

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 ID # ██████████
Request # 708696

NOTICE OF DECISION

PARTY

██████████
For ██████████
██████████
██████████ 5

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████ (the "Applicant") a Notice of Action ("NOA") informing him that she must pay \$1462.00 each month towards her cost of care under the Long Term Care Medical

On ██████████ 2015, Attorney ██████████ the Applicant's Attorney, requested an administrative hearing to contest the effective date of the Long Term Care Medicaid benefits as determined by the Department.

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

On ██████████ 2015, at the Department's request, the OLCRAH issued a Notice rescheduling the administrative hearing for ██████████ 2015.

On ██████████ 2015, the Appellant's Attorney requested to reschedule the administrative Hearing.

On ██████████ 2015 at the request of Attorney ██████████ the OLCRAH issued a Notice rescheduling 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, Applicant's son
Attorney ██████████ Applicant's Attorney
Karonesa Logan Department's Representative
Victor Robles, Department's Representative
Swati Sehgal, Hearing Officer

STATEMENT OF THE ISSUE

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

The issue regarding effective date will be addressed in another decision.

FINDINGS OF FACT

1. On ██████████ 2014, the Applicant entered Saint Mary Home (the "Facility"), a long term care facility. (Hearing Record)
2. On ██████████ 2015, the Department received an application for Medicaid for Long Term Care for the Applicantt. (Department's summary)
3. Application listed ██████████ as authorized representative. (Hearing Record)
4. The Applicant was approved for long term level of care by Ascend, the medical reviewer contracted with DSS to complete level of care determinations. (Exhibit 6: Acend level of care determination and Hearing Record)
5. The Applicant has been approved for Money Follows the Person Program. (Appellant's testimony)
6. The Department received a copy of the request for authorization for purchase of stair lift from the Applicant's primary physician; Dr. Alex Mbewe from Saint Mary Home. Dr. Mbewe specifies that the Applicantt is planning to be discharged home to ██████████ (Exhibit 8: Request for stair lift)
7. The Applicant has been approved for stair lift which was requested by her primary physician for her to be discharged home. (Appellant's testimony)

8. The Appellant provided copies of electric bill, water bill and property taxes, snow removal bills, Attorney's payments, home insurance invoice, boiler's maintenance invoice. (Exhibit B: bills provided by the Appellant)
9. The Applicant gets \$1,522.00 a month in social security benefits. (Department's summary and Hearing record)
10. The Applicant does not pay a monthly premium for his Medicare Part B coverage as the Applicant is the recipient of the Qualified Medicare Beneficiary program that pays for the Medicare part B coverage. (Department's Testimony and Hearing Record)
11. The Applicant has a total monthly allowable deduction of \$60.00 as his personal needs allowance ("PNA"). (Hearing Summary and Hearing Record)
12. Effective [REDACTED] 2015, the Applicant's applied income equaled \$1,462.00 (gross income of \$1,522 minus \$60.00 PNA = \$1,462.00 applied income. (Exhibit 5: MAFI screen print, Hearing Record and Department's Testimony)
13. On [REDACTED] 2015, the Department sent a notice of approval for Long Term Care Medicaid to the Applicantt informing her that she is required to pay, effective [REDACTED] 2015, monthly applied income of \$1,462 toward the cost of care. (Exhibit 2: Notice of Approval dated [REDACTED]/15)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes, authorizes the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
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 [REDACTED] 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.

4. As of [REDACTED] 2014 the Applicant is a resident of Long Term Care Facility who has resided in the facility for more than 30 continues days.
5. The Department correctly allowed for deduction of the \$60.00 personal needs allowance from the Applicant's gross income.
6. 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

8. The Department incorrectly did not allow the deduction for maintaining a home in the community for allowed six months although physician letter was provided stating that the Applicant is planning to be discharged to her home.

DISCUSSION

The Appellant and Applicant's Attorney disagreed with Department's decision not to reduce the applied income due to the Appellant's maintaining a home in the community. The regulations regarding allowing a deduction for maintaining a home in the community are very specific as to the circumstances in which such a deduction is allowed and the amount allowed. A physician must certify that an individual is likely to return to her home in the community within six months. Letter received from the Applicant's primary physician requesting for authorization of the purchase of stair lift in order for her to be discharged from the facility to her home, clearly indicates the likelihood of the Applicant returning to community within very short period. The testimony revealed that the Applicant has been approved for Money Follows the Person program, and as well as for stair glide lift.

DECISION

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

ORDER

The Department is to recalculate the Applied Income allowing the deduction for maintaining a home in the community for six months. Compliance with this order is due by [REDACTED] 2015 and shall consist of documentation that the Applied Income has been recalculated.

swati sehgal

Swati Sehgal
Hearing Officer

Cc: Musa Mohamud, DSS Operations Manager, DO#10 Hartford.
Elizabeth Thomas, DSS Operation Manager, DO#10 Hartford.
Karonesa Logan, DSS Eligibility Services Specialist and Liaison, DO#10 Hartford.
Attorney [REDACTED]

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.

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.

