

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

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

Client ID # ██████████
Request # 141596

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 (“NOA”) discontinuing her medical benefits under the Medicare Savings Program (“MSP”) effective ██████████ 2019.

On ██████████ 2019, the Appellant requested an administrative hearing to contest the Department’s discontinuance of such benefits.

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:

██████████ Appellant
Omayra Otero, Department’s Representative
Lisa Nyren, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to discontinue the Appellant's medical benefits under the Medicare Savings Program ("MSP") effective [REDACTED] 2019 was correct.

FINDINGS OF FACT

1. The Appellant received medical benefits under the Medicare Savings Program ("MSP") Specified Low Income Medicare Beneficiary (SLMB) program. (Hearing Record)
2. Beginning [REDACTED] 2019, the Appellant receives gross Social Security Benefits ("SSA") of \$2,360.00 per month. (Stipulated)
3. Each [REDACTED] the Appellant receives a yearly distribution of funds. In [REDACTED] 2017, the Appellant received \$4,000.00 under the distribution. In [REDACTED] 2019, the Appellant received \$3,644.80 under the distribution. (Exhibit 1: W-1QMBR Renewal Form for MSP and Appellant's Testimony)
4. The Department applied the yearly distribution of funds monthly and calculated the monthly distribution as \$333.33. [$\$4,000.00 \text{ yearly} / 12 \text{ months} = \333.33] (Department Representative's Testimony, Exhibit 3: Notice of Action, Exhibit 5: Medicare Savings Program – Income Test and Exhibit 8: Unearned Income – Details)
5. The Department determined the Appellant's monthly income as \$2,693.33 per month. [$\text{SSA } \$2,360.00 + \text{distributed funds } \$333.33 = \$2,693.33$] (Exhibit 5: Medicare Savings Program)
6. Beginning 2012, the Appellant receives Medicare Part A coverage from the Social Security Administration. (Appellant's Testimony and Exhibit 1: Medicare Savings Program Renewal)
7. Beginning 2012, the Appellant receives Medicare Part B coverage from the Social Security Administration. (Appellant's Testimony and Exhibit 2: Medicare Savings Program Renewal)
8. On [REDACTED] 2019, the Department discontinued the Appellant's benefits under the SLMB effective [REDACTED] 2019 because the household's income exceeds the income limit under the MSP. (Hearing Summary and Exhibit 3: Notice of Action, Exhibit 5: Medicare Savings Program-Income Test)
9. On [REDACTED] 2019, the Department issued the Appellant a Notice of Discontinuance. The notice stated the Department discontinued the

Appellant's SLMB benefits under the MSP effective [REDACTED] 2019 because the money your family gets each month is more than the limit for this program (Exhibit 3: Notice of Action)

10. 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] 2019. However, the hearing, which was originally scheduled for [REDACTED] 2019, was rescheduled for [REDACTED] 2019, at the request of the Appellant, which caused a 16-day delay. Because this 16-day delay resulted from the Appellant's request, this decision is not due until [REDACTED] 2019, and therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes ("Conn. Gen. Stats.") provides as follows: "the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act."

2. Federal Statutes provide for the definition of a qualified Medicare beneficiary as an individual:

Who is entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter (including an individual entitled to such benefits pursuant to an enrollment under section 1395I-2 of this title, but not including an individual entitled to such benefits only pursuant to an enrollment under section 1351I-2a of this title.) [42 United States Code (U.S.C.) § 1396d(p)(1)(A)]

Whose income (as determined under section 1382(a) of this title for purposes of the supplemental security income program, except as provided in paragraph 2(D)) does not exceed an income level established by the state consistent with paragraph 2.

42 U.S.C. § 1396d(p)(1)(B)

3. State statute provides as follows:

The Commissioner of Social Services shall increase income disregards used to determine eligibility by the Department of Social Services for the federal Qualified Medicare Beneficiary, the Specified Low-Income Medicare Beneficiary and the Qualifying Individuals Programs, administered in accordance with the provisions of 42 USC1396d(p), by such amounts that

shall result in persons with income that is (1) less than two hundred eleven percent of the federal poverty level qualifying for the Qualified Medicare Beneficiary program, (2) at or above two hundred eleven percent of the federal poverty level but less than two hundred thirty-one percent of the federal poverty level qualify for the Specified Low-Income Medicare Beneficiary program, and (3) at or above two hundred thirty-one percent of the federal poverty level but less than two hundred forty-six percent of the federal poverty level qualifying for the Qualifying Individual program. The Commissioner shall not apply an asset test for eligibility under MSP. The Commissioner shall not consider as income Aid and Attendance pension benefits granted to a veteran, as defined in section 27-103, or the surviving spouse of such veteran. The Commissioner of Social Services, pursuant to section 17b-10, may implement policies and procedures to administer the provisions of this section while in the process of adopting such policies and procedures in regulation form, provided the Commissioner prints notice of the intent to adopt the regulations in the Connecticut Law Journal not later than 20 days after the date of implementation. Such policies and procedures shall be valid until the time final regulations are adopted.

