

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT06105-3730

██████████ 2019
SIGNATURE CONFIRMATION

HEARING REQUEST #141534

████████████████████
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NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the "Department" or "DSS") sent ██████████ (the "Appellant") a Notice of Action stating that the Appellant's individual home and community based services would be discontinued, effective ██████████ 2019, because the household's monthly gross income exceeded the income limit for the program, and the Appellant did not meet program requirements.

On ██████████ 2019, the Appellant requested an administrative hearing to contest the Department's discontinuance of her home and community based services.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice of Administrative Hearing scheduling a hearing for ██████████ 2019 @ 10:00 AM.

On ██████████ 2019, in accordance with Connecticut General Statutes § 17b-60, § 17b-61 and § 4-176e to § 4-184, inclusive, OLCRAH held an administrative hearing to address the Department's discontinuance of the Appellant's home and community based services.

The following individuals were present at the hearing:

- ████████████████████, Appellant
- ████████████████████, Appellant's Representative/Daughter
- ████████████████████, Appellant's Representative/Son
- Amy Koropatkin, Representative for the Department
- Brenda Lopez, Representative for the Department

Hernold C. Linton, Hearing Officer

The closing of the record was extended to [REDACTED] 2019 for the Appellant to provide verification that she has increased the amount being deducted for her pooled trust contribution. No response was received, and the record was closed on [REDACTED] 2019.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Appellant is ineligible for services under the Connecticut State-Funded Individual Receiving Home and Community Based Services Program, due to excess income.

FINDINGS OF FACT

1. The Department granted the Appellant assistance under the Connecticut State-Funded Individual Receiving Home and Community Based Services Program effective [REDACTED] 2017. (Dept.'s Exhibit 7: [REDACTED] 19 Notice of Action)
2. On [REDACTED] 2019, the Department received the Appellant Renewal of Eligibility packet. (Hearing Summary; Dept.'s Exhibit #1: Notice of Renewal of Eligibility)
3. On [REDACTED] 2019, the Department sent the Appellant a Worker Generated Request for Proofs (Form "W-1348M") to provide verification of her income and assets by [REDACTED], 2019 for the Department to make a decision on her eligibility. (Hearing Summary; Dept.'s Exhibit #2: [REDACTED] 19 W-1348M)
4. On [REDACTED] 2019, the Department sent the Appellant a Notice of Action stating that the Appellant's services under the Connecticut State-Funded Individual Receiving Home and Community Based Services Program would be discontinued effective [REDACTED] 2019, because the gross monthly income for her household exceeded the income limit for the program, and she did not meet program requirements. (Hearing Summary; Dept.'s Exhibit 7)
5. The Appellant receives \$2,564.50 per month in gross Social Security ("SSA") benefits. (Hearing Summary; Dept.'s Exhibit #6)
6. The Appellant receives \$983.20 (\$599.06; plus \$384.14) per month in total combined gross pension income. (Hearing Summary; Dept.'s Exhibit #6)
7. The Appellant has total monthly gross unearned income of \$3,547.70. (See Facts # 5 & 6; Hearing Summary)
8. The Appellant's approved monthly Pooled Trust contribution is \$978.00. (Hearing Summary)

COLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Title XIX (Medicaid) Program.
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, 573 A.2d 712 (1990)).
3. Uniform Policy Manual (“UPM”) Section 2540.92(A) pertains to Individuals Receiving Home and Community Based Services and provides, in pertinent part, as follows:

This group includes individuals who:

1. would be eligible for MAABD if residing in a long term care facility (LTCF); and
 2. qualify to receive home and community-based services under a waiver approved by the Centers for Medicare and Medicaid Services; and
 3. would, without such services, require care in an LTCF.
[UPM Section 2540.92(A)]
4. “Individuals qualify for Medicaid as categorically needy for as long as they meet the conditions above and receive home and community-based services under a waiver.”
[UPM § 2540.92(B)]
 5. UPM § 2540.92(C)(1) provides, in pertinent part, as follows:

the Department determines income eligibility under this coverage group by comparing the individual's gross income to the Special Categorically Needy Income Limit (CNIL), set at 300% of the maximum SSI amount for one person. To qualify as categorically needy, the individual's gross income must be less than the special CNIL.
[UPM Section 2540.92(C)(1)]

6. UPM § 5520.15(A)(3) provides, in pertinent part, as follows:

An assistance unit is income eligible to receive Home and Community -Based Services if it:

- a. is eligible and receiving cash assistance; or

- b. has gross monthly income which is less than 300% of the maximum SSI benefit given to an individual living in his or her own home. (Cross Reference: 5045 - "Post-Eligibility Treatment of Income")
7. The Department correctly determined the Appellant's total monthly gross countable income as \$3,547.71 (\$2,564.50, SSA; plus \$983.20, total combined pension income).
8. UPM § 3029.11(D) provides, in pertinent part, as follows:

The transfer of asset penalties do not apply to the following trusts:

