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

[redacted] **2015**
Signature Confirmation

Client ID # [redacted]
Request # 668412

NOTICE OF DECISION

PARTY

[redacted]
C/O [redacted]

PROCEDURAL BACKGROUND

On [redacted], 2015, the Department of Social Services (the "Department") sent [redacted] (the "Appellant") a Notice of Action ("NOA") regarding the amount of applied income that he must pay toward his cost of long-term care ("LTC").

On [redacted] 2015, the Appellant's authorized representative requested an administrative hearing to contest the Department's calculation of the applied income amount.

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

On [redacted] 2015, the authorized representative requested a continuance which was granted.

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

On [redacted], 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:

Attorney [redacted], Appellant's Authorized Representative via telephone
Saya Miyakoshi, Department's Representative
Thomas Monahan, Hearing Officer

The hearing record remained open for the submission of additional information. On [redacted] 2015, the record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department has correctly calculated the amount of applied income that the Appellant is responsible to pay to the facility for the cost of his care.

FINDINGS OF FACT

1. The Appellant is a resident at Pines at Bristol Health and Rehab Center. (Exhibit. A: Renewal of Eligibility form, [redacted]/14)

2. The Appellant receives Medicaid long-term care benefits. (Ex. B: Notice of Redetermination Results, [redacted]/15)

3. Prior to [redacted] 2014, the Appellant was not paying anything toward the cost of his care at the facility. (Appellant's Brief, Applied Income Letter, [redacted]/14)

4. Effective [redacted] 2015, the Appellant's gross monthly Social Security benefit is $1,810.00. In [redacted] and [redacted] of 2014 the Appellant received gross monthly Social Security benefits of $1,780.00. (Ex. C: SVES Title II Information)

5. For purposes of calculating the portion of the Appellant's income that he is required to pay toward to cost of his care at the facility (applied income), the Department deducts $60.00 from his gross monthly income as his Personal Needs Allowance ("PNA"). (Ex. L: MAFI screens, 2015).

6. The Department calculated the Appellant's applied income to be $1,720.00 ($1,780.00 - $60.00) effective [redacted] 1, 2014 and $1,750.00 ($1,810.00 - $60.00) effective [redacted] 2015

7. On [redacted], 2015, the Department sent the Appellant an NOA with the results of his redetermination application. The NOA stated that the Appellant remained eligible for Medicaid long-term care benefits and that the Appellant was required to contribute $1,750.00 each month toward the cost of his care at the facility. (Exhibit B: Redetermination Results Notice, [redacted]/15).

8. Because the Appellant is responsible for paying $1,750.00 in applied income to the facility, the Department's Medicaid payment to the facility on behalf of the Appellant is the difference between the facility's monthly Medicaid rate and the amount of the Appellant's applied income.

9. The Appellant is divorced and his two minor children live with his ex-wife in the community. (Hearing record)

10. The Appellant pays monthly child support and alimony per a prior court order of $1,176.50 which is deducted from his monthly Social Security benefit. (Ex. E: Social Security letters, 2014, Ex. F: Connecticut Child Support System payments, Appellant's brief)

11. Because child support and alimony are deducted from the Appellant's Social Security benefit, he is not paying the required applied income amount.

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. Section 17b-261(n) of the Connecticut General Statutes authorizes coverage for low – income adults under the Medicaid program. The state Medicaid plan is amended to establish an alternative benefit package. The Commissioner of Social Services shall, subject to federal approval, administer coverage under the Medicaid program for low income adults in accordance with Section 1902 (a)(10)(A)(i)(VIII) of the Social Security Act.

   Sections 17b-260 to 17b-264 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer Title XIX Medical Assistance program to provide medical assistance to eligible persons in Connecticut.

3. 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. Uniform Policy Manual ("UPM"), section 5000.01.

4. State regulation provides that, except to the extent that it is specifically excluded, the Department counts all of the individual's income when determining the income that is available to the individual. UPM § 5005(A, B).

5. Court-ordered alimony and support payments are not deducted from an assistance unit's gross income and are considered as available income. *Himes v. Shalala*, 999 F. 2d 684, 688 (2nd Cir.1993); *Clark v. Comm'r of Income Maintenance*, 209 Conn. 390, 403 (1988)

6. All of the Appellant's Social Security income is available income.

7. Counted income is that income which remains after excluded income is subtracted from the total amount of available income. UPM § 5000.01

8. Neither state nor federal law provides for the exclusion of child support or alimony payments from available income. *See* 42 C.F.R. 435.831

9. All of the Appellant's Social Security income is counted income because neither the alimony nor the child support payments is excluded income.

10. State regulation provides that assistance units who are residents of long-term care facilities are responsible for contributing a portion of their income toward the cost of their care. UPM § 5045.20.

11. The difference between the assistance unit's contribution and the long-term care facility's Medicaid rate is the amount the Department pays to the long-term care facility on behalf of the assistance unit.

12. The portion of one's income that the assistance unit is required to pay toward the cost of his or her care is called applied income.

