

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 #124568

CLIENT ID ██████████
CASE ID ██████████

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (the "Department") sent ██████████ ██████████ (the "Appellant") a Notice of Action stating that the Appellant was required to pay \$952.82 from her income monthly towards the cost of her care, effective ██████████ 1, 2018.

On ██████████ 2018, the Appellant's Representative ██████████ requested an administrative hearing on behalf of the Appellant to contest her monthly applied income as determined by the Department.

On ██████████, 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings, (OLCRAH) sent a Notice of Administrative Hearing scheduling a hearing for ██████████ 2018 @ 10:00 AM to address the Appellant's monthly applied income as determined by the Department.

On ██████████ 2018, OLCRAH, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, held an administrative hearing to address the Appellant's monthly applied income as determined by the Department.

The following individuals participated in the hearing:

██████████, Appellant's Representative (By Telephone)

Sayaka Miyakoshi, Representative for the Department (By Telephone)
Hernold C. Linton, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Appellant's monthly applied income as determined by the Department is correct.

FINDINGS OF FACT

1. On [REDACTED] 2017, the Appellant was admitted to Maple View Manor as a resident, which is a long-term care facility ("LTCF"). (Hearing Summary)
2. The Appellant was granted medical assistance under the Medicaid program, effective [REDACTED] 2017 to cover the cost of her stay in a LTCF. (Hearing Summary)
3. On [REDACTED] 2018, the Department completed a review of the Appellant's on going eligibility and determined that the Appellant is required to contribute \$952.82 monthly from her income towards her cost of care as applied income or Patient Liability Amount. (Hearing Summary; Dept.'s Exhibit D: [REDACTED]/18 Notice of Action)
4. The Department calculated the Appellant's monthly applied income as \$952.82, effective [REDACTED] 2018, after allowing for a deduction of \$245.18 for insurance premium, and a disregard of \$60.00 as her Personal Needs Allowance ("PNA") . (Hearing Summary; Dept.'s Exhibit D)
5. The Appellant is seeking a diversion of applied income to maintain her apartment in the community. (Appellant Representative's Testimony)
6. The Appellant is [REDACTED] years of age (DOB [REDACTED]). (Dept.'s Exhibit A: Renewal Form)
7. The Appellant suffers from congestive heart failure, seizure disorder, and hypertension. (Appellant Representative's Testimony)
8. The Appellant receives \$928.00 per month in gross Social Security ("SSA") income. (Hearing Summary; Dept.'s Exhibit D)
9. The Appellant receives monthly gross pension income of \$330.00. (Hearing Summary; Dept.'s Exhibit D)
10. The Appellant has private medical insurance coverage wherein she incurs \$245.18 monthly in insurance premium. (Hearing Summary; Dept.'s Exhibit D)

11. The Appellant does not have a spouse residing in the community. (Hearing Summary)
12. The Appellant's monthly premium for her Medicare Part B coverage is paid through the Medicare Savings Program ("MSP"). (Dept.'s Exhibit D)
13. The Appellant's monthly allowable disregard for her PNA is \$60.00. (Hearing Summary; Dept.'s Exhibit D)
14. There is no evidence of the likelihood of the Appellant's returning to the community to occupy her former residence within six months of the date of her institutionalization as certified by a physician. (See Facts # 1 to 2; Hearing Summary; Dept.'s Exhibit D)
15. The Department determined that the Appellant did not request that a portion of her income be diverted to cover the cost of maintaining her residence in the community for a period of six months, based on the likelihood of her returning to the community as certified by a physician. (Hearing Record)
16. The Appellant's stay in a nursing facility exceeds six months. (See Facts # 1 & 2; Hearing Summary)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes ("CGS") authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Uniform Policy Manual ("UPM"), Section 5000.01 provides definitions as follows:

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 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.

Disregards are those amounts which are subtracted as standard adjustments to countable income and which do not represent expenses paid by the assistance unit.

3. Public Act 11-44 provides the procedures to decrease the personal needs allowance ("PNA") of Medicaid recipients who reside in long term care facility from \$69.00 to \$60.00 per month. Public 11-44 required the Department to reduce the PNA for residents of long term care facilities, effective [REDACTED] 2011.
4. UPM § 5005(C) provides that the Department computes applied income by subtracting certain disregards and deductions, as described in this section, from counted income.
5. UPM § 5005(D) provides that the Department uses the assistance unit's applied income to determine income eligibility and to calculate the amount of benefits.
6. The Department correctly determined the Appellant's total monthly gross unearned income as \$1,258.00 (\$928.00, SSA income; plus \$330.00, pension income) as of [REDACTED] 2018.
7. The Department correctly determined the Appellant's monthly insurance premium as \$245.18 to maintain her third party coverage.
8. 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.
9. As a resident of a LTCF, the Appellant is responsible to contribute a portion of her income towards the cost of her nursing facility care.
10. 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, 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 [REDACTED] 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...

11. UPM § 5045.10(C)(1) provides that except for determining AABD eligibility and benefit amounts for individuals residing in long term care facilities, applied unearned income is calculated by reducing the gross unearned income amount by the appropriate disregard based upon living arrangements.
12. The Department correctly denied the Appellant's request for a diversion of income for six months to maintain her apartment as there is no evidence of the likelihood of her returning to the community within the six months period, and is certified by a physician.
13. Effective [REDACTED] 2018, the Appellant's monthly applied income is \$952.82 (\$1,258.00, total unearned income; minus \$60.00, for her PNA, and \$245.18, for her insurance premium).
14. The Department correctly calculated the Appellant's monthly applied income as \$952.82 by allowing all appropriate deductions and disregards to calculate the amount of income which is to be applied towards her monthly cost of nursing care.
15. 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.
16. 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.
17. UPM § 5045.20(B)(1)(b) provides that total gross income is reduced by post-eligibility deductions (Cross reference: 5035-"Income Deductions") to arrive at the amount of income to be contributed.
18. UPM § 5045.20(D) provides that the difference between the assistance unit's contribution and the Medicaid rate of the LTCF or CBS is the amount of benefits paid by the department to the facility or provider organization on the unit's behalf.
19. The Appellant's monthly applied income, effective [REDACTED] 2018 of \$952.82 must be paid towards the monthly cost of her nursing care in the facility.

DISCUSSION

The policy requires that residents of LTCF are responsible for contributing a portion of their income towards the cost of their medical care. In the Appellant's situation, the

record established that she is a resident of a LTCF, and therefore, she must contribute a portion of her income towards the cost of her medical care.

It is noted that the policy provides that the total gross income of residents in LTCF's is adjusted by certain deductions to calculate the amount of income which is to be applied towards their monthly cost of medical care. Therefore, the Department calculated the amount of the Appellant's monthly applied income after allowing for the personal needs allowance of \$60.00, the insurance premium of \$245.18, as deductions. The Department's calculation of the amount of income to be applied towards the Appellant's monthly cost of care is in accordance with the regulation. Therefore, the amount of the Appellant's monthly applied income was determined in accordance with the policy.

DECISION

The Appellant's appeal is **DENIED**.



Hernold C. Linton
Hearing Officer

Pc: **Musa Mohamud**, Social Service Operations Manager,
DSS, R.O. #10, Hartford

Judy Williams, Social Service Operations Manager,
DSS, R.O. #10, Hartford

Jessica Carroll, Social Service Operations Manager,
DSS, R.O. #10, Hartford

Fair Hearing Liaisons, DSS, R.O. #10, Hartford



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 06105-3725.

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.