

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3730

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

Client ID # ██████████
Request #745965

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2016, the Department of Social Services (the "Department") sent ██████████ ("Appellant") a Notice of Applied Income for retroactive months.

On ██████████, 2016, the Appellant' AREP requested an administrative hearing to contest the determination of the amount of applied income for the retroactive period.

On ██████████, 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings, ("OLCRAH") sent a Notice of Administrative Hearing scheduling a hearing for ██████████ 2016.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings, ("OLCRAH") sent a Notice of Administrative Hearing rescheduling a hearing for ██████████, 2016.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings, ("OLCRAH") sent a Notice of Administrative Hearing rescheduling a hearing for ██████████, 2016.

On ██████████, 2016, in accordance with sections 17b-60, 17b-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's Son, Authorized Representative ("AREP")
 Amy Kreidel, Department's Representative
 Barbara Brunner, Department's Representative via telephone
 Miklos Mencseli, Hearing Officer

The Appellant was not present.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined the amount of the Appellant's monthly applied income for the retroactive months.

FINDINGS OF FACT

1. The Appellant is a resident of ██████████ Convalescent Home..
 (Summary)
2. The Appellant was admitted to the facility on ██████████ 2012. (Summary)
3. On ██████████ 2014, the Appellant applied for Long Term Care ("LTC") Medicaid benefits. (Summary, Exhibit 1: Department's case narrative screen printout, Exhibit 2: W-1LTC application).
4. The Appellant's AREP completed the application for the Appellant. (Exhibit 2)
5. The AREP checked off the Appellant receives social security, pension and annuity income on the application. No amounts were entered. (Exhibit 2)
6. The Department sent the Appellant's AREP a W-1348 verification form requesting information needed to process the Appellant's application on ██████████-14, ██████████-14, ██████████-14, ██████████-14 and ██████████-14. (Exhibit 1)
7. The Appellant's AREP provided the Department with all the requested information. (Exhibit 1, Testimony)
8. The Appellant's income is direct deposited into a TD Bank account # ██████████ (Exhibits 7a, 7b, 7c, 7d, 7e: TD bank statements)
9. The Appellant was granted LTC benefits effective for ██████████-14. (Exhibit 1, Exhibit 11: Notice of Approval for Long Term Care Medicaid dated ██████████-15)
10. The Department determined the Appellant's applied income for ██████████ and ██████████ 2014 to be \$987.65 based on gross Social Security income of \$1,110.90 + \$93.83 fixed pension from ██████████ -\$60.00 personal needs allowance - \$157.08 private health insurance premium equals \$987.65. (Summary, Exhibit 11)

11. The Appellant's applied income changed to \$1,006.65 effective for [REDACTED] 2015 due to an increase of the Appellant's gross Social Security increased to \$1,129.90. (Summary, Exhibit 11)
12. The notice dated [REDACTED]-15 list the Appellant's social security income and one pension amount. (Exhibit 11)
13. The Appellant's AREP did not question why the other two pension amounts where not listed on the notice or contact the Department regarding the amount. (Testimony)
14. On [REDACTED], 2015, the Department received the Appellant's W-1ER redetermination form. (Exhibit 3: W-1ER signed by the Appellant's AREP)
15. The Appellant's AREP wrote "Not Applicable" all over the form. Nothing was listed under income or assets. (Exhibit 3)
16. On [REDACTED], 2015, the Department sent the Appellant's AREP the W-1ER form along with a W-1348 Verification We Need form. The Department requested the AREP complete section 8 of the redetermination concerning all income you receive and complete section 9 concerning any assets you own. In addition verify if TD Bank account is closed and if Appellant has resident trust account. The requested information was due by [REDACTED]-15. (Exhibit 4: W-1348 dated [REDACTED]-15)
17. On [REDACTED] 2015, the Department received the filled out redetermination form. (Exhibit 5: W-1ER signed by the Appellant's AREP)
18. On [REDACTED] 2015, the Department determined that the Appellant's Fidelity Investment and TIAA-CREF pension are not being counted in determining the Appellant's applied income. (Summary, Exhibit 1, Testimony)
19. The Fidelity Investment and TIAA-CREF are both deposited into the Appellant's TD Bank account that the Department had statements of that show the deposits. (Exhibits 7a, 7b, 7c, 7d, 7e)
20. On [REDACTED] 2015, the Department sent the Appellant's AREP a W-1348 verification form requesting verification of the gross TIAA-CREF pension. (Exhibit 1)
21. The Appellant's AREP provided the Department with the following Verifications; 2014 1099-R's for Fidelity Investments and TIAA-CREF, [REDACTED]/15 and [REDACTED]/16 check stubs from [REDACTED] and [REDACTED]/16 check stub form TIAA-CREF. (Exhibits: 8a, 8b, 9a, 9b, 10)

