

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3730

██████████ 2016
Signature Confirmation

Client ID # ██████████
Request #745602

NOTICE OF DECISION

PARTY

██████████
C/O ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████ ("Appellant") a Notice of Applied Income stating that he must pay \$2,617.89 per month towards the cost of his care effective December 2015.

On ██████████ 2015, the Appellant requested an administrative hearing to contest the determination of the amount of applied income that he has to pay towards his care.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings, ("OLCRAH") sent a Notice of Administrative Hearing scheduling a hearing for ██████████ 2016.

On ██████████ 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:

██████████ Appellant
██████████ Appellant's Spouse, Power of Attorney ("POA")
Nancy Luddy, Administrator, ██████████
Victor Robles, Department's Representative
Miklos Mencseli, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined the amount of the Appellant's monthly applied income.

FINDINGS OF FACT

1. The Appellant is a resident of [REDACTED]. He has been receiving Long Term Care ("LTC") Medicaid since [REDACTED] 2013, (Summary)
2. The Appellant's spouse lives in the community with their two children. (Record)
3. On [REDACTED] 2015, the Department activated a N99 Medicaid spend-down by entering the spend-down amount of \$37,167.96(nursing facility rate of \$6,194.66 x 6 months). (Summary)
4. On [REDACTED] 2015, the Department sent the Appellant a Notice stating effective [REDACTED] 2015 that he had to pay \$2,618.79 per month towards the cost of his care. (Exhibit 2: Department's notice [REDACTED] 15)
5. The Appellant receives \$2,385.90 per month in Social Security Disability benefits.
6. The Appellant receives \$2,939.13 per month in a Prudential Disability pension.
7. The Appellant receives \$5,325.03 in total unearned income. (Facts #5-6)
8. The applicant receives monthly diversions of \$112.40 for medical insurance premium (\$224.80 per month for Appellant and Spouse divided by two)
9. The applicant receives a monthly allowable deduction of \$59.00 as his personal needs allowance.
10. The community spouse is employed and works for the school system. The Department determined her monthly gross wages as \$1,272.42
11. The community spouse mortgage amount is \$2,451.20 which includes the property tax.
12. The Minimum Monthly Needs Allowance (MMNA) is capped at the maximum amount of \$2,980.50
13. The Appellant is eligible for the Community Family Allowance for his two children.

14. The Department determined the Community Family allowance is \$944.07 based on one child receiving Social Security income.
15. The Department determined the Appellant's applied income to be \$2,618.79 (Total Income of \$5,325.03 - \$2,707.14 deductions equals \$2,618.79)
16. The Appellant's mortgage amount is \$2,424.12. (Appellant Exhibit A)
17. The Appellant does pay home owners insurance.
18. The Appellant's Spouse is employed by the school system. Her employment is from [REDACTED] through [REDACTED]. The Appellant's Spouse is an hourly employee.
19. The Appellant's Spouse is paid bi-weekly.
20. Both of the Appellant's children receive Social Security benefits.
21. Effective [REDACTED] 2016 they are both receiving \$596.00 a month.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes ("CGS") authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Uniform Policy Manual ("UPM") Section 5000.01 provides the following definitions:

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.

Applied income is that portion of the assistance unit's countable income that remains after all deductions and disregards are subtracted.

Counted income is that income which remains after excluded income is subtracted from the total of available income.

Deductions are those amounts which are subtracted as adjustments to counted income and which represent expenses paid by the assistance unit.

Disregards are those amounts which are subtracted as standard adjustments to countable income and which do not represent expenses paid by the assistance unit.

3. UPM Section 5005.C provides that the Department computes applied income by subtracting certain disregards and deductions, as described in this section, from counted income.
4. UPM Section 5005.D provides that the Department uses the assistance unit's applied income to determine income eligibility and to calculate the amount of benefits.
5. The Department correctly determined the applicant's total monthly gross unearned income as \$5,325.03.
6. UPM Section 5035.25 provides that for residents of long term care facilities (LTCF) and those individuals receiving community-based services (CBS) when the individual has 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. UPM Section 5035.25.B provides that the following monthly deductions are allowed from the income of assistance units in LTCF's:
 1. a personal needs allowance of \$50.00, 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;
 2. a Community Spouse Allowance (CSA), when appropriate; (Cross Reference 5035.30)
 3. a Community Family Allowance (CFA), when appropriate; (Cross Reference 5035.35)
 4. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for the Department 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.
8. Conn. Gen. Stat. § 17b-272. **(Formerly Sec. 17-134m). Personal fund allowance.** Effective July 1, 2011, 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 sixty dollars.
 9. The Department incorrectly provided a \$59.00 personal needs allowance (PNA) deduction.
 10. The current PNA amount is \$60.00
 11. The Department correctly provided health insurance premiums as deductions.
 12. UPM Section 5035.30 provides, in part, the regulation on Community Spousal;

A. Use of Community Spouse Allowance (CSA)

1. The CSA is used as an income deduction in the calculation of the post-eligibility applied income of an institutionalized spouse (IS) only when the IS makes the allowance available to the community spouse (CS) or for the sole benefit of the CS.
(Cross Reference 5035.25)
2. For the purpose of using a CSA, the Department considers a CS to include a spouse receiving home and community based services under a Medicaid waiver.

B. Calculation of CSA

1. The CSA is equal to the greater of the following:
 - a. the difference between the Minimum Monthly Needs Allowance (MMNA) and the community spouse gross monthly income;
3. The community spouse's excess shelter cost is equal to the difference between his or her shelter cost as described in section 5035.30 B.4. and 30% of 150 percent of the monthly poverty level for a unit of two persons.
4. The community spouse's monthly shelter cost includes:

- a. rental costs or mortgage payments, including principle and interest; and
 - b. real estate taxes; and
 - c. real estate insurance; and
 - d. required maintenance fees charged by condominiums or cooperatives except those amounts for utilities; and
 - e. Standard Utility Allowance (SUA) used in the FS program for the community spouse.
13. The Department incorrectly calculated the community spouse's shelter cost as \$3,159.20. The Department did not give credit for the home owners insurance payment.
14. It cannot be determined if the Department correctly calculated the community spouse allowance to be \$1,708.08 as it did not provide verification of how the Appellant's Spouse income was calculated.
15. UPM Section 5035.35 provides in part, the regulation on the Community Family Allowances;

