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 # 698829

NOTICE OF DECISION

PARTY

[redacted]
For [redacted]
[redacted]
[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2015, the Department of Social Services (the "Department") sent [redacted] (the "Appellant") a Notice of Action ("NOA") informing him that he must pay $909.00 each month towards his cost of care under the Long Term Care Medical Assistance ("LTC") program effective [redacted] 2015.

On [redacted] 2015, the Appellant's Power of Attorney ("POA") 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 POA requested to reschedule the hearing due to having a scheduling conflict.

On [redacted] 2015, the Office of Legal Counsel, Regulations and Administrative Hearings ("OLCRAH") issued a Notice rescheduling the 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:

[redacted], POA
Joanne Crist, Department's Representative
Shelley Starr, Hearing Officer

The Appellant, [redacted] was not present at the hearing.

The hearing record was held open for the submission of additional information. On [redacted] 2015, the hearing 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 has been a recipient of the W01 home care program and was residing with his daughter in her home prior to his admission to Ellis Manor. (Hearing Summary)

2. On [redacted] 2015, the Appellant was admitted to Ellis Manor of Hartford, Connecticut, ("the facility"). (Exhibit F: Admission Notice)

3. The Appellant's primary medical diagnosis is Vascular Dementia and the Appellant was admitted to the facility for 24 hour supervision due to his recent issues with wandering and turning on the gas stove. (POA's Testimony and Hearing Record)

4. The Appellant was approved for long term level of care by Ascend, the medical reviewer contracted with DSS to complete level of care determinations. (Exhibit G: Acend level of care determination and Hearing Record)

5. On [redacted] 2015, Ellis Manor updated their admission system to indicate that the Appellant was anticipated to have an expected length of stay of 6 months or longer and updated his admission notice to indicate a length of stay of 6 months of more. (Appellant's Exhibit 1 [redacted] 2015 email and Exhibit F: Ellis Manor admission notice)

6. The Appellant was not planning to stay at Ellis Manor for a long duration and was on the waiting list at "The Retreat" and other institutions for further placement

upon their availability. (POA Testimony; Appellant's Exhibit 1: [redacted], 2015 email)

7. The Appellant would not be returning to live with his daughter and her family in the near future. (POA's Testimony and Hearing Record)

8. The Appellant was responsible to pay his daughter $450.00 per month for shelter costs including his utilities. (POA's Testimony)

9. The Appellant has been estranged from his spouse for over ten years. (POA's Testimony and Hearing Record)

10. The Appellant receives $969.00 per month in gross Social Security benefits. (Exhibit B: MAFI screenprint, Hearing Summary and Department's Testimony)

11. The Appellant does not have private medical insurance coverage. (POA's Testimony)

12. The Appellant does not pay a monthly premium for his Medicare Part B coverage as the Appellant is the recipient of the Q01 program that pays for the Medicare part B coverage. (Department's Testimony and Hearing Record)

13. The Appellant has a total monthly allowable deduction of $60.00 as his personal needs allowance ("PNA"). (Hearing Summary and Hearing Record)

14. Effective[redacted] 2015, the Appellant's applied income equaled $909.00 (gross income of $969.00 minus $60.00 PNA = $909.00 applied income. (Exhibit B: MAFI screenprint, Hearing Record and Department's Testimony)

15. On[redacted] 2015, the Department sent a notice of action to the POA informing her that she is required to pay, effective [redacted]2015, monthly applied income of $909.00 toward the cost of care. (Exhibit C: Notice of Action dated [redacted] 2015)

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.

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.

UPM § 5035.20(A) provides that for residents of long term care facilities (LTCF) 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. Beginning with the month in which the 30th day of continuous LTCF care occurs, certain monthly deductions from income are allowed. Deductions include a personal needs allowance of $50.00 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 (currently $60.00), and a deduction for Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid by Medicare or any other third party.

As of [redacted] 2015, the Appellant is a resident of a LTCF who has resided in the facility for more than 30 continuous days.

The Department correctly allowed for the deduction of the $60.00 personal needs allowance from the Appellant's gross income.

4. 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 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) mortgage interest

(9) fire insurance premiums (10) amortization

The Department correctly determined that the Appellant was not likely to be returning to the community within six months based on the provided documents.

The Department correctly did not deduct the cost of the Appellant's home expenses in the community as he was not anticipated to be returning to his home in which he resided prior to his [redacted] 2015 admission.

The Department correctly computed the Appellant's applied income of $909.00. ($969.00 (SSA) - $60.00 (PNA) = $909.00

5. UPM § 5045.20 provides that assistance units who are residents of Long Term Care Facilities or receiving Community Based Services 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.

The Department correctly determined that the Appellant is responsible for contributing applied income toward the cost of his care.

6. 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.

The Department correctly determined the Appellant entered Ellis Manor on [redacted] 2015 and the 30th day of continuous care takes place in [redacted] 2015.

The Department correctly determined the Appellant is responsible for contributing applied income in the monthly amount of $909.00 effective [redacted] 2015.

DISCUSSION

After reviewing the evidence and testimony presented, I find that the Department was correct in the calculation of the Appellant's applied income effective [redacted] 2015.

The regulation requires that residents of a long term care facility are responsible for contributing a portion of their income toward the cost of their medical care. In the Appellant's situation, the record established that he is a resident of a LTCF, and therefore, he must contribute a portion of his income towards the cost of his medical care.

The Appellant's Representative's main argument was that the Appellant was admitted to Ellis Manor as a short term resident and was never anticipated to be long term at the facility. While it may be true that the Appellant's stay at Ellis Manor was intended to be temporary until the Appellant could further transition into another placement, the provided evidence supports that the Appellant required 24 hour care and would not be anticipated to return to his home in which he resided with his daughter for an extended period of time. The Appellant was not obligated to continue to pay his rent as he was not anticipated to return home.

The Department calculated the amount of the Appellant's monthly-applied income after allowing for all permissible deductions. The Department's calculation of $909.00 as the amount of income to be applied towards the Appellant's monthly cost of care effective [redacted] 2015 is correct and in accordance with the regulation.

DECISION

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

Shelley Starr
Hearing Officer

cc: Musa Mohamud**,** Operations Manager, Hartford
Elizabeth Thomas, Operations Manager, Hartford
Patricia Ostroski, Program Manager, Hartford
Tricia Morelli, Program Manager, Hartford

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.