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

[redacted] **2016**
Signature Confirmation

Client ID # [redacted]
Request # 763071

NOTICE OF DECISION

PARTY

[redacted]
c/o [redacted]
[redacted]
[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2016, the Department of Social Services (the "Department") sent [redacted] (the "Appellant") Power of Attorney ("POA"), a Notice of Action ("NOA") regarding the amount of applied income that he must pay toward his cost of long-term care ("LTSS").

On [redacted] 2016, the Appellant's POA requested an administrative hearing to contest the Department's calculation of the applied income amount.

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

On [redacted] 2016, the Appellant's POA requested to reschedule the hearing to allow for additional preparation time.

On [redacted] 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice rescheduling an administrative hearing for [redacted] 2016.

On [redacted] 2016, the Appellant's POA requested to reschedule the hearing to allow her attorney additional preparation time.

On [redacted] 2016, the Office of Legal Counsel, Regulations and Administrative Hearings ("OLCRAH") issued a notice rescheduling an administrative hearing for [redacted] 2016.

On [redacted] 2016, the Appellant's POA requested to reschedule the hearing due to her inability to attend the scheduled hearing due to having family medical issues.

On [redacted] 2016, the Office of Legal, Counsel, Regulations and Administrative Hearings ("OLCRAH") issued a notice rescheduling an administrative hearing for [redacted] 2016.

On [redacted] 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:

[redacted], Appellant's Daughter and Power of Attorney
Susan Debevec, Medicaid Consultant, Riverside Health
William Johnson, Department's Representative
Shelley Starr, Hearing Officer

The hearing record remained open for the submission of additional evidence from both the Appellant and the Department. On [redacted] 2016, the hearing record closed.

STATEMENT OF THE ISSUE

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

FINDINGS OF FACT

1. On [redacted] 2015, the Appellant was admitted to Riverside Healthcare of [redacted], Connecticut as a long term care resident. (Exhibit 1: W-1LTC dated [redacted] 2016; Hearing Record)

2. On [redacted] 2016, the Appellant applied for long term care Medicaid assistance. (Exhibit 1: W-1LTC application dated [redacted] 2016; Hearing Summary)

3. On [redacted] 2016, the Department granted the Appellant long term care Medicaid retroactive to [redacted] 2015. (Hearing Summary; Record)

4. On [redacted] 2016, the Appellant and his POA were notified that applied income of $4,977.07 was due for each of the Medicaid approved months, beginning

[redacted] 2015. (Exhibit 12: Notice of Action dated [redacted] 2016; Exhibit 5: Notice of Approval for Long Term Care Medicaid dated [redacted] 2016)

5. The Appellant receives gross monthly Social Security of $814.90 effective [redacted] 2015. In [redacted] 2016, the Appellant had no change in the amount of his gross monthly Social Security and his monthly benefits remained at $814.90. (Exhibit 2: Social Security benefit letter; Exhibit 5: Notice of Approval for Long Term Care Medicaid)

6. The Appellant receives a retirement benefit of $4,327.07 gross per month. (Exhibit 3: [redacted] Pension statement of benefits; Hearing Record; Representative's Testimony)

7. For purposes of calculating the portion of the Appellant's income that he is required to pay toward the cost of his care at the facility (applied income), the Department deducts $60.00 from his gross monthly income as his Personal Needs Allowance ("PNA") and $104.90 Medicare Part B monthly premium deduction. (Exhibit 5: Notice of Approval for Long Term Care Medicaid; Exhibit 9: MAFI screenprint).

8. The Department calculated the Appellant's applied income to be $4,977.07 ($814.90 (SSA) + $4,327.07 (Pension) = $5,141.97 - $60.00 (PNA) - $104.90 (Medicare Part B) effective [redacted] 2015. (Exhibit 5: Notice of Approval for Long Term Care Medicaid dated [redacted] 2016)

9. On [redacted] 2016, the Department sent the Appellant's POA a Notice with the results of his application. The Notice stated that the Appellant was eligible for Medicaid long-term care benefits beginning [redacted] 2015, and that the Appellant was required to contribute $4,977.07 each month toward the cost of his care at the facility. (Exhibit 5: Notice of Approval for long term care Medicaid; dated [redacted] 2016); Exhibit 6: Notice of Approval for long term care.

