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]
[redacted] **700674**

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 her that she must pay $2,470.58 each month towards her cost of care under the Long Term Care Medical Assistance ("LTC") program effective [redacted] 2015.

On [redacted] 2015, the Appellant's conservator 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 Conservator requested to reschedule the hearing due to having a trouble getting transportation.

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], Appellant
[redacted], Conservator
Bryant Grimes, Department's Representative
Swati Sehgal, Hearing Officer

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 her care.

FINDINGS OF FACT

1. The Appellant has been a recipient of the L01. (Hearing Summary)

2. On [redacted] 2015, the Appellant was admitted to Hamden Healthcare, Hamden, Connecticut, ("the facility"). (Hearing Summary)

3. On [redacted] 2015, Money follows the Person created an action plan with targeted discharge date of [redacted] 2015. (Conservator's Testimony; Exhibit A: Action Plan)

4. The Appellant is planning to be returning home to live with her dependent daughter. (Conservator's Testimony)

5. The Appellant's dependent daughter is her conservator and lived with the Appellant prior to the Appellant entering the facility. (Conservator's Testimony)

6. The Appellant is responsible to pay $1,012.55.00 per month for shelter costs and utilities. (POA's Testimony, Exhibit C: Mortgage statement from Wells Fargo, Exhibit D: statement from united Illuminating CO., Exhibit E: statement from southern Connecticut Gas CO.)

7. The Appellant receives $1,150.90 per month in gross Social Security benefits and $1,833.92 per month in gross Pension (Exhibit 3: Notice of Approval for Long Term Care Medicaid and Exhibit 2: Pension stub dated [redacted]/14 and SVES print out)

8. The Appellant pays a monthly premium for her Medicare Part B coverage and has a monthly allowable deduction of $104.90 for medical insurance. (Hearing Record and Exhibit 3)

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

10. The Appellant has a monthly allowable deduction of $320.41as her spousal or family allowance ("CFA"). (Hearing summary and Exhibit 3)

11. Effective [redacted] 2015, the Appellant's applied income equaled $2,470.58 (gross income of $2,984.82 minus $104.90 Medicare B minus $60.00 PNA minus $320.41 CFA= $2,470.58 applied income). (Exhibit 3 and Hearing summary)

12. On [redacted] 2015, the Department sent a notice of action to the Conservator informing her that she is required to pay, effective [redacted] 2015, monthly applied income of $2,470.58 toward the cost of care. (Exhibit 4: Notice of Action dated [redacted] 2015)

13. Department was wrong to allow CFA as an income deduction because the Appellant's daughter is not residing with the Appellant's community spouse. (Department's Testimony)

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 allowed deduction of $104.90 Medicare B premium paid by the Appellant.

The Department incorrectly did not allow the deduction for the cost of maintaining a home in the community for allowed six months.

5. UPM § 5035.35 provides in part that the 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.

The Department incorrectly allowed CFA deduction of $320.41 as the Appellant's dependent child does not reside with the Appellant's community spouse.

6. 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.

7. 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 Hamden Healthcare on [redacted] 2015 and the 30th day of continuous care takes place in [redacted] 2015.

The Department correctly determined that the Appellant is responsible for contributing applied income.

The Department incorrectly determined the Appellant's contributing applied income in the amount of $2471.58 effective [redacted] 2015.

DISCUSSION

After reviewing the evidence and testimony presented, I find that the Department was incorrect 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 she is a resident of a LTCF, and therefore, she must contribute a portion of her income towards the cost of his medical care. However the Department must allow the applicable deductions in computing the applied income.

The Department incorrectly allowed CFA while computing applied income to determine the contributing portion of the Appellant's income towards the cost of medical care, and The Department incorrectly did not allow the Appellant the deduction for the cost of maintaining a home in the community.

The Appellant's conservator's main argument was that the Appellant is planning to be discharged on [redacted] 2015 and therefore she should be allowed deduction for the mortgage payments and utility bills.

Please be noted that the Department provided the documentation substantiating the correct deduction. The Department removed the CFA deduction and allowed the cost of maintaining a home effective [redacted] 2015, therefore there is no issue for this hearing officer to adjudicate.

DECISION

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

Swati Sehgal

Swati Sehgal
Hearing Officer

cc: Bonnie Shizume, Program Manager, New Haven R.O. 20
Bryant Grimes, Fair 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.