

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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██████████  
██████████  
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Atty ██████████  
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**PROCEDURAL BACKGROUND**

The Department of Social Services (the "Department") determined that ██████████ (the "Appellant") had an applied income amount of \$967.79 effective ██████████ 2019, that she must pay toward her cost of Husky C Long-Term Care Medicaid assistance.

On ██████████ 2019, Attorney ██████████, the Conservator of Estate (the "Conservator") 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, the Conservator requested to reschedule the administrative hearing.

On ██████████ 2019, the 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:

Attorney ██████████, Appellant's Conservator of Estate  
██████████, Appellant's spouse  
Kimberly DiVirgilio, Eligibility Services Worker, Department's Representative

Roberta Gould, Hearing Officer

At the request of the Appellant's Conservator the hearing record remained open for the submission of additional evidence. On [REDACTED], 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 receives Social Security benefits in the amount of \$1,427.50 gross per month. (Exhibit 1: Spreadsheet for community spouse allowance effective [REDACTED] 2019 and Hearing summary)
4. The Appellant received a [REDACTED] pension in the amount of \$312.50 per month. (Exhibit 1 and Hearing summary)
5. On [REDACTED] 2019, the Appellant's Conservator obtained verification that her [REDACTED] pension ended in [REDACTED] of 2017. (Exhibit 6: [REDACTED] 401k plan information)
6. The Appellant's spouse receives Social Security benefits of \$1,837.00 gross per month. (Exhibit 1 and Hearing summary)
7. The Appellant's spouse receives a [REDACTED] pension of \$663.28 gross per month. (Exhibit 3: Income verification for [REDACTED], Exhibit 1 and Hearing summary)
8. The Appellant's spouse receives an additional pension in the amount of \$149.51 gross per month. (Exhibit 1 and Hearing summary)
9. The Appellant's spouse pays a mortgage of 1,473.14 per month. (Exhibit 4: Mortgage statement and Hearing summary)
10. Effective [REDACTED] 2019, the Appellant pays \$165.30 for her monthly Medicare B premiums. (Exhibit 1)

11. Effective [REDACTED] 2019, the Appellant pays \$36.20 monthly medical insurance premiums. (Exhibit 1)
12. Effective [REDACTED] 2019, \$510.71 per month of the Appellant's income is diverted to the Appellant's community spouse to help pay shelter costs. (Exhibit 1 and Hearing summary)
13. The personal needs allowance ("PNA") for the long-term care Medicaid assistance is \$60.00 per month. (Exhibit 1 and Department's testimony)
14. Effective [REDACTED] 2019, the Department calculated the Appellant's applied income that needed to be paid toward her Husky C Long-Term Care Medicaid assistance long-term care to be \$967.79 per month. (Exhibit 1 and Hearing summary)

### **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.

**The Department incorrectly determined that the Appellant’s monthly gross income in ██████████ 2019, was \$1,740.00 (\$1,427.50 SSA + \$312.50 Walmart pension).**

- 5. 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 as well as deductions for a Medicare Part B insurance premium in the amount of \$165.30 per month and a medical insurance premium of \$36.20 per month.**

The Department correctly allowed for an amount of income diverted to meet the needs of the Appellant's spouse who resides in a community home.

Effective [REDACTED] 2019, the Department incorrectly determined that the Appellant's monthly applied income was \$967.79 (\$1,427.50 SSA - \$60.00 PNA - \$165.30 Medicare B premium - \$36.20 medical insurance premium - \$510.71 community spouse allowance = \$655.29).

### DISCUSSION

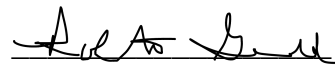
After reviewing the evidence and testimony presented at this hearing, I find that the Department's calculation of the Appellant's applied income for Husky C Medicaid for long-term care is not correct due to a miscalculation of the amount of income received by the Appellant. Department policy provides 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 in monthly income. The Appellant's Conservator provided evidence that there was a significant change in her income because her Walmart pension ended during the previous year. The Conservator did provide documentation to support the reported change as part of the hearing record. Policy provides that at the end of the six month period, projected income must be reconciled with actual income paid or payable to the recipient. Therefore, 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 received.

### DECISION

The Appellant's appeal is GRANTED.

### 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: Jamel Hilliard, Social Services Operations Manager, DSS Waterbury  
Peter Bucknall, Social Services Operations Manager, DSS Waterbury  
Kimberly DiVirgilio, Eligibility Services Worker, DSS Waterbury

### **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.