

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

████████████████████  
Request # 133659

**NOTICE OF DECISION**

**PARTY**

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

**PROCEDURAL BACKGROUND**

On ██████████ 2018, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") stating that she must pay \$650.16 towards the cost of her care effective ██████████ 2018.

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, Anthony Oropallo, the Authorized Representative ("AREP") requested the administrative hearing to be rescheduled.

On ██████████, 2019, OLCRAH issued a notice rescheduling the administrative 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 Son and Authorized Representative ("AREP")

Turquoise McBride, Department's Representative via telephone  
Carla Hardy, Hearing Officer

The Hearing remained open until [REDACTED] 2019, in order for the Department to submit additional evidence.

### **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 [REDACTED] 2018.

### **FINDINGS OF FACT**

1. On [REDACTED] 2018, the Appellant was admitted to [REDACTED] for short term nursing home care. (Exhibit 3: ASCEND Admission Notice; Hearing Summary)
2. On [REDACTED] 2018, the Department received the Appellant's application for Home Care assistance. (Exhibit 1: Application; Hearing Summary)
3. The Appellant received a short term approval for long term care services from [REDACTED] 2018 through [REDACTED] 2018. (Exhibit 3; Hearing Summary)
4. The Appellant resides in an apartment in her son's home that received a Special Permit Use (SPU #165) designation to be approved as an accessory apartment from the town of [REDACTED] CT on [REDACTED] 1990. (Appellant's Exhibit D: Parent/grandparent apt. regs-[REDACTED])
5. The apartment is 580 square feet and has its own kitchen, bathroom, living room and entrance. The apartment also has separate utilities from the AREP's home. (Appellant's Exhibit C: Photos; AREP's Testimony)
6. The Appellant pays the AREP \$650.00 monthly for rent. (Hearing Record; AREP's Testimony)
7. The Appellant has been widowed since [REDACTED] 2009. (Exhibit 1: Application, [REDACTED] 19; Exhibit 4: Case Notes)
8. The Appellant's gross Social Security ("SSA") benefit amount in 2018 was \$999.00 per month. (Department's Testimony, AREP's Testimony)
9. The Appellant receives a foreign pension twice a year that is issued in US dollars. She received \$439.03 on [REDACTED] 2018 and \$894.92 on [REDACTED] 2018. The Department determined her monthly pension equaled \$111.16

$[(\$439.03 + \$894.92)/12 = \$111.16]$ (Exhibit 4; Department's Testimony; AREP's Testimony)

10. The Appellant's monthly gross income totals \$1,110.16 (\$999.00 SSA + \$116.16 = \$1,110.16). (Facts 8 and 9)
11. The Appellant is active on the Qualified Medicare Beneficiary program which pays her Medicare B premium. (Exhibit 5A: NOA, [REDACTED]/18; Exhibit 5B: NOA, [REDACTED]/19)
12. The Department received all verifications needed to establish eligibility. (Exhibit 4: Case Notes; Hearing Summary)
13. On [REDACTED], 2018, the Department granted Long Term Care ("LTC") Medicaid assistance for the Appellant effective [REDACTED] 2018 and determined the Appellant's applied income to be \$1,050.16 effective [REDACTED] 2018. (Exhibit 5A: NOA, [REDACTED]/19; Exhibit 4: Case Narrative)
14. On [REDACTED], 2018, the Department reviewed the Appellant's case record and allowed her a \$400.00 monthly rental diversion credit against her applied income effective [REDACTED] 2018 through [REDACTED] 2018, based on the minimum allowable deduction. (Exhibit 4; Department's Testimony)
15. The Department determined the Appellant's applied income to be \$650.16 (\$1,110.16 gross income - \$400.00 Rental diversion - \$60.00 Personal Needs Allowance ("PNA") = \$650.16) effective [REDACTED] 2018 through [REDACTED] 2018. (Exhibit 5B; Hearing Record)
16. The Department did not allow the Appellant to utilize the \$650.00, maximum monthly rental diversion. (Hearing Record)
17. ASCEND approved the Appellant for long term nursing home care effective [REDACTED] 2018. (Exhibit 3; Hearing Summary)
18. On [REDACTED] 2019, the Appellant expired. (Hearing Record)
19. 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 was due on [REDACTED], 2019. However, the hearing, which was originally scheduled for [REDACTED], 2019, was rescheduled for [REDACTED] 2019, at the request of the AREP, which caused a 49-day delay. Because this 49-day delay resulted from the AREP's request, this decision is not due until [REDACTED] 2019, and is therefore timely.

