

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

██████████
██████████
Request # 218333

NOTICE OF DECISION
PARTY

██████████
██████████
██████████
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PROCEDURAL BACKGROUND

On ██████████ 2023, the Department of Social Services (the “Department”) sent ██████████ (the “Applicant”) a Notice of Action (“NOA”) stating that he remained eligible for Husky C – Long Term Care Facility Residents Eligibility Under Special Income Level Medicaid Medical Coverage (“L01”) and he must pay \$2,509.20 per each month in Patient Liability Amount (“PLA”), also known as Applied Income (“AI”) towards the cost of his ongoing facility health care services.

On ██████████ 2023, the Applicant’s ██████████, power of attorney (“POA”), and Authorized Representative (“AREP”), ██████████ ██████████ ██████████ (the “Appellant”) requested an Administrative Hearing to contest the Department’s calculation of the Applicant’s AI amount.

On ██████████ 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a Notice scheduling the Administrative Hearing for ██████████ 2023.

On ██████████ 2023, 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 by phone.

The Applicant was not present at the administrative hearing.

The following individuals participated telephonically:

████████████████████, POA, AREP, and the Appellant
Jessica Holmes, Department's Representative
Jessica Gulianello, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly calculated the AI amount that the Applicant is responsible to pay towards the cost of his long-term care medical services.

FINDINGS OF FACT

1. The Applicant is ████████ (██) years old (DOB: ████████). (*Exhibit 1: Online Renewal received ████████ 2023, Appellant's Testimony*)
2. The Applicant is ████████. (*Exhibit 1: Online Renewal dated ████████ 2023*)
3. The Applicant was admitted to ████████ nursing home (the "facility") about ████████ for a long-term stay. (*Appellant's Testimony*)
4. The Department subsequently determined the Applicant was eligible for medical coverage under the Husky C – long-term care ("L01") coverage group for facility residents. (*Hearing Record*)
5. On ████████ 2022, the Department mailed the Applicant a Notice of Renewal of Eligibility requesting completion to determine his continued eligibility for long-term care medical coverage. (*Hearing Summary, Department's Testimony*)
6. On ████████ 2023, a ████████ the Appellant submitted an online renewal form with his electronic signature requesting continued medical coverage on behalf of the Applicant. (*Exhibit 1: Online Renewal signed ████████ 2023*)
7. On ████████ 2023, (the next business day) the Department marked the online renewal form as received. (*Exhibit 1: Online Renewal dated ████████ 2023*)
8. The Applicant is a recipient of ████████ income ████████ from the Social Security Administration in the gross amount of \$2,647.00 per month. (*Hearing Record*)
9. The Applicant does not own a home in the community. (*Hearing Record*)

10. The Applicant pays \$62.80 per month for a telephone that he utilizes to schedule medical appointments with his doctors. *(Hearing Record)*
11. The Department classified the Applicant's phone expense as "medical equipment", an allowable medical deductible expense. *(Hearing Record)*
12. The Applicant does not have out-of-pocket private health insurance premiums. *(Appellant's Testimony)*
13. On [REDACTED] 2023, the Department completed the Applicant's medical renewal and mailed him a NOA to confirm his continued eligibility. The NOA informed the Applicant that he remained eligible for Husky C Long Term Care Medical Coverage for the certification cycle beginning [REDACTED] 2023, and ending [REDACTED] 2024. The NOA further informed the Applicant that his PLA/AI he must pay for the cost of his care at the facility effective [REDACTED] 2023, was \$2,509.20 per month. *(Exhibit 2: NOA dated [REDACTED] 2023)*
14. On [REDACTED] 2023, the Appellant submitted an online change report on behalf of the Applicant. The Appellant reported that the Applicant is responsible for paying \$529.92 semi-annually for auto insurance to support his medical transportation needs to [REDACTED]. *(Exhibit 3: Online Change dated [REDACTED] 2023)*
15. On [REDACTED] 2023, the Department issued the Applicant a NOA advising that he remained eligible for Husky C Long Term Care Medical Coverage and that the PLA/AI amount that he must pay for the cost of his care at the facility remained \$2,509.20 per month. *(Exhibit 8: NOA dated [REDACTED] 2023)*
16. On [REDACTED] 2023, the Department reviewed the change report and determined that auto insurance is not an allowable medical expense. *(Exhibit 6: Case Notes – Details dated [REDACTED] 2023)*
17. On [REDACTED] 2023, the Appellant contacted the Department's Benefit Center concerning the above-noted online change report and the NOA. The Department advised the Appellant that auto insurance is not an allowable medical expense as the Facility provides medical transportation. *(Exhibit 6: Case Notes – Details dated [REDACTED] 2023)*
18. The Applicant has been diagnosed with [REDACTED] and requires the use of medical adaptive equipment including but not limited to [REDACTED] for assistance with his mobility. *(Appellant's Testimony)*
19. The Applicant owns a [REDACTED] van that has been modified to include a battery-operated lift to accommodate his wheelchair. The Applicant is responsible for paying insurance for the vehicle in the amount of \$529.92 semi-annually. *(Appellant's Testimony)*

