

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

██████████, 2019
Signature Confirmation

Client ID # ██████████
Request #133530

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2018, the Department of Social Services (the "Department") sent ██████████ ("Appellant") a Notice of Action ("NOA") stating that she must pay \$751.00 towards the cost of her care effective ██████████ 2019.

On ██████████, 2018, the Appellant requested an administrative hearing to contest the determination of the amount of applied income that she has to pay towards her care.

On ██████████, 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings, ("OLCRAH") sent a Notice of Administrative Hearing scheduling a hearing for ██████████, 2019.

On ██████████, 2019, 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 Daughter, Power of Attorney (POA)
██████████ Appellant's Son in-law, Representative
Angella Querette, Department's Representative via telephone
William Salwocki, Department's Representative
Miklos Mencseli, Hearing Officer

The Appellant was not present.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined the amount of the Appellant's monthly applied income effective for [REDACTED] 2019.

FINDINGS OF FACT

1. On [REDACTED] 2018, the Appellant was admitted to [REDACTED] as a short term stay. (Summary, Exhibit 8: letter from Dr [REDACTED], MD from [REDACTED])
2. On [REDACTED], 2018, the Department received the Appellant's application for Long Term Care ("LTC") Medicaid Assistance. (Summary, Exhibit 1: W-1LTC application)
3. On [REDACTED], 2018, the Department sent the Appellant's Representatives a W-1348LTC Verification WE Need form requesting information needed to process the Appellant's application. The information was due by [REDACTED], 2018. (Summary, Exhibit 2: W-1348LTC dated [REDACTED]-18)
4. The Department sent subsequent W-1348LTC forms as the Appellant provided requested verifications:
 - W-1348LTC dated [REDACTED] 18 (Exhibit 3)
 - W-1348LTC dated [REDACTED]-18 (Exhibit 4)
 - W-1348LTC dated [REDACTED]-18 (Exhibit 5)
5. On [REDACTED], 2018, Dr. [REDACTED] submitted a letter stating the Appellant was admitted as short term rehab and the intent was to return the Appellant home when she becomes medically stable in the New Year. (Summary, Exhibit 8)
6. On [REDACTED], 2018, the Department granted the Appellant Long Term Care ("LTC") Medicaid Assistance effective for [REDACTED] 2018, the date the facility requested Medicaid pick-up. (Summary, Department's Testimony)
7. The Department granted the Appellant a rental diversion of \$650.00 (the maximum amount) in determining her monthly applied income. (Summary, Exhibit 9: Notice of Approval for Long Term Care Medicaid)
8. The Department is allowed to give up to a 6 (six) months maximum for the cost of maintaining a home in the community. (Department's Testimony)
9. The Department's deductions for Long Term Care Medicaid are limited to the shelter deduction and expenses for services provided by a licensed medical provider. (Department's Testimony)

10. The Department calculated the Appellant's applied income minus the \$650.00 shelter deduction for the months of [REDACTED], 2018 through [REDACTED], 2018. (Exhibit 9)
11. Effective for [REDACTED], 2019, the Department removed the Appellant's \$650.00 deduction. (Summary, Exhibit 8)
12. The Appellant's only income is her monthly Social Security income. The Appellant's gross monthly income is \$811.00. (Summary, Appellant's Representatives Testimony)
13. The Department calculated the Appellant's applied income as \$101.00 (\$811.00 - \$650.00 rental diversion - \$60.00 Personal Needs Allowance = \$101.00) for the period of [REDACTED] 2018 through [REDACTED], 2018. (Summary, Exhibit 9, Exhibit 10: NOA dated [REDACTED]-18)
14. The Department calculated the Appellant's applied income as \$751.00 (\$811.00 - \$60.00 Personal Needs Allowance = \$751.00) effective for [REDACTED] 2019. (Summary, Exhibit 9, Exhibit 10: NOA dated [REDACTED]-18)
15. The Appellant entered the facility from her community home which she still is maintaining. (Appellant's Representative Testimony)
16. The Appellant has no mortgage but is incurring the expenses associated with home ownership (taxes, insurance, utilities). (Appellant's Representative Testimony)
17. The Appellant's Representatives are spending additional monies to purchase the Appellant items above and beyond what the facility is providing. (Appellant's Representative Testimony)
18. The goal is to return the Appellant to her community home. (Appellant's Representative Testimony)
19. As of the hearing date the Appellant is still at the facility with no discharge date. (Appellant's Representative Testimony)
20. "The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED], 2018. Therefore, this decision is due not later than [REDACTED], 2019."

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 the following 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 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.

Gross unearned income is the total amount of counted unearned income before disregards are subtracted from it.

Unearned income is income which does not constitute compensation for work or services performed or business conducted and includes returns from capital investments when the individual is not actively involved in the production of the income.

3. UPM Section 5005.C provides that the Department computes applied income by subtracting certain disregards and deductions, as described in this section, from counted income.
4. UPM Section 5005.D provides that the Department uses the assistance unit's applied income to determine income eligibility and to calculate the amount of benefits.
5. UPM Section 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, 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.
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

6. 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.
7. The Department correctly determined the Appellant was eligible for the six (6) month deduction of the cost of maintaining a home in the community.
8. The Department correctly determined the Appellant was eligible for the maximum deduction of \$650.00.
9. The Department correctly calculated the Appellant's applied income amount of \$101.00 with the rental diversion deduction for the period of [REDACTED], 2018 through [REDACTED], 2018.

10. The Department correctly removed the Appellant's \$650.00 deduction effective for [REDACTED], 2019 as she received the maximum months (6 months) allowed for the rental diversion.
11. The Department correctly calculated the Appellant's applied income amount of \$751.00 (\$811.00 - \$60.00 Personal Needs Allowance = \$751.00) effective for [REDACTED] 2019.

DISCUSSION

The Department can allow only a maximum six (6) deduction for the rental diversion. The Appellant received the diversion for the period of [REDACTED] 2018 through [REDACTED] 2018. The Appellant is receiving the \$60.00 Personal Needs Allowance deduction. The expenses her Representatives stated at the hearing are not allowable deductions. The Department's deductions for Long Term Care Medicaid are limited to the criteria set forth in the Department's policy.

DECISION

The Appellant's appeal is denied

Miklos Mencseli
Hearing Officer

C: Carol Sue Shannon, Operations Manager, Danbury #31

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.