

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 # 144606

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2019, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying her request for medical benefits under the Medicare Savings Program ("MSP") effective ██████████, 2019.

On ██████████ 2019, the Appellant requested an administrative hearing to contest the Department's denial 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, the Appellant requested a continuance which OLCRAH granted.

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

On ██████████, 2019, the Appellant requested a continuance which OLCRAH granted.

On ██████████ 2019, The 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  
Christopher Filek, Department's Representative  
Lisa Nyren, Hearing Officer

### **STATEMENT OF THE ISSUE**

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

### **FINDINGS OF FACT**

1. On [REDACTED], 2019, the Appellant submitted an Application for Medicare Savings Programs (QMB, SLMB, ALMB) ("W-1QMB") to the Department. (Exhibit 1: W-1QMB)
2. Qualified Medicare Beneficiary ("QMB") program, Specified Low Income Medicare Beneficiary (SLMB) program and Additional Low Income Medicare Beneficiaries ("ALMB") are programs under the Medicare Savings Program ("MSP"). (Hearing Record)
3. The Appellant receives gross Social Security Benefits ("SSA") of \$1,690.50 per month. (Stipulated)
4. The Appellant receives disability benefits directly from her former employer, [REDACTED] ("former employer"), of \$930.62 per month after taxes and adjustments. Monthly gross benefit amount \$2,438.95 - \$29.33 federal taxes - \$1,479.00 primary social security disability benefit adjustment = \$930.62. (Appellant's Testimony, Exhibit 1: W-1QMB, and Exhibit A: Explanation of Benefits)
5. The Department determined the disability benefits as unearned income. (Hearing Record)
6. The Department determined the Appellant's monthly gross income as \$2,621.12 per month. [SSA \$1,690.50 + disability \$930.62 = \$2,621.12] (Exhibit 2: Notice of Action)

7. Beginning [REDACTED] 2012, the Appellant receives Medicare Part A coverage from the Social Security Administration. (Appellant's Testimony)
8. Beginning [REDACTED] 2013, the Appellant receives Medicare Part B coverage from the Social Security Administration. (Appellant's Testimony)
9. Under the MSP, the QMB income limit for a household of one is \$2,196.51. (Exhibit 3: Income Limits and Standards)
10. Under the MSP, the SLMB income limit for a household of one is \$2,404.71. (Exhibit 3: Income Limits and Standards)
11. Under the MSP, the ALMB income limit for a household of one is \$2,560.86. (Exhibit 3: Income Limits and Standards)
12. On [REDACTED], 2019, the Department denied the Appellant's application for benefits under the ALMB effective [REDACTED] 2019 because the household's income \$2,621.12 exceeds the ALMB income limit of \$2,560.86 under the MSP. (Exhibit 2: Notice of Action)
13. On [REDACTED], 2019, the Department issued the Appellant a Notice of Action. The notice stated the Department denied the Appellant's application for ALMB benefits under the MSP effective [REDACTED] 2019 because the monthly net income of your household is more than the limit for this program and does not meet program requirements. (Exhibit 3: Notice of Action)
14. 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 twice at the request of the Appellant, which caused a [REDACTED]-day delay. Because this [REDACTED]-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. Departmental policy provides as follows:

In consideration 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 provide that it is inaccessible; or
3. Deemed by the Department to benefit the assistance unit.

UPM § 5005(A)

10. "Income from the Social Security Administration is treated as unearned income in all programs." UPM § 5050.13(A)(1)

11. The Department correctly determined the Appellant's Social Security benefits as countable income under the MSP.
12. "If income is received on a monthly basis, a representative monthly amount is used as the estimate of income." UPM § 5025.05(B)(1)
13. The Department correctly determined the Appellant receives Social Security Benefits of \$1,690.50 per month.
14. "Sick pay is received from employers, workmen's compensation benefits, private insurance, and unemployment compensation benefits: Sick benefits received from an employer are treated as earned income subject to appropriate deductions and disregards." UPM 5050.75(A)
15. Departmental policy provides as follows:

Except for determining AABD eligibility and benefit levels for assistance units residing in long term care facilities, earned income disregards are subtracted from the assistance unit's monthly total available gross income. Total available gross earned income is counted in full in determining AABD eligibility and benefit levels for assistance units residing in long term care facilities.

UPM § 5030.10(A)

16. "The following amounts are disregarded from income earned by the groups indicated: \$65.00 per month plus  $\frac{1}{2}$  of the remaining income is disregarded from the earnings of: applicants for assistance to the disabled and aged." UPM § 5030.10(B)(1)(a)  
  
"Personal employment expenses are not allowed as deductions to those applying for or receiving assistance to the disabled or aged." UPM § 5035.10(B)(1)
17. The Department correctly determined the Appellant's disability benefits as countable income under the MSP; however, the Department incorrectly determined the disability benefits from the Appellant's former employer as unearned income. Because the benefits are paid directly from the Appellant's former employer and not through workmen's compensation, private insurance, or unemployment compensation, the benefits are treated as earned income and subject to the earned income disregard.
18. Although the Department correctly determined the household's total countable include includes the Appellant's Social Security benefits and disability benefits, the Department erroneously counted the disability

benefits as unearned income rather than counting the gross disability benefits as earnings and applying the applicable earned income disregard to determine the total countable income under the MSP.

**DECISION**

The Appellant's appeal is remanded back for further action by the Department.

**ORDER**

1. The Department must reopen the Appellant's application for the MSP effective [REDACTED], 2019 and continue to process the application by counting her disability benefits as earnings and reducing her total available earnings by the appropriate earned income disregard.
2. Compliance is due 10 days from the date of this hearing decision.



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Lisa A. Nyren  
Fair Hearing Officer

CC: Brian Sexton, DSS RO #50  
Christopher Filek, DSS RO #50

### **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.