20. The Department asserted that medical transportation is provided by the Facility; therefore, vehicle insurance is not an allowable medical deductible expense. *(Department Testimony)*
21. The Appellant confirmed that the Applicant does have access to medical transportation coordinated by the Facility; however, he contested that it is not always readily available. As such, the Applicant utilizes his own vehicle as needed for supplemental transportation to his doctor appointments. *(Appellant's Testimony)*
22. The Appellant further argued that because the Applicant's vehicle is primarily used for medical transportation, and because auto insurance is required by law, it should be considered an allowable medical expense. *(Exhibit A: Hearing Request dated ██████ 2023, Appellant's Testimony)*
23. The vehicle is also occasionally used for the Applicant's misc. transportation needs such as a reunion, a funeral, etc. The Applicant is not permitted to park the vehicle at the Facility; it is stored and operated by family/friends. *(Appellant's Testimony)*
24. The Department calculated the Applicant's PLA/AI as follows:

Gross Income	\$2,647.00 ████████████████████
Minus (-) Personal Needs Allowance ("PNA")	\$75.00 (Standard deduction for residents of skilled nursing facilities)
Minus (-) Monthly Out-of-Pocket Medical Expenses	\$62.80 (Medical equipment: telephone)
Equals PLA (AI)	\$2,509.20 per month

(Exhibit 8: NOA dated ██████ 2023, Department's Testimony)

19. 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 ██████ 2023. This decision was due no later than ██████ 2023, and is therefore timely. *(Hearing Record)*

CONCLUSIONS OF LAW

1. Connecticut General Statute (“Conn. Gen. Stats.”) § 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. State statute provides that the Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department. [Conn. Gen. Stat. § 17b-261b(a)]

The Department has the authority to administer Medicaid.

3. State statute provides that for purposes of this section, “applied income” means the income of a recipient of medical assistance, pursuant to section 17b-261, that is required, after the exhaustion of all appeals and in accordance with state and federal law, to be paid to a nursing home facility for the cost of care and services. [Conn. Gen. Stat. § 17b-261r(a)]

The Department correctly determined PLA/AI is the income the Applicant is required to pay to the Facility for the cost of his care and services.

4. State statute provides that in determining the amount of applied income, the Department of Social Services shall take into consideration any modification to the applied income due to revisions in a medical assistance recipient's community spouse minimum monthly needs allowance, as described in Section 1924 of the Social Security Act, and any other modification to applied income allowed by state or federal law. [Conn. Gen. Stat. § 17b-261r(b)]

The Applicant is [REDACTED]. The Department correctly determined that he does not have a community spouse.

5. Title 42 of the Code of Federal Regulations (“CFR”) § 436.832(a)(1) provides that the agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section from the individual’s total income.
6. “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))

Uniform Policy Manual (“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.

7. 42 CFR § 436.832(a)(2) provides the individual's income must be determined in accordance with paragraph (e) of this section.

42 CFR § 436.832(e)(1) provides in determining the amount of an individual's income to be used to reduce the agency's payment to the institution, the agency may use total income received or it may project total monthly income for a prospective period not to exceed 6 months.

UPM § 5050.13(A)(1) provides that income from these sources [Social Security and Veterans' Benefits] is treated as unearned income in all programs.

The Department correctly determined that the Applicant's [REDACTED] benefits in the amount of \$2,647.00 per month from the Social Security Administration is countable unearned income.

8. 42 CFR § 436.832(a)(3) provides that medical expenses must be determined in accordance with paragraph (f) of this section.

42 CFR § 436.832(f)(1) provides that in determining the amount of medical expenses to be deducted from an individual's income, the agency may deduct incurred medical expenses, or it may project medical expense for a prospective period not to exceed 6 months.

42 CFR § 436.832(b) provides that this section applies to medically needy individuals in medical institutions and intermediate care facilities.

42 CFR § 436.832(c) provides that the agency must deduct the following amounts, in the following order, from the individual's total income as determined under paragraph (e) of this section. Income that was disregarded in determining eligibility must be considered in this process.

1. *Personal needs allowance.* A personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution. This protected personal needs allowance must be at least-
 - i. \$30 a month for an aged, blind, or disabled individual, including a child applying for Medicaid on the basis of blindness or disability;
 - ii. \$60 a month for an institutionalized couple if both spouses are aged, blind, or disabled and their income is considered available to each other in determining eligibility; and
 - iii. For other individual, a reasonable amount set by the agency, based on a reasonable difference in their personal needs from those of the aged, blind, or disabled.

