

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

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

Client ID # ██████████
Request # 825477

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
██████████

Attorney ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2017, the Department of Social Services (the "Department") sent Attorney ██████████, conservator for ██████████ (the "Appellant") a Notice of Approval for Long Term Medicaid informing her that his applied income towards the cost of his care was \$6,436.36.

On ██████████, 2017 the Appellant requested an administrative hearing to contest the Department's calculation of the applied income.

On ██████████, 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling an administrative hearing for ██████████ 2017.

On ██████████ 2017, the Appellant requested a continuance of the hearing, which was granted.

On ██████████ 2017, OLCRAH issued a Notice scheduling the administrative hearing for ██████████ 2017.

On ██████████ 2017, 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:

Attorney [REDACTED], Conservator for the Appellant
 Marilyn Philips, Department Representative
 Almelinda McLeod, Hearing Officer

The hearing record was held open for the submission of additional evidence. On [REDACTED], 2017 the hearing record was closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's calculation of the applied income that must be paid towards his cost of care is correct.

FINDINGS OF FACT

1. The Appellant is 77 years old (DOB-[REDACTED]/40) and lives at the Westport Health Care and Rehabilitation located in [REDACTED], CT. (Exhibit 1, W-1LTC application)
2. The Appellant is a widower as his spouse passed away in 2014. (Hearing record)
3. On [REDACTED] 2016, the Appellant became conserved by the State of Connecticut, [REDACTED] Probate Court. His conservator is Attorney [REDACTED] of [REDACTED] (Exhibit 7, Court document)
4. On [REDACTED] 2016, The Appellant was admitted into Westport Health Care and Rehabilitation. (Hearing record)
5. On [REDACTED], 2016, The Appellant's conservator applied for long term care assistance. (Exhibit 1)
6. The Appellant's income consists of \$176.90 from Social Security (\$72.00 + 104.90 Medicaid part B premium) and \$6,654.00 in an annuity pension. A total of \$6831.00. (Hearing summary)
7. The Appellant did not have any costs associated with maintaining a home in the community because her home was foreclosed. (Hearing record)

8. The Department allows a Personal Needs Allowance (“PNA”) income deduction in the amount of \$60.00 per month. (Exhibit 4)
9. On ██████, 2017, the Department issued a notice informing the Appellant that the Department granted Long term care for the Appellant effective ██████ 2017. (Exhibit 4 and Exhibit 5)
10. On ██████ 2017, the Department notified the Appellant’s conservator that the applied income was \$ 6,430.04. (\$177 social security + \$6635.00 - \$104.90 med. Part b – PNA \$60.00 - \$217.06 health insurance plan) (Hearing summary)
11. On ██████ 2017, the conservator e-mailed the Department requesting a correction to the applied income because there were some discrepancies in the deduction amounts used to calculate the applied income. Specifically, the gross pension amount listed as \$6635.00 was actually \$6654.00, health insurance deduction listed as 217.06 was actually \$229.64 and the Appellant’s social security listed as \$177.00 was actually \$176.90. (Exhibit B)
12. The Department made the appropriate changes and notified the conservator that the new applied income was \$6,436.36. See calculation:
- \$176.90 Soc. Security Income + \$6654.00 annuity = \$6830.90 minus \$229.64 Health benefit premium, minus \$60.00 personal needs allowance (PNA) and minus \$104.90 Medicare part B premium = \$6436.36. (Hearing summary)
13. The conservator does not agree with the applied income because the Department is counting monies the Appellant does not have. (Appellant’s testimony)
14. From the Appellant’s annuity gross income, \$6654.00, there are several deductions listed as follows.

