

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

██████████, 2023
Signature confirmation

Case: ██████████
Client: ██████████
Request: 221506

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2023, the Department of Social Services (the “Department”) issued a *Notice of Action* to ██████████ (the “Appellant”) notifying her that as a HUSKY-C/Medicaid recipient residing in a skilled nursing facility, her patient liability amount was \$2,950.53 per month effective ██████████ 2022.

On ██████████, 2023, the Department issued a *Notice of Action* to the Appellant that her patient liability amount was \$2,780.43 effective ██████████ 2022.

On ██████████, 2023, the Department issued a *Notice of Action* to the Appellant that her patient liability amount was \$2,950.53 effective ██████████ 2022.

On ██████████, 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received an online request for an administrative hearing on the Appellant’s behalf as filed by ██████████, the holder of the Appellant’s power of attorney. ██████████ disputed the Appellant’s patient liability amount effective ██████████ 2022.

On ██████████ 2023, the OLCRAH scheduled an administrative hearing for ██████████, 2023.

On ██████████, 2023, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held a hearing by telephone conferencing. As the Appellant was unable to participate due to frailty, ██████████ represented the Appellant’s interests. The following individuals participated:

██████████, Appellant Representative (daughter)

Jennifer McKean, Department Representative
Eva Tar, Hearing Officer

On [REDACTED] 2023, the hearing record closed.

STATEMENT OF ISSUE

The issue is whether the Department correctly determined the Appellant's monthly patient liability amount effective [REDACTED] 2022.

FINDINGS OF FACT

1. The Appellant is not married. (Appellant Representative Testimony)
2. The Appellant is a resident of a skilled nursing facility. (Dept. Exhibit 6)
3. The Appellant has HUSKY-C/Medicaid coverage. (Dept. Exhibit 6)
4. The Appellant's Medicare B premium is deducted from the Appellant's Social Security benefit. (Appellant Representative Testimony)
5. In 2022, the Appellant grossed \$1,165.10 per month in Social Security benefits. (Department Representative Testimony) (Dept. Exhibit 6)
6. In 2022, the Appellant's Medicare B premium equaled \$170.10 per month; the Medicare B premium is deducted from the Appellant's Social Security benefits. (Department Representative Testimony)
7. The Appellant receives a [REDACTED] pension (the "pension"). (Appellant Exhibit A)
8. Every month, the Appellant's pension reimburses the Appellant for her Medicare B premium that is deducted from the Appellant's Social Security benefits. (Appellant Exhibit A)
9. With respect to the Department's programs, the Department does not count reimbursements for expenditures as income; reimbursements do not represent a benefit or gain to the individual. The reimbursement is "an even wash." (Dept. Exhibit 3)
10. In 2022, the Appellant grossed \$1,893.05 per month from her pension. The \$1,893.05 figure does not include the pension's additional \$170.10 monthly reimbursement of the Appellant's Medicare B premium. (Appellant Exhibit A)
11. In 2022, the Appellant's dental premium as directly deducted from her pension equaled \$32.62 per month. (Department Representative Testimony)
12. From [REDACTED] 2022 through [REDACTED] 2023, the Department permitted the Appellant a deduction from her patient liability amount toward a pharmacy premium of \$20.89 per month. (Department Representative Testimony)

13. The Appellant's pharmacy premium ended in [REDACTED] 2023. (Department Representative Testimony)
14. In 2023, the Appellant grossed \$1,266.90 per month in Social Security benefits. (Department Representative Testimony)
15. In 2023, the Appellant's Medicare B premium equaled \$164.90 per month. (Department Representative Testimony)
16. In 2023, the Appellant grossed \$1,949.84 per month from her pension. The \$1,949.84 figure does not include the pension's additional \$164.90 monthly reimbursement of the Appellant's Medicare B premium. (Appellant Exhibit A)
17. On [REDACTED], 2023, the Appellant's dental premium as directly deducted from her pension increased to \$34.15 per month. (Appellant Representative Testimony) (Appellant Exhibit A)
18. On [REDACTED], 2023, the Department issued a *Notice of Action* notifying the Appellant that her patient liability amount equaled \$2,780.43 per month for [REDACTED] 2022 through [REDACTED] 2022, \$2,950.53 per month for [REDACTED] 2022 through [REDACTED] 2022, \$2,780.43 per month for [REDACTED] 2022 through [REDACTED] 2022, \$2,944.22 per month for [REDACTED] 2023 through [REDACTED] 2023, \$3,109.12 per month for [REDACTED] 2023, \$2,944.22 per month for [REDACTED] 2023 through [REDACTED] 2023. (Dept. Exhibit 6)
19. On [REDACTED] 15, 2023, the Department issued a *Notice of Action* notifying the Appellant that her patient liability amount equaled \$2,780.43 per month for [REDACTED] 2022 through [REDACTED] 2022, \$2,950.53 per month for [REDACTED] 2022 through [REDACTED] 2022, and \$3,109.12 per month for [REDACTED] 2023 through [REDACTED] 2023. (Dept. Exhibit 6)
20. On [REDACTED] 22, 2023, the Department issued a *Notice of Action* notifying the Appellant that her patient liability amount equaled \$2,950.53 per month for [REDACTED] 2022 through [REDACTED] 2022, and \$3,109.12 per month for [REDACTED] 2023 through [REDACTED] 2023. (Dept. Exhibit 6)
21. Connecticut General Statutes § 17b-61 (a) provides: "The Commissioner of Social Services or the commissioner's designated hearing officer shall ordinarily render a final decision not later than ninety days after the date the commissioner receives a request for a fair hearing pursuant to section 17b-60...." On [REDACTED] 2023, the OLCRAH received the online hearing request; this hearing decision would have become due by no later than [REDACTED] 2023. This 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 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 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 sole authority to administer the HUSKY-C/Medicaid program and make regulations governing the same.

2. “An aggrieved person authorized by law to request a fair hearing on a decision of the Commissioner of Social Services or the conservator of any such person on his behalf may make application for such hearing in writing over his signature to the commissioner and shall state in such application in simple language the reasons why he claims to be aggrieved. Such application shall be mailed to the commissioner within sixty days after the rendition of such decision....” Conn. Gen. Stat. § 17b-60.

Since the Department’s ██████████, 2023 Notice of Action cited a retroactive change in the patient liability amount effective ██████████ 2022, the Appellant’s ██████████, 2023 request for a hearing to address the patient liability amount effective ██████████ 2022 is timely.

3. “The commissioner, subject to the provisions of subsection (b) of this section, 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.

The Department had the authority under Conn. Gen. Stat. § 17b-80 to retroactively correct the Appellant’s patient liability amount.

4. “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.” UPM § 5005 A.

Section 5015.10 of the Uniform Policy Manual identifies the specific types of income excluded for the purposes of the Aid to the Aged, Blind, and Disabled and HUSKY-C/Medicaid programs.

Reimbursements for expenditures which do not represent benefit or gain to the recipients are excluded when determining eligibility and calculating benefits with respect to the HUSKY-C/Medicaid program. UPM § 5015.10 F.11.

The pension's reimbursement of the Appellant's monthly Medicare B premium expenditure is excluded income for the purposes of the HUSKY-C/Medicaid program in accordance with UPM § 5015.10 F.11.

5. "Social Security and Veterans' Benefits. 1. Income from these sources is treated as unearned income in all programs." UPM § 5050.13 A.1.

For the purposes of the HUSKY-C/Medicaid program, the Appellant's gross monthly Social Security benefits are counted, unearned income.

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

Apart from her pension's reimbursement of the Appellant's Medicare B premium expenditure, the Appellant's gross monthly pension is counted, unearned income in 2022 and 2023 for the purposes of the HUSKY-C/Medicaid program.

For the purposes of the HUSKY-C/Medicaid program, the Appellant's gross pension equaled \$1,893.05 per month in 2022 and \$1,949.84 per month in 2023 in counted, unearned income.

7. Section 17b-261 (a) of the Connecticut General Statutes provides in part: "The commissioner shall establish the standards for eligibility for medical assistance at one hundred forty-three per cent of the benefit amount paid to a household of equal size with no income under the temporary family assistance program in the appropriate region of residence. ... Any income in excess of the applicable amounts shall be applied as may be required by said federal law, and assistance shall be granted for the balance of the cost of authorized medical assistance...."

"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...." UPM § 5045.20.

"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).

Section 17b-261r of the Connecticut General Statutes addresses the determination of applied income, notice, and the legal recourse by a nursing home facility to recover unpaid applied income from a patient.

The Department correctly determined that the Appellant was required to contribute a portion of her income as a patient liability amount, or applied income, toward the monthly cost of her care at the skilled nursing facility.

8. "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).

As the Appellant does not have a community spouse, she is not eligible for deductions for a community spousal allowance from her patient liability amount.

9. Section 17b-272 of the Connecticut General Statutes provides that 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 seventy-five dollars.

Section 5035.20 B. of the Uniform Policy Manual specifies the deductions from income permitted to unmarried Medicaid recipients residing in long-term care facilities. These deductions are limited to: an increased personal needs allowance for veterans whose Veterans Administration pension was reduced to \$90.00; a standard personal needs allowance; an amount of income diverted to meet the needs of a family member in a community home with certain limitations; Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for by Medicaid or any other third party; 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; expenses for services provided by a licensed medical provider in the six-month period immediately preceding the first month of eligibility under certain conditions; the cost of maintaining a home in the community subject to certain conditions.

In 2022 and 2023, Connecticut’s HUSKY-C/Medicaid personal needs allowance for (non-veteran) individuals residing in long-term care facilities equaled \$75.00 per month.

For the purposes of the HUSKY-C/Medicaid program, the Appellant’s patient liability amount equals \$2,929.64 per month from [REDACTED] 2022 through [REDACTED] 2022. [\$1,165.10 (gross Social Security benefits per month) plus \$1,893.05 (gross pension per month) minus \$75.00 (personal needs allowance) minus \$32.62 (dental premium) minus \$20.89 (pharmacy premium)]

For the purposes of the HUSKY-C/Medicaid program, the Appellant’s patient liability amount equals \$3,088.23 per month from [REDACTED] 2023 through [REDACTED] 2023. [\$1,266.90 (gross Social Security benefits per month) plus \$1,949.84 (gross pension per month) minus \$75.00 (personal needs allowance) minus \$32.62 (dental premium) minus \$20.89 (pharmacy premium)]

For the purposes of the HUSKY-C/Medicaid program, the Appellant’s patient liability amount equals \$3,107.59 per month effective [REDACTED] 2023. [\$1,266.90 (gross Social Security benefits per month) plus \$1,949.84 (gross pension per month) minus \$75.00 (personal needs allowance) minus \$34.15 (dental premium)]

The Department incorrectly calculated the amount of the Appellant's patient liability amounts effective [REDACTED] 2022, as memorialized by its [REDACTED], 2023, [REDACTED] 2023, and [REDACTED] 2023 *Notices of Action*.

DISCUSSION

The Department "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..." per Conn. Gen. Stat. § 17b-80. State statute supports the Department's [REDACTED] 2023 attempts to recalculate and correct the Appellant's patient liability amount effective [REDACTED] 2022.

The hearing officer reviewed the hearing record and determined that the Appellant's patient liability amount is as follows: \$2,929.64 per month from [REDACTED] 2022 through [REDACTED] 2022; \$3,088.23 per month from [REDACTED] 2023 through [REDACTED], 2023; and \$3,107.59 per month effective [REDACTED] 2023.

In [REDACTED] 2024, the Appellant's patient liability amount will adjust to reflect changes to her Social Security benefits and pension amounts.

DECISION

The Appellant's appeal is GRANTED, as the undersigned hearing officer finds that the Department incorrectly calculated the Appellant's patient liability amount due to the skilled nursing facility from [REDACTED] 2022 forward.

ORDER

1. If it has not already done so, the Department will update its calculations to reflect the Appellant's patient liability amounts as follows:
 - \$2,929.64 per month, from [REDACTED] 2022 through [REDACTED] 2022.
 - \$3,088.23 per month, from [REDACTED] 2023 through [REDACTED], 2023.
 - \$3,107.59 per month, effective [REDACTED] 2023.
2. The Department will issue an updated *Notice of Action* to the Appellant and her Representative that identifies the Appellant's patient liability amounts as identified in this Order from [REDACTED] 2022 through the current service month.
3. Within 21 calendar days, or [REDACTED] 2023, documentation of compliance with this Order is due to the undersigned.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

Pc: Eileen Sullivan
Jennifer McKean, DSS-New Haven
Sarah Chmielecki, DSS-New Haven
Tim Latifi, DSS-New Haven
Ralph Filek, 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.