

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

██████████, 2018
Signature Confirmation

██████████
Request # 110444

NOTICE OF DECISION
PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

██████████ 2017, 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 towards her cost of long term care.

██████████, 2017, ██████████ the Appellant's daughter and Power of Attorney ("POA") requested an administrative hearing to contest the Department's calculation of the applied income amount.

██████████, 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████ 2018.

██████████, 2018, OLCRAH issued a Notice rescheduling the administrative hearing for ██████████ 2018.

██████████ 2018, 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 Appellant was not present at the hearing. The following individuals were present at the hearing:

██████████ the Appellant's daughter and POA
Felicia Andrew, Department representative
Veronica King, Hearing Officer

The hearing record remain open for submission of additional documents. On [REDACTED], 2018 the record closed.

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. [REDACTED], 2017, the Department received an application for Long Term Care services under Medicaid program. (Exhibit 1: W1LTC Long-term Care Application and Hearing Record)
2. The Appellant is a resident of [REDACTED], a skilled nurse facility. (Hearing Record)
3. [REDACTED] requested a pick up date of [REDACTED], 2017. (Hearing record)
4. The Appellant reported the following income: \$929.00 per month in Social Security, \$117 per month in Veteran's benefits, \$228.06 per month in [REDACTED] benefits and \$221.52 per month in UFCW Interna benefits. (Exhibit 1 and Exhibit 6: Unearned screen prints)
5. [REDACTED], 2017, the Department issued a NOA to the Appellant stating that she was approved for Medicaid Assistance effective [REDACTED]/17 and that she must pay \$1435.58 per month towards the cost of her care. The notice also stated that if her situation change, the amount may change. (Exhibit 7: Notice of Approval, [REDACTED] 17)
6. [REDACTED] 8, 2017, the Department sent a notice of approval for long term care Medicaid stating that the department have determined that she was eligible for Medicaid as of [REDACTED] 2017 and Medicaid will be paying for nursing home cost as of [REDACTED] 2017. (Exhibit 5: Notice of Approval for long term care Medicaid, [REDACTED] /17)
7. The Department granted qualified Medicare Beneficiaries assistance effective [REDACTED] 2017. The Appellant's Medicare Part B premium is paid by the State of Connecticut effective [REDACTED] 2017. (Exhibit 5 and Exhibit 7)

8. The Department allowed the Appellant \$60 in Personal Needs Allowance (PNA) deduction. (Hearing record)
 9. [REDACTED], 2017, the Department calculated the Appellant's applied income as \$1435.58.00 effective September 2017. [Social Security income \$929 + pension \$221.52 + pension2 \$228.06 + VA \$117= \$1495.58– minus \$60 Personal Needs Allowance]. (Exhibit 5)
 10. [REDACTED], 2017, the Department's system matched with the Social Security Administration system (Eligibility Verification System - IEVS) and the Appellant's Social Security gross amount was increased to \$1616.00 per month. (Exhibit 9: Unearned screen print)
- [REDACTED], 2017, the Department recalculated the Appellant's applied income as \$2122.58 effective [REDACTED] r 2017. [Social Security income \$1616.00 + pension \$221.52 + pension2 \$228.06 + VA \$117= \$2182.58– minus \$60 Personal Needs Allowance]. (Exhibit 10: notice of applied income change, 9/11/17)
12. [REDACTED] 2017, the Department issued a NOA to the Appellant stating that her applied income changed to \$2122.58 effective [REDACTED]/17 because her income has changed. (Exhibit 10)
- [REDACTED] 2017, the Appellant's daughter called the Department and reported that the Appellant receives another pension from Nusco retirement, \$644.89 per month. (Exhibit 8: Remarks screen print)
14. [REDACTED] 2017 the Department added the \$644.89 per month Nusco onto the Appellant's unearned income and recalculated the Appellant's applied income amount. (Exhibit 8 and Exhibit 9)

CONCLUSIONS OF LAW

1. Section 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. 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.

4. 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.

5. 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.