22. The Department determined that the Appellant cancelled her private Aetna Insurance effective for [REDACTED] 0, 2015. (Summary, Exhibit 1)
23. On [REDACTED], 2016, the Department sent the Appellant a corrected Notice of Approval for Long term Care Medicaid. (Exhibit 14: Notice of Approval for Long Term Care Medicaid)
24. Based on the updated income totals and deductions the Appellant's corrected applied income is \$1,451.39 for [REDACTED] 2014 and [REDACTED] 2014, \$1,472.25 for [REDACTED] 2015 and \$1,629.33 for [REDACTED] 2015. (Exhibit 14)
25. The Appellant's AREP stated he paid the applied income amount he was instructed to pay. (Testimony, Appellant's letter received by OLCRAH on [REDACTED]-16)

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 the following definitions:

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.

Gross unearned income is the total amount of counted unearned income before disregards are subtracted from it.

Unearned income is income which does not constitute compensation for work or services performed or business conducted and includes returns from capital investments when the individual is not actively involved in the production of the income.

3. UPM 5050.13(A) (1) provides payments from Social Security are treated as countable unearned income in determine eligibility in all programs.
4. UPM § 5050.09 (A) provides payments received by the assistance unit from annuity plans, pensions and trusts are considered unearned income treated as countable income in determine eligibility in all programs.
5. UPM § 7005.10(B) provides for Agency Error Overpayments

Agency errors which cause overpayments include, but are not limited to:

 1. failing to take timely action on a change reported by the assistance unit;
 2. incorrectly computing the assistance unit's income or need;
 3. failing to insure that the assistance unit fulfilled certain technical or procedural eligibility requirements;
 4. making a data entry error or other processing error;
 5. failing to adjust the assistance unit's Food Stamp allotment, when appropriate, when altering the unit;s Public Assistance benefit level;
 6. continuing to provide the assistance unit its Food Stamp allotment after the unit's certification period expires, without conducting a redetermination of eligibility;
 7. incorrectly issuing to the assistance unit duplicate food stamp benefits which the unit subsequently transacts.
6. The Department incorrectly computed the Appellant's applied income as it did not include all her unearned income in its calculation.
7. UPM §1555.30(A) provides for Agency Action
 1. The Department acts promptly to determine the effect on eligibility or benefit level whenever changes become known to the Department.
 2. Prior to taking corrective action the Department:
 - a. determines the accuracy of the information upon which it is acting; and

- b. may require verification of any reported information which is questionable.
- 8. The Department correctly sent the Appellant's AREP a W-1348 Verification We Need form on [REDACTED], 2015 and [REDACTED] 2015 requesting verification of the Fidelity Investment and TIAA-CREF pensions.
- 9. UPM § 1555.35(B) Changes Resulting in Decreased Benefits
 - 1. AFDC, AABD, MA Adverse Changes