2. *Maintenance needs of spouse.* For an individual with only a spouse at home, an additional amount for the maintenance needs of the spouse. This amount must be based on a reasonable assessment of need but must not exceed the higher of-
 - i. The amount of the highest need standard for an individual without income and resources under the State's approved plan of OAA, AFDC, AB, APTD, or AABD; or
 - ii. The amount of the highest medically needy income standard for one person established under § 436.811.

3. *Maintenance needs of family.* For an individual with a family at home, an additional amount for the maintenance needs of the family. This amount must-
 - i. Be based on a reasonable assessment of their financial need;
 - ii. Be adjusted for the number of family members living in the home; and
 - iii. Not exceed the highest of the following need standards for a family of the same size:
 - A. The standard used to determine eligibility under the State's Medicaid plan, as provided for in §436.811.
 - B. The standard used to determine eligibility under the State's approved AFDC plan.

4. *Expenses not subject to third party payment.* Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including-
 - i. Medicare and other health insurance premiums, deductibles, or coinsurance charges; and
 - ii. Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses.

- 42 CFR § 436.832(d) *Optional deduction: Allowance for home maintenance.* For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if-
 1. The amount is deducted for not more than a 6-month period; and
 2. A physician has certified that either of the individuals is likely to return to the home within that period.

9. UPM § 5035.20(A) provides that the deductions described below 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 discharged from the LTCF or community-based services are last received.
10. 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 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.
 7. The cost of maintaining a home in the community for the assistance unit, subject to the following conditions:
 - a. The amount is not deducted for more than six months; and
 - b. The likelihood of the institutionalized individual's returning 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 or her 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:
 - a. Heat
 - b. Hot water
 - c. Electricity
 - d. Cooking fuel

- e. Water
- f. Laundry
- g. Property taxes
- h. Interest on the mortgage
- i. Fire insurance premiums
- j. amortization

The Department correctly determined that the Applicant is eligible for the PNA disregard.

The Department correctly determined that auto insurance is not an allowable medical expense.

The Department incorrectly determined that a cell phone is an allowable medical expense.

Fixed Income (██████)	\$2,647.00
Variable Source Income (N/A)	+\$0.00
Total Income	\$2,647.00
Less PNA	-\$75.00
Post PNA Deduction Income	\$2,572.00
Less Medicare Premium	-\$0.00
Less Health Care Premium Deduction	-\$0.00
Post Health Care Premium Deduction	\$2,572.00
Less Community Home Maintenance	-\$0.00 (N/A)
Less Community Spousal Allowance	-\$0.00 (N/A)
Less Community Family Allowance	-\$0.00 (N/A)
Less <i>Uncovered Medical Expenses</i> <i>See UPM 5035.20(B)</i>	-\$0.00
LTSS Patient Liability Amount	\$2,572.00

The correct LTSS PLA/AI amount is \$2,572.00 per month.

DISCUSSION

A Medicaid recipient who is residing in a long-term care facility must contribute to the cost of his or her care which is referred to as applied income. The regulations allow for deductions based on specific conditions. The Department correctly calculated the Applicant's gross income source and deducted the standard \$75.00 personal needs allowance.

The Appellant argued that the Applicant is the legal owner of the modified [REDACTED] van and by Connecticut State Law he is required to ensure the vehicle. The Department correctly determined this expense is not an allowable medical deduction as outlined above. Furthermore, the Applicant has access to transportation coordinated by the Facility in which he resides.

The Department incorrectly determined a cell phone expense to be an allowable deduction. I find that a cell phone expense is not classified as an unpaid medical expense in accordance with the above-noted policy and regulations. Similarly, it is reasonable to assert that the Applicant has access to a telephone at the Facility in which he resides.

In accordance with policy and regulation, the Applicant is responsible for paying a contribution of his income towards the cost of his care. The Department incorrectly calculated the Applicant's contribution to be \$2,509.20 per month. I find that the correct amount is \$2,572.00 per month.

DECISION

The Appellant's appeal is REMANDED.

ORDER

- 1). The Department shall remove the cell phone expense as an allowable medical deduction and issue the Applicant, the Appellant, and all concerned parties an updated NOA to advise of the corrected PLA/AI amount of \$2,572.00 per month effective [REDACTED] 2023 and ongoing.
- 2). Verification of compliance with this order is due to the undersigned no later than [REDACTED] 2023.

Jessica Gulianello

Jessica Gulianello
Hearing Officer

CC: Jessika Holmes & Angelica Branfalt -SSOM, DO 11
Josie Savastra, Lindsey Collins, Mathew Kalarickal- SSOM's, DO 10

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 §4-1181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, 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 with 45 days of the mailing of this decision, or 45 days after the agency denies 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 06105-3725. 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 her 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.