

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3730

██████████, 2017
Signature Confirmation

Client ID # ██████████
Request #800325

NOTICE OF DECISION

PARTY

██████████
C/O ██████████
██████████
████████████████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") with the amount of applied income that she must pay toward her cost of long term care effective ██████████ 2016.

On ██████████ 2016, the Appellant's Power of Attorney ("POA") 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, 17b-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 Son and Power of Attorney
Kenneth Smiley, Department's Representative
Marci Ostroski, Hearing Officer

The Appellant was not present.

The Hearing record was held open until [REDACTED], 2016 for the submission of additional information from the Appellant and the Department. On [REDACTED] [REDACTED] 2016 the Hearing Officer reopened the record to request further information. Exhibits were received from both parties and the record closed [REDACTED], 2017.

STATEMENT OF THE ISSUE

The issue is whether the Department has correctly calculated of the amount of applied income that the Appellant is responsible to pay toward the cost of her long-term care.

FINDINGS OF FACT

1. On [REDACTED] 2016 the Appellant was admitted to Wadsworth Glen Long Term Care facility. (Hearing Summary)
2. On [REDACTED], 2016, the Department granted the Appellant Long Term Care ("LTC") Medicaid assistance effective [REDACTED] 2016. (Ex. 2: Narrative)
3. On [REDACTED] 2016 the Department received a letter from the Appellant's physician stating that she was expected to return to her home within six months of her admission date. (Ex. 4: Wadsworth Glen letter signed by Prakash Huded, M.D., Ex. 2: Narrative)
4. The Appellant has life use of a home in the community. The Appellant is responsible to pay the property tax, insurance, and utilities in the home. She does not pay rent or mortgage. (Ex. 2: Narrative, Appellant's son's testimony)
5. The Appellant is widowed and lived alone in the home she retained life use of prior to her institutionalization. (Appellant's son's testimony)
6. The Appellant's gross Social Security benefit amount in 2016 was \$1300.90 (Ex. 9: UINC screen)
7. The Appellant's Prudential gross monthly pension amount is \$231.43. (Ex. 9: UINC screen)
8. The Appellant receives an international pension which varies in amount based on the exchange rates. The Department calculated at the time of application the monthly pension in US dollars to be \$211.52 per month. (Ex. 9: UINC screen, Appellant's son's testimony)
9. The Department credited the Appellant with paying \$258.81 per month in third party medical insurance premiums monthly. (Ex. 10: INST screen)

10. The Appellant is active on the Qualified Medicare Beneficiary program which pays her Medicare B premium. (Ex. 10: INST screen)
11. On [REDACTED] 2016 the Department granted the Appellant a \$650.00 per month rental diversion credit against her applied income effective [REDACTED] 2016 based on the maximum allowable deduction rather than the calculation of her actual costs. (Ex. 2: Narrative, Department's testimony)
12. Effective [REDACTED] 2016, the Department determined the Appellant's applied income to be \$864.14 (gross income of 1832.95 (231.43+211.52+1390.00)-\$60.00 personal needs allowance-258.81 health insurance premium-\$650.00 rental diversion). (Hearing Record)
13. On [REDACTED] 2016 the Department determined that the Appellant was no longer eligible to receive the shelter deduction of \$650.00 per month and removed it from her applied income calculation effective [REDACTED]/16. (Ex. 12: Narrative, Department's testimony)
14. On [REDACTED] 2016 the Department sent a Notice of Action to the Appellant, the Skilled Nursing Facility, and the Appellant's son and Power of Attorney stating the change in applied income and the effective date of [REDACTED] 2016. A notice was not sent regarding the change in applied income effective [REDACTED] 2016. (Ex. 13, 14, 15: Notice of Action, [REDACTED]/16, Department's testimony)
15. The Department determined the Appellant's applied income to be \$1514.14 (gross income of 1832.95 (231.43+211.52+1390.00)-\$60.00 personal needs allowance-258.81 health insurance premium). (Ex. 13, 14, 15 Notice of Action [REDACTED]/16, Hearing Record)