6. UPM 5050.13 provides, in part, that Social Security Benefits, Veteran's Benefits are income that is treated as unearned income in all programs.

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

8. UPM 5050.09 provides that (A) Payments received by the assistance unit from annuity plans, pensions and trusts are considered unearned income. (B) When the payments are received less frequently than monthly, each payment is averaged forward over the number of months for which it was intended to obtain an amount of gross monthly income. (Cross Reference: 5050.53 - Intermittent Income)

9. The Department correctly determined that the Appellant's pensions are available income.
10. UPM § 5045.20 B (1) (a) provides that the amount of income to be contributed in LTFC 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.
11. UPM § 5045.20 (B) (1) (b) provides that the total gross income is reduced by post-eligibility deductions (Cross reference: 5035-"Income Deductions") to arrive at the amount of income to be contributed.
12. 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.
13. 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 (60) dollars.
14. 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.
15. UPM 1540.10 (A) provides the assistance unit bears the primary responsibility for providing evidence to corroborate its declarations.
16. 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.
17. UPM 1540.10 (D) provides the Department considers all evidence submitted by the assistance unit or received from other sources.
18. The Department correctly deducted the Appellant's PNA of \$60.00 in the calculation of applied income.
19. The Department correctly calculated the Appellant's monthly applied income with the information that was provided at the initial application

- form. (Social Security income \$929 + pension \$221.52 + pension2 \$228.06 + VA \$117= \$1495.58 – minus \$60 PNA = \$1435.58 applied income)
20. The Department correctly recalculated the Appellant's income considering all the evidence and verifications obtained through IEVS. (Social Security income \$1616.00 + pension \$221.52 + pension2 \$228.06 + VA \$117= \$2182.58 – minus \$60 PNA = \$2122.58 applied income)
21. The Department correctly recalculated the Appellant's income considering the new information regarding the Nusco retirement pension. (Social Security income \$1616.00 + pension \$221.52 + pension2 \$228.06+ pension3 \$644.89 + VA \$117= \$2827.47)
22. The Appellant monthly applied income for [REDACTED], 2017 and ongoing months should be \$2767.47. (Social Security income \$1616.00 + pension \$221.52 + pension2 \$228.06+ pension3 \$644.89 + VA \$117= \$2827.47 – minus \$60 PNA = \$2767.47 applied income)

DISCUSSION

The Appellant's applied income was initially calculated as \$1435.58 in [REDACTED] 2018. [REDACTED] 2017, the Department's system updated the Appellant's Social security benefit to \$1616.00 causing a recalculation of applied income to \$2122.58. In addition, at the time of the application the Appellant's POA underreported the Appellant's [REDACTED] pension. The Department became aware of the \$644. 89 pension from [REDACTED] in [REDACTED] of 2017 causing another recalculation of the Appellant's applied income amount. Regulations are clear that the amount of the applied income can change due to changes of the Appellant's income or allowable expenses.

The argument in this case centered in regards of the appellant's expenses. The Appellant's POA provided a list of expenses such as hair appointments, foot pad, vitamins, clothing, toothpaste, birthdays and Christmas gifts, and other personal items expenses. The applied income amount is based on available income minus allowable deductions. Applied income regulations do not provide for deductions for things like hair, foot pad, vitamins, clothing, toothpaste, birthdays and Christmas gifts, it only allowed for \$60 in Personal Needs Allowance.

I understand the confusion regarding the applied income amount as it had changed a few times. The Department could only calculate the applied income

with the information that they have at the time. It is uncertain how the Department arrived at \$2662.57 applied income amount. The Department is encouraged to review the calculation.

In essence, the Appellant's POA argument that the Appellant's expenses exceeds the \$60 PNA and therefore the Department should take those expenses in consideration is not binding and the Department was correct when on deducted \$60 PNA from the Appellant's unearned income.

DECISION

The Appellant's appeal is **DENIED**

Veronica King
Hearing Officer

CC: Tricia Morelli, SSOM Manchester Regional Office
[REDACTED], Appellant's POA
Felicia Andrews, Fair Hearing Liaison, DSS New Haven 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.