTED] of 2017 through [REDACTED] 2017. The VA considered the retroactive payment of \$3101 to be entirely for aid and attendance. (Exhibit B and Exhibit C: Email from the VA dated [REDACTED] 16, 2018)
12. In [REDACTED] of 2018, the Appellant retained the \$3101.00 retroactive benefit as payment to Counsel for the Recipient's legal expenses incurred in the VA appeal. (Appellant's summary and testimony)
13. Beginning in [REDACTED] of 2018, the Appellant's VA benefit was \$1847.00 monthly, which includes and aid and attendance allowance of \$733, leaving a basic pension amount of \$1114 per month. (Exhibit C)

CONCLUSIONS OF LAW

1. Section 17b-2, section (9) of the Connecticut General Statutes, designates the Department of Social Services as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual (“UPM”) § 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.
3. UPM § 5045.20 provides that a lump sum is an amount of money which is received by an assistance unit on a one time basis and is not expected to recur.
4. UPM § 5050.65 D 1 b provides for treatment of lump sums in the Medical for the Aged, Blind and Disabled (“MAABD”) and states that lump sums received in the month of application or after are treated as income in the month of receipt.
5. UPM § 5035.11 A provides for lump sum deductions in the MAABD program and states that any portion of a lump sum which was paid for the purposes of meeting certain designated expenses is deducted when it is used to meet those expenses.
6. There is no provision in the regulations for allowing the Recipient’s legal fees as a deduction to his lump sum income.
7. Section 17b-261 (a) of the Connecticut General Statutes provides for Medicaid eligibility and states in part that in determining eligibility the commissioner shall not consider as income Aid and Attendance pension benefits granted to a veteran, as defined in section 27-103, or the surviving spouse of such veteran.

Because the VA considered the entire retroactive payment of \$3101 to be aid and attendance benefits, it is not considered as income in calculating the applied income for █████ of 2018, the month of receipt.

8. UPM § 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 received.
9. UPM § 5035.20 provides that 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. (Emphasis added)

10. 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. (Emphasis added)
11. UPM § 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 ("PNA") 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;(note: prior to July 2011, the PNA was \$69 per month; in July of 2011, the PNA was reduced to \$60)
 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.

The Department was correct when it determined that the Appellant was entitled to the personal needs allowance and deductions for his Medicare B and D premiums when calculating his applied income.

Beginning [REDACTED] 2018, the Appellant is responsible to pay \$2679.20 in applied income to the facility. [\$1114 (basic VA pension) + \$1794 (Social Security benefit) - \$60 (personal needs allowance - \$134 (Medicare B premium amount) - \$34.80(Medicare D premium amount)]

DISCUSSION

The Department and the Appellant agree that there is no applied income due for [REDACTED] through [REDACTED] of 2018. In [REDACTED] the VA sent the Recipient a check for the VA benefits due to him from January through [REDACTED] of 2018 minus the amounts that he was overpaid in 2017. In the view of the VA, this payment was entirely for aid and attendance. The attorney (Appellant) kept this retro check as payment for his services in appealing the discontinuance of the VA benefits. There is no provision in the regulation which would allow disregarding the income that the Recipient had turned over to his attorney (the Appellant) for legal fees. However, as the VA views this payment to be entirely for Aid and Attendance, the Department would disregard this payment in calculating the applied income. The Appellant also provided policy stating that a disregard should be applied to the Recipient's income but the reference he provided (P5030.15) is procedure, not policy and is for determining eligibility, which is different from determining the amount of applied income. The calculation of applied income is a post eligibility procedure and the policy is clear that total gross income is used in such calculation. The Department correctly allowed all of the possible deductions of the personal needs allowance and the Medicare premiums.

DECISION

The Appellant's appeal is GRANTED.

ORDER

The Department is to adjust the applied income due to the facility to \$2679.20 per month effective [REDACTED] 2018. Compliance with this order is due by

██████████ 2018 and shall consist of documentation that the applied income has been adjusted in accordance with this decision.

Maureen Foley-Roy

Maureen Foley-Roy
Hearing Officer

CC: Yecenia Acosta, Tim Latifi, Fred Presnick, Operations Managers
DSS. R.O.#30, Bridgeport
Adessa Williams, Eligibility Worker, Bridgeport

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 06105-3730.

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 , Hartford, CT 06106. 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.