

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

██████████ 2015
Signature Confirmation

CLIENT No # ██████████
Request # 666528

NOTICE OF DECISION

PARTY

██████████
C/O ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services- (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") informing him that effective ██████████ 2015, he must pay \$1163.00 in applied income each month towards his cost of care under the Long Term Medical Assistance program.

On ██████████ 2015, the Appellant's conservator requested an administrative hearing to contest the decision to terminate such benefits.

On ██████████ ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2015.

On ██████████ 2015, 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:

██████████ Appellant's Conservator
Saya Miyakoshi , Department Representative,
Almelinda McLeod, Hearing Officer

STATEMENT OF THE ISSUE

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

FINDINGS OF FACT

1. The Appellant is a recipient of the Adult Long Term Care Medicaid Program. (Exhibit # A, State Notice dated [REDACTED]/14)
2. On [REDACTED] 2015, the Appellant received a gross benefit of \$1223.00 per month in Social Security disability ("SSD") benefit. (Hearing summary, Exhibit #1, US Department of the Treasury payment summary)
3. The Appellant has a reduction of \$183.45 per month from his Social Security check for an amount owed to the Department of Veterans Affairs. (Appellant's Testimony and Exhibit #1, US Treasury payment summary)
4. The reduction of \$183.45 per month from the Social Security disability benefit is to recover benefits received by the Appellant in the amount of \$30,000 through the Veterans Administration. The recoupment has existed all along. (Conservator's testimony)
5. The Appellant has not received VA benefits while active in the Medicaid program. (Department testimony)
6. The Appellant receives Qualified Medicare Beneficiary ("QMB") assistance, which pays for his monthly Medicare B premiums. (Department testimony)
7. The Appellant does not have any out of pocket medical expenses. (Conservator's testimony)
8. The personal needs allowance ("PNA") for the Appellant is \$60.00 per month. (Department's summary)
9. The Appellant's applied income effective for [REDACTED] 2015, is \$1163.00. (\$1223.00 SSD - \$60.00 PNA). (Exhibit C, Medicaid Financial Eligibility screen)
10. On [REDACTED] 2014, the Department determined that the Appellant's applied income used to pay towards the cost of his medical care would change from \$1142.00 to \$1163.00 effective [REDACTED] 2015 due to cost of living increase.

CONCLUSIONS OF LAW

1. Section 17b-260 to 17b-264 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Title XIX Medical Assistance Program to provide medical assistance to eligible person in Connecticut.
2. Uniform Policy Manual ("UPM") § 5045.20 pertain to 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.
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.

The Department was correct when it determined that the Appellant must pay applied income as he has been in LTCF for 30 days and has not been discharged from the LTCF.

4. UPM 5045.20 (B) (2) pertains to the recalculation of the amount to be contributed. The recalculation of the amount to be contributed in any a month for the six month period is required under the following conditions:
 - (a) a significant change occurs in income which amounts to an increase or decrease in monthly income of \$15 or more per month ; or
 - (b) a change occurs, in any amount , in any deduction.

The Department correctly determined the Appellants Social Security monthly income changed from \$1202.00 to \$1223.00 effective [REDACTED] 2015 due to cost of living increase.

5. UPM § 5035.20 (B) (2) provides for residents of long term care facilities (LTCF) and those 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. A monthly deduction for LTFC units of a personal needs allowance ("PNA") is \$60.00, 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.

6. UPM § 5045.20 (B) (1) (b) provides that the total gross income is reduced by post eligibility deductions (Cross reference 5035-“Income Deduction”) to arrive at the amount of income to be contributed.
7. UPM § 5035.20 (B) (1) (2) pertains to the Deductions for LTCF Units. 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.

The Department correctly allowed the Appellant a PNA of \$60.00.

The Department correctly denied the Appellant a monthly deduction of \$183.45 reduced from the Social Security income as a deduction as the Appellant never received VA benefits while on the Medicaid program and is not an allowable deduction.

The Department correctly calculated the Applicant's applied income effective [REDACTED] 2015.

DISCUSSION

After reviewing the evidence and testimony presented at this hearing, the Department was correct when they determined the applied income reflecting the cost of living increase effective [REDACTED] 2015.

The conservator feels that the Department should take the VA recoupment of \$183.45 into account when calculating the applied income because the Appellant was not receiving the gross amount. However, the Department must count the gross income minus the allowable deductions in order to properly calculate for the applied income. In this case, the Department counted the gross SSD income and allowed the \$60.00 personal needs allowance. The Department's summary and testimony at the hearing indicated that the Appellant was not receiving VA benefits while on Medicaid, therefore was unable to allow an income deduction. The conservator did not provide any evidence to the contrary. The VA recoupment from the Appellant's Social Security disability benefit does not meet the definition of an allowable deduction in accordance with departmental policy, therefore the Department's determination not to allow this deduction is correct.

DECISION

The Appellant's appeal is DENIED.

Almelinda McLeod
Hearing Officer

CC: Musa Mohamud, SSOM, Hartford Regional Office
Elizabeth Thomas, SSOM, Hartford Regional Office

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 Legal Counsel, Regulations, and Administrative Hearings, 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 his 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.