

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

██████████, 2023
Signature Confirmation

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

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2022, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) informing her that her HUSKY C Long Term Care Facility Residents Spend-down was approved effective ██████████, 2022.

On ██████████, 2022, ██████████., the Appellant’s legal counsel (the “Attorney”,) requested an administrative hearing to contest the Department’s inclusion of the Appellant’s ██████████ structured settlement annuity as unearned income.

On ██████████, 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (the “OLCRAH”) issued a notice scheduling the administrative hearing for ██████████, 2022.

On ██████████, 2022, the administrative hearing was rescheduled per the Attorney’s request.

On [REDACTED], 2022, the OLCRAH issued a notice, rescheduling the hearing for [REDACTED], 2023.

On [REDACTED], 2023, the administrative hearing was rescheduled a second time per the Attorney's request.

On [REDACTED], 2023, the OLCRAH issued a notice, rescheduling the hearing for [REDACTED], 2023.

On [REDACTED], 2023, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-184, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The following individuals participated in the hearing:

[REDACTED], Appellant's sister, Appellant's Power of Attorney Attorney [REDACTED], Law Offices of [REDACTED], Appellant's Legal Counsel Ashley Lebel, Eligibility Services Worker, Department's Representative Joseph Davey, Administrative Hearing Officer

The Appellant did not attend the hearing; she was represented by her Power of Attorney and Legal Counsel.

The hearing record was held open for the submission of additional information from the Department and the Appellant's Legal Counsel. Information from both parties was received and the hearing record closed on [REDACTED], 2023.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly counted the Appellant's [REDACTED] structured settlement annuity as unearned income.

FINDINGS OF FACT

1. On [REDACTED], 2022, the Appellant was admitted to [REDACTED] (the "Facility") in [REDACTED], Connecticut. (Department's testimony, Hearing Record)
2. On [REDACTED], 2022, the Department received an application for Long Term Care ("LTC") Medicaid assistance. (Department's Exhibit 2: W-1LTC Application dated [REDACTED]; Hearing Record)
3. The Appellant was [REDACTED] ([REDACTED]) years old (DOB [REDACTED]) at the time of application. (Department's Exhibit 2)
4. The Appellant is not married. (Department's Exhibit 2, Department's testimony)

5. The Appellant received \$2,215.10 per month in Social Security Retirement (“SSA”) benefits at the time of application. (Department’s Exhibit 8: Social Security Gross Amount Award Letter [REDACTED], Hearing Record)
6. The Appellant receives \$461.67 per month from an [REDACTED] pension. (Department’s Exhibit 9: [REDACTED] Pension Deposit Advice dated [REDACTED])
7. The Appellant receives \$144.65 per month from a [REDACTED] [REDACTED] [REDACTED] [REDACTED] (“[REDACTED]”) pension. (Department’s Exhibit 10: [REDACTED] Pension Deposit Advice dated [REDACTED])
8. The Appellant receives \$5,909.39 per month from a [REDACTED] annuity. The annuity payments began on [REDACTED], 2022, and will end on [REDACTED], 2023. (Department’s Exhibit 11: [REDACTED] [REDACTED] Single Premium Immediate Annuity Contract dated [REDACTED])
9. The Appellant was awarded a Workers’ Compensation settlement of \$369,831.00 on [REDACTED], 2017. The terms of the settlement stipulate in part that “the sum of \$369,831.00 to be funded in accordance with the annuity...represents un-reimbursed future medical costs arising out of the claimant’s work related injuries and is to be set aside in a self-administered account by the claimant...The sum of \$369,831.00 is intended directly for payment of future Medicare-covered expenses...The claimant understands that the funds set aside must be put in an interest bearing account, and this account must be separate from her personal savings and checking account. The funds in this account can only be used for payment of medical services relating to the work injuries that would normally be paid by Medicare...The claimant further understands that annual reporting must be prepared before submission to Medicare which would include summaries of the transactions and status of account.” (Department’s Exhibit 4: Workers’ Compensation Commission Stipulation for Agreement and Award dated [REDACTED])
10. The Appellant’s Workers’ Compensation settlement was disbursed as a [REDACTED] [REDACTED] structured settlement annuity, deposited into an interest-bearing account designated by the Appellant. On [REDACTED], 2017, an initial sum (a “cash seed”) of \$104,836.00 was deposited into a [REDACTED] checking account ending in [REDACTED]. Per the [REDACTED] annuity terms, the remaining settlement funds are to be disbursed in annual payments of \$22,082.00. These payments began on [REDACTED], 2017, and are deposited into the Appellant’s designated account on [REDACTED] each year for a maximum of twelve (12) years while the Appellant is living. (Department’s Exhibit 4, Department’s Exhibit 5: [REDACTED] Annuity Disbursements history dated [REDACTED], Department’s Exhibit 7: Statement dated [REDACTED]-[REDACTED] for [REDACTED] account ending [REDACTED] and copies of checks.)

