**STATE OF CONNECTICUT**
**DEPARTMENT OF SOCIAL SERVICES**
**OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS**
**25 SIGOURNEY STREET**
**HARTFORD, CT 06106-5033**

[redacted] **2014**
**Signature Confirmation**

**Client ID #** [redacted]
**Request # 559098**

## NOTICE OF DECISION

## PARTY

[redacted]

## PROCEDURAL BACKGROUND

On [redacted] 2013, the Department of Social Services (the "Department") sent [redacted] (the "Appellant") a Notice of Action ("NOA) informing her that effective [redacted] 2013 she must pay $1744.39 in applied income towards her cost of care under the Long Term Care Medical Assistance program.

On [redacted] 2013, the Appellant's son and Power of Attorney, [redacted] (the "POA") requested an administrative hearing to contest the Department's calculation and effective date of the applied income amount.

On [redacted] 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for [redacted] 2013.

On [redacted] 2013, the Appellant requested a continuance of the hearing, which OLCRAH granted.

On [redacted] 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice rescheduling the administrative hearing to [redacted] 2014.

On [redacted] 2014, 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], the Appellant's son and power of attorney ("POA")
Kenneth Smiley, ESW, Department's Representative
Shelley Starr, Observer
Maureen Foley-Roy, Hearing Officer

The hearing record remained open for the submission of additional evidence. On [redacted] 2014, the hearing record closed.

## STATEMENTS OF THE ISSUES

The first issue to be decided is whether the Department's decision that the Appellant must pay applied income beginning in [redacted] of 2013 was correct.

The second issue is whether the Department's decision to calculate applied income without an allowance for maintaining a home in the community was correct.

## FINDINGS OF FACT

1. The Appellant was living in the community and a recipient of Title 19/Medicaid under the home care waiver program. (Department representative's testimony)

2. On [redacted] 2013, the Appellant entered a nursing facility and the Department approved a long term stay. (Exhibit 1: Ascend Data notice)

3. Prior to entering the nursing home, the Appellant was living in the community with her son. (POA's testimony)

4. The Appellant had transferred ownership of her home to her son, who was living with her, retaining life use. (POA's testimony)

5. The Appellant was responsible for paying the property taxes and utilities at the home that she shared with her son. (Exhibit 5: Bills)

6. The POA charged his mother $800 per month to live in the home that they shared. (POA's testimony)

7. The Appellant needs total care with her activities of daily living ("ADL's"). (Exhibit 4: Letter and notes from facility)

8. The POA spends four or five hours at the facility every day, performing various personal care duties for the Appellant, including washing her hair and exercising with her. (POA's testimony)

9. The Appellant wanted to return to her home and it was her family's intention to bring her home. (Exhibit 4)

10. The Appellant applied for Money Follows the Person benefits in [redacted] of 2013.(POA's testimony)

11. On [redacted] 2014, Health Management Systems ("HMS") representing Medicare, sent the Appellant a letter that they were sending the Appellant a refund of her applied income in the amount of $5233.17. (Exhibit 6: Letter from HMS)

12. The Appellant anticipates returning to her home in the community on [redacted] 2014. (POA's testimony)

## 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 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.

4. The Department was correct when it determined that the Appellant must pay applied income beginning in [redacted] of 2013, after she had been in the facility for 30 days.

5. 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.

6. 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.

7. 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.

8. UPM § 5035.20 B 7 a and b provides that the cost of maintaining a home in the community for the assistance unit is allowed as a monthly deduction from the income of an assistance unit in a LTCF **subject to the conditions that the amount is not deducted for more than six months and the likelihood of the institutionalized individual's returning to the community within six months is certified by a physician.**

9. The Department correctly did not allow the cost of maintaining a home in the community as a deduction because a physician did not certify the likelihood of the Appellant returning to the community within six months and in fact, the Appellant did **not** return to the community within six months.

## DISCUSSION

The POA requested this hearing because he disagreed with the Department's decision to charge applied income beginning in [redacted] of 2013, when the Appellant's stay was covered by Medicare through [redacted] 2013. The policy is clear that applied income is charged starting with the month in which the 30th day of continuous LTCF care occurs. There are no provisions or exceptions due to Medicare coverage. HMS was going to reimburse the Appellant for payments made when she was dually eligible for Medicare and Medicaid.

The POA also disagreed with the Department's decision not to reduce the applied income due to the Appellant's 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 and the amount allowed. A physician must certify that an individual is likely to return to her home in the community within six months. When the Appellant was admitted to the facility, it was for the purpose of long term care. There was nothing to indicate that the Appellant would be returning to her home. Just one week prior to the 6 month anniversary of the Appellant entering the home, the physician sent a letter speaking to the family's intention to have the Appellant return to her home. That letter did not certify that the Appellant was likely to return home within 6 months of her admission date. As of the date of the hearing, nearly eight months after her admission, the Appellant had not returned to her home. The Appellant did not meet the criteria for having a deduction to maintain a home in the community. The Department was correct when it did not allow such a deduction.

At the hearing, the POA testified that he performed some personal care duties for the Appellant during her stay at the facility. He questioned whether the value of such duties could be used to reduce the amount of applied income. As per conclusion of law # 7, above the regulation does not allow for such a deduction.

## DECISION

The Appellant's appeal is **DENIED.**

Maureen Foley-Roy
Hearing Officer

CC: Tonya Cook-Bedford, Operations Manager
DSS #42, Willimantic

## 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, 25 Sigourney Street, Hartford, CT 06106-5033.

## 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, 25 Sigourney Street, 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.