

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

██████████
Request # 152690

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2020, the Department of Social Services (the "Department") sent ██████████ (the "Recipient"), a Notice of Action ("NOA") stating that she must pay \$534.00 monthly towards the cost of her care effective ██████████ 2020 for the HUSKY D – Long Term Care Facility Coverage for Low Income Adults program.

On ██████████ 2020, ██████████ (the "Appellant"), 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 hearing for ██████████ 2020.

On ██████████ 2020, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-184, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals were present at the hearing:

██████████, Appellant, Power of Attorney ("POA"), and the Recipient's spouse
Angela Querette, Department's Representative via telephone
Barbara Brunner, Department's Representative
Carla Hardy, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly calculated the amount of the Recipient's monthly applied income that is payable to the long-term care facility.

FINDINGS OF FACT

1. The Recipient was admitted to [REDACTED], a nursing facility in [REDACTED] Connecticut on [REDACTED] 2019. (Appellant's Testimony, Hearing Summary)
2. The Recipient is not receiving Medicare or Supplemental Security Income ("SSI"). She is [REDACTED] years old (DOB [REDACTED] 57). (Exhibit 2: Application, [REDACTED]/19; Appellant's Testimony, Department's Testimony)
3. The Recipient has not been determined to be disabled by either the Social Security Administration or the Department. (Department's Testimony)
4. The Recipient's spouse, [REDACTED] ("Appellant") resides in the community. (Hearing Record)
5. The Appellant is the Recipient's Power of Attorney. (Hearing Record)
6. On [REDACTED] 2019, the Department received an application requesting long-term care assistance for the Recipient. (Exhibit 2; Exhibit 5: Case Notes)
7. The Recipient receives a monthly spouse's Social Security ("SSA") income. She received the following gross monthly amounts:

MONTH	INCOME AMOUNT
[REDACTED] 2019	\$779.00
[REDACTED] 2019	\$779.00
[REDACTED] 2019	\$584.00
[REDACTED] 2020	\$594.00
[REDACTED] 2020	\$594.00

(Exhibit 4: Social Security Administration's Notice of Award; Exhibit 7: Unearned Income Details; Department's Testimony)

8. The Recipient's SSA income was reduced from \$779.00 to \$584.00 monthly because the Appellant's daughter was approved for SSI. (Appellant's Testimony)
9. The Recipient does not have monthly medical insurance premiums or copays. (Appellant's Testimony)

10. The Recipient owes for medical bills that are three to four years old that have not been submitted to the Department for review. (Appellant's Testimony)
11. There is no evidence provided indicating the Recipient is blind. (Hearing Record)
12. The Recipient is not eligible for HUSKY C - Medicaid because she is under age 65, not on Medicare or SSI, and does not have a disability determination. (Department's Testimony)
13. The Department did not complete a Spousal Allowance for the Recipient. (Hearing Summary; Hearing Record)
14. On [REDACTED] 2020, [REDACTED] requested an [REDACTED] 2019 pay-start date. (Exhibit 5; Hearing Summary)
15. On [REDACTED], 2020, the Department issued a notice to the Recipient notifying her that she must pay for the cost of care effective [REDACTED] 2019. The notice listed Patient Liability Amounts ("PLA") for the following months:

Benefit Period	Patient Liability Amount
[REDACTED] /19 – [REDACTED] /19	N/A
[REDACTED] /19 – [REDACTED] /19	\$719.00
[REDACTED] /19 – [REDACTED] /19	\$524.00
[REDACTED] /20 – [REDACTED] /20	\$534.00
[REDACTED] /20 – [REDACTED] /20	\$534.00

(Exhibit 1: NOA, [REDACTED] /20)

16. 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] 2020. Therefore, this decision is due not later than [REDACTED] 2020. (Hearing Record)