Changes that cause a decrease in benefits or ineligibility are taken into consideration in the month the change occurred, regardless of when the change is reported.
- 10. Conn. Gen. Stat § 17b-80(a) states in part: "The commissioner shall make periodic investigations to determine eligibility and may, at any time, modify, suspend or discontinue an award previously made when such action is necessary to carry out the provisions of the state supplement program, medical assistance program, temporary family assistance program, state-administered general assistance program or supplemental nutrition assistance program. The parent or parents of any child for whom aid is received under the temporary family assistance program and any beneficiary receiving assistance under the state supplement program shall be conclusively presumed to have accepted the provisions of sections 17b-93, 17b-94 and 17b-95."
- 11. The Department is correct to retroactively recalculate the Appellant's applied income amount back to [REDACTED] 2014 (date of grant).
- 12. UPM § 7005.30 A. Notification Prior To Action To Correct

The Department notifies the assistance unit before taking action to correct an error.

 - 1. If there is an underpayment the Department notifies the assistance unit that it is entitled to a corrective payment, subject to the conditions described in this section.
 - 2. If there is an overpayment the Department notifies the assistance unit of its intended action to recoup.

B. Contents of Notice

The Department's notice of intent to correct an error informs the assistance unit of:

 - 1. the type of error which has occurred;
 - 2. the amount of the error;
 - 3. the specific cause of the error, as preliminarily determined by

the Department;

4. the time period covered by the error;
 5. the amount of any offsetting done to reduce the error;
 6. the Department's proposed method to correct the error;
 7. the assistance unit's right to participate in the correction process;
 8. the assistance unit's right to a Fair Hearing to dispute the Department's intended action based on either the action itself or the amount of the error;
 9. the availability of free legal representation, if any.
13. The Department correctly notified the Appellant on [REDACTED], 2016 of the corrected amount of applied income.
 14. UPM Section 5005.C provides that the Department computes applied income by subtracting certain disregards and deductions, as described in this section, from counted income.
 15. UPM Section 5005.D provides that the Department uses the assistance unit's applied income to determine income eligibility and to calculate the amount of benefits.
 16. The Department is correct to use the total monthly gross unearned income in determining the Appellant's monthly applied income.
 17. UPM Section 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.
18. Conn. Gen. Stat. § 17b-272. **(Formerly Sec. 17-134m). Personal fund allowance.** 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.
19. The Department correctly provided a \$60.00 personal needs allowance (PNA) deduction.
20. The Department correctly provided health insurance premium of \$217.08 as a deduction.
21. The Department correctly removed the deduction for health insurance premium effective for the date the Appellant no longer paid them.
22. UPM Section 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.
23. As a resident of a LTCF, the applicant is responsible for contributing a portion of his income towards the monthly cost of his care.

24. UPM Section 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.
25. UPM Section 5045.20.B.1.b provides that total gross income is reduced by post eligibility deductions (Cross reference: 5035-"Income Deductions") to arrive at the amount of income to be contributed.
26. The Department is correct to recalculate the Appellant's applied income effective for [REDACTED] 2014. The corrected amounts are \$1,451.39 for [REDACTED] 014, \$1,451.39 for [REDACTED], \$1,472.25 for [REDACTED] 2015 and \$1,629.33 for [REDACTED] 2015.

DISCUSSION

The Appellant's AREP provided a letter received on [REDACTED] 2016. The AREP states he provided all the verifications concerning income. The pensions from Fidelity and TIAA-CREF are indicated on the bank statements provided to the Department. The AREP paid the applied income amount he was instructed to pay. The Department should have been thorough in its review of the information provided.

The Department at time of grant incorrectly determined the Appellant's applied income amount. The Department failed to use the Appellant's total pension amounts in determining the applied income. Upon discovery the Department correctly recalculated the applied income back to the date of grant. The Department is correct in its actions to recalculate the Appellant's income to correctly determine the applied income amount based on all the income she receives.

DECISION

The Appellant's appeal is denied


Miklos Mencseli
Hearing Officer

C: Poonam Sharma, Operation Manager Bridgeport #30 Bridgeport

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.