

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

██████████, 2016
Signature Confirmation

Client ID # ██████████
Request # 744540

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2015, the Department of Social Services (the "Department") sent ██████████, ("POA") the Appellant's Authorized Representative and Power of Attorney on behalf of ██████████ (the "Appellant") a Notice of Action ("NOA) granting Medicaid eligibility under the Long Term Care Program ("LTC") effective ██████████ 2015 and informing him that he must contribute \$3,362.23 per month toward the cost of convalescent care to the nursing facility beginning ██████████ 2015.

On ██████████ 2016, the POA on behalf of the Appellant requested an administrative hearing to contest the Department's calculation of the applied income.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████, 2016.

On ██████████, 2016, 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:

██████████, Power of Attorney for the Appellant
Janet Giunti, Department Representative

Lisa Nyren, Fair Hearing Officer

The hearing record remained open for the submission of additional evidence. On [REDACTED], 2016, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly calculated the amount of income the Appellant must pay toward his cost of care under the Medicaid Long Term Care Program.

FINDINGS OF FACT

1. On [REDACTED] 2015, the Appellant entered Masonicare Health Center (the “nursing facility”). (POA’s Testimony and Department Representative’s Testimony)
2. The Department granted Medicaid under the LTC program effective [REDACTED] 2015. (Exhibit 1: Notice of Approval)
3. The Appellant receives gross social security benefits (“SSA”) of \$472.00 per month from the Social Security Administration. (Exhibit 4: Unearned Income Screenprint and Exhibit D: Social Security Administration Notice [REDACTED] 15)
4. For [REDACTED] 2015, the Social Security Administration withheld \$464.00 from the Appellant’s SSA benefits as repayment for an overpayment of benefits that occurred in [REDACTED] 2015. (Exhibit C: Letter of Explanation [REDACTED] 16 and Exhibit D: Social Security Notice [REDACTED] 15)
5. In 2015, the Appellant paid Medicare Part B premium of \$104.90 per month. (Exhibit 1: Notice of Approval)
6. Beginning [REDACTED] 2016, the Medicare Part B premium increased to \$121.80 per month. (Department Representative’s Testimony)
7. The Appellant receives a pension from the [REDACTED] (“pension”) totaling \$3,055.13 gross per month. Federal income tax of \$350.00 per month, Connecticut state tax of \$125.00 per month, and Internal Revenue Service (“IRS”) wage garnishment of \$600.00 per month is withheld from the Appellant’s monthly pension leaving a net distribution of \$1,980.13 paid to the Appellant. (Exhibit 3: Wage Stub, Exhibit A: Wage Stub, and POA’s Testimony)
8. Beginning [REDACTED] 2015, the following deductions ended: federal income tax of \$350.00 per month and Connecticut state tax of \$125.00 month. The Appellant stopped the withholding of taxes leaving a net distribution of 2,455.13 paid to the

Appellant. (Exhibit A: Wage Stub, Exhibit B: Withholding Certificate and POA's Testimony)

9. The Appellant received a personal needs allowance of \$60.00 per month. (Department Representative's Testimony)
10. On [REDACTED], 2015, the Department determined the Appellant must pay \$3,362.23 toward his cost of care effective [REDACTED], 2015 and issued a notice to the POA. The notice stated the Department granted Medicaid effective [REDACTED] 2015 and that the Appellant must pay \$3,362.23 toward his cost of care beginning [REDACTED] 2015. (Exhibit 1: Notice of Approval)
11. Beginning [REDACTED] 2016, the Appellant must pay \$3,345.33 toward his cost of care to the nursing facility. (Hearing Summary and Department Representative's Testimony)

CONCLUSIONS OF LAW

1. Connecticut General Statutes ("C.G.S.") § 17b-2(6) provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual ("UPM") § 5045.20 provides that assistance units who are residents of Long Term Care Facilities (LTCF) or receiving community based services (CBS) 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.
3. UPM § 5050.13(A)(1) provides that income from Social Security and Veteran's benefits are treated as unearned income in all programs.
4. The Department correctly included the Appellant's SSA benefits in the calculation of applied income.
5. UPM § 5050.09(A) provides that payments received by the assistance unit from annuity plans, pensions and trusts are considered unearned income.
6. The Department correctly included the Appellant's pension in the calculation of applied income.
7. UPM § 5025.05(B)(1) provides that if income is received on a monthly basis, a representative monthly amount is used as the estimate of income.

