

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 # 795342

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████ ██████████ ("Guardian"), the Plenary Guardian and Authorized Representative for ██████████ (the "Appellant"), a Notice of Action ("NOA") granting Medicaid under the Long Term Care ("LTC") Program effective ██████████ 2016 and informing her that the Appellant must contribute toward the cost of convalescent care beginning ██████████ 2016.

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

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:

██████████ Plenary Guardian for the Appellant
██████████ Department of Developmental Services, Witness for the Appellant
Nedra Pierce, Department Representative
Lisa Nyren, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined the Appellant must pay a portion of her income toward the cost of her care under the Medicaid Long Term Care Program while a resident of a nursing facility beginning [REDACTED] 2016.

A secondary issue is whether the Department correctly calculated the amount of income the Appellant must pay toward her cost of care under the Medicaid Long Term Care Program while a resident of a nursing facility.

FINDINGS OF FACT

1. On [REDACTED] 2016, Bride Brook Health and Rehabilitation Center (the “nursing facility”) admitted the Appellant to their facility from Yale New Haven Hospital. (Guardian’s Testimony and Hearing Summary)
2. The Department granted Medicaid under the LTC program effective [REDACTED] [REDACTED] 2016. (Exhibit 1: Notice of Approval and Exhibit 2: Notice of Action)
3. The Appellant receives gross social security benefits (“SSA”) of \$1,004.00 per month from the Social Security Administration. (Exhibit 1: Notice of Approval)
4. The Department pays the Appellant’s Medicare Part B premiums under the Medicare Saving Program. (Exhibit 1: Notice of Approval)
5. On [REDACTED] 2016, the Appellant returned to work at [REDACTED] (the “employer”) while a resident at the nursing facility. On [REDACTED] 2016, the Appellant stopped working. The Appellant earned the following gross wages: (Exhibit 1: Notice of Approval, Exhibit 5: Remarks, and Exhibit 6: Case Narrative)

Pay Date	Gross Wages	Pay Date	Gross Wages	Pay Date	Gross Wages
[REDACTED] 2016	\$67.20	[REDACTED] 2016	\$69.60	[REDACTED] 2016	\$168.00
[REDACTED] 2016	\$69.60	[REDACTED] 2016	\$139.20	[REDACTED] 2016	\$199.20
		[REDACTED] 2016	\$182.40	[REDACTED] 2016	\$57.60
		[REDACTED] 2016	\$170.40		
July Total	\$136.80	August Total	\$561.60	September Total	\$424.80

6. The Department determined the Appellant’s countable wages as follows:

█: $\$136.80 / 2 \text{ weeks} = \$68.20 \times 2.15 = \$146.63$

█: $\$561.60 / 4 \text{ weeks} = \$140.40 \times 4.3 = \$603.72$

█: $\$424.80 / 3 \text{ weeks} = \$141.60 \times 4.3 = \$608.88$

7. The Appellant received a personal needs allowance of \$60.00 per month. (Exhibit 1: Notice of Approval)
8. On █ 2016, the Department determined the Appellant must pay toward her cost of care beginning █ 2016 and issued a notice of action to the Guardian. The notice stated the Department granted Medicaid effective █ 2016 and that the Appellant must contribute a portion of her income toward the cost of her care at the nursing facility beginning █ 2016. This payment is called applied income. The applied income for each month is listed below. (Exhibit 1: Notice of Approval and Exhibit 2: Notice of Action)

█ 2016	█ 2016	█ 2016	█ 2016	█ 2016	█ 2016
\$944.00	\$944.00	\$1,090.63	\$1,547.72	\$1,552.88	\$944.00

CONCLUSIONS OF LAW

1. Connecticut General Statutes ("Conn. Gen. Stats.") § 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 the 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 § 5050.13(A)(1) provides that income from Social Security and Veteran's benefits are treated as unearned income in all programs.
4. The Department correctly included the Appellant's SSA benefits in the calculation of applied income.
5. 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.