Conn. Gen. Stats. § 17b-256f

4. "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, 573 A.2d 712(1990))
5. "The assistance unit in AABD and MAABD consists of only one member. In these programs, each individual is a separate assistance unit." Uniform Policy Manual ("UPM") § 2015.05(A)
6. The Department correctly determined an assistance unit of one.
7. Departmental policy provides as follows:

The needs group for an MAABD unit includes the following:

- a. The applicant or recipient; and
- b. The spouse of the applicant or recipient when they share the same home regardless of whether one or both are applying for or receiving assistance, except in cases involving working individuals with disabilities. In these cases, the spouse (and

children) are part of the needs group only in determining the cost of the individual's premium for medical coverage. (Cross Reference 2540.85)

UPM § 5515.05(C)(2)

8. The Department correctly determined a needs group of one.
9. "Income from the Social Security Administration is treated as unearned income in all programs." UPM § 5050.13(A)(1)
10. "If income is received on a monthly basis, a representative monthly amount is used as the estimate of income." UPM § 5025.05(B)(1)
11. The Department correctly determined the Appellant receives Social Security Benefits of \$2,360.00 per month.
12. "Payments received by the assistance unit from annuity plans, pensions, and trusts are considered unearned income." UPM § 5050.09(A)
13. "When the payments are received less frequently than monthly, each payment is averaged forward over the number of months for which it was intended to obtain an amount of gross monthly income. (Cross Reference: 5050.53- Intermittent Income)" UPM 5050.09(B)
14. "The treatment of intermittent income described in this section involves both earned and unearned income. Some intermittent payments which are sporadically received are distinguished from lump sums on the basis of their probable recurrence." UPM § 5050.53

"The following types of payments exemplify income which is considered intermittent: payments made at intervals greater than one month subject to arrangements made between the payer and payee including, but no limited to, benefits from insurance settlements, payments of dividends and interest, and payments from pensions and annuities." UPM § 5050.53(A)(3)

"Income which is received intermittently is considered in relation to whether the payment is: a single payment with no relationship to any former or subsequent payment." UPM § 5050.53(B)(2)
15. The Department correctly determined the distributed funds of \$4,000.00 per year as countable intermittent income.
16. Departmental policy provides as follows:

The amount of the payment is prorated over a period of time in the following situations: when the income consists of unearned income paid on installment basis either resulting from the nature of the source or pursuant to an agreement between the payer and payee, the payment is averaged over the number of months the amount is intended to cover.

UPM § 5050.53(C)(3)

17. The Department correctly calculated the Appellant's monthly distributed funds as \$333.33 per month.

18. Department policy provides as follows:

Inconsideration of income, the Department counts the assistance unit's available income, except to the extent that it is specifically excluded. Income is considered available if it is:

1. Received directly by the assistance unit; or
2. Received by someone else on behalf of the assistance unit and the unit fails to prove that it is inaccessible; or
3. Deemed by the Department to benefit the assistance unit.

UPM § 5005(A)

19. The Department correctly determined the assistance unit's gross monthly income as \$2,693.33. (\$2,360.00 SSA + \$333.33 distributed funds = \$2,693.33)

20. "The income limit used to determine Medicaid eligibility is the limit for the number of persons in the needs group." UPM § 5515.10(C)

21. Effective [REDACTED] 2019, the 2019 federal poverty guidelines for the 48 Contiguous States and the District of Columbia for a household of one is \$12,490.00 annually. (\$12,490.00 / 12 months = \$1,040.8333 per month)

Federal Register, Volume 84, No. 22, [REDACTED] 2019, p1168

22. Effective [REDACTED] 2019, the Department established the income limit under the MSP applicable to the Qualified Medicare Beneficiary ("QMB") program for a household of one as \$2,196.51. (\$1,041.00 x 211% = \$2,196.51)

23. The Department correctly determined the Appellant's gross monthly income of \$2,693.33 exceeds the QMB income limit of \$2,196.51 and ineligible for the MSP under the QMB beginning [REDACTED] 2019.

24. Effective [REDACTED] 2019, the Department established the income limit under the MSP applicable to the SLMB program for a household of one as \$2,404.71. ($\$1,041.00 \times 231\% = \$2,404.71$)
25. The Department correctly determined the Appellant's gross monthly income of \$2,693.33 exceeds the SLMB income limit of \$2,404.71 and ineligible for the MSP under the SLMB for beginning [REDACTED] 2019.
26. Effective [REDACTED] 2019, the Department established the income limit under the MSP applicable to the Additional Low-Income Medicare Beneficiary ("ALMB") program for a household of one as \$2,560.86. ($\$1,041.00 \times 246\% = \$2,560.86$)
27. The Department correctly determined the Appellant's gross monthly income of \$2,693.33 exceeds the ALMB income limit of \$2,560.86 and ineligible for medical assistance under the MSP program beginning [REDACTED] 2019.
28. On [REDACTED] 2019, the Department correctly discontinued the Appellant's benefits under the MSP effective [REDACTED] 2019.

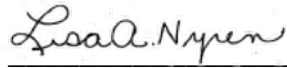
DISCUSSION

At the administrative hearing, the Appellant reported a reduction in the amount of the [REDACTED] 2019 annual distributed funds from \$4,000.00 to \$3,644.80. However, the decrease in funds does not change the Department's decision to discontinue the Appellant's medical benefits under the MSP as the Appellant remains over the MSP income limit.

\$3,644.80 annual distribution / 12 months = \$303.73 per month.
 \$303.73 distribution/month + \$2,360.00 SSA = \$2,663.73 gross monthly income
 \$2,663.73 exceeds the QMB income limit of \$2,196.51
 \$2,663.73 exceeds the SLMB income limit of \$2,404.71
 \$2,663.73 exceeds the ALMB income limit of \$2,560.86

DECISION

The Appellant's appeal is denied.

A handwritten signature in cursive script that reads "Lisa A. Nyren".

Lisa A. Nyren
Fair Hearing Officer

CC: Musa Mohamud, DSS RO #10
Judy Williams, DSS RO #10
Jessica Carroll, DSS RO #10
Jay Bartolomei, DSS RO #10
Omayra Otero, DSS RO #10

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.