8. UPM § 5050.66(C) provides that when money is withheld from an income source to recoup an overpayment, the amount of income to be counted is the amount the household would receive if no withholding had occurred unless:
 1. The income was received concurrently with AABD or MAABD assistance at the time the overpayment occurred; and
 2. The overpaid amount was included in determining AABD or MAABD eligibility.
9. The Department correctly calculated the gross SSA as \$472.00 per month.
10. The Department correctly calculated the gross pension as \$3,055.13.
11. UPM § 5045.20(B)(1) provides for the amount of income to be contributed in LTCF cases in the initial calculation.
 - a. For each month in the six month period for which the contribution is projected, monthly gross income is established as follows:
 1. Total gross monthly income which was paid or payable to the applicant or recipient, in the six months prior to the period for which the contribution is projected is divided by six;
 2. Any additional counted income expected in the period for which the contribution is projected, is divided by six;
 3. Any amount of the counted income received in the previous six months, but not expected to be received in the period for which the contribution is projected, is divided by six. The resulting figure is subtracted from the total of the amounts calculated in (1) and (2), above.
 - b. Total gross income is reduced by post-eligibility deductions (Cross reference: 5035-“Income Deductions”) to arrive at the amount of income to be contributed.
12. The Department correctly determined the Appellant’s gross monthly income as \$3,527.13. ($\$472.00 \text{ SSA} + \$3,055.13 \text{ pension} = \$3,527.13$)
13. UPM § 5035.20 provides that for residents of long-term care facilities (LTCF) and those individuals receiving community-based services (CBS) 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.
14. UPM § 5035.20(A) provides that the deductions described below are subtracted from income:
 1. Beginning with the month in which the 30th day of continuous LTCF care or the receipt of community-based services occurs; and

2. Ending with the month in which the unit member is discharged from the LTCF or community-based services are last received.
15. 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, and 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. Interest on the mortgage
9. Fire insurance premiums
10. amortization

16. State statute provides effective July 1, 2011, the Commissioner of Social Services shall permit patients residing in nursing homes, chronic disease hospitals and state humane institutions who are medical assistance recipients under sections 17b-260 to 17b-262, inclusive, 17b-264 to 17b-285, inclusive, and 17b-357 to 17b-361, inclusive, to have a monthly personal fund allowance of sixty dollars. [C.G.S. § 17b-272]
17. The Department correctly allowed the Personal Needs Allowance of \$60.00.
18. The Department correctly allowed the Medicare Part B premium deduction of \$104.90 per month from the Appellant's income.
19. The Department correctly determined the \$125.00 state income tax deduction from the Appellant's pension is not an allowable deduction.
20. The Department correctly determined the \$350.00 federal income tax deduction from the Appellant's pension is not an allowable deduction.
21. The Department correctly determined the \$600.00 wage garnishment from the Appellant's pension is not an allowable deduction.
22. The Department correctly determined the \$464.00 withheld by Social Security in October 2015 as repayment of an overpayment is not an allowable deduction.
23. The Department correctly calculated the Appellant's applied income as \$3,362.23 effective August 1, 2015. (\$3,527.13 monthly gross income - \$60.00 PNA - \$104.90 = \$3,362.23 applied income)
24. UPM § 5045.20(B)(2) provides that the recalculation of the amount to be contributed in any month of the six month period is required under the following conditions:
 - a. A significant change occurs in income which amounts to an increase or decrease in monthly income of \$15.00 or more per month; or
 - b. A change occurs, in any amount, in any deduction.
25. Beginning [REDACTED] 2016, the Department correctly allowed the Medicare Part B deduction of \$121.80 per month from the Appellant's income.

26. Effective [REDACTED] 2016, the Department correctly calculated the Appellant's applied income as \$3,345.33. (\$3,527.13 gross monthly income - \$60.00 PNA - \$121.80 = \$3,345.33)
27. 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.
28. The Department correctly determined the Appellant must pay applied income of \$3,362.23 beginning [REDACTED] 2015.
29. The Department correctly determined the Appellant must pay applied income of \$3,345.33 beginning [REDACTED] 2016.

DECISION

The Appellant's appeal is DENIED.

Lisa A. Nyren

Lisa A. Nyren
Fair Hearing Officer

CC: [REDACTED], Power of Attorney, [REDACTED]
Lisa Wells, Social Services Operations Manager
Bonnie Shizume, Social Services Program Manager
Brian Sexton, Social Services Operations Manager
Janet, Giunti, Eligibility Services Specialist

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.