10. The Appellant is divorced and is obligated to pay his ex-wife in the community alimony of $1,516.67 per month. (Exhibit 4: Dissolution of Marriage document and Separation Agreement dated [redacted] 2002)

11. The Appellant pays monthly alimony per a court order of $1,516.67 which is deducted from his monthly retirement benefit. (Exhibit 3: [redacted] Pension statement of benefits; Exhibit 4: Dissolution of Marriage document and Separation Agreement dated [redacted] 2002)

12. Because alimony is deducted from the Appellant's retirement benefit, he is not paying the required applied income amount. (Representative's Testimony; Hearing Record)

13. There is no evidence in the hearing record that the Appellant is required to pay alimony based on a Qualified Domestic Relations Order ("Quadro"), which diverts a portion of the Appellant's pension via court order, demonstrating that the ex-spouse has ownership of a portion of the Appellant's pension. (Hearing Record; Exhibit 4: Dissolution of Marriage document and Separation Agreement dated [redacted] 2002)

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. Section 17b-261(n) of the Connecticut General Statutes authorizes coverage for low – income adults under the Medicaid program. The state Medicaid plan is amended to establish an alternative benefit package. The Commissioner of Social Services shall, subject to federal approval, administer coverage under the Medicaid program for low income adults in accordance with Section 1902 (a)(10)(A)(i)(VIII) of the Social Security Act.

   Sections 17b-260 to 17b-264 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer Title XIX Medical Assistance program to provide medical assistance to eligible persons in Connecticut.

3. Uniform Policy Manual ("UPM") § 5000.01 provides Treatment of Income 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. UPM § 5000.01.

4. UPM § 5005 (A&B) provides that, except to the extent that it is specifically excluded, the Department counts all of the individual's income when determining the income that is available to the individual.

   UPM § 5015.10 (F)(12) provides for types of excluded income in AABD and MAAABD and provides that money received for the care and support of a person who is not a member of the assistance unit is excluded.

   The Department correctly determined that the Appellant's social security and benefit of retirement was the Appellant's income in the determination of his available income.

The Department correctly included the Appellant's available gross social security and benefit of retirement in the calculation of his total income.

The Department correctly did not exclude the Appellant's countable income prior to issuing his monthly alimony support payment to his ex-spouse.

5. UPM § 5035.20 provides Deductions for LTCF Units Without a Community Spouse and provides that the following 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.

The Department correctly determined that the Appellant is a LTCF unit without a community spouse.

The Department correctly determined that the Appellant's Social Security and benefit of retirement is available income.

The Department correctly did not allow the Appellant's court ordered alimony payments as a deduction, as it is not an allowable deduction.

The Department correctly deducted the Appellant's personal needs allowance of $60.00 and Medicare Part B insurance premium of $104.90 in the calculation of applied income.

6. 42 C.F.R 435.831 provides for income eligibility and does not provide for the exclusion of alimony payments from available income.

UPM § 5000.01 provides that counted income is that income which remains after excluded income is subtracted from the total amount of available income.

The Department correctly determined that neither state nor federal law provides for the exclusion of alimony payments from available income.

The Department correctly determined that all of the Appellant's Social Security income and retirement pension is counted income because the alimony payments are not excluded income.

7. 42 C.F.R 435.832 (a)(1) provides the agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section, from the individual's total income.

UPM § 5045.20 provides that assistance units who are residents of long-term care facilities are responsible for contributing a portion of their income toward the cost of their care.

The Department correctly determined that the Appellant was a resident of a long term-care facility and responsible for contributing a portion of his income toward the cost of his care.

