

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE
HEARINGS
55 FARMINGTON AVE.
HARTFORD, CT 06105-3725

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

Client ID # ██████████
Request # 143785

NOTICE OF DECISION
PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the "Department") sent ██████████ ██████████ the Appellant") a Notice of Action ("NOA") adjusting the Applied income effective ██████████ 2019.

On ██████████ 2019, the Appellant requested an administrative hearing to contest the effective date of the Applied Income.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ ██████████, 2019.

On ██████████ 2019, due to technical issues, the administrative hearing was re-scheduled.

On ██████████ 2019, OLCRAH issued a notice scheduling the administrative hearings for ██████████ 2019.

On ██████████, 2019, the Appellant requested a re-schedule and it was granted.

On ██████████, 2019, OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2019.

On [REDACTED] 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:

[REDACTED], Appellant's son and POA
[REDACTED], Appellant's daughter
Edward Carter, Department Representative
Almelinda McLeod, Hearing Officer

The Appellant was not present as she is institutionalized.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined the effective date of the Applied income as instructed in a fair hearing decision requiring the Department to re-calculate the applied income effective [REDACTED] 2018 in accordance with state and federal law.

FINDINGS OF FACT

1. On [REDACTED] 2019, an administrative hearing was held regarding the Appellant's applied income amount. (Hearing record)
2. On [REDACTED] 2019, the Appellants' POA and AREP provided documentation of expenses associated with the rental property located at [REDACTED]. (Finding of Fact ("FOF") # 19 of Exhibit 1- Hearing Decision)
3. The AREP's had not previously reported any expenses for the rental property on her recertification form. (Exhibit 1, Hearing decision, FOF# 16)
4. the Appellant's income consists of two separate [REDACTED] pensions of \$483.18 and \$1271.33 (previous to [REDACTED] 2019, this pension was \$1255.33); Social Security benefit of \$1464.50 and as of [REDACTED] 2019, rental income of \$1300.00 per month. (Exhibit 1, Hearing decision)
5. Effective [REDACTED] 2019, the Appellant had a Medicare part B premium of \$135.50 per month. (Exhibit 1, Hearing decision)
6. The Appellant was entitled to the personal needs allowance of \$60.00 per month. (Exhibit 1, Hearing decision)

7. On ██████ 2019, the administrative hearing decision order was to remand the Department to re-calculate the Applied Income ("A.I.") and adjust the A.I. based on new evidence provided on ██████ 2019. (Exhibit 1, Hearing decision)
8. The Department took into consideration income and expenses incurred during the previous 6 months recertification period. See the following deductions:

RENTAL INCOME:	
Rent amount as ██████ per month =	\$1300.00
RENTAL EXPENSES :	
Taxes \$4365.46 div. by 12 =	-\$363.79
Insurance \$1217.00 div. by 12 =	-\$101.42
Oil delivery \$2995.80 div. by 12=	-\$249.65
Oil Service \$387.05 div. by 12=	-\$32.25
Electric \$460.10 div. by 12=	-\$38.25
Mower purchase \$800.00 div. by 12=	-\$66.67
Net Rental Income	\$447.97

(Exhibit 3, Case Notes)

9. On ██████ ██████ 2019, the A.I. from ██████ ██████ 2018 to ██████ was \$2,969.51, from ██████ 2019 to ██████, 2019 as \$3455.48 and ██████ 2019 and on-going as \$3,471.48. (Exhibit 2, NOA, Exhibit 3- Case Notes)
10. On ██████ 2019, the Appellant requested a fair hearing contesting the effective date of ██████ 2018 for the Applied income. (Exhibit A- Fair hearing request and Appellant's testimony)
11. 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 ██████ 2019. Therefore the decision was due no later than ██████ 2019. However, the Appellant requested two re-scheduled administrative hearings which caused a delay of 47 days. Because this delay was caused by the Appellant, the decision is now due ██████ 2019, therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2 (6) & 17b-262 of the Connecticut General Statutes designates that the Department is the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act and may make such regulations as are necessary to administer the medical assistance program.

