

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

██████████ 2020
Signature Confirmation

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

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA) indicating the amount of applied income he must pay towards his long term cost of care effective ██████████, 2019.

On ██████████ 2020, the Appellant’s Conservator of Person and Estate requested an administrative hearing to contest the Department’s calculation of the applied income.

On ██████████ ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2020.

On ██████████ 2020, the counsel for the Appellant requested a continuance of the hearing, which was granted.

On ██████████ 2020, OLCRAH issued a notice scheduling the administrative hearing for ██████████, 2020.

On ██████████, 2020, counsel for the Appellant did not appear at the scheduled hearing.

On ██████████ 2020, counsel for the Appellant requested a continuance of the hearing citing he never received notice of the re-scheduled hearing date of ██████████ 2020 and due to the pandemic, assumed all hearing were postponed.

On [REDACTED] 2020, OLCRAH granted his request.

On [REDACTED] 2020, OLCRAH issued a notice scheduling the administrative hearing for [REDACTED], 2020.

On [REDACTED], 2020, 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 Conservator of Person and Estate
 Kristen Bert, Department Representative
 Almelinda McLeod, Hearing Officer

[REDACTED] was not present due to his institutionalization.

The hearing record was held open for the submission of additional evidence for review and response by [REDACTED] 2020. On [REDACTED] 2020 the hearing record was closed.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly calculated the Appellant's applied income used to determine the amount he is responsible to pay toward the cost of his long-term care.

FINDINGS OF FACT

1. The Appellant is [REDACTED] years old (DOB- [REDACTED]) who suffers with dementia and currently resides at the [REDACTED], a skilled nursing facility ("SNF"). (Exhibit 1)
2. The Appellant has never married; thus has no community spouse. (Hearing record)
3. Sometime in [REDACTED] 2019, the Appellant was hospitalized where his leg was amputated due to complications with diabetes. (Conservator testimony)
4. On [REDACTED] 2019, the Appellant was admitted into the SNF from the hospital. (Hearing summary)
5. In the month of [REDACTED] 2019, attorney [REDACTED] was court appointed to be the Appellant's conservator of person and estate. (Conservator testimony)
6. On [REDACTED] 2019, ASCEND determined the Appellant was short term stay; which was to expire [REDACTED] 2019. (Hearing summary)

7. The 30th continuous day of LTCF care for the Appellant occurred in the month of [REDACTED] 2019. (Hearing record)
8. On [REDACTED] [REDACTED] 2019, the Department received the W-1 LTC application requesting long term facility Medicaid assistance. (Exhibit 1)
9. On [REDACTED], 2019, Ascend updated the Appellant's level of care ("LOC") which resulted in long term care approval. (Hearing record)
10. On [REDACTED] 2019, the SNF wrote a letter indicating that the Appellant planned on being discharged to return to the community within 6 months. His anticipated return would have been approximately [REDACTED] 2020. (Exhibit 4 and Appellant testimony)
11. This letter from the facility doctor was necessary in order to prevent the Appellant from listing his home property for sale in order for the state to place a lien against his property. (Department testimony)
12. The Appellant's income consists of \$1309.50 Social Security income ("SSA") and \$1507.00 [REDACTED] Pension. (Hearing summary)
13. The Appellant pays for two [REDACTED] Insurance premiums for \$246.75 and \$72.00 per month and also pays \$135.50 for his Medicare Part B premiums. (Hearing summary)
14. The conservator was responsible to pay for the Appellant's mortgage, rental of land, solar mortgage, federal and state income tax to the city of [REDACTED], utilities, insurances, conservator fees and property maintenance obligations in order to keep his home in the community. (Conservator testimony)
15. The Department determined the Appellant was eligible for a one-time 6 month diversion of \$650.00 from [REDACTED] 2019 to [REDACTED] 2019 as level 1 housing. There is no extension to the 6 months rental diversion. (Hearing Summary and Departmental testimony)
16. The Department allowed \$60.00 for the personal needs allowance ("PNA") deduction.
17. On [REDACTED] 2019, the Department issued a NOA to the Appellant stating that he was approved Medicaid effective [REDACTED] 2019 and that he must pay \$1727.67 for the benefit period of [REDACTED], 2019 to [REDACTED], 2019 and \$2377.67 effective [REDACTED] 2019 and ongoing per month towards the cost of his care. (Exhibit 6)
18. On [REDACTED] 2019, the Department determined the Appellant had reduced his assets to below the \$1600 asset limit in [REDACTED] 2019 and was therefore eligible Medicaid effective [REDACTED] 2019. (Department testimony)

