

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

██████████ 2016
SIGNATURE CONFIRMATION

REQUEST #748242

CLIENT ID # ██████████

EX. REF. REQUEST #748245

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the “Department”) sent ██████████, (the “Appellant”) a Notice of Approval for Long Term Care Medicaid stating that the Appellant was eligible for Medicaid, effective ██████████ 2015, and that the Appellant was required to contribute \$4,411.87 monthly towards the cost of his care, effective ██████████ 2015.

On ██████████ 2016, the Appellant’s Representative (████████████████████) requested an administrative hearing on behalf of the Appellant to contest his monthly applied income as determined by the Department.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings, (OLCRAH) sent a Notice of Administrative Hearing scheduling a hearing for ██████████ 2016 @ 10:00 AM to address the Appellant’s monthly applied income as determined by the Department.

OLCRAH granted the Appellant’s Representative four continuances.

On ██████████, 2016, OLCRAH, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, held an administrative hearing to address the Appellant’s monthly applied income as determined by the Department.

The following individuals were present at the hearing:

████████████████████, Appellant’s Representative

Michael Briggs, Representative for the Department
Dawn Kosarko, Representative for the Department
Hernold C. Linton, Hearing Officer

The hearing record was closed on [REDACTED] 2016.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Appellant's monthly applied income as determined by the Department is correct.

FINDINGS OF FACT

1. On [REDACTED] 2015, the Appellant was admitted to [REDACTED] Healthcare Center of [REDACTED] as a resident, which is a long-term care facility ("LTCF"). (Hearing Summary)
2. On [REDACTED] 2015, the Department received the Appellant's application for medical assistance under Medicaid program to cover the cost of LTC. (Hearing Summary)
3. On [REDACTED] [REDACTED] 2015, the Department granted the Appellant medical assistance under the Medicaid program, effective [REDACTED] 2015 to cover the cost of his stay in a LTCF. (Hearing Summary)
4. The Department calculated the Appellant's monthly applied income as \$4,411.87, effective [REDACTED] 2015, less \$2,135.00 which the Department diverted to pay for the Appellant's cost of care for the month of [REDACTED] 2015. (Hearing Summary)
5. The diversion of applied income was to pay for medical expenses incurred in [REDACTED] 2015, as the Department determined that the Appellant's countable assets in [REDACTED] 2015 exceeded the allowable asset limit for the program. (Hearing Summary)
6. On [REDACTED] 2015, the Department notified the Appellant that his monthly applied income of \$4,426.87 must be paid towards the cost of his nursing facility care, effective [REDACTED] 2015. (Hearing Summary; Dept.'s Exhibit # 3: [REDACTED] 15 Notice of Approval for Long Term Care Medicaid)
7. The Appellant receives \$1,286.90 per month in gross Social Security ("SSA") income. (Hearing Summary; Dept.'s Exhibit #3)
8. The Appellant receives monthly gross pension income of \$3,289.87, which was increased to \$3,304.87, effective [REDACTED] 2015. (Hearing Summary; Dept.'s Exhibit #3)
9. The Appellant does not have a spouse residing in the community. (Hearing Summary)

