

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 # ██████████
Case ID # ██████████
Request # ██████████

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the "Department") sent ██████████ (the "Applicant") a Notice of Action ("NOA") informing him that he must pay \$1,093.00 in applied income towards his cost of care under the Long Term Care Medical Assistance program beginning ██████████ 2019.

On ██████████ 2019, ██████████, the Applicant's Representative and Appointed Executor of the Estate (the "Appellant"), requested an administrative hearing to contest the Department's calculation of the applied income liability 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, 17-61 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:

██████████, Representative, Executor of Estate
Edward Carter, Department Observer
Nikea Isley, Department Observer
Victor Robles, Department Representative
Shelley Starr, Hearing Officer

The Applicant was not present at the hearing due to his expiring on [REDACTED] 2019.

The hearing record was held open for the submission of documentation that the Applicant's Representative has been appointed Executor of the Estate for purposes of the Medicaid application. The Representative provided the requested documentation from Probate Court advising of his appointment. On [REDACTED] 2019, the hearing record closed.

STATEMENTS OF THE ISSUE

The issue to be decided is whether the Department's determination that the Applicant must pay applied income of \$1,093.00 per month is correct.

FINDINGS OF FACT

1. The Applicant is [REDACTED] years old [REDACTED] and never married. (Representative's Testimony; Hearing Record)
2. In [REDACTED] 2019, the Applicant was admitted to [REDACTED] [REDACTED] from [REDACTED], with a primary medical diagnosis of Stage 4 Cancer of the Stomach. (Representative's Testimony; Hearing Record)
3. The Applicant was anticipated to be a long term stay at [REDACTED]. (Department's Testimony; Hearing Record)
4. On [REDACTED] 2019, the Department received an M2T for a single male seeking the Connecticut Homecare Program for the Elderly. The Department sent to the Applicant a W-1348 requesting a completed application and documents. (Hearing Summary; Hearing Record)
5. On [REDACTED] 2019, the Department received the W-1LTC application for the home care waiver and long-term care Medicaid. (Exhibit L: Case Notes and Exhibit M: Application)
6. A back and forth communication was conducted throughout the application process between the Department and the Applicant. Several W-1348 requests for information was issued, with the information provided to the Department. (Hearing Summary; Hearing Record)
7. On [REDACTED] 2019, the Department was notified that the Applicant was a resident at [REDACTED]. (Hearing Summary; Hearing Record)

8. On [REDACTED] 2019, the Department determined that the Applicant is eligible for Medicaid long term care assistance and granted the Applicant Medicaid with a pick-up date requested by [REDACTED] of [REDACTED] 2019. The Department determined that he must pay \$1,093.00 (\$1,153.00 (social security) – 60.00 (Personal Needs Allowance) towards his cost of care. (Hearing Summary; Hearing Record; Exhibit 3: Notice of Action dated [REDACTED] 2019)
9. On [REDACTED] 2019, the Department sent the Applicant a Notice of Action advising that he was approved for Husky C Long Term Care Medicaid effective [REDACTED] 2019, and that he must pay \$1,093.00 for his cost of care beginning [REDACTED] 2019. (Exhibit 3: [REDACTED] 2019, Notice of Action; Hearing Record)
10. The Applicant receives gross Social Security benefits in the amount of \$1,153.00 per month. He has no other income sources. (Hearing Summary; Department's Testimony; Representative's Testimony)
11. The Applicant is Medicare A & B enrolled. His Medicare Part B premiums are paid by the Qualified Medicare Beneficiaries ("QMB") program. (Hearing Summary; Exhibit 3: Notice of Action dated [REDACTED] 2019)
12. On [REDACTED] 2019, the Applicant expired. (Representative's Testimony; Hearing Record)
13. 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 Applicant's Representative requested an administrative hearing on [REDACTED] 2019. Therefore, this decision is due not later than [REDACTED] 2019. However, due to the Applicant expiring, the close of the hearing record was extended to [REDACTED], 2019, at the Representative's request to allow the Representative time to provide that he was appointed Executor of the Estate. Because of this 70- day delay in the close of the record, this final decision is not due until [REDACTED] 2019, and is therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes designates the Department of Social Services as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. "The department's uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573A.2d 712 (1990)).

3. Uniform Policy Manual ("UPM") § 5000.01 provides the definition of Applied Income and states that Applied income is that portion of the assistance unit's countable income that remains after all deductions and disregards are subtracted.

UPM § 5000.01 provides the definition of Continuous Period of Institutionalization and states that a Continuous Period of Institutionalization is a period of 30 or more consecutive days of residence in a medical institution or long term care facility, or receipt of home and community based services (CBS) under a Medicaid Waiver.

4. 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.
5. 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 received.

In [REDACTED] 2019, the Applicant was admitted into [REDACTED].

The Department correctly determined that the Applicant must pay applied income beginning [REDACTED] 2019, (the month of the 30th day of his admission and continuous care).

6. 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.
7. UPM § 5045.20 (B)(1)(b) provides for the amount of income to be contributed in LTCF cases and states 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.
8. 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, 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 ("PNA") 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.

The Department correctly determined that the Applicant is entitled to the personal needs allowance deduction of \$60.00 per month.

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 LTCF 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.

The Department correctly determined that the Applicant was admitted to [REDACTED] as an anticipated long term admission.


The Department correctly determined that the Applicant must pay \$1,093.00 in applied income beginning in [REDACTED] 2019. (\$1,153.00 (Social Security) - \$60.00 (Personal Needs Allowance))

DISCUSSION

The regulations are clear that a Medicaid recipient who is residing in a long term care facility must contribute to the cost of his or her care. This is referred to as "applied income." In calculating the amount of that contribution, the regulations allow for deductions based on specific conditions. The Department correctly calculated the Applicant's gross Social Security income and deducted the \$60.00 standard personal needs allowance. The Applicant was a recipient of the Qualified Medicare Beneficiaries program which pays for the Medicare Part B premium. The regulations also allow a deduction for maintaining a home in the community for a period of up to six months if the likelihood of the institutionalized individual is returning to the community within six months and is certified by a physician. The Department received notification that the Applicant was admitted to [REDACTED] [REDACTED] as an anticipated long term stay. The Department is correct with its calculation of applied income effective [REDACTED] 2019, the month of the 30th day of continuous facility care.

DECISION

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


Shelley Starr
Hearing Officer

Pc: Carol Sue Shannon, DSS, Danbury
Victor Robles, DSS, 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.