The Department correctly determined the difference between the assistance unit's contribution and the long - term care facility's Medicaid rate is the amount the Department pays to the long-term care facility on behalf of the assistance unit.

8. UPM § 5000.01 provides the definition of applied income and states that the portion of one's income that the assistance unit is required to pay toward the cost of his or her care is called applied income.

   UPM 5045.20 (B)(1)(b) provides that applied income is that portion of the assistance unit's countable income that remains after all deductions and disregards are subtracted.

9. UPM § 5005 (C) (D) provides that the Department computes applied income by subtracting certain disregards and deductions, as described in this section, from counted income. The Department uses the assistance unit's applied income to determine income eligibility and to calculate the amount of benefits.

   UPM § 5000.01 provides deductions are those amount that are subtracted as adjustments to counted income and represent expenses paid by the assistance unit.

   UPM 5035.20 (B) provides that State regulation allows for certain deductions that may be made from the gross income of residents of long-term care facilities when calculating the amount of income to be applied toward the monthly cost of care in the long-term care facility.

10. 42 C.F.R. 435.832 (a) provides that the Department must reduce its payment to a long-term care facility for long-term care services by the amount that remains after deducting amounts specified in the regulations.

11. 42 C.F.R. 435.832 (c) provides that Federal law requires the Department to deduct certain amounts from an assistance unit's income, in a specific order, when calculating the amount it will pay to a long-term care facility on behalf of an the assistance unit.

The Department correctly determined that the alimony payments made on behalf of the Appellant to his ex-wife are not permissible deductions under state or federal law.

The Department correctly determined that the Appellant's total monthly gross unearned income effective [redacted] 2015 and ongoing months was $5,141.97.

The Department correctly determined that the Appellant's applied income for [redacted] 2015 and ongoing months is $4,977.07 ($814.90 (SSA) + $4,327.07 (Pension) - $60.00 (PNA) - $104.90 (Medicare Part B).

The Department correctly determined that the Appellant must contribute $4,977.07 applied income toward the cost of his care in the facility effective [redacted] 2015, and ongoing months.

DISCUSSION

Based on the testimony and evidence presented, I find the Department was correct in the calculation of the Appellant's applied income amount. The regulation requires that residents of a long term care facility are responsible for contribution of 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 long term care facility, and therefore, he must contribute a portion of his income towards the cost of his medical care.

I find that the court ordered alimony payments in accordance with policy are not allowable deductions from the Appellant's gross monthly income and are considered available. I find a QDRO which assigns a portion of an individual's pension to an ex-spouse is different from a court ordered alimony. As opposed to court ordered alimony, as a result of the QDRO, the person against whom a QDRO is issued no longer owns that income. There is no indication in the hearing record that the court order was a QDRO, therefore the income is considered the Appellant's.

The Appellant referenced UPM 5015.10 (F)(12) in his appeal advising that the money received for the care and support of his ex-wife who is not a member of the assistance unit should be excluded and not counted in the determination of eligibility. I find that the Department correctly determined that the social security and benefit of retirement income is the Appellant's income. In addition, I did not find language in the alimony order indicating that any part of the Appellant's income is owned by the ex-spouse or received by the Appellant on the ex-spouse's behalf. I did not find the policy referenced as applicable to the Appellant's situation. I find that the Appellant's income is available and counted.

It is should be noted, the hearing record was held open to allow the Appellant's POA time to obtain the missing page of the dissolution of marriage and separation agreement and to provide any additional evidence. No additional evidence was provided by the POA.

The Appellant may pursue modification of his current alimony order due to being on a social service program and no longer having the ability to honor his alimony order.

DECISION

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

Shelley Starr
Hearing Officer

cc: Elizabeth Thomas, Operations Manager, Manchester Regional Office
Susan Debevec, Medicaid Consultant, Riverside Healthcare
William Johnson, Department Representative

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 Legal Counsel, Regulations and Administrative Hearings, 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. 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 his/her 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.