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

[redacted] **2016**
Signature Confirmation Mail

CL ID # [redacted]
Hearing # 739938

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

The Department of Social Services (the "Department") discontinued [redacted] Qualified Medicare Beneficiaries ("QMB") benefits effective [redacted] 2015, because his income exceeded the allowable limit and granted benefits under Specified Low Income Beneficiaries ("SLMB") effective [redacted] 2015.

On [redacted] 2015, the [redacted], ("the Appellant") requested an administrative hearing because he contests the discontinuance of such benefits.

On [redacted] 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for [redacted] 2016.

On [redacted] 2016, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals were present at the hearing:

[redacted] Appellant
Guerline Dominique, Department's Representative
Pamela J. Gonzalez, Hearing Officer

STATEMENT OF THE ISSUES

The issue is whether the Department correctly discontinued the Appellant's QMB benefits and granted SLMB through the Medicare Savings Program effective [redacted] 2015.

FINDINGS OF FACT

1. The Appellant was receiving QMB assistance under the Q01 coverage group. (Eligibility Management System STAT screen print – Department's exhibit B)

2. In [redacted] of 2015, the Appellant's Social Security disability income increased from $2049 to $2084 per month. The Appellant has no other income. (Appellant's testimony)

3. On [redacted] 2015, the Department sent to the Appellant a notice of Redetermination Results. The notice advised him that a review of his case was completed and he remained eligible for QMB benefits. The notice stated that his Social Security of $2049 helped make the eligibility determination. (Notice dated [redacted] 2015 – Hearing request)

4. For QMB eligibility purposes, the Department continued to reflect Social Security income in the monthly amount of $2049 until [redacted] 2015. (Eligibility Management System UINC screen print – Department's exhibit C, Hearing record)

5. Beginning in [redacted] 2015, the Appellant's medical providers were requiring him to pay co-pays and deductibles. (Appellant's testimony)

6. For QMB eligibility purposes, the Department reflected Social Security income in the monthly amount of $2084 effective [redacted] 2015. (Department's exhibit C)

7. The Department discontinued the Appellant's QMB assistance under the Q01 coverage group effective [redacted] 2015 and granted SLMB assistance under the Q03 coverage group effective [redacted] 2015. (Eligibility Management System MAFI screen prints for [redacted]/15 and [redacted]/15 – Department's exhibit D)

8. The Department failed to notify the Appellant of the change in his benefit level prior to initiating the change effective [redacted] 2015. (Department's representative's testimony)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.

2. Federal Statutes provide for the definition of a qualified Medicare beneficiary as an individual: Who is entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter (including an individual entitled to such benefits pursuant to an enrollment under section 1395I-2 of this title, but not including an individual entitled to such benefits only pursuant to an enrollment under section 1351I-2a of this title.) [42 United States Code (U.S.C.) § 1396d(p)(1)(A)] whose income (as determined under section 1382(a) of this title for purposes of the supplemental security income program, except as provided in paragraph 2(D) does not exceed an income level established by the state consistent with paragraph 2. [42 U.S.C. § 1396d(p)(1)(B)]

3. Section 17b-256(f) of the Connecticut General Statutes provides for the Medicare Saving Program Regulations. The Commissioner of Social Services shall increase income disregards used to determine eligibility by the Department of Social Services for the federal Qualified Medicare Beneficiary, the Specified Low-Income Medicare Beneficiary and the Qualifying Individual programs, administered in accordance with the provisions of 42 USC 1396d(p), by such amounts that shall result in persons with income that is (1) less than two hundred eleven per cent of the federal poverty level qualifying for the Qualified Medicare Beneficiary program, (2) at or above two hundred eleven per cent of the federal poverty level but less than two hundred thirty-one per cent of the federal poverty level qualifying for the Specified Low-Income Medicare Beneficiary program, and (3) at or above two hundred thirty-one per cent of the federal poverty level but less than two hundred forty-six per cent of the federal poverty level qualifying for the Qualifying Individual program. The commissioner shall not apply an asset test for eligibility under the Medicare Savings Program. The commissioner shall not consider as income Aid and Attendance pension benefits granted to a veteran, as defined in section 27-103, or the surviving spouse of such veteran. The Commissioner of Social Services, pursuant to section 17b-10, may implement policies and procedures to administer the provisions of this section while in the process of adopting such policies and procedures in regulation form, provided the commissioner prints notice of the intent to adopt the regulations in the Connecticut Law Journal not later than twenty days after the date of implementation. Such policies and procedures shall be valid until the time final regulations are adopted.