6. UPM § 5005(A) provides that in consideration of income, 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 prove that it is inaccessible; or
 3. Deemed by the Department to benefit the assistance unit.
7. UPM § 5000.01 defines earned income as income which the assistance unit received in exchange for the performance of duties or through self-employment and may be in the form of wages, salary, benefits, or proceeds from self-employment.
8. The Department correctly included the Appellant's employment income in the calculation of applied income.
9. UPM § 5025.05(A)(1) provides for past month income. The Department uses the exact amount of the unit's available income received or deemed in the month.
10. The Department incorrectly determined the Appellant gross wages for [REDACTED] 2016 as \$146.63. The correct gross wages are \$136.40.
11. The Department incorrectly determined the Appellant gross wages for [REDACTED] 2016 as \$603.72. The correct gross wages are \$561.60.
12. The Department incorrectly determined the Appellant gross wages for [REDACTED] 2016 as \$608.88. The correct gross wages are \$424.80.
13. 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.
14. For █████ 2016, █████ 2016, and █████ 2016, the Department correctly determined the Appellant gross monthly income as \$1,004.00.
 15. For █████ 2016, the Department incorrectly determined the Appellant gross monthly income as \$1,150.63. The correct gross monthly income is \$1,140.80. ($\$1,004.00 \text{ SSA} + \$136.80 \text{ earnings} = \$1,140.80$)
 16. For █████ 2016, the Department incorrectly determined the Appellant gross monthly income as \$1,607.72. The correct gross monthly income is \$1,565.60. ($\$1,004.00 \text{ SSA} + \$561.60 \text{ earnings} = \$1,565.60$)
 17. For █████ 2016, the Department incorrectly determined the Appellant gross monthly income as \$1,612.88. The correctly gross monthly income is \$1,428.80. ($\$1,004.00 \text{ SSA} + \$424.80 \text{ earnings} = \$1,428.80$)
 18. 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.
 19. UPM § 5035.20(A) provides that the deductions described below are subtracted from income:
 1. Beginning with the month in which the 30th 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.
 20. 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.
 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 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.

22. 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 \$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 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
23. State statute provides 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. [Conn. Gen. Stats. § 17b-272]
24. The Department correctly allowed the Personal Needs Allowance of \$60.00.
25. For the months of █████ 2016, █████ 2016, and █████ 2016, the Department correctly calculated the Appellant's applied income as \$944.00. (\$1,004.00 gross income - \$60.00 PNA = \$944.00)
26. For █████ 2016, the Department incorrectly calculated the Appellant's applied income as \$1,090.63. The correct applied income is \$1,080.40. (\$1,140.80 gross income – 60.00 PNA = \$1,080.80)
27. For █████ 2016, the Department incorrectly calculated the Appellant's applied income as \$1,547.72. The correct applied income is \$1,505.60. (\$1,565.60 gross income – 60.00 PNA = \$1,505.60)
28. For █████ 2016, the Department incorrectly calculated the Appellant's applied income as \$1,552.88. The correct applied income is \$1,368.80. (\$1,428.80 gross income – 60.00 PNA = \$1,368.80)
29. The Department correctly determined the Appellant must pay applied income beginning █████ 2016.

DECISION

With respect to whether or not the Appellant must pay a portion of her income toward the cost of her care at the nursing facility, the Appellant's appeal is denied.

With respect to the amount of the applied income to be paid to the nursing facility, the Appellant's appeal is granted.

ORDER

1. The Department must correct the amount of applied income paid for the month of [REDACTED] 2016 from \$1,090.63 to \$1,080.80 by applying the actual gross wages paid for [REDACTED] 2016.
2. The Department must correct the amount of applied income paid for the month of [REDACTED] 2016 from \$1,547.72 to \$1,505.60 by applying the actual gross wages paid for [REDACTED] 2016.
3. The Department must correct the amount of applied income paid for the month of [REDACTED] 2016 from \$1,552.88 to \$1,368.80 by applying the actual gross wages paid for [REDACTED] 2016.
4. Compliance is due [REDACTED] 2016.

Lisa A. Nyren

Lisa A. Nyren
Fair Hearing Officer

CC: Cheryl D. Parsons, Social Services Operations Manager
Nedra Pierce, Eligibility Services Specialist
Lisa Miller, Department of Developmental Services, lisa.z.miller@ct.gov

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.