2. Section 17b-10 of the Connecticut General Statutes (Conn. Gen. Stat.) provides the Departments' Uniform Policy Manual ("UPM") is the equivalent of state regulation and, as such, carries the force of law.
3. UPM 5045.20 provides that assistance units who are residents of Long Term Care facility ("LTCF") or receiving community-based services ("CBS") are responsible for contributing a portion of their income toward the cost of their care.
4. UPM (B) (1) (b) provides that the total gross income is reduced by post eligibility deductions (Cross-reference: 5035- "Income Deductions") to arrive at the amount of income to be contributed.
5. UPM 0500 defines Applied Income as that portion of the assistance unit's countable income that remains after all deductions and disregards are subtracted.
6. UPM 5045.20 (B) (2) (a) allows for a recalculation of the amount to be counted to be contributed in any of the six month periods is required when a significant change occurs in income which amounts to an increase or decrease in monthly income of \$15 or more per month.
7. UPM 5045.20 (C) (2) provides that the applied income is recalculated whenever there is a change in income or deductions.
8. UPM 4000.01 (2) provides for the definition of home property as life use which is the right of a person to occupy and/or enjoy the income proceeds of real property during the person's lifetime in accordance with the terms of a legal agreement.
9. UPM 4030.35 (C) provides for income derived from life use and provides that if life use is an inaccessible asset and the life tenant is collecting rent derived from the life use, the rent is considered income. (Cross reference:5050, Treatment of Specific Types).
10. UPM 5035.20 provides that for residents of LTCF without community spouse, the 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.
11. UPM 5035.20 (A) pertains to the durational use of deductions and provides that deductions are subtracted from income beginning 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 unit member is discharged from the LTCF or community-based services are last received.

12. UPM 5035.20 (B) (7) (a) pertains to the monthly post-eligibility deductions for long-term care facility (“LTCF”) units without community spouses and provides that the cost of maintaining a home in the community for the assistance unit cannot be more than six months.
13. UPM 5050.69 (A) (2) provides for the treatment of rental income. The total self-employment income earned each month is reduced by the self-employment deductions *when they are incurred*, which include:
 - 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.
14. UPM 5050.69 (A) (3) (b) provides that when the rental property is not part of a home –occupied property, the expenses are considered in total.
15. UPM 5050.69 (a) (4) provides that the gross earned income which remains after consideration of self-employment expenses is reduced by all appropriate deductions and disregards;
16. UPM 5050.69 (A) (5) provides the remaining amount of money is applied income.
- 17. The Department correctly determined rental income as self-employment income.**
- 18. The Department was correct to only count the expenses incurred when determining the new A.I.**
- 19. The Department correctly reduced the rental income by the expenses incurred by the Appellant.**
- 20. The Department correctly calculated the new A.I. based on the information that had been provided.**
- 21. The Department correctly calculated the new A.I. effective to [REDACTED] 2018.**

DISCUSSION

The AREP's argued on behalf of the Appellant that the substantial changes mentioned as the reason for the re-calculation of the A.I., existed well before [REDACTED] 2018, therefore they should have been given the deductions prior to [REDACTED] 2019.

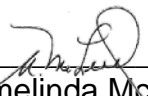
The record shows that the Department was unaware of the rental property expenses until after the administrative hearing was held on [REDACTED] 2019 because none were reported in the previous recertification form. The documents of those expenses were provided to the Department on [REDACTED] 2019. Among them was a quote for a new roof of \$8,000 from [REDACTED] Construction; which was not taken into consideration. The AREP's also mentioned the need for a new stove and the removal of a dead tree; in addition, they were taking on work around the property themselves in order to save money, which was admittedly not reported. Policy dictates the deductions can be reduced from the rental income when the expenses are incurred; therefore quotes for work that has not been completed, billed or paid for are not allowable deductions. The Department only took into consideration those expenditures that had been incurred and a receipt had been provided for the service. I find, the Department correctly followed the hearing decision order given to reconcile and re-calculate the A.I. for the 6 months prior re-certification period and on-going based on the actual income and expenses incurred effective [REDACTED] 2018.

The AREP's also requested to keep the net rental income of \$447.97 to build a reserve in order to address the costs of the extensive work needed on the rental property. Policy dictates that residents of LTCF are responsible for contributing a portion of their income towards their costs of care. There is nothing in the policy that states that an institutionalized individual without a community spouse can retain applied income to maintain a home in the community for more than 6 months.

Policy, however, dictates that A.I. can be re-calculated whenever there is a change in income or deductions. Since the Department has agreed to look at the receipts of the new expenditures to re-calculate the A.I., the AREP's are encouraged to provide the receipts to the Department at their earliest convenience. The Department is upheld.

DECISION

The Appellant's appeal is DENIED.



Almelinda McLeod
Hearing Officer

cc: Alejandro Arbelaez, SSOM, Torrington Regional Office
Ed Carter, Fair Hearing Liaison, Danbury Regional 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 06105-3725.

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.