

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

Client ID # ██████████
Case ID # ██████████
Request # 157854

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2020, the Department of Social Services (the "Department") sent ██████████ (the "Applicant") a Notice of Action ("NOA") informing her that she must pay \$2,298.94 in applied income towards her long term cost of care effective ██████████ 2020.

On ██████████, 2020, ██████████, the Applicant's Power of Attorney, ("POA"), requested an administrative hearing to contest the Department's calculation of the applied income liability amount.

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

On ██████████, 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:

██████████, ██████████, Power of Attorney
██████████, ██████████, Business Office Bookkeeper
Sayaka Miyakoshi, Department Representative
Shelley Starr, Hearing Officer

The Applicant was not present at the hearing due to her institutionalization.

The hearing record was held open for the submission of additional evidence from the Department. The Department provided the additional evidence. On [REDACTED] 2020, the hearing record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department's determination that the Applicant must pay applied income of \$2,298.94 toward the cost of her long-term care effective [REDACTED] 2020, is correct.

FINDINGS OF FACT

1. The Applicant is [REDACTED] years old ([REDACTED]) who is a widow. (Representative's Testimony; Hearing Record)
2. On [REDACTED], 2019, the Applicant was admitted to [REDACTED], from [REDACTED], after suffering a fall. (Representative's Testimony; [REDACTED] Representative's Testimony; Hearing Record)
3. On [REDACTED] 2019, the Department received an application for Long Term Care ("LTC") Medicaid assistance. (Department's Testimony; Hearing Record)
4. In [REDACTED], the Applicant was approved by ASCEND as an anticipated long term care resident at [REDACTED] with a long term care level of care ("LOC") approval. (Department's Testimony; [REDACTED] Representative's Testimony)
5. On [REDACTED] 2020, the Department determined that the Applicant is eligible for Husky C-Long Term Care Medicaid assistance and granted the Applicant Medicaid with a pick-up date of [REDACTED] 2020, with applied income of \$2,153.94 owed effective [REDACTED] of 2020. The Department calculated the applied Income as follows: (\$1,233.60 ([REDACTED]) + \$597.64 [REDACTED] + \$527.30 [REDACTED]) - \$60.00 [REDACTED] - \$144.60 ([REDACTED]) = \$2,153.94 towards her cost of care. (Hearing Summary; Department's Testimony; Exhibit 5: Notice of Action dated [REDACTED] 2020)
6. On [REDACTED] 2020, the Department sent the Applicant a Notice of Action advising that she was approved for Husky C-Long Term Care Medicaid assistance effective [REDACTED] 2020, and that she must pay \$2,153.94 for her cost of care effective [REDACTED] 2020, and ongoing months. (Hearing Summary; Exhibit 3: Notice of Action dated [REDACTED] 2020; Hearing Record)

7. On [REDACTED] 2020, the Power of Attorney contacted the Department to request a rental diversion of [REDACTED] to maintain the Applicant's home in the community. The Department advised that she could receive up to a \$650.00 diversion, which is the maximum allowable diversion amount. (Exhibit 4: Case Narrative; Hearing Summary; Case Record)
8. On [REDACTED] 2020, the Department sent the Applicant a Notice of Action advising that effective [REDACTED] 2020, she must pay \$1,503.94, allowing the \$650.00 short term rental diversion ($\$1,233.60$ [REDACTED] + $\$597.64$ [REDACTED] + $\$527.30$ [REDACTED] - $\$60.00$ [REDACTED] - $\$144.60$ [REDACTED]) - $\$650.00$ (Short Term Allowance) = $\$1,503.94$ for her cost of care for the months of [REDACTED] of 2020. The notice advised that effective [REDACTED] 2020, and ongoing months, the Applicant must pay \$2,298.94 for her cost of care; the applied income calculation without the \$650.00 short term allowance, and [REDACTED] premium deduction. $\$1,233.60$ [REDACTED] + $\$597.64$ [REDACTED] + $\$527.30$ [REDACTED] - $\$60.00$ [REDACTED] = $\$2,298.94$. (Exhibit 5: Notice of Action dated [REDACTED] 2020; Hearing Summary; Hearing Record)
9. The Department discovered that the calculated applied income was incorrect for the months of [REDACTED] of 2020, as the Applicant was not eligible for the \$650.00 diversion to maintain her home in the community because she was not a short term stay with an anticipated discharge. Her Ascend approval was long term. (Hearing Summary; Department's Testimony; Hearing Record)
10. On [REDACTED] 2020, the Department sent the Applicant a Notice of Action advising that the amount she must pay for her cost of care is \$2,298.94 effective [REDACTED] 2020, and ongoing months. (Hearing Summary; Exhibit 5: Notice of Action dated [REDACTED] 2020; Hearing Record)
11. The Applicant receives \$1,234.00 [REDACTED] [REDACTED] per month. (Hearing Summary; Department's Testimony; POA's Testimony; Hearing Record)
12. The Applicant receives a gross [REDACTED] of \$597.64 and a gross [REDACTED] of \$527.30 per month from [REDACTED]. (Department's Testimony; POA's Testimony; Hearing Record)
13. The Applicant is [REDACTED] enrolled. Her [REDACTED] premiums are covered by the Qualified Medicare Beneficiaries ("QMB") program. (Hearing Summary; Department's Testimony; Hearing Record)
14. The Department allowed \$60.00 for the Personal Needs Allowance ("PNA"). (Hearing Record; Department's Testimony)