CONCLUSIONS OF LAW

1. Sections 17b-260 to 17b-264 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Title XIX Medical Assistance Program to provide medical assistance to eligible persons in Connecticut.
2. Uniform Policy Manual ("UPM") § 5045.20 pertains to 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 § 5045.20 B (1) (a) provides that the amount of income to be contributed in LTCF cases at initial calculation for each month in the six month period for which the contribution is projected, monthly gross income is established as follows: 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.
4. The Department correctly determined that the Appellant's monthly gross income is \$1832.95 (231.43+211.52+1390.00).
5. UPM § 5035.20 provides that for residents of long term care facilities (LTFC) 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.
6. UPM § 5035.25 (B) (1) provides a monthly deduction for LTFC units of a personal needs allowance ("PNA") of \$50.00, 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.
7. Conn. Gen. Stat. § 17b-272. **(Formerly Sec. 17-134m). Personal fund allowance.** 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.
8. 42 CFR § 435.82 provides for required deductions from the assistance units income.

UPM § 5035.20 (B) provides that the following monthly deductions are allowed from the income of assistance units in LTFC'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[current personal needs allowance is 60.00];

- (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

9. 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 LTFC **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)
10. The Department correctly allowed for the deduction of the \$60.00 PNA from the Appellant's gross income.
11. UPM § 5035.25 (B) (4) provides a monthly deduction for LTFC units of Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for the Department or any other third party.
12. The Department correctly allowed deductions for health insurance premiums
13. The Department was correct when it allowed the Appellant a deduction for maintaining her home in the community.
14. The Department incorrectly allowed for the maximum deduction of \$650.00 from the Appellant's gross income for maintaining a home in the community
15. 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.
16. 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

17. The Department was incorrect to change the Appellant's applied income calculation effective [REDACTED] 2016 without giving proper notice.
18. The Department was correct 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 \$864.14 to \$1514.14 effective [REDACTED] 2016.
19. Beginning [REDACTED] 2016, the Appellant is responsible to pay \$1514.14 in applied income to the facility. [\$231.43 (pension) + 211.52 (pension)+ \$1390.00 (Social Security benefit) - \$60.00 (personal needs allowance) - \$258.81 (third party health insurance premium)]

DISCUSSION

The Appellant's son and Power of Attorney disputed the discontinuation of the rental diversion in the calculation of the Appellant's applied income. The Department correctly calculated the income and deductions and granted the rental diversion when it received the letter from the Appellant's physician stating that Appellant was expected to return home within six months.

The Department was correct in its calculation of applied income after the six months of rental diversion were given; however, the Department only provided the rental diversion for five months in error. The Appellant is entitled to receive the diversion per regulations for a maximum of six months regardless of when the diversion begins. The Department's argument that the diversion would have started in [REDACTED] if she were asset eligible and should have then ended at the end of [REDACTED] is not supported by regulations. The Appellant's rental diversion began [REDACTED] 2016 and should have been carried through [REDACTED] 2016.

There is no provision in regulations which would allow the diversion to be extended past the six month period regardless of the Appellant's probability to return home.

The Department also erred when it calculated the rental diversion. Regulations provide that the diversion is the lesser of \$650.00 per month or the actual cost of the living expenses. The Department testified that the maximum credit was given rather than calculating the actual cost because it was easier.

While the Appellant would only be entitled to a lesser rental diversion if processed correctly, the Department failed to follow the regulations regarding notice requirements of adverse actions. The Department testified that it discontinued the rental diversion, decreasing the benefit of applied income assistance, on [REDACTED] 2016 effective [REDACTED] 2016 not only without giving 10 day advance notice of the action but actually providing no written notice at all. 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 notice sent on [REDACTED] 2016 increasing the applied income due to the elimination of the rental diversion effective [REDACTED] 2016 was accurate. I find that the ongoing calculation of applied income and discontinuance of rental diversion is correct.

Because the Department failed to provide the full six months of rental diversion it is required to give the rental diversion for the month of [REDACTED] 2016. Because the Department failed to give advance notice of adverse action it is required to provide the rental diversion at the same benefit level it was previously providing though the regulation instructs the Department to calculate the actual cost of the living expenses.

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

1. The Department will recalculate the applied income for the month of [REDACTED] 2016 giving the full \$650.00 rental diversion.
2. Compliance with this order is due to the undersigned 10 days from the date of this order, [REDACTED] 2017.


Marci Ostroski
Hearing Officer

CC: Tyler Nardine, Operations Manager, Middletown Regional Office
Kenneth Smiley, Fair Hearing Liaison, DSS, Willimantic Regional Office

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.