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

2015
Signature Confirmation

Client ID #
Request # 634575

NOTICE OF DECISION

PARTY

c/o

PROCEDURAL BACKGROUND

On 2014, the Department of Social Services (the "Department") sent (the "Applicant") a Notice of Action ("NOA") informing him that effective of 2014 he must pay $2866.78 in applied income each month towards his cost of care under the Long Term Care Medical Assistance program.

On 2014, the Appellant's daughter and Power of Attorney, (the "Appellant") requested an administrative hearing to contest the Department's calculation of the applied income amount.

On 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for 2014.

On 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:

, the "Appellant", daughter and power of attorney ("POA") for
, the Applicant
Bruce Disco, Owner & Operator of the Villa Maria Nursing & Rehabilitation Facility
Victor Robles, ESW, Department's Representative
Maureen Foley-Roy, Hearing Officer

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

STATEMENTS OF THE ISSUES

The issue to be decided is whether the Department's calculation of the Applicant's applied income is correct.

FINDINGS OF FACT

1. On ██████ 2014, the Department received an application for home care services for the Applicant. (Exhibit C: case narrative)

2. In ███ of 2014, the Applicant was admitted to a long term care facility. (Hearing record, Exhibit C)

3. The Applicant and his wife are the owners of a housing complex that consists of 48 units, a business office, and an outbuilding, financed by the U.S Department of Agriculture ("USDA") Rural Development. (Exhibit D: ████ 2014 email from Investigations Supervisor)

4. The tenants at the housing complex make their rent checks out to the housing complex and it is deposited to an account in the Applicant's name and Social Security number. (Appellant's testimony)

5. The Appellant and his spouse claim the income from the housing project on their federal income taxes. (Exhibit F: 2013 tax return)

6. Owners of multi-family housing projects financed by the USDA do not have access to project income or bank accounts for personal use (Appellant's Exhibit 1: Letter from Loan Specialist at the USDA dated ██████ 2014)

7. USDA regulations allow that the owners of multi-family housing projects may receive a return on investment of up to 8% per annum of the borrower's initial investment and may also make an annual withdrawal from the reserve account equal to no more than 25% of the interest earned on a reserve account during the year. (Exhibit M: Resources Unit Administrative Hearing Addendum dated ██████ 2014)

8. For the years from 2008 through 2013, the Applicant and his spouse received a return on their investment of $13,520.00 each year from the housing project. (Exhibit N: Resources Unit Addendum Part II dated ██████ 2014 and Appellant's Exhibit 2: Letter dated ██████ 2014 and financial statements for project from 2008 through 2013)

9. The Applicant and his spouse have received the following amounts from the withdrawal of reserve interest: $646 in 2009, $685 in 2010, $640 in 2011, $136 in 2012, and $126 in 2013.(Appellant's Exhibit 2):

10. Up until 2013, the Applicant and his spouse received compensation for services that they performed at the housing complex. The Applicant no longer does any work at the complex due to his frail health and no longer receives any such compensation. (Appellant's Exhibit 3: Letter dated ██████ 2014 and cancelled checks)

11. Beginning in ██████ of 2014, the Applicant's wife limited her services to the housing project to Site Manager, the duties of which she shared with her daughter. For these services, the Applicant's spouse received $550 per month. (Exhibit 3)

12. In 2014, the Applicant was receiving a monthly gross benefit of $1441 from Social Security and must pay Medicare premiums of $104.90. (Exhibit L: Notice of Approval for Long Term Care Medicaid)

13. The Applicant's spouse pays $800 a month for rent and pays for her own heat and association fees. (Exhibit K: Lease)

14. On ██████ 2014, the Department granted Medicaid for Long Term care, effective ██████ 2014, for the Applicant and determined that he must pay $2866.78 per month towards the cost of his care. (Exhibit L)

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 Applicant must pay applied income after he had been in the facility for 30 days.

5. UPM § 5000.01 provides that the definition of "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.

6. UPM §5005 A 1,2,3, provides that in consideration of income, the Department counts the assistance unit's available income, except to the extent that it is specifically excluded. Income is considered available if it is: received directly by the assistance unit; or received by someone else on behalf of the assistance unit and the unit fails to prove that it is inaccessible or deemed by the Department to benefit the assistance unit.

7. UPM §5005 B provides that the Department does not count income which it considers inaccessible to the assistance unit.

8. The Department was incorrect when it determined that the rental income from the housing project was available to the Applicant.

9. 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.

10. 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.

11. The Department incorrectly determined that the Applicant's spouse was not entitled to a Community Spouse Allowance because it was including income that is not available to the Applicant or his spouse in its calculations.

12. The Department incorrectly calculated the Applicant's applied income when it included income that was not available to the Applicant.

DISCUSSION

The circumstances regarding this case are unique. The Department reviewed the evidence and calculated rental income according to the regulations provided in the Department's policy, based on the Applicant's tax return. Federal regulations allow for deductions that actually reduce the Applicant's taxable income to zero. The Appellant had no way of knowing that the Department would not look at the income in the same way.

At the hearing, the Appellant provided testimony and documentation that the Applicant did not have access to the rental income. However, the Department had no way of knowing that. Further research by the Department's resources unit concluded that the Applicant and his wife comply with two sets of federal rules regarding their ownership of the housing project. After receiving some information from the USDA, the resources investigation concurred with the Appellant's contention that the Applicant/owners were limited to receiving the $13,520 return on investment each year and a percentage of withdrawal of interest income. The resources department concluded that the project was solvent and had been a source of income for the Applicant and his spouse for over twenty years and that the Department was correct in counting such income. The information from the USDA also indicated that the Appellant filed financial reports with the USDA every year. Resources recommended that those reports be made available to the Department to provide accurate financial data. The Appellant did provide those financial reports for the past 5 years. Those reports showed while the Applicant was limited to the $13520.00 payment and the withdrawal of the interest, the Applicant, his spouse and other family members were receiving "compensation" from the project for services performed at the complex. Such "compensation"

provided a steady income stream for the Applicant and his spouse for many years. The Appellant testified that due to their age and frail health, the Applicant was no longer able to provide such services, and that his wife was limited to acting as a part time site manager for $550 per month.

The Department correctly followed the policy for determining net rental income; however, the Department failed to take into account that the Applicant and his spouse did not receive that income and it was not available for his benefit.

The Department's decision to count the unavailable income factored into the determination that the Applicant's spouse was not entitled to a community spouse allowance, which also affected the applied income.

Although it was not the issue of this hearing and the undersigned cannot rule on it; the consideration of the unavailable income may have affected the denial of benefits from the Medicare Savings Program for the Applicant and his spouse. They may want to consider reapplying for such benefits.

DECISION

The Appellant's appeal is **REMANDED BACK TO THE DEPARTMENT FOR FURTHER ACTION.**

The Department is ordered to recalculate the Applicant's applied income based on his actual available income; his Social Security benefit, the return to the owner, and the 25% interest withdrawal. The Department must also recalculate the Applicant's spouse's need for a community spouse allowance based on her available income, including her Social Security income, the return to the owner, 25% interest withdrawal and any compensation that she is currently receiving for services performed for the project. Compliance with this order is due by ████ ██ 2015 and shall consist of documentation that the applied income has been recalculated.

Maureen Foley-Roy

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Hearing Officer

CC: Tonya Cook-Bedford, Operations Manager, DSS #42, Willimantic
Victor Robles, ESW, DSS R.O. #10, Hartford
Catherine Shires, Investigations Supervisor, DSS #40, Norwich

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.