CONCLUSIONS OF LAW

1. Connecticut General Statutes § 17b-2 (6) provides that 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. "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 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 in the Medical Assistance (“MA”) program.
4. Uniform Policy Manual (“UPM”) Section 2540.88(A) provides that eligibility for long term care under special income level (L01) includes residents of long term care facilities (LTCF), who:
 1. meet categorical requirements of age, blindness or disability, and
 2. reside in the LTCF for at least thirty (30) consecutive days; and
 3. have income below a special income level.
5. UPM § 2525.15(B) provides that to meet the age requirement for State Supplement and related Medicaid based on old age, the individual must be sixty-five (65) years of age or older.
6. UPM § 2535.05(A) provides in part that in order to be eligible for the State Supplement or related Medicaid on the basis of blindness, the individual must be blind as determined by the Department.
7. UPM § 2530.05(A) provides in part that to qualify for the State Supplement or related Medical Assistance programs on the basis of disability, the individual must be disabled as determined by SSA or the Department.
8. The Department correctly determined that the Recipient does not qualify for an L01 based on age, blindness, or disability.
9. UPM § 5035.25 provides that for residents of long term care facilities (LTCF) and those individuals receiving community-based services (CBS) when the individual has a spouse living in 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.
10. UPM § 5035.25 (B) provides that the following monthly deductions are allowed from the income of assistance units in LTCF’s:
 1. a personal needs allowance of \$50.00, 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;
 2. a Community Spouse Allowance (CSA), when appropriate; (Cross Reference 5035.30)
 3. a Community Family Allowance (CFA), when appropriate; (Cross Reference 5035.35)
 4. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for [sic] the Department 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.
11. Connecticut General Statutes § 17b-272 provides that 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 dollars.
12. The Department correctly determined that the Recipient is eligible for a \$60.00 personal needs allowance ("PNA").
13. UPM § 5035.30(A)(1) provides that the Community Spouse Allowance ("CSA") is used as an income deduction in the calculation of the post-eligibility applied income of an institutionalized spouse (IS) only when the IS makes the allowance available to the community spouse (CS) or for the sole benefit of the CS in the MAABD program.
14. The Department correctly determined the Recipient is not eligible for a CSA because she is not eligible for MAABD.
15. UPM § 5045.20(A) provides for the 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.
16. The Department correctly determined that the Recipient must pay applied income beginning [REDACTED] 2019, (the month of the 30th day of her admission and continuous care).
17. 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:

- 1) 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.
 - 2) any additional counted income expected in the period for which the contribution is projected, is divided by six;
 - 3) any amount of the counted income received in the previous six months, but not expected to be received in the period for which the contribution is projected, is divided by six. The resulting figure is subtracted from the total of the amounts calculated in (1) and (2), above.
18. 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.
19. UPM § 5050.13(A)(1) provides that income received by the assistance unit from Social Security and Veterans' Benefits are treated as unearned income in all programs.
20. The Department correctly determined that the Recipient's gross monthly income of \$779.00 for [REDACTED] and [REDACTED] 2019; \$584.00 for [REDACTED] r 2019; and \$594.00 for [REDACTED] and [REDACTED] 2020.
21. The Department correctly determined that the Recipient must pay \$719.00 (\$779.00 gross income - \$60.00 PNA = \$719.00) in applied income for [REDACTED] 2019.
22. The Department correctly determined that the Recipient must pay \$524.00 (\$584.00 gross income - \$60.00 PNA = \$524.00) in applied income for [REDACTED] 2019.
23. The Department correctly determined that the Recipient must pay \$534.00 (\$594.00 gross income - \$60.00 PNA = \$534.00) in applied income for [REDACTED] and [REDACTED] 2020.

DECISION

The Appellant's appeal is DENIED.


Carla Hardy
Hearing Officer

Pc: Fred Presnick, Yecenia Acosta, Tim Latifi, Angella Querette, Bridgeport 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, law, and 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 the Department of Social Services, Director, Office of Legal Counsel, Regulations, and Administrative Hearings, 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, if 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 06105-3725. 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.