11. The Appellant switched her designated interest-bearing account (herein referred to as the Medicare Set Aside or “MSA” account) from the [REDACTED] checking account ending [REDACTED] to a [REDACTED] checking account ending [REDACTED] sometime between [REDACTED], 2017, and [REDACTED], 2018. (Department’s Exhibit 7, Department’s Exhibit 17: Statements dated [REDACTED]-[REDACTED] for [REDACTED] account ending [REDACTED])
12. The Appellant is responsible for “keeping accurate records of payments made from the (MSA) account” as part of her Workers’ Compensation settlement. “Every year, beginning no later than 30 days after the 1-year anniversary of the settlement, the administrator must sign and send a statement that payments from the WCMSA (aka MSA) account were made for Medicare-covered medical expenses and Medicare-covered prescription drug expenses related to the work-related injury, illness or disease.” These annual reports are to be sent to the Centers for Medicare and Medicaid Services [“CMS.”] (Appellant’s Exhibit 1: Legal Memorandum from Attorney [REDACTED] dated [REDACTED])
13. The Appellant has not filed any annual statements with the CMS accounting for Medicare-covered medical expenses and Medicare-covered prescription drug expenses related to the work-related injury, illness, or disease. (Hearing Record)
14. The Appellant’s SSA payments, [REDACTED] pension payments, [REDACTED] pension payments, [REDACTED] annuity disbursements, and [REDACTED] structured settlement annuity disbursements are all electronically deposited into the Appellant’s MSA account. (Department’s Exhibit 17)
15. The Appellant uses the MSA account to pay for personal expenses. (Power of Attorney’s testimony, Department’s Exhibit 17)
16. On [REDACTED], 2022, the Department sent an email to the Department’s legal counsel requesting guidance on whether the \$22,082.00 deposited annually as part of the Appellant’s [REDACTED] structured settlement annuity would be countable as income. (Department’s Exhibit 27: Unredacted Departmental correspondence regarding MSA account guidance)
17. On [REDACTED], 2022, the Department received a response from the Department’s legal counsel advising that the \$22,082.00 deposited annually as part of the Appellant’s [REDACTED] structured settlement annuity should be counted as unearned income. (Department’s Exhibit 27)
18. The Department converted the Appellant’s annual [REDACTED] [REDACTED] structured settlement annuity deposit to a monthly amount by dividing the annual amount by twelve [$\$22,082.00 / 12 = \1840.166 rounded to $\$1840.17$.] The resulting $\$1840.17$ was reflected as monthly unearned income. (Department’s

Exhibit 28: DSS notices for period [REDACTED]-[REDACTED], Department's testimony)

19. The Appellant incurs a monthly [REDACTED] [REDACTED] [REDACTED]. medical insurance premium of \$357.05. (Department's Exhibit 17, Hearing Record)
20. The Appellant incurs a monthly Medicare Part B medical insurance premium of \$164.90. (Hearing Record)
21. On [REDACTED], 2022, the Department issued a W-495C Transfer of Assets Final Decision Notice to the Appellant stating that the Department had determined the Appellant transferred \$163,427.26 on [REDACTED], 2022, to become eligible for Medicaid. The Department imposed a penalty period of 11.62 months which started [REDACTED], 2022 and runs through [REDACTED], 2023. The Appellant is not disputing the transfer or the penalty period. (Department's Exhibit 28, Appellant's Exhibit 1, Hearing Record)
22. On [REDACTED], 2022, the Department issued a NOA to the Appellant informing her that she is eligible for Husky C-Long Term Care Facility Residents-Spend-down Medicaid assistance effective [REDACTED], 2022. Her certification period runs through [REDACTED], 2023. (Department's Exhibit 28)
23. The issuance of this decision is timely under Connecticut General Statutes ("Conn. Gen. Stat.") §17b-61(a), which requires that a decision be issued within (90) days of the request for an administrative hearing. The Appellant's legal counsel requested an administrative hearing on [REDACTED], 2022. Therefore, this decision is due no later than [REDACTED], 2023. However, the hearing, which was originally scheduled for [REDACTED] [REDACTED], 2022, was rescheduled twice at the request of the Appellant's legal counsel and was held on [REDACTED], 2023, which caused a ([REDACTED]) day delay. In addition, the record was held open ([REDACTED]) days, until [REDACTED], 2023, for the Department and the Appellant's legal counsel to provide further information. The decision is therefore due no later than [REDACTED], 2023. (Hearing Record)

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. 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.

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.

