

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06106-5033

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

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

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2019, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a notice of action increasing the amount of applied income that she must pay toward her cost of Husky C Long-Term Care Medicaid assistance.

On ██████████ 2019, the Authorized Representative (“AREP”) for the Appellant requested an administrative hearing to contest the Department’s calculation of the applied income amount.

On ██████████, 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling 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 Representative and Power of Attorney (“POA”)
██████████, Appellant’s daughter and AREP
Barbara Brunner, Eligibility Services Specialist, Department’s Representative
Roberta Gould, Hearing Officer

At the request of the Appellant’s POA the hearing record remained open for the submission of additional evidence. On ██████████ 2019, the hearing record closed.

STATEMENT OF THE ISSUE

The issue is whether or not the Department has correctly calculated of the amount of applied income that the Appellant is responsible to pay toward the cost of her Husky C long-term care Medicaid assistance.

FINDINGS OF FACT

1. The Appellant is a recipient of Medicaid assistance for long-term care. (Hearing record)
2. The Appellant resides at [REDACTED] long-term care facility. (Hearing record)
3. The Appellant was granted long-term care Medicaid assistance effective [REDACTED], 2016. (Hearing summary)
4. The Appellant receives a New York State pension in the amount of \$483.18 per month. (Exhibit 2: New York State & and Local Retirement Systems receipt and Hearing summary)
5. The Appellant also receives a New York State pension in the amount of \$1,271.33 per month. (Exhibit 2 and Hearing summary)
6. The Appellant receives gross Social Security benefits of \$1,464.50 per month. (Hearing summary)
7. Effective [REDACTED] 2019, the Appellant pays \$135.50 for her monthly Medicare B premiums. (Department's testimony)
8. The Appellant has life use of property located at [REDACTED], [REDACTED], [REDACTED]. (Exhibit 5: Listing of expenses for [REDACTED], NY property and Hearing summary)
9. On [REDACTED], 2018, the tenant for property located at [REDACTED], [REDACTED], [REDACTED] moved out of the apartment. (Exhibit 5: Notice of intent to vacate dated 7/30/2018, POA and AREP's testimony)
10. In [REDACTED] 2018, the Appellant stopped making mortgage payments on property located at [REDACTED], [REDACTED], [REDACTED]. (AREP's testimony)
11. On [REDACTED] 2019, a new tenant moved into property located at [REDACTED], [REDACTED]. (Exhibit 6: Residential lease dated [REDACTED] 019, POA and AREP's testimony)
12. The new tenant at [REDACTED] is paying \$1,300.00 per month in rent, (Exhibit 6 and AREP's testimony)

13. The owner of property located at [REDACTED] is responsible to pay for electricity, oil heat and water. (Exhibit 6)
14. The personal needs allowance (“PNA”) for the long-term care Medicaid assistance is \$60.00 per month. (Department’s testimony)
15. On [REDACTED] 2019, the Department processed the Appellant’s recertification for Husky C Long-Term Care Medicaid assistance. (Exhibit 4: Case notes and Exhibit 5: Online recertification form dated 1/29/2019)
16. The Appellant did not report any expenses for home property located at [REDACTED] on her recertification form. (Exhibit 5)
17. On [REDACTED], 2019, the Department re-granted the Appellant Husky C Long-Term Care Medicaid assistance effective [REDACTED] 2018, and ongoing. (Exhibit 4)
18. On [REDACTED], 2019, the Department determined that the Appellant’s applied income that needed to be paid toward the cost of her long-term care was \$4,509.01 effective [REDACTED] 2019. (Exhibit 1: Notice of action dated [REDACTED] and Hearing summary)
19. On [REDACTED] 2019, the Appellant’s POA and AREP provided documentation of expenses associated with the rental property located at [REDACTED]. (Exhibit 5: tax statements and utility bills, Exhibit 6: lawn tractor receipt and breakdown of property expenses, and Exhibit 7: fax receipts)

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. Conn. Gen. Stat. § 17b-10 provides that “the Department’s Uniform Policy Manual (“UPM”) is the equivalent of a state regulation and, as such, carries the force of law.”
3. Uniform Policy Manual (“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.
4. UPM § 5045.20(B) provides for the amount of income to be contributed in LTCF cases:
 1. Initial Calculation

- a. For each month in the six month period for which the contribution is projected, monthly gross income is established as follows:
 - (1) 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;
 - (2) any additional counted income expected in the period for which the contribution is projected, is divided by six;
 - (3) any amount of the counted income received in the previous six months, but not expected to be received in the period for which the contribution is projected, is divided by six. The resulting figure is subtracted from the total of the amounts calculated in (1) and (2),
- b. Total gross income is reduced by post-eligibility deductions (Cross reference 5035 – “Income Deductions”) to arrive at the amount of income to be contributed.