10. The Appellant does not have private medical insurance coverage wherein he incurs a monthly insurance premium. (Hearing Summary; Dept.'s Exhibit #3)
11. The Appellant pays a monthly premium of \$104.90 for his Medicare Part B coverage. (Hearing Summary; Dept.'s Exhibit #3)
12. The Appellant receives total monthly allowable deduction of \$60.00 as his personal needs allowance ("PNA"). (Hearing Summary; Dept.'s Exhibit #3)
13. Effective [REDACTED] 2015, the Appellant's monthly applied income is \$4,411.87. (See Facts # 1 to 12; Hearing Summary; Dept.'s Exhibit #3)
14. Effective [REDACTED] 2015, the Appellant's monthly applied income is \$4,426.87. (See Facts # 1 to 13; Hearing Summary; Dept.'s Exhibit #3)
15. Pursuant to this administrative hearing, the Appellant provided outstanding medical expenses with the service dates of [REDACTED] 2015 for Health Drive Eye Care amount \$47.00, and [REDACTED] 2015 for [REDACTED] Care amount \$16.67, which the Department advised the Appellant to remit them to the providers to bill Medicaid for payment. (Dept.'s Exhibit #9: Letter Dated [REDACTED] 2016)
16. The Appellant provided an additional \$1,587.30 in outstanding medical bills with the service dates of [REDACTED] 2014 through [REDACTED] 2015, which the Department approved a diversion of the applied income for [REDACTED] 2016 to pay off the total amount. (Dept.'s Exhibit #9)
17. The Appellant provided an additional \$68,123.73 in paid invoices and requesting reimbursement for homecare and personal care attendance services provided by Stellar Home Care during the period of [REDACTED] 2015 through [REDACTED] 2015, which the Department determined that a diversion of the applied income could not be approved as private duty homecare and personal care attendance services are not Medicaid covered services. (Dept.'s Exhibit #9)

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. Public Act 11-44 provides the procedures to decrease the personal needs allowance ("PNA") of Medicaid recipients who reside in long term care facility from \$69.00 to \$60.00 per month. Public 11-44 required the Department to reduce the PNA for residents of long term care facilities, effective [REDACTED] 2011.
4. UPM § 5005(C) provides that the Department computes applied income by subtracting certain disregards and deductions, as described in this section, from counted income.
5. 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.
6. The Department correctly determined the Appellant's total monthly gross unearned income as \$4,576.77 (\$1,286.90, SSA income; plus \$3,289.87, pension income) as of [REDACTED] 2015.
7. The Department correctly determined the Appellant's total monthly gross unearned income as \$4,591.77 (\$1,286.90, SSA income; plus \$3,304.87, pension income) as of [REDACTED] 2015.
8. 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.
9. As a resident of a LTCF, the Appellant is responsible to contribute a portion of his income towards the cost of his nursing facility care.
10. 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 certain conditions.
11. UPM § 5045.10(C)(1) provides that except for determining AABD eligibility and benefit amounts for individuals residing in long term care facilities, applied unearned income is calculated by reducing the gross unearned income amount by the appropriate disregard based upon living arrangements.
12. The Department correctly calculated the Appellant's monthly applied income by allowing all deductions and disregards to calculate the amount of income which is to be applied toward his monthly cost of nursing facility care.

13. 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.
14. 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.
15. UPM § 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.
16. Effective [REDACTED] 2015, the Appellant's monthly applied income is \$4,411.87 (\$1,286.90, SSA income; plus \$3,289.87, pension income; minus \$60.00, PNA, and \$104.90, Medicare Part B premium) as determined by the Department.
17. Effective [REDACTED] [REDACTED] 2015, the Appellant's monthly applied income is \$4,426.87 (\$1,286.90, SSA income; plus \$3,304.87, pension income; minus \$60.00, PNA, and \$104.90, Medicare Part B premium) as determined by the Department.
18. The Department correctly denied reimbursement to the Appellant for the cost of the private duty homecare and personal care attendance services provided by Stella Home Care, as not Medicaid covered services, as the monthly facility rate paid for by Medicaid for room and board already includes payment for homecare and personal care attendance services.
19. UPM § 5045.20(D) provides that the difference between the assistance unit's contribution and the Medicaid rate of the LTCF or CBS is the amount of benefits paid by the department to the facility or provider organization on the unit's behalf.
20. The Appellant's monthly applied income, effective [REDACTED] 2015 of \$4,411.87, less \$2,153.00, and \$4,426.87 as of [REDACTED] 2015 must be paid towards the monthly cost of his nursing facility care.

DISCUSSION

The regulation requires that residents of LTCF 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.

It is noted that the regulation provides that the total gross income of residents in LTCF's is adjusted by certain deductions to calculate the amount of income which is to be

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 06105-3725.

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.