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 Appellant's Social Security retirement benefit of \$2215.10 per month, ██████████ pension of \$461.67 per month, ██████████ pension of \$144.65 per month, and ██████████ annuity of \$5,909.39 per month are available unearned income.

4. UPM § 5015.10(F)(14) provides in relevant part for Types of Excluded Income in AABD and MAABD: F. Miscellaneous Payments The following payments are excluded when determining eligibility and calculating benefits...14. those portions of lump sums which are paid to the unit for the purpose of meeting certain designated expenses such as settlement of back medical expenses or compensation for loss of resources to the extent that: a. they are used for that purpose; and b. can be distinguished from other funds.

UPM § 5025.10 provides for Income Received Less Frequently Than Monthly: A. The Department prorates payments over a period of time in the following situations: 1. When the income was earned over a past period of time, the payment is averaged retroactively over the number of months in which it was earned; 2. when the income is paid subject to an employment agreement which provides for periodic advances to cover future needs, the payment is averaged by the number of months for which it is intended; 3. when the income consists of unearned income paid on installment basis either resulting from the nature of the source or pursuant to an agreement between the payor and payee, the payment is averaged over the number of future months the amount is intended to cover. B. The amount of the payment is counted as income in the month of receipt when there is no period of time associated with the payment. Any portion of the payment which is retained by the assistance

unit in the following month is counted as an asset. C. If a payment is retroactively prorated, the unit's eligibility and the amount of benefits are recalculated for each of the months affected by the income. Resulting overpayments are computed according to policy cited in 7030, 7035, 7040, and 7045. D. The amounts of income from a particular source which are designated for future months continue to be counted as income for those months regardless of changes which may subsequently occur.

The Department correctly prorated the Appellant's [REDACTED] structured settlement annuity by dividing the annual amount (\$22,082.00) by the number of months it is intended to cover ($\$22,082.00 / 12 = \1840.166 rounded to \$1840.17.)

The Department correctly considered the Appellant's [REDACTED] structured settlement annuity amount of \$1840.17 per month available unearned income. The Appellant has the [REDACTED] structured settlement annuity deposited into her MSA account ([REDACTED] checking account ending in [REDACTED]) which contains her Social Security retirement benefits, her [REDACTED] pension, [REDACTED] pension, and [REDACTED] annuity. Comingling the [REDACTED] structured settlement annuity with the other income sources in the account renders it indistinguishable from the other funds, and therefore countable as unearned income.

DISCUSSION

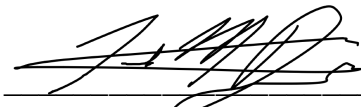
During the hearing, the Attorney argued that the Appellant's [REDACTED] structured settlement annuity should not be considered countable unearned income by the Department as the payments are designated specifically for Medicare-covered services as outlined in the Appellant's Workers' Compensation settlement. The undersigned finds this argument to be unfounded. The Appellant comingled her [REDACTED] structured annuity payments with her other income sources, making the [REDACTED] structured annuity payments indistinguishable from the other funds within the account. The Department correctly determined that under UPM § 5015.10(F)(14), if the funds from the [REDACTED] structured annuity payments cannot be distinguished from others within the MSA account, the annual deposit is considered countable unearned income.

The Attorney further argued that the Appellant's [REDACTED] structured settlement annuity should not be included in the Appellant's applied income calculation for [REDACTED] 2023. As the Appellant's certification cycle only runs through [REDACTED], 2023, and the Appellant has no applied income during the said cycle, the issue of applied income for [REDACTED] 2023 falls outside the scope of this hearing. However, the undersigned acknowledges the difficulty the Attorney has encountered in attempting to establish a new Medicare Set Aside account for the Appellant. After

the Department's [REDACTED], 2022, action to grant the Appellant's Husky C-Long Term Care Facility Residents-Spend-down Medicaid assistance, the Attorney attempted to establish a [REDACTED] "d4c Special Needs Trust" in which to have the Appellant's [REDACTED] structured settlement annuity deposited and to serve as a new Medicare Set Aside account. [REDACTED] informed the Attorney that a d4c Special Needs Trust could not be established because they do not accept Medicare Set Aside at this time. As of the date of this hearing decision, the Attorney is still actively pursuing a separate account in which to house the Medicare Set Aside. The Department is encouraged to maintain open communication with the Attorney to address the issue. Should a new Medicare Set Aside account be established and submitted to the Department, the Attorney will maintain appeal rights on the Department's subsequent action.

DECISION

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



Joseph Davey
Administrative Hearing Officer

CC: Ashley Lebel, Eligibility Services Worker, DSS, Waterbury Regional Office
Katarzyna Olechowska, SSOM, DSS, Waterbury Regional Office
Randalynn Muzzio, SSOM, DSS, Waterbury 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 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.