2. Recalculation of the Amount to be Contributed

The recalculation of the amount to be contributed in any month of the six month period is required under the following conditions:

- a. a significant change occurs in income which amounts to an increase or decrease in monthly income of \$15 or more per month; or
- b. a change occurs, in any amount, in any deduction.

3. Reconciliation of Projected Income

At the end of the six month period, projected income must be reconciled with actual income paid or payable to the recipient.

5. UPM § 4000.01 provides for the definition of home property as

1. real property which someone owns and is using as principal residence; and
2. life use which is the right of a person to occupy and/or enjoy the income proceeds of real property during the person’s life time in accordance with the terms of a legal agreement.

The Department correctly determined that the Appellant has life use of property located at [REDACTED].

6. UPM § 4030.35(C) provides for income derived from life use:

If life use is an inaccessible asset, as described above and the life tenant is collecting rent derived from the life use, the rent is considered income (cross reference: 5050, Treatment of Specific Types).

The Department correctly determined that the Appellant was collecting rental income from the life use of property located at [REDACTED], [REDACTED], but incorrectly calculated the amount of rental income she received.

The Department incorrectly determined that the Appellant's monthly gross income in [REDACTED] 2019, was \$4,703.01 (\$1,464.50 SSA + \$1,271.33 pension + \$483018 pension + \$1,500.00 rental income).

7. UPM § 5035.20(B) provides for monthly post-eligibility deductions for long-term care facility (":LTCF") Units without community spouses:

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 premium amounts, deductibles, and coinsurance costs when not paid 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

The Department correctly allowed for the deduction of a personal needs allowance of \$60.00 per month but incorrectly allowed for a deduction for her Medicare Part B insurance premium in the amount of \$134.00 per month, rather than \$135.50 per month.

8. UPM § 5050.69(A) provides for the treatment of rental income:
- 1. Income received by the assistance unit from renting property to someone else is treated as:
 - a. earned self-employment income under the AFDC and AABD programs;
 - b. unearned self-employment income under the Medicaid programs unless the income is derived from a business enterprise.
 - 2. The total self-employment income earned each month is reduced by the

following self-employment deductions when they are incurred:

- a. labor (wages paid to an employee or work contracted out);
 - b. interest paid to purchase income producing property;
 - c. insurance premiums;
 - d. taxes, assessments, and utilities paid on income producing property;
 - e. service and repair of business equipment and property;
 - f. rental of business equipment and property;
 - g. advertisement;
 - h. licenses and permits;
 - i. legal or professional fees;
 - j. business supplies.
3. When the rental property is:
- a. part of the home-occupied property of the assistance unit, only the expenses associated with the rented portion are considered as a deduction;
 - b. not part of home-occupied property, the expenses are considered in total;

The Department did not apply appropriate deductions from the rental income for the property located at [REDACTED].

9. On [REDACTED] 2019, the Department incorrectly determined that Appellant's monthly applied income effective [REDACTED] 2019, was \$4,509.01 (\$1,255.33 Pension + \$483.18 Pension + \$1,464.50 SSA + \$1,500.00 rental income = \$4,703.01 - \$60.00 PNA - \$134.00 Medicare B premium).

DISCUSSION

After reviewing the evidence and testimony presented at this hearing, I find that the Department's calculation of the Appellant's applied income for Husky C Medicaid for long-term care is not correct due to a miscalculation of the amount of income received

by the Appellant, as well as the amount of expenses incurred through her rental property at [REDACTED]. Even though the Appellant did not report any expenses for home property at the time of recertification, policy provides for the recalculation of the amount to be contributed in any month of the six month period when there is a significant change of \$15.00 or more or a change occurs, in any amount, in any deduction. The Appellant's AREP provided evidence that there was a significant change in her income as well as the amount of deductions for her rental property during the previous 6 month recertification period. The AREP did provide documentation to support the reported changes as part of the hearing record. I find that the Department needs to reconcile and re-calculate the amount of applied income for the six-month prior recertification period and ongoing, based on actual income and expenses incurred.

DECISION

The Appellant's appeal is **REMANDED** to the Department for further action.

ORDER

1. The Department shall re-calculate the Appellant's Husky C Medicaid applied income amounts based on evidence presented at the hearing.
2. No later than [REDACTED] 2019, the Department will submit to the undersigned verification of compliance with this order.


Roberta Gould
Hearing Officer

Pc: Alejandro Arbalaez, Social Services Operations Manager, DSS Torrington
Barbara Brunner, Eligibility Services Specialist, DSS Danbury
[REDACTED], POA
[REDACTED], AREP

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.