15. 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, which 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 Applicant’s Power of Attorney requested an administrative hearing on [REDACTED], 2020. However, the closing of the hearing record that was scheduled to close on [REDACTED] 2020, was extended three days, to allow additional exhibits from the Department. On [REDACTED] 2020, the hearing record closed. Because of three day delay in the closing of the record, this decision is not due until [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 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, 573A.2d 712 (1990)).
3. Uniform Policy Manual (“UPM”) § 5000.01 provides the definition of Applied Income and states that Applied income is that portion of the assistance unit’s countable income that remains after all deductions and disregards are subtracted.

UPM § 5000.01 provides the definition of Available Income and states that 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.

4. 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 it is inaccessible; or 3. Deemed by the Department to benefit the assistance unit.
5. UPM § 5050.09 provides that (A) payments received by the assistance unit from annuity plans, pensions and trusts are considered unearned income.

UPM § 5050.13 provides in part, that Social Security Benefits are income that is treated as unearned income in all programs.

The Department correctly determined that the Applicant's [REDACTED] of \$1,234.00 and [REDACTED] of \$597.64 and \$527.30 are available unearned income.

6. Uniform Policy Manual ("UPM") § 5045.20 provides that 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.

The Department correctly determined the Applicant is a resident of a Long Term Care Facility and is responsible for contributing a portion of her income toward the cost of her care.

7. UPM § 5045.20(A) provides that 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 received.

In [REDACTED] 2019, the Applicant was admitted into [REDACTED].

The Department correctly determined that the Applicant must pay applied income beginning [REDACTED] 2020, (the first month of receipt of LTCF Medicaid)

8. UPM § 5035.20 provides that 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.
9. UPM § 5045.20 (B)(1)(b) provides for the amount of income to be contributed in LTCF cases and states that total gross income is reduced by post-eligibility deductions (Cross-reference: 5035-"Income Deductions") to arrive at the amount of income to be contributed.

UPM § 5035.20(B) provides that the following monthly deductions are allowed from the income of assistance units in LTCF's:

1. for veterans whose VA pension has been reduced to \$90.00 pursuant to P.L. 101-508, and for spouses of deceased

veterans whose pension has been similarly reduced pursuant to P.L. 101-508, as amended by Section 601 (d) of P.L. 102-568, a personal needs allowance equal to the amount of their VA pension and the personal needs allowance described in 2. below;

2. a personal needs allowance ("PNA") 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;
3. an amount of income diverted to meet the needs of a family member who is in a community home to the extent of increasing his or her income to the MNIL which corresponds to the size of the family;
4. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for by Medicaid or any other third party;
5. costs for medical treatment approved by a physician which are incurred subsequent to the effective date of eligibility and which are not covered by Medicaid;
6. expenses for services provided by a licensed medical provider in the six month period immediately preceding the first month of eligibility providing the following conditions are met:
 - a. the expenses were not for LTCF services, services provided by a medical institution equivalent to those provided in a long term care facility, or home and community-based services, when any of these services were incurred during a penalty period resulting from an improper transfer of assets; and
 - b. the recipient is currently liable for the expenses; and
 - c. the services are not covered by Medicaid in a prior period of eligibility.

The Department correctly determined that the Applicant is entitled to the Personal Needs Allowance deduction of \$60.00 per month.

10. 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
11. UPM § 5035.20 (B)(7) provides that the cost of maintaining a home in the

community for the assistance unit is allowed as a monthly deduction from the income of an assistance unit in a LTCF 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) \$400.00 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 that the Applicant was admitted to [REDACTED] as an anticipated long term admission with an ASCEND long term care approval.


The Department correctly determined that the Applicant must pay \$2,298.94 in applied income beginning in April of 2020. (\$1,234.00 [REDACTED]) + \$597.64 [REDACTED]) + \$527.30 ([REDACTED]) - \$60.00 (Personal Needs Allowance)

DISCUSSION

The regulations are clear that a Medicaid recipient who is residing in a long term care facility must contribute to the cost of his or her care. This is referred to as "applied income." In calculating the amount of that contribution, the regulations allow for deductions based on specific conditions. The Department correctly calculated the Applicant's gross [REDACTED] and [REDACTED] income and deducted the \$60.00 standard personal needs allowance. The Applicant is a recipient of the Qualified Medicare Beneficiaries program which pays for the Medicare Part B premium. The regulations also allow a deduction for maintaining a home in the community for a period of up to six months if the likelihood of the institutionalized individual is returning to the community within six months and is certified by a physician. The Department received notification that the Applicant was admitted to [REDACTED] as an anticipated long term stay with an ASCEND long term care approval. The Department is correct with its calculation of applied income effective [REDACTED] 2020, and ongoing months.

DECISION

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


Shelley Starr
Hearing Officer

Pc: Musa Mohamud, DSS, Hartford
Judy Williams, DSS, Hartford
Jessica Carroll, DSS, Hartford
Jay Bartolomei, DSS, Hartford
Sayaka Miyakoshi, DSS, Manchester

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.