

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

██████████ 2021
Signature confirmation

Case: ██████████
Client: ██████████
Request: 165086

NOTICE OF DECISION

PARTY

██████████
re: ██████████, conserved person
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2020, Attorney ██████████ (the "Conservator"), the conservator of person and estate of ██████████ (the "Appellant"), filed an online request with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") to schedule an administrative hearing to address the Department of Social Services' (the "Department") calculation of the Appellant's income with respect to the Appellant's HUSKY-C Medicaid long-term care coverage.

On ██████████ 2020, the OLCRAH issued a notice, scheduling an administrative hearing for ██████████ 2020. The OLCRAH granted the Conservator's requests for postponements of the administrative hearing.

On ██████████ 2021, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing by teleconferencing. The following individuals participated in the administrative hearing:

██████████, Conservator
Stephanie Smith, Department Representative
Christine Morin, Department Representative
Eva Tar, Hearing Officer

The hearing record closed ██████████ 2021.

STATEMENT OF ISSUE

The issue is whether the Department correctly determined the amount of applied income that the Appellant is required to pay each month to the skilled nursing facilities in which she was a patient.

FINDINGS OF FACT

1. The Appellant receives monthly Social Security benefits. (Department Exhibit 3)
2. The Appellant receives a monthly pension from [REDACTED] (Appellant Exhibit A)
3. From [REDACTED], 2019 through [REDACTED] 2020 and from [REDACTED] 2020 through [REDACTED] 2020, the Appellant was a patient at [REDACTED], a skilled nursing facility. ([REDACTED] Testimony)
4. The Appellant is now at [REDACTED], a different facility. (Conservator Testimony)
5. On [REDACTED] 2020, the Department granted the Appellant's HUSKY-C Medicaid application for coverage of her long-term care coverage effective [REDACTED] 2019. (Department Exhibit 3)
6. The Department's [REDACTED] 2020 *Notice of Action* notified the Appellant that she would be required to contribute a portion of her income each month toward the cost of her care. (Department Exhibit 3)
7. In error, the Department's [REDACTED] 2020 calculation of the Appellant's monthly applied income did not incorporate the Appellant's gross monthly pension. ([REDACTED] Testimony) (Department Exhibit 3)
8. On [REDACTED] 2021, the Conservator emailed verification of the Appellant's [REDACTED] 2019 and 2020 gross monthly pension to the Department. (Appellant Exhibit A)
9. Connecticut General Statutes § 17b-61 (a), as codified in the *2020 Supplement to the General Statutes of Connecticut* provides the deadline for the rendering of a hearing decision and provides that "the time for rendering a final decision shall be extended whenever the aggrieved person requests or agrees to an extension...."

On [REDACTED] 2020, the OLCRAH received the Appellant's online hearing request. This final decision initially would have become by [REDACTED] 2021, however, the OLCRAH granted the Conservator's requests to postpone the [REDACTED] 2020 hearing date. The [REDACTED]-day postponement extended the deadline for the rendering of a final decision by [REDACTED] days, through [REDACTED] 2021. This final decision is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes in part designates the Department as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

“The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program....” Conn. Gen. Stat. § 17b-262.

“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 \(1990\)](#)).

In Connecticut, the Department has the authority to administer the Medicaid program and make regulations governing the same.

2. “The commissioner, ..., shall in determining need, take into consideration any available income and resources of the individual claiming assistance. The commissioner shall make periodic investigations to determine eligibility and may, at any time, modify, suspend or discontinue an award previously made when such action is necessary to carry out the provisions of the ..., medical assistance program....” Conn. Gen. Stat. § 17b-80 (a).

At any time, the Department has the authority to modify the Appellant’s applied income calculation when that action is necessary to comply with the requirements of the HUSKY-C Medicaid program.

3. “In consideration of income, the Department counts the assistance unit’s available income, except to the extent 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.” Uniform Policy Manual (“UPM”) § 5005 A.

Income from Social Security is treated as unearned income in all programs. UPM § 5050.13 A. 1.

“Payments received by the assistance unit from annuity plans, pensions and trusts are considered unearned income.” UPM § 5050.09 A.

The Appellant’s monthly Social Security benefits and monthly █████ pension are unearned income for the purposes of the HUSKY-C Medicaid program.

4. “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.” UPM § 5045.20.

The Department correctly determined that the Appellant was responsible for contributing a portion of her income each month toward her care at the skilled nursing facilities.

5. “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.” UPM § 5045.20 A.

"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 § 5045.20 B.1.b.

Section 5035.20 B. of the Uniform Policy Manual identifies the permissible deductions from income of assistance units without community spouses who reside in long-term care facilities.

"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." UPM § 5045.20 D.

The Department incorrectly determined the amount of applied income that the Appellant is required to pay each month to the skilled nursing facilities in which she was a patient, as the Department failed to incorporate the Appellant's monthly pension in its calculation effective [REDACTED] 2019.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. If it has not already done so, the Department will recalculate the Appellant's applied income due to the skilled nursing facilities for each month from [REDACTED] 2019 forward, to incorporate the Appellant's gross monthly pension from [REDACTED]
2. The Department will notify the Conservator in writing of the correct monthly applied income due from the Appellant to the skilled nursing facilities for each month from [REDACTED] 2019 forward.
3. Within 21 calendar days of this decision, or [REDACTED] 2021, documentation of compliance with this Order is due to the undersigned.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

Pc: Stephanie Smith, DSS-New Haven
Christine Morin, DSS-New Haven
Rachel Anderson, DSS-New Haven
Cheryl Stuart, DSS-New Haven
Lisa Wells, DSS-New Haven

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, 165 Capitol Avenue, 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.