19. On [REDACTED] 2019, the Department re-calculated the Appellant's A.I. from [REDACTED] 2019 to [REDACTED], 2019 as **\$1652.67**: [\$1309.50 (SSA) + \$1507.52 (Pension) - \$60.00 (PNA) - \$246.75 - \$72.10 ([REDACTED] [REDACTED] Ins premiums.)- \$650.00 (rental diversion) - \$135.50 (Med part B premium)]. (Hearing summary)
20. On [REDACTED] 2019, the Department re-calculated the Appellant's A.I. excluding the rental diversion from [REDACTED] 2019 to [REDACTED], 2019 as **\$2302.67**: [\$1309.50 (SSA) + \$1507.52 (Pension) - \$60.00 (PNA) - \$246.75 - \$72.10 ([REDACTED] [REDACTED] Ins. Premiums- \$135.50 (Med Part B premium))] (Hearing summary)
21. The Appellant claims exceptional circumstances due to the carrying cost of all his living expenses to maintain his residence and his property in the community, plus the added liability of paying the conservator's fee. The A.I. of \$2302.67 leaves him with only \$400.00 per month to maintain his home in the community. (Appellant testimony)
22. As of the date of this hearing, [REDACTED] 2020, the Appellant has not returned to the community. (Appellant testimony)
23. The hearing decision is timely under section 17b-61 (a) of Connecticut General Statutes, which requires that a decision be issued within 90 days of the request for an administrative hearing has been extended to "Not later than 120 days" after the request for a fair hearing pursuant to Section 17b-60 by order of Department of Social Services Commissioner dated [REDACTED] 2020. The Appellant requested an administrative hearing on [REDACTED], 2020. However, the hearing record, which had been anticipated to close on [REDACTED] 2020, did not close due to the Appellant's request for a re-schedule. The administrative hearing subsequently had to be re-scheduled again causing a further delay of 136 days. The decision is due [REDACTED] 2020 and is therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-260 to 17b-264 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Title XIX Medical Assistance Program to provide medical assistance to eligible persons in Connecticut.
2. The Department's uniform policy manual ("UPM") is the equivalent of 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") § 5045.20 pertains to 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.

4. **The Department correctly determined the Appellant was a resident of a LTCF and is responsible for contributing a portion of his income toward the cost of his care.**
5. UPM ("UPM") § 5000.01 provides Treatment of Income definitions.
Available income- is all income from which the assistance unit is considered to benefit, either through actual receipt or by having the income deemed to exist for its benefit. Applied Income- Available income is that portion of the assistance unit's countable income that remains after all deductions and disregards are subtracted. Counted income- is that income which remains after excluded income is subtracted from the total of available income. Deductions- are those amounts which are subtracted as adjustments to counted income and which represent expenses paid by the assistance unit.
6. UPM § 5005 (A) provides that 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 prove that is inaccessible; or 3. Deemed by the Department to benefit the assistance unit.
7. UPM 5050.13 provides, in part, that Social Security Benefits, Veteran's Benefits are income that is treated as unearned income in all programs.
8. UPM 5050.09 provides that (A) Payments received by the assistance unit from annuity plans, pensions and trusts are considered unearned income.

The Department correctly determined that the Appellant's SSA of \$1309.50 and pension of \$1507.52 are available unearned income.

9. UPM 4520.15 (a) pertains to Level 1 Housing and provides that an applicant or recipient is considered to be living in Level 1 Housing in the following situations: (1) he or she is living in commercial housing or in a Department of Mental Health (DMH) sanctioned supervised apartment and not sharing a bedroom with any other individual; (2) he or she is living in a shelter for the homeless or for battered women; **(3)** he or she is living in any type of housing not mentioned in (1) or (2) above, and is not sharing his or her bedroom, bathroom or kitchen with another individual.

The Department correctly determined the Appellant was in Level 1 Housing.

10. UPM § 5035.20 (A) provides that for residents of long term facilities ("LTCF") without a spouse living in the community , 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. The following deductions described

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.

11. UPM § 5035.20 (B) (7) provides the cost of maintaining a home in the community for the assistant unit is subject to the following conditions: **a.** the amount is not deducted for more than six months; and **b.** the likelihood of the institutionalized individual will return to the community within six months is certified by a physician; and **c.** the amount deducted is the lower of either (1) the amount the unit member was obligated to pay each month in his former community arrangement; or **(2)** \$650.00 per month if the arrangement was Level 1 Housing; or (3) \$400 per month if the arrangement was Level 2 Housing; and **d.** the amount deducted includes the following: (1) heat; (2) hot water; (3) electricity; (4) cooking fuel; (5) water; (6) laundry; (7) property taxes; (8) interest on the mortgage; (9) fire insurance premiums and (10) amortization.

The Department correctly determined the Appellant was eligible for a one- time rental diversion of \$650.00 of no more than 6 months for the cost of maintaining his home in the community, in accordance with policy.

The Department incorrectly determined the rental diversion was from [REDACTED] 2019 to [REDACTED] 2019.

Because the Appellant was admitted in [REDACTED] 2019, the 30th day of continuous care would be in the month of [REDACTED] 2019; therefore the correct rental diversion should be [REDACTED] 2019 to [REDACTED] 2019.

