

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 # 763836

NOTICE OF DECISION

PARTY

████████████████████
For ██████████
██████████
████████████████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA) informing her that effective ██████████ 2016, her mother, ██████████, ("the Recipient") for whom she is conservator, must pay \$2832.81 per month in applied income towards her cost of care under the Long Term Care Medical Assistance program.

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

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:

████████████████████, the Appellant, daughter and conservator of ██████████
██████████, the Recipient
Bryant Grimes, Eligibility Worker, DSS
Maureen Foley-Roy, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to increase the amount of the Recipient's applied income from \$2390.99 per month to \$2832.81 per month beginning in [REDACTED] of 2016 was correct.

FINDINGS OF FACT

1. The Recipient owns a home in the community that she was sharing with her adult daughter, the Appellant. (Appellant's testimony)
2. On [REDACTED] 2015, the Recipient was admitted to a skilled nursing facility for a short term stay. (Exhibit 6: Ascend Data)
3. The Recipient receives Medicaid Assistance for Long Term Care. (Hearing Record)
4. The Recipient receives a gross benefit of \$1150.90 per month from Social Security. (Exhibit 5a: SVES printout)
5. The Recipient receives a gross retirement benefit of \$1772.25 per month. (Exhibit 5b: OSC retirement payroll)
6. The Retirement Services Division reimburses the Recipient \$104.90 each month for her Medicare Premium. (Exhibit 5b)
7. In addition to her Medicare Premiums, the Recipient pays \$30.34 per month for dental insurance premiums. (Exhibit 5b)
8. From [REDACTED] of 2015 through [REDACTED] of 2015, the Department permitted the Recipient an allowance of \$400 per month to maintain her home in the community while she was living in the skilled nursing facility. (Exhibit 2: Institution screen)
9. In [REDACTED] of 2015, the Appellant began working with the Money Follows the Person program ("MFP") in an effort to have the Recipient return to her own home with home health services. The application and approval are still pending. (Appellant's testimony)
10. On [REDACTED] 2016, the Department sent the Appellant a letter advising her that the amount that the Recipient would have to pay towards her medical care would increase from \$2390.99 per month to \$2832.81 per month effective [REDACTED] 2016. (Exhibit 1: Notice of Applied Income Change)

CONCLUSIONS OF LAW

1. Section 17b-2, section (9) of the Connecticut General Statutes, designates the Department of Social Services 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.
3. 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 received.
4. 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.
5. UPM § 5045.20 (B)(1)(b) provides for the amount of income to be contributed in LTCF cases and states 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.
6. 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 ("PNA") 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;(note: prior to July 2011, the PNA was \$69 per month; in July of 2011, the PNA was reduced to \$60)
 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. UPM § 5035.20 B 7 a and b provides that the cost of maintaining a home in the community for the assistance unit is allowed as a monthly deduction from the income of an assistance unit in a LTCF **subject to the conditions that the amount is not deducted for more than six months** and the likelihood of the institutionalized individual's returning to the community within six months is certified by a physician. (Emphasis added)
8. The Department was correct when it determined that the Appellant was entitled to the personal needs allowance and deductions for her Medicare and dental premiums when calculating her applied income.
9. The Department was correct when it allowed the Appellant a deduction for maintaining her home in the community for a period of six months.
10. UPM § 1570.10 A 1 provides that the Department mails or gives adequate notice at least ten days prior to the date of the intended action if the Department intends to discontinue, terminate, suspend or reduce benefits.
11. UPM § 1570.10 B 4 c provides for exceptions to timely notice in the Medicaid program and states that the Department sends adequate notice no later than the date of the action when the Department authorizes the assistance unit to receive assistance for a specific period of time and informs the unit in writing at the time of authorization that assistance automatically terminates when the specific period ends

12. The Department was incorrect when it issued a notice on [REDACTED] 2016 stating that the applied income that she must pay towards the cost of her medical care would increase from \$2390.99 to \$2832.81 effective [REDACTED] 2016 because it had not given the Appellant ten days' notice nor advised her that the deduction for maintaining a home in the community was only allowed for a six month period.
13. Beginning [REDACTED] 2016, the Appellant is responsible to pay \$2832.81 in applied income to the facility. [\$1772.25 (pension) + \$104.90 (Medicare premium reimbursement) + \$1150.90 (Social Security benefit) - \$60 (personal needs allowance - \$104.90 (Medicare premium amount) - \$30.34(dental premium)]

DISCUSSION

The Appellant testified that prior to the Recipient's institutionalization, she and her mother shared her mother's home. The Appellant cannot afford to stay in the home on her own. The regulations are specific in that an allowance for maintaining a home in the community is limited to six months. The Appellant testified that she is working with the Money Follows the Person ("MFP") program in an effort to have services in place so the Recipient, her mother, can return home. But the regulations do not allow for an extension to that six month period under any circumstances.

The regulations do require that the Department send notification of an adverse action at least ten days prior to taking such an action. There is an exception in the Medicaid program which states that the Department is not required to give the ten days' notice in cases where it had notified the household that it was authorizing assistance for a specific period of time and the assistance would automatically terminate when the time period ended. However, there is no evidence in the record that the Department notified the Appellant in [REDACTED] of 2015 that the allowance for maintaining a home in the community was only for six months and would terminate after [REDACTED] of 2016. The Department was correct regarding the increase in the applied income but incorrect in that it did not give the Appellant the correct advance notice of the increase.

DECISION

The Appellant's appeal is **DENIED** with regards to the amount of the applied income.

The Appellant's appeal is **GRANTED** with regards to the effective date of the increase in the applied income.

ORDER

The Department is to consider the increase in applied income effective [REDACTED] 2016. Compliance with this order is due by [REDACTED] 2016 and shall include documentation that the increase in applied income was effective [REDACTED] 2016.

Maureen Foley-Roy

Maureen Foley-Roy
Hearing Officer

CC: Brian Sexton, Lisa Wells, Operations Managers, DSS. R.O.#20, New Haven
Bonnie Beal Shizume, Program Manager, New Haven
Bryant Grimes, Eligibility Worker, New Haven

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 06105-3730.

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 , Hartford, CT 06106. 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.