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

[redacted], 2017
**Signature Confirmation**

**Client ID #** [redacted]
**Request #** 829176

## NOTICE OF DECISION

## PARTY

[redacted]

## PROCEDURAL BACKGROUND

On [redacted] 2017, the Department of Social Services (the "Department") sent [redacted] (the "Appellant") a Notice of Action ("NOA) with the amount of applied income that she must pay towards her cost of long term care.

On [redacted], 2017, the Appellant requested an administrative hearing to contest the Department's calculation of the applied income amount.

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

On [redacted] 2017, the Appellant requested a continuance of the hearing, which was granted.

On [redacted], 2017, OLCRAH issued a Notice scheduling the administrative hearing for [redacted], 2017.

On [redacted] 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:

[redacted] the Appellant
Marjorie Simpson, Social Services Director, Regal Care at West Haven
Olga Ivenskaya, Department representative
Almelinda McLeod, Hearing Officer

## STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly calculated the applied income amount that the Appellant is responsible to pay towards the cost of her long term care.

## FINDINGS OF FACT

1. On, [redacted], 2016, the Appellant was admitted into Regal Care of West Haven. ( Exhibit 2)

2. The Department's interface matches through EMS/ CONNECT system shows that the Appellant receives Social Security in the amount of $1215.00. (Exhibit. 4, Bendex-Unearned Income screen and SVII screen)

3. The Appellant's Medicare Part B $104.90 premium is paid by the State of Connecticut. ( Exhibit 2, INST screen)

4. The Department allowed the Appellant $60 PNA. (Hearing record)

5. On [redacted] 2017, the Department calculated the Appellant's applied income as $1155.00 effective [redacted] 2017. [Social Security income $1215.00– minus $60 Personal Needs Allowance]. ( Exhibit 1)

6. The Appellant indicated that there is a $15.00 discrepancy in her Social Security income. (Appellant testimony, Exhibit B, Key Bank Express checking statements)

7. At this hearing, the Appellant provided Key Bank statements for the months of [redacted] and [redacted] 2017 which show $1200.70 being deposited into her bank account. ( Exhibit B)

8. The Appellant testified she is not subject to an overpayment with the Social Security Administration and that the $15.00 discrepancy is a mystery. ( Appellant testimony)

9. The Department was unable to find the cause of the $15.00 discrepancy through the Institution, Unearned Income and SVES Title II Information – SVII screens. ( Exhibit 2, Exhibit 4)

10. The Department inquired with the Social Security Administration but was not given any information. The Department was instructed to have the Appellant to call the Social Security Administration for that information. ( Department testimony , Exhibit 3)

11. The Department is unable to address the $15.00 discrepancy until the Department knows what caused the $15.00 difference. Once known, the Appellant's applied income may be adjust if appropriate to do so. (Department's testimony , Exhibit 3)

12. The Appellant has attempted to call Social Security to find out why she has a $15.00 discrepancy between the regular monthly payment of $1215.00 and what is deposited into her bank account, $1200.70. The Appellant has testified that the wait time was too long and she was unable to connect with anyone in the Social Security Administration to find out.

## CONCLUSIONS OF LAW

1. Section 17b-2 (6) 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.

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

4. Universal Policy Manual ("UPM") 1540.10 provides that the verification of information pertinent to an eligibility determination or a calculation of benefits is provided by the assistance unit or obtained through the direct efforts of the Department.

5. UPM 1540.10 (A) provides the assistance unit bears the primary responsibility for providing evidence to corroborate its declarations.

6. UPM 1540.10 (C) provides that the Department obtains verifications on behalf of the assistance when the following conditions exist.

    1. The Department has the internal capability of obtaining the verification needed through such means as case files, microfiche records, or direct access to other official records; or

    2. The Department has the capability to obtain the verification on It's own; and assistance unit has done the following:

        a. made a reasonable effort to obtain the verifications on its own; and

        b. been unable to obtain the verification needed; and

        c. requested the Department's help in obtaining the verification; and

        d. continued to cooperate in obtaining the verification.

7. UPM 1015.05 (c) provides that the Department must tell the assistance unit what the unit has to do to establish eligibility when the Department does not have sufficient information to make an eligibility determination.

8. UPM 1540.15 (E) provides that in addition to other methods of verification, the Department also uses the federally mandated Income Eligibility Verification System (IEVS) to obtain and utilize information on income.

9. UPM 1540.10 (D) provides the Department considers all evidence submitted by the assistance unit or received from other sources.

10. **The Department correctly attempted to retrieve information from the Social Security Administration to address the $15.00 discrepancy because the Department has the internal capability to do so.**

11. **When the Department was denied information from the Social Security administration, the Department correctly informed the Appellant that she had to call Social Security to obtain that information herself.**

**12. The Department correctly evaluated and considered all the evidence and verifications submitted by the Appellant and obtained through IEVS.**

13. 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.

**14. The Department correctly determined the Appellant was a resident of a LTCF and is responsible for contributing a portion of her income toward the cost of her care.**

15. UPM ("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.

Applied Income- Available income is that portion of the assistance unit's countable income that remains after all deductions and disregards are subtracted.

Counted income- is that income which remains after excluded income is subtracted from the total of available income.

Deductions- are those amounts which are subtracted as adjustments to counted income and which represent expenses paid by the assistance unit.

16. 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 is inaccessible; or

3. Deemed by the Department to benefit the assistance unit.

17. UPM 5050.13 provides, in part, that Social Security Benefits is income that is treated as unearned income in all programs.

**18. The Department correctly determined that the Appellant's Social security income is available income.**

**19. The Department correctly counted the Appellant's Social Security as unearned income for the Long Term Care Medicaid.**

20. 42 Code of Federal Regulations ("CFR") ( a) provides that the Department must reduce its payment to a long-term facility for long-term care services by the amount that remains after deducting amounts specified in the regulations.

21. UPM 5005 ( C) The Department computes applied income by subtracting certain disregards and deductions , as described in this section , from counted income.

22. UPM § 5035.20 (a) provides Deduction for LTCF Units without a Community Spouse and provides that the following deductions are allowed from the income of the 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.

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

**24. The Department correctly deducted the Appellant's PNA of $60.00 in the calculation of applied income.**

25. 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.

26. 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.

**27. The Department correctly determined that the Appellant's applied income for [redacted], 2017 and ongoing months is $1155.00. ($1215.00 (SSA) - $60.00 (PNA) = $1155.00)**

## DISCUSSION

Based on the evidence and testimony presented at this hearing, I see no error in the Appellant's computation of applied income effective [redacted] 2017.

I understand the frustration the Appellant has regarding the $15.00 discrepancy in her Social Security Income which affects her applied income. The Department did their due diligence in trying to resolve the $15.00 discrepancy with the Social Security Administration; however, the Social Security Administration refused to provide that information and instructed the Department to have the Appellant call for this information.

The Appellant testified she called but did not wait on the line to get the assistance she needed to clear up the $15.00 discrepancy. The Department is willing to adjust the Appellant's applied income, if it is appropriate to do so, as soon as the $15.00 discrepancy has been identified. In the meanwhile, based on the verification provided at the time, the Department's calculation of the applied income is upheld.

## DECISION

The Appellant's appeal is DENIED

Almelinda McLeod
Hearing Officer

CC: Lisa Wells, SSOM New Haven Regional Office
Brian Sexton, SSOM New Haven Regional Office
Cheryl Stuart, SSPM, New Haven Regional Office
Olga Ivenskaya, Fair Hearing Liaison, Stamford 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.