12. Conn. Gen. Stat. § 17b-272. (Formerly Sec. 17-134m). Personal fund allowance. Effective July 1, 2011, the Commissioner of Social Services shall permit patients residing in nursing homes, chronic disease hospitals and state humane institutions who are medical assistance recipients under sections 17b-260 to 17b-262, inclusive, 17b-264 to 17b-285, inclusive, and 17b-357 to 17b-361, inclusive, to have a monthly personal fund allowance of sixty (60) dollars.
13. UPM 5035.20 (B) (2) provides a personal needs allowance 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.
14. UPM 5035.20 (B) (4) provides Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for by Medicaid or any other third party.

15. The Department correctly deducted the Appellant's PNA of \$60.00 in the calculation of applied income.
16. The Department correctly deducted the Appellant's [REDACTED] [REDACTED] Insurance premiums [\$246.75 & \$72.10] and the cost of his Medicare Part B [\$135.50] premium) in the calculation of applied income.
17. UPM § 1500.01 provides for the definition of exceptional circumstances. Exceptional circumstances are conditions that are unusual or extreme for a community spouse, and which either directly threatens the community spouse's ability to remain in the community, or pose some other type of unusual or extreme hardship for the community spouse, such as caring for a disabled child, sibling or other immediate relative.
- The Appellant has never been married; thus there is no community spouse. The Appellant does not fit the criteria for exceptional circumstances. The Department is correct not to consider exceptional circumstances.**
18. UPM § 5045.20 B (1) (a) provides that the amount of income to be contributed in LTCF cases at initial calculation for each month in the six month period for which the contribution is projected, monthly gross income is established as follows: total gross monthly income which was paid or payable to the applicant or recipient, in the six months prior to the period for which the contribution is projected, is divided by six.
19. UPM § 5045.20 (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.
20. UPM 5045.20 B. (2) provides the recalculation of the amount to be contributed in any month of the six month period is required under the following conditions. a. significant change occurs in income which amounts to an increase or decrease in monthly income of \$15 or more per month; or b. a change occurs, in any amount, in any deduction.
21. The Department correctly calculated the Appellant's initial monthly applied income as \$1652.67 (\$1309.50 SSA + \$1507.52 pension = \$2817.02 – minus \$60.00 PNA - \$650.00 rental diversion – \$246.75 - \$72.10, [REDACTED] Insurance Premiums - \$135.50, Medicare Part B premium).
22. The Department incorrectly determined that the period of the initial applied income was from [REDACTED] 2019 to [REDACTED], 2019.
23. The correct period of the initial monthly applied income is from [REDACTED], 2019 to [REDACTED] 2019.

24. The Department correctly re-calculated the Appellant's monthly applied income without the rental diversion as \$2302.67. (\$1309.50 SSA + \$1507.52 pension = \$2817.02 – minus \$60.00 PNA - \$246.76 - \$72.10 [REDACTED] Insurance premiums - \$135.50, Medicare Part B premium.
25. The Department incorrectly determined that the re-calculated applied income was from [REDACTED], 2019 to [REDACTED] 2019.
26. The correct period of the re-calculated applied income is from [REDACTED], 2019 to [REDACTED], 2019.

DISCUSSION

The Conservator's main argument was that the expenses to maintain the Appellant's home in the community in addition to his conservator's fees makes the applied income unrealistic and claimed exceptional circumstances; especially since the Appellant intends to return to his home in the community. The hearing record shows that the Appellant does not have a community spouse; therefore exceptional circumstances, in this case, do not apply. In addition, as of the date of this administrative hearing, the Appellant was still a resident of the SNF; thus he is responsible to pay a portion for his cost of care.

The applied income is based on available income minus allowable deductions. The initial calculation and subsequent re-calculation of the applied income is correct since the applied income policy does not allow for a rental diversion beyond 6 months. The hearing record shows that the Department determined the Appellant was eligible for the rental diversion from [REDACTED] 2019 to [REDACTED] 2019; however policy states that rental diversion as a deduction starts in the beginning with the month in which the 30th day of continuous LTC occurs. In this case, the 30th day of continuous care in a LTC facility occurs in the month of [REDACTED] 2019; therefore the rental diversion starts in [REDACTED] 2019 and the 6 months was to expire in the month of [REDACTED] 2019. The Appellant is owed rental diversion for the month of [REDACTED] 2019.

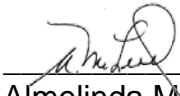
It should also be noted that the conservator requested a decision on the effective date of the Appellants applied income on this scheduled administrative hearing. A thorough research did not show that a request for an administrative hearing had been requested for effective date; therefore I am unable to issue a decision on this issue.

DECISION

The Appellant's appeal was GRANTED in part and DENIED in part.

ORDER

1. The Department is ordered to determine eligibility for rental diversion for the month of [REDACTED] 2019.
2. Compliance with the undersigned is due by [REDACTED] 2020.



Almelinda McLeod
Hearing Officer

CC: Tricia Morelli, SSOM Manchester
Kristen Bert, fair Hearing Liaison, New Haven 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 Legal Counsel, Regulations, and Administrative Hearings, 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 his 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.