

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 # 762804

**NOTICE OF DECISION**

**PARTY**

██████████  
c/o ██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████, (the "Conservator") the Appellant's Conservator on behalf of ██████████ (the "Appellant") a Notice of Action ("NOA") granting Medicaid eligibility under the Long Term Care Program ("LTC") effective ██████████ 2016 and informing him that he must contribute \$2,505.24 per month toward the cost of convalescent care to the nursing facility beginning ██████████ 2016.

On ██████████ 2016, the Conservator 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:

██████████, Appellant's Conservator of Person and Estate and Daughter (via telephone)  
Adessa Williams, Department's Representative

Maren Walsh, Department's Representative  
Sybil Hardy, 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] 2010, the Appellant signed an agreement to pay his former spouse, who resides in [REDACTED] \$528.00 per month. (Exhibit 11: Final Judgment of Simplified Dissolution of Marriage and Addendum)
2. On [REDACTED] 2010, the Appellant and his former spouse were divorced in the state of Florida. (Exhibit 5: Court Document)
3. During [REDACTED] 2015, the Appellant entered [REDACTED] Center, [REDACTED], Connecticut (the "nursing facility") after being discharged from [REDACTED] Hospital. (Conservator's Testimony)
4. The Appellant is 75 years old (DOB [REDACTED]/44). (Conservator's Testimony, Exhibit 5)
5. The Appellant resides in the nursing facility. (Conservator's Testimony)
6. On [REDACTED] 2016, the Department granted Medicaid under the LTC program effective [REDACTED] 2016. (Exhibit 4: Notice of Approval for Long Term Care Medicaid, 02/19/16, Exhibit 7: Notice of Action, [REDACTED]/16)
7. The Appellant receives a gross monthly benefit amount of \$2,455.90 from the Social Security Administration ("SSA"). (Exhibit 3: SSA Benefit Notice)
8. The Appellant pays Medicare Part B premium of \$104.90 per month. (Exhibit 3)
9. The Appellant's SSA benefits are deposited directly into his checking account with Wells Fargo bank owned jointly with his former spouse [REDACTED]. (Exhibit 12: Wells Fargo Bank Statement)



10. The Appellant receives a monthly pension of \$528.09 from the [REDACTED] pension plan. The Appellant's pension is deposited directly into his Wells Fargo checking account. (Conservator's Testimony, Exhibit 2: Pension Payment, Exhibit 12)
11. The Appellant receives a personal needs allowance of \$60.00 per month. (Exhibit 4)
12. The Appellant pays \$313.00 per month towards his private health insurance premium. (Exhibit 4)
13. On [REDACTED] 2016, the Department sent a Notice of Approval for Long Term Care Medicaid to the Appellant and his Conservator indicating that the Appellant is eligible for Long Term Care benefits effective [REDACTED] 2016 and the Appellant must pay 2,505.24 toward his cost of care effective [REDACTED] 2016. (Exhibit 4, Exhibit 7)
14. On [REDACTED] 2016, the Appellant's former spouse filed a petition with Florida Circuit Court to become an alternate payee of the Appellant's [REDACTED] pension plan. (Exhibit 5)
15. On [REDACTED] 2016, the Appellant's daughter, [REDACTED], was appointed as his Conservator of Person and Estate. (Exhibit A: Appellant's Hearing Request)

### **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 § 5005 provides in part that the Department counts the assistance unit's available income, except to the extent that it is specifically excluded. Income is considered available if it is: 1. Received directly by the assistance unit; or 2 received by someone else on behalf of the assistance unit and the unit fails to provide that it is inaccessible; or deemed by the Department to benefit the assistance unit.

4. UPM § 5050.13(A)(1) provides that income from Social Security and Veteran's benefits are treated as unearned income in all programs.
5. The Department correctly included the Appellant's SSA benefits in the calculation of applied income.
6. UPM § 5050.09(A) provides that payments received by the assistance unit from annuity plans, pensions and trusts are considered unearned income.
7. The Department correctly included the Appellant's pension in the calculation of applied income.
8. 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.
9. The Department correctly determined the Appellant's gross SSA is \$2455.90 per month.
10. The Department correctly determined the Appellant's gross pension \$528.09.
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 \$2,983.99. (\$2,455.90, SSA + \$528.09, pension)
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 30<sup>th</sup> 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 \$60.00 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 [REDACTED] 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 Appellant's applied income is \$2,505.24 effective [REDACTED] 2016. (\$2,983.99, monthly gross income - \$104.90, Medicare B premium - \$60.00, PNA - \$313.85, private health insurance premium).
20. 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.
21. 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 30<sup>th</sup> 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.
22. The Department correctly determined the Appellant must pay applied income of \$2,505.24 effective [REDACTED] 2016.

### **DISCUSSION**

The Department correctly determined that the Appellant's applied income was \$2,505.24.

The Appellant's Conservator argued that the Appellant's pension from [REDACTED] should not be counted towards his total income because that money is used to make payments to his former spouse. The Appellant and his former spouse divorced on [REDACTED] 2010. At that time the Appellant agreed to pay her \$528.00 per month which equaled the amount of his pension. The Appellant's SSA benefit and his pension were both deposited into a checking account that he held jointly with his former spouse. The former spouse did not apply to be alternate payee of his pension until [REDACTED] 2016, after the Appellant had entered into the nursing home and applied for Medicaid Long Term Care benefits.

The pension belongs to the Appellant and must be counted by the Department. The payments made to his former spouse do not meet the criteria as an allowable deduction from income as specified by state law.

### **DECISION**

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

  
Sybil Hardy  
Hearing Officer

Pc: Rachel Anderson, Operations Manager, DSS R.O. # 32, Stamford  
Adessa Williams, Fair Hearings Liaison, DSS R.O. # 30, Bridgeport  
Maren Walsh, Fair Hearings Liaison, DSS R.O. # 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.