Health benefits premium	\$229.64
Federal Income tax	\$1,176.07
Post Retirement Basic Life Insurance	\$ 193.83
Option B –additional insurance	\$694.20
Total deductions from Appellants annuity	\$2,293.74
Which leaves a net income of ;	\$4,360.26

15. As of [REDACTED] 2017, the Federal Income tax of \$1176.07 had been stopped. The net income increased to \$5536.33. (Exhibit B)
16. The life insurance premium of \$193.83 and the option B insurance plan premium of \$694.20 per month (*a total of \$888.03*) included in the applied income, is not accessible to cover his applied income amount. The Appellant has explored options to cancel insurance but was notified by the United States Office of Personnel Management (“OPM”) that federal law prohibits cancelation of the life insurance. (Exhibit B, Exhibit C and Appellant’s testimony)
17. On [REDACTED] 2017, OPM issued a letter to the conservator which explains that actions on behalf of another party in detriment to the annuitant are considered “personal rights” and cannot be taken by one person on behalf of another. More specifically stated in 8. e. The court appointed guardians and Representative payees cannot “Terminate or decrease FEGLI coverage. This will prevent a third party from terminating a benefit which could not be resumed. There is a disadvantage to the annuitant if the entire annuity is needed for current expenses, but the advantages outweigh the disadvantages.” (Exhibit C)
18. The Appellant does not have any other source of income to make up the difference between the income received and what is owed as applied income. (Appellant’s testimony)
19. The conservator would like the applied income to be adjusted because the Appellant’s monthly income does not reflect the applied income the Appellant is responsible for towards his cost of care. (Appellant’s testimony)

CONCLUSIONS OF LAW

1. Section 17b-2 (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”) Section § 5045.20 provides that assistance units who are residents of Long Term Care (LTCF) or receiving community based services (CBS) are responsible for contributing a portion of their income toward the cost of their care.

3. UPM § 5050.13 (A) pertains to the treatment of Social Security and Veteran's benefits and provides that income from these sources are treated as unearned income in all programs.
4. UPM § 5050.09 (A) provides payments received by the assistance unit from annuity plans; pensions and trusts are considered unearned income.
5. **The Department correctly determined the Appellant's gross income is \$6830.90. [\$176.90 Social Security + \$6654.00 Annuity pension]**
6. 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.
7. UPM § 5045.20 (A) (1) 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.
8. UPM § 5035.20 B. provides for deductions for LTCF Units. 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 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.
- 9. The Department correctly allowed for the \$60.00 PNA deduction from the Appellant's gross income.**
- 10. The Department correctly determined that the Appellant's Medicare Part b premium of \$104.90 as a deduction.**
- 11. The Department correctly allowed for the Appellant's Health benefits premium of \$229.64 as a deduction.**
- 12. The Department correctly determined that the Life insurance premium of \$193.83 plus the additional Option B insurance of**

\$694.20 are not allowable deductions for the appellant residing in a LTCF.

13. The Department correctly determined that the Appellant's applied income is \$ 6436.36.

DISCUSSION

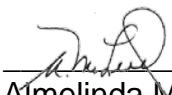
The Appellant has a basic life insurance \$193.00 and an additional insurance called Option B \$694.20 for a monthly premium of \$888.03 with Federal Employees' Group Life Insurance ("FEGLI"). The conservator tried to cancel the life insurance but was notified by the United States Office of Personnel Management that court appointed guardians and Representative payees cannot terminate or decrease FEGLI coverage.

The conservator for the Appellant disagrees with the Department's applied income calculation and request that the Applied income be re-adjusted to reflect the gross income minus the life insurance premiums of \$888.03 because the net income \$5536.33 falls short of the applied income amount of \$6436.36 expected to be paid to the LTCF.

The regulations regarding applied income states that the 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. The regulations regarding allowable deductions are very specific as to what deduction is allowed and life insurance premiums are not an allowable deduction.

DECISION

The Appellant's appeal is DENIED.



Almelinda McLeod
Hearing Officer

CC: Fred Presnick, SSOM Bridgeport Regional Office
Yesenia Acosta, SSPM, Bridgeport Regional Office
Marilyn Philips, Fair Hearing Liaison, Bridgeport 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 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, 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 his 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.