

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

██████████ 2014
SIGNATURE CONFIRMATION

REQUEST #629493

CLIENT ID ██████████

NOTICE OF DECISION

PARTY

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

On ██████████ 2014, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Applied Income Change stating that the amount that she must pay towards the cost of her care will change to \$1,697.64 per month, effective ██████████ 2014.

On ██████████, 2014, the Appellant's representative, ██████████, requested an administrative hearing on behalf of the Appellant to contest her monthly applied income as determined by the Department.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings, ("OLCRAH") sent a Notice of Administrative Hearing scheduling a hearing for ██████████ 2014 @ ██████████ to address the Appellant's monthly applied income as determined by the Department.

On ██████████ 2014, 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 regarding the Appellant's monthly applied income as determined by the Department.

The following individuals were present at the hearing:

██████████, Appellant's Representative
██████████, Appellant's Representative

Tyshara Coggins, Representative for the Department
Dinah Morales, Observer
Hernold C. Linton, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the amount of the Appellant's monthly applied income as determined by the Department is correct.

FINDINGS OF FACT

1. On [REDACTED] 2013, the Appellant was admitted to a long-term care facility ("LTCF") for a short-term stay. (Hearing Summary)
2. On [REDACTED] 2014, the Department received the Appellant's application for medical assistance under Medicaid program. (Hearing Summary)
3. The Department granted the Appellant's application for medical assistance under the Medicaid program, effective [REDACTED] 2014 to cover the cost of her stay in a LTCF. (Hearing Summary)
4. The Department calculated the Appellant's monthly-applied income as \$1,047.64, effective [REDACTED] 2014, as the Department diverted \$650.00 per month of the Appellant's income to maintain her home in the community. (Hearing Summary; Dept.'s Exhibit #1: EMS-MAFI Screens)
5. The diversion of income to maintain the Appellant's home in the community, under the likelihood that she would be returning to the community, is only allowed for six months. (Hearing Summary)
6. On [REDACTED] 2014, the Department notified the Appellant that her monthly applied income of \$1,697.64 must be paid towards the cost of her care, effective [REDACTED] [REDACTED] 2014. (Hearing Summary; Dept.'s Exhibit # 2: [REDACTED]/14 Notice of Action)
7. Effective [REDACTED] 2014, the Department is no longer diverting \$650.00 per month of the Appellant's income to maintain her home in the community. (Hearing Summary; Dept.'s Exhibit #1: EMS-MAFI Screens)
8. The Appellant has total monthly gross unearned income of \$1,779.14. (Hearing Summary; Dept.'s Exhibit #1)
9. The Appellant does not have a spouse residing in the community. (Hearing Summary)
10. The Appellant has monthly allowable deduction for non-covered medical expense of \$21.50. (Hearing Summary)

11. The Appellant has monthly allowable deduction of \$60.00 as her personal needs allowance ("PNA"). (Hearing Summary; Dept.'s Exhibit #1)
12. The Appellant's monthly-applied income is \$1,697.64, effective [REDACTED] 2014. (See Facts # 1 to 11; Hearing Summary; Dept.'s Exhibit #1)

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 definitions as follows:

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.

3. UPM § 5005(C) provides that the Department computes applied income by subtracting certain disregards and deductions, as described in this section, from counted income.
4. UPM § 5005(D) provides that the Department uses the assistance unit's applied income to determine income eligibility and to calculate the amount of benefits.
5. The Department correctly determined the Appellant's total monthly gross unearned income as \$1,779.14.
6. 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.

7. As a resident of a LTCF, the Appellant is responsible for contributing a portion of her income towards the monthly cost of her care.
8. 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, 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 certain 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
9. The Department correctly allowed six months diversion of \$650.00 of the Appellant's income from [REDACTED], 2014 through [REDACTED] 2014 to maintain her home in the community, under the likelihood that she would be returning to the community within the six months.
10. The Appellant's expected stay in a LTCF was upgraded from short-term to long-term, and it is now determined that she would not be able to return to the community.
11. UPM § 5045.10(C)(1) provides that except for determining AABD eligibility and benefit amounts for individuals residing in long term care facilities, applied unearned income is calculated by reducing the gross unearned income amount by the appropriate disregard based upon living arrangements.
12. The Department correctly calculated the Appellant's monthly applied income, effective [REDACTED] 2014, by allowing all deductions and disregards to calculate the amount of income which is to be applied towards her monthly cost of care.
13. 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.

For LTCF cases only, the amount to be contributed is projected for a six month period.

14. 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 last received.
15. UPM § 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.
16. Effective [REDACTED] 2014, the Appellant's monthly applied income is \$1,697.64 (\$1,779.14, unearned income; minus \$60.00, PNA, and \$21.50, non-covered medical expense) as determined by the Department.
17. UPM § 5045.20(D) provides that the difference between the assistance unit's contribution and the Medicaid rate of the LTCF or CBS is the amount of benefits paid by the department to the facility or provider organization on the unit's behalf.
18. The Appellant's monthly applied income of \$1,697.64 must be paid towards the cost of her care, effective [REDACTED] 2014.

DISCUSSION

The regulation requires that residents of LTCF are responsible for contributing a portion of their income towards the cost of their care. In the Appellant's situation, the record established that she is a resident of a LTCF, and therefore, she must contribute a portion of her income towards the cost of her care.

It is noted that the regulation provides that the total gross income of residents in LTCF's is adjusted by certain deductions to calculate the amount of income which is to be applied towards their monthly cost of care, and that the amount of income to be contributed is projected over a six-month period. Consequently, the Department did calculate the Appellant's monthly applied income after allowing for the personal needs allowance of \$60.00 and \$21.50 for non-covered medical expense as deductions. The Department could only allow the \$650.00 per month in diverted income for six months in order to maintain the her home in the community. Effective [REDACTED] 2014, the Department could no longer allow for the diversion of the Appellant's income to maintain her home in the community, based on the UPM.

The Department's calculation of the amount of income to be applied towards the Appellant's monthly cost of care, effective [REDACTED] 2014, is in accordance with the

applicable provisions of the UPM. Therefore, the amount of the Appellant's monthly applied income as determined by the Department and stated in the Notice of Action is correct.

The Appellant's representatives argued that the Department did not provide advance notice of the change in the Appellant's applied income. They also testified that the diverted income is still needed to pay for the upkeep and maintenance of the property. However, the policy does not provide for the diversion of the Appellant's income beyond the allowable six months. The increase in the Appellant's monthly applied income is due to the \$650.00 no longer being diverted to maintain her home in the community.

For informational purposes, in light of the change in the Appellant's LTC stay from short-term to long-term, the Department now has to consider her former residence as possible non-home property.

DECISION

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

Hernold C. Linton

Hernold C. Linton
Hearing Officer

Pc: **Phil Ober**, Social Service Operations Managers,
DSS, R.O. #52, New Britain

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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.