13. Applied income is that portion of the assistance unit's countable income that remains after all deductions and disregards are subtracted. UPM §§ 5000.01, 5045.20 (B)(1)(b)

14. State regulation provides that the Department computes applied income by subtracting certain disregards and deductions, as described in this section, from counted income. The Department uses the assistance unit's applied income to determine income eligibility and to calculate the amount of benefits. UPM § 5005 (C ,D)

15. Deductions are those amounts that are subtracted as adjustments to counted income and represent expenses paid by the assistance unit. UPM § 5000.01

16. State regulation allows for certain deductions that may be made from the gross income of residents of long-term care facilities when calculating the amount of income to be applied toward the monthly cost of care in the long-term care facility. UPM 5035.20(B)

17. Federal law provides that the Department must reduce its payment to a long-term care facility for long-term care services by the amount that remains after deducting amounts specified in the regulations. 42 C.F.R. 435.82 (a)

18. Federal law requires the Department to deduct certain amounts from an assistance unit's income, in a specific order, when calculating the amount it will pay to a long-term care facility on behalf of an the assistance unit. 42 C.F.R. 435.82 (c)

19. Neither child support nor alimony payments are permissible deductions under state or federal law.

20. A PNA of $60.00 must be deducted from the gross income of residents of long-term care facilities when calculating the amount of the applied income. Conn. Gen. Stat. 17b-272; 42 C.F.R. 435.832 (c)(1); UPM 5035.20(B)(2)

21. The Department correctly determined that the Appellant's total monthly gross unearned income in [redacted] and [redacted] of 2014 was $1,780.00 and $1,810.00 effective J[redacted] 2015.

22. The Department correctly determined that the Appellant's applied income for [redacted] and [redacted] of 2014 is $1,720.00 ($1,780.00 - $60.00). The Department correctly determined that the Appellant's applied income is $1,750.00 ($1,810.00 - $60.00) effective [redacted] 2015.

23. The Department correctly determined that the Appellant must contribute $1,720.00 toward the cost of his care in the facility for [redacted] and [redacted] of 2014. The Department correctly determined that the Appellant must contribute $1,750.00 toward the cost of his care in the facility effective [redacted] 2015.

DISCUSSION

The Court of Appeals for the Second Circuit has upheld the validity of state and federal regulations that do not allow court-ordered payment, which include child support, as deductions from available income. In *Himes v. Shalala*, 999 F. 2d 684 (2d Cir. 1993), the court considered the issue of whether court-ordered support payments and mandatory payroll deductions could be counted by the state when determining income that was available to an applicant for Medicaid. In upholding the decision of the federal district court, the Second Circuit cited to two other Courts of Appeals, which ruled on the exact provisions that were at issue, and upheld the state and federal government's interpretation of the term "available." *See Peura v. Mala*, 977 F.2d 484 (9th Cir. 1992); *Emerson v. Steffen*, 959 F. 2d 119 (8th Cir. 1992). The Second Circuit, cites to the United States Supreme Court decision in *Heckler v. Turner*, 470 U.S. 184, 200 (1985), and explained that the concept of "actual availability" stemmed from the desire to be

sure the state was not "conjuring fictional sources of income and resources by imputing financial support from persons who have no obligation to furnish it."

The *Himes* court described the legislative history of the federal statute, 42 U.S.C 1396a(a)(17(B), which required the states to take into account "only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient." The Court wrote that the statute was "intended to guard against unfounded attribution of income from relatives, a prevalent state practice at the time." The concept of "availability" did not mean that available income should not include an applicant's actual income, merely because the applicant was subject to certain deductions that were not permitted by the federal regulations. The Court, therefore, deferred to the Secretary's interpretation of "available" income as including the amount of court-ordered support payments and mandatory payroll deductions.

Even prior to the Second Circuit's decision in *Himes*, the Connecticut Supreme Court had upheld the Department's decision not to deduct from a Medicaid applicant's available income the amount of a probate court order to pay herself $460.00 per month. *Clark v. Comm'r of Income Maintenance*, 209 Conn. 390 (1988).

The Appellant cites to a 1991 United States District Court decision in Minnesota to support his position that support payments are not considered available income. But the Appellant failed to report that this decision was reversed by the Court of Appeals for the Eighth Circuit in *Emerson v. Steffen*, 959 F. 2d 119 (8th Cir. 1992). The Eighth Circuit ruled in accordance with the Second Circuit in *Himes*, upholding the interpretation of the Secretary of Health and Human Service to treat court-ordered support as available income.

In light of the decisions referenced above by both the Court of Appeals for the Second Circuit and the Connecticut Supreme Court, I decline to follow the decision in State of California v. Secretary of Health and Human Services, 823 F. 2d 323 (9th Cir. 1987), which is not binding in Connecticut.

DECISION

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

Thomas Monahan
Hearing Officer

C: Peter Bucknall, Operations Manager, New Britain Regional Office
Phil Ober, Operations Manager, New Britain Regional Office
Saya Miyakoshi, Hearing Liaison

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. 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/her 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.