## CONCLUSIONS OF LAW

1. Sections 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. UPM § 5045.20 (B)(1) (a) provides that the amount of income to be contributed in LTCF 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.
4. The Department correctly determined that the Appellant’s monthly gross income is \$1,110.16 (\$999.00 SSA + \$116.16 Pension = \$1,110.16).
5. 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.
6. 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.
7. 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.
8. Title 42 of the Code of Federal Regulations (“CFR”) section 435.82 provides for required deductions from the assistance units income.

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 July 1, 1999 and annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration [current personal needs allowance is 60.00];
- (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. UPM § 5035.20 (B)(7) (a) and (b) provides that the cost of maintaining a home in the community for the assistance unit is allowed as a monthly deduction from the income of an assistance unit in a LTFC **subject to the conditions that the amount is not deducted for more than six months** and the likelihood of the institutionalized individual's returning to the community within six months is certified by a physician.
10. The Department correctly allowed for the deduction of the \$60.00 PNA from the Appellant's gross income.
11. UPM § 5035.25 (B)(4) provides a monthly deduction for LTFC units of Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for the Department or any other third party.
12. The Department correctly did not allow any deductions for health insurance premiums.
13. UPM § 4520.15(C) provides for Shelter in non-rated housing.
1. Level 1 Housing
    - a. an applicant or recipient is considered to be living in Level 1 Housing in the following situations:
      - (1) He or she is living in commercial housing or in a Department of Mental Health (DMH) sanctioned supervised apartment and not sharing a bedroom with any other individual;
      - (2) He or she is living in a shelter for the homeless or for battered women;
      - (3) He or she is living in any type of housing not mentioned in (1) or (2) above, and is not sharing his or her bedroom, bathroom or kitchen with another individual.

- b. The standard of assistance for shelter for assistance units living in Level 1 Housing is the amount that the assistance unit is obligated to pay for housing, up to \$400 per month. This includes rent, mortgage principal and interest, fire insurance premiums, property taxes, and water bills.
2. Level 2 Housing
- a. An applicant or recipient is considered to be living in Level 2 Housing in the following situations:
    - (1) he or she is sharing a bedroom in any type of housing except a shelter for the homeless or a shelter for battered women;
    - (2) he or she is sharing a bathroom or kitchen in any housing except a shelter for the homeless, a shelter for battered women, a DMH sanctioned supervised apartment, or commercial housing.
  - b. The standard assistance for shelter for assistance units living in Level 2 Housing is the amount that the assistance unit is obligated to pay for housing, up to \$200.00 per month. This includes rent, mortgage principal and interest, fire insurance premiums, property taxes, and water bills.
14. The Department was incorrect when it determined the Appellant resided in Level 2 Housing.
15. The Appellant does not share her bedroom, bathroom or kitchen with another individual and therefore, resides in Level 1 Housing.
16. The Department was incorrect when it allowed the Appellant a \$400.00 deduction for maintaining her home in the community.
17. The Appellant is eligible for the maximum \$650.00 deduction from her gross income for maintaining a home in the community.
18. The Department incorrectly determined the Appellant's applied income was \$650.16 (\$999.00 SSA + \$111.16 Pension - \$400.00 Rental diversion - \$60.00 PNA = \$650.16)
19. Beginning [REDACTED] 2018, the Appellant is responsible to pay \$400.16 (\$999.00 SSA + \$111.16 Pension - \$650.00 Rental diversion - \$60.00 PNA = \$400.16) in applied income that she must pay towards the cost of her care.

**DECISION**

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

**ORDER**

1. The Department shall allow the maximum \$650.00 rental diversion in its calculation of applied income effective [REDACTED] 2018.
2. The Department shall provide proof of compliance with this order no later than [REDACTED] 2019.

  
Carla Hardy  
Hearing Officer

Pc: Patricia Ostroski, Department of Social Services, Greater New Britain Office  
Turquoise McBride, Department of Social Services, Greater Hartford 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 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.