

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT06106-5033

[REDACTED], 2015  
Signature Confirmation

Client Id: # [REDACTED]  
Hearing Id# 693954

**NOTICE OF DECISION**

**PARTY**

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

**PROCEDURAL BACKGROUND**

On [REDACTED] 2015, the Department of Social Services (the “Department”) sent [REDACTED] (the “Appellant” and “Institutionalized Spouse”) a Notice of Action advising that the amount you must pay towards the cost of your medical will change.

On [REDACTED], 2015, the Appellant’s Representative and Community Spouse, [REDACTED], requested an administrative hearing as she is dissatisfied with amount of applied income that her spouse must pay.

On [REDACTED], 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a Notice of Administrative Hearing scheduling a hearing for [REDACTED], 2015.

The Appellant’s Representative requested a rescheduling of the hearing due to her hospitalization.

On [REDACTED] 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a Notice of Administrative Hearing rescheduling a hearing for [REDACTED] 2015.

The Appellant’s Representative requested a rescheduling of the hearing due to her hospitalization.

On [REDACTED] 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice of Administrative Hearing rescheduling a hearing for [REDACTED] 2015.

On [REDACTED], 2015, in accordance with Connecticut General Statutes § 17b-60, § 17b-61 and § 4-176e to § 4-184, inclusive, OLCRAH held an administrative hearing to address the amount of the applied income as determined by the Department.

The following individuals were present at the hearing:

[REDACTED] Appellant's Rep / Community Spouse  
[REDACTED], Appellant's Daughter/Witness  
Ellen Croll, Department's Representative  
Shelley Starr, Hearing Officer

The Appellant, [REDACTED] [REDACTED] was not present at the hearing due to his institutionalization.

The hearing record remained open for the submission of additional information from the Department. The Department did not provide any of the requested information. On [REDACTED] 2015, the hearing record closed.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department correctly calculated the Applied Income owed to the long term care facility.

### **FINDINGS OF FACT**

1. The Appellant/institutionalized spouse has been a resident of a long term care facility and a recipient of Medicaid since 1993. (Community Spouse's Testimony and Hearing Record)
2. The Appellant's spouse resides in the community with her sixteen year old grandson and her adult disabled daughter. (Hearing Summary)
3. The community spouse has had custody of her grandson since 2010 and her daughter has been residing with her since 2006. (Community Spouse's Testimony)
4. The Appellant and his community spouse declare their grandson and their daughter as legal tax dependents. (Appellant's Exhibit B: 2014 1040 income tax return)
5. In the past, the Appellant has not been responsible for paying applied income to the nursing home. (Community Spouse's Testimony)

6. On [REDACTED] 2015, the Department reviewed the Appellant's W-1ER renewal form and submitted verifications. (Department's Testimony and Hearing Record)
7. There is no evidence in the hearing record that the Department issued a W-1348 to request verification to determine eligibility for a community family allowance, as the Department did not provide a copy of the requested additional evidence. (Hearing Record)
8. On [REDACTED], 2015, the Department completed the Appellant's L99 redetermination. (Department's Testimony and Hearing Record)
9. On [REDACTED] 2015, the Department issued the Appellant a notice of action informing the Appellant that the amount that you must pay towards the cost of your medical care will change on [REDACTED] 2015 as the amount of money we allow you to keep in your home has changed. (Exhibit 1: Notice of Action dated [REDACTED], 2015)
10. There is no evidence in the hearing record that the Department explored eligibility for a community family allowance based on the Appellant's legal tax dependents. (Hearing Record and Department's Testimony)

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Uniform Policy Manual ("UPM") § 1545 provides the eligibility of an assistance unit is periodically redetermined by the Department. During the redetermination, all factors relating to eligibility and benefit level are subject to review.

UPM § 1545.05 (A)(3) provides in general, eligibility is redetermined through the same methods by which eligibility is initially determined at the time of application.

UPM § 1545.05 (B)(3) provides that circumstances subject to change or which are unclear or questionable are investigated and verified.

**The Department did not review all factors of the Appellant's eligibility and benefit level at the time of redetermination.**

**The Department did not investigate or verify the Appellant's community spouse's household composition or dependents.**

**The Department did not use the same methods previously used to calculate the Appellant's applied income that was used in his initial application or previous redeterminations.**

3. UPM § 5035.25 provides that for resident of long term care facilities (LTCF) and those individuals receiving community-based services (CBS) when the individual has a spouse living in 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.

UPM § 5035.35 (A) (1) provides the community family allowance (“CFA”) is used as an income deduction in the calculation of the post-eligibility applied income of an institutionalized spouse (IS) when any of the following individuals are living with the community spouse (CS):

- a. a minor child of either spouse; or
- b. a child, parent, or sibling who is a legal tax dependent of either spouse.

UPM § 5035.35 (B) provides the Department calculates the CFA deduction for each eligible family member by (1) subtracting the gross monthly income of each eligible family member from 150 percent of the monthly poverty level for a unit of two persons; and (2) multiplying the result of step 1 by 33 1/3 %.

**There is no evidence in the hearing record demonstrating the Department considered a Community Family Allowance as an income deduction in the calculation of the Appellant's applied income at the time of his redetermination.**

**The Department failed to compute the Appellant's Community Family Allowance based on the Appellant's legal tax dependents.**

## **DISCUSSION**

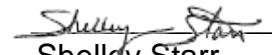
Based on evidence and testimony, the Department acted incorrectly in its determination of the Appellant's eligibility. The Department did not base the review on previously submitted redeterminations or use the same methods for the review process. There is no evidence that the Department explored all factors of eligibility by requesting additional information with regards to the Appellant's tax dependents. The Department was asked to provide for the hearing record a copy of the W-1348 request for information and additional exhibit(s). The Department did not provide the requested items for the record. In addition, when the Department was made aware by the Appellant of a possible error pertaining to the applied income calculation, the Department did not take action to review the calculations.

**DECISION**

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

**ORDER**

1. Effective [REDACTED] 2015, the Department shall review the Appellant's eligibility for the calculation of a family allowance and request by issuance of a W-1348 all information necessary to determine the Community Family Allowance.
2. The Department shall re-calculate the Appellant's applied income as determined by the Department and send the notice of the results to the Appellant with appeal rights for the months beginning [REDACTED] 2015 to the present.
3. Proof of compliance with this order is due by [REDACTED] 2015 by submission of the W-1348 and case narrative.



Shelley Starr  
Hearing Officer

Pc: Bonnie Shizum, Program Manager DSS, R.O. #20 New Haven

### **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.