- 1. a trust containing the assets of an individual under age 65 who is disabled, under criteria for SSI eligibility, if:
 - a. the trust is established for the benefit of such individual by his or her parent, grandparent, or legal guardian, or by a court; and
 - b. the State will receive all amounts remaining in the trust upon the death of the individual, up to an amount equal to the total amount of Medicaid benefits paid on behalf of the individual.
 - 2. a trust that meets the following conditions:
 - a. the trust is established and managed by a non-profit association; and
 - b. a separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of the funds, the trust pools these accounts; and
 - c. accounts in the trust are established solely for the benefit of individuals who are disabled, under criteria for SSI eligibility, by the individuals, their parent, grandparent or legal guardian, or by a court; and
 - d. to the extent that the amounts remaining in the individual's account upon his or her death are not retained by the trust, the trust pays to the State from such remaining amount an amount equal to the total amount of Medicaid benefits paid on behalf of the individual.
9. 42 U.S. Code 1396(p)(d) describes treatment of trust amounts; 42 U.S. Code 1396(p)(d)(4) describes that the subsection (d) does not apply to the following trusts; 42 U.S. code 1396(p)(d)(4)(C) describes the pooled trust; and 42 U.S. Code 1396(p)(h)(1) defines assets to include all income and resources of the individual and of the individual's spouse.
10. Policy Information Bulletin ("PIB") 09-02 states that income placed into a pooled trust for the benefit of a disabled individual is not counted when determining eligibility for Medicaid. Medicaid rules require that recipients who are residents of long-term care facilities or receiving waiver services pay all of their monthly income, minus a personal

needs allowance and all allowable deductions, towards their cost of care. This amount is called a patient liability amount or applied income.

9. UPM § 5035.20 provides, in pertinent part, as follows:

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.

A. Durational Use of Deductions

The deductions described below are subtracted from income:

1. beginning with the month in which the 30th day of continuous LTCF care or the receipt of community-based services occurs; and
2. ending with the month in which the unit member is discharged from the LTCF or community-based services are last received.

C. Deductions For CBS Units

The following monthly deductions are allowed from the income of assistance units receiving Community Based Services:

1. an amount to meet the basic community maintenance needs of the individual to the extent that it is equivalent to:
 - a. the MNIL for one person for those who are eligible under the model waiver; or
 - b. 200% of the Federal Poverty Level for those eligible under the PAS or DMR waiver;
2. an amount of income diverted to meet the needs of a family member who is in the community home to the extent of increasing his or her income to the MNIL which corresponds to the size of the family;
3. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for by Medicaid or any other third party;
4. expenses recognized as medical costs for which the recipient is currently liable, and which are not covered by Medicaid

10. UPM § 5045.20 provides, in pertinent part, as follows:

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.

A. Period for Which the Amount to be Contributed is Calculated

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 last received.

C. Amount of Income to be Contributed in CBS Cases

1. Initial Calculation

The amount of income to be contributed is prospectively calculated by reducing gross monthly income by the post-eligibility deductions referred to in 5035-"Income Deductions."

2. Recalculation of Applied Income

Applied income is recalculated whenever there is a change in income or deductions.

D. Amount of Benefits Paid by Department

The difference between the assistance unit's contribution and the Medicaid rate of the LTCF or CBS is the amount of benefits paid by the department to the facility or provider organization on the unit's behalf.

11. The Department correctly determined the Appellant's total monthly Adjusted Gross Income as \$2,569.71 (\$3,547.71, gross monthly income; minus \$978.00, pooled trust contribution).

12. UPM § 5520.15 provides, in pertinent part, as follows:

The income eligibility of those who are categorically needy and whose income is subjected to an income test is determined by comparing the assistance unit's monthly income to a CNIL appropriate to the size of the pertinent needs group.

A. Community Residents

3. Individuals Receiving Home and Community-Based Services

An assistance unit is income eligible to receive Home and Community –Based Services if it:

- a. is eligible and receiving cash assistance; or
- b. has gross monthly income which is less than 300% of the maximum SSI benefit given to an individual living in his or her own home. (Cross Reference: 5045 - "Post-Eligibility Treatment of Income")

13. Effective [REDACTED] 2019, the income limit for the Connecticut State-Funded for Individual Receiving Home and Community Based Services Program is \$2,313.00 per month, or 300% of the maximum SSI (\$771.00, SSI Maximum; multiplied by 300%) benefit given to an individual living in his or her home.
14. The Appellant's monthly Adjusted Gross Income exceeds the program's income limit by \$256.71 per month (\$2,569.71, Adjusted Gross Income; minus \$2,313.00, income limit)
15. The Appellant is ineligible for services under the Connecticut State-Funded Individual Receiving Home and Community Based Services Program, due to excess income as her monthly Adjusted Gross Income exceeds the income limit for the program of \$2,313.00, or 300% of the maximum SSI benefit given to an individual living in the community.
16. The Department correctly determined that the Appellant is ineligible for services under the Connecticut State-Funded Individual Receiving Home and Community Based Services Program, due to excess income as her monthly Adjusted Gross Income exceeds the income limit for the program.
17. The Department correctly discontinued the Appellant's services under the Connecticut State-Funded Individual Receiving Home and Community Based Services Program, effective [REDACTED] 2019, due to excess income.

DECISION

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



Hernold C. Linton
Hearing Officer

Pc: **Patricia Ostroski**, Social Service Operations Manager,
DSS, R.O. #52, New Britain

Fair Hearing Liaisons, DSS, R.O. #52, New Britain

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.