4. Uniform Policy Manual (“UPM”) § 2540.94(A)(1) provides for Qualified Medicare Beneficiaries (“QMB”) coverage group to include individuals who:

a. are entitled to hospital insurance benefits under part A of Title XVIII of the Social Security act; and

b. have income and assets equal to or less than the limits described in paragraph C and D.

5. UPM § 2540.97(A)(1) provides for Additional Low Income Medicare Beneficiaries Under 135% and states that this group includes individuals who would be Qualified Medicare Beneficiaries described in 2540.94 except that their applied income is equal to or exceeds 120 percent of the Federal Poverty Level but is less than 135% of the Federal Poverty Level.

6. Effective [redacted] 2015, the Department established the income limit under the Medicare Savings Program ("MSP") applicable to the QMB program for a household of one person as $2069.91 per month.

7. Effective [redacted] 2015, the Department established the income limit under the MSP applicable to the SLMB program for a household of one as $2266.11 per month.

8. UPM § 2540.94 D 1 a provides, in part, that the Department uses AABD income criteria (Cross Reference 5000) to determine eligibility for the additional low income Medicare beneficiaries except that the annual cost of living percentage increase received by SSA and SSI recipients each January is disregarded when determining eligibility for the first three months of each calendar year.

9. UPM § 5030.15(B)(1)(d) provides for a QMB disregard in the AABD program and states that the disregard is the amount of additional benefits received from Social Security each year which result from the annual Cost of Living Allowance (COLA).

10. UPM § 5030.15(B)(3) provides that the QMB disregard is used only in the months of January, February and March of each year.

11. The Department was correct when it determined that the Appellant's income of $2084 exceeded the allowable limit for QMB assistance under the Q01 coverage group of $2069.91.

12. UPM § 1570.10(A)(1) provides, in part, that the Department mails or gives adequate notice at least ten days prior to the date of the intended action if the Department intends to discontinue, terminate, suspend or reduce benefits.

13. The Department was incorrect when it discontinued the Appellant's QMB benefits under the Q01 coverage group without providing adequate notice to the Appellant that his benefit level would be reduced.

DISCUSSION

The Federal Poverty Level (FPL) is revisited and reestablished in [redacted] of each year. Cost of Living Increases in the Social Security program are effective in [redacted] each year. The Department has established policy to disregard the Social Security cost of living increase for the first three months of the year. On [redacted] 2015, when such disregard expired, the Appellant's income exceeded the level for QMB. The Department however, did not reflect the Appellant's 2015 Cost of Living Increase until [redacted] 2015.

Although the Appellant's income was in excess of the program's income limit, the Department has legal obligations to notify Appellants of adverse actions before such

action is taken. In this case, the Department did not do so. Accordingly, the Department erroneously discontinued the Appellant's assistance.

The remedy is to restore lost benefits and provide adequate notice of adverse action.

I note that effective [redacted] 2016, the Q01 income limit has been increased to $2,088.90. Because there was no Cost of Living Increase this year (2016), the Appellant's income of $2084 is within the Q01 program income limit and if otherwise eligible, he qualifies for Q01 coverage effective [redacted] 2016.

The Appellant presented printed material from an internet website indicating that the first $20 of income is not counted when determining income eligibility for the Medicare Savings Program. I have reviewed pertinent regulations and I did not find any provision allowing for said $20 exclusion.

DECISION

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

ORDER

The Department shall void its [redacted] 2015 discontinuance of the Appellant's QMB – Q01 coverage and shall restore assistance back to that date.

Prior to taking any adverse action, the Department must, in accordance with its own regulations, provide proper notification of its intended action.

Prior to taking any action the Department shall determine the Appellant's Q01 eligibility by considering the increase in the program income limit effective [redacted] 2016 and the lack of a COLA in 2016.

Verification that the [redacted] 2015 discontinuance has been voided and benefits have been restored is due to OLCRAH by [redacted] 2016.

Pamela J. Gonzalez
Hearing Officer

Copy: Musa Mohamud, SSOM, DSS, Hartford RO #10
Elizabeth Thomas, SSOM, DSS, Hartford, RO #10
Patricia Ostroski, SSPM, DSS, Hartford, RO #10
Tricia Morelli, SSPM, DSS, Hartford, RO #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 §4-181a(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 Legal Counsel, Regulations, and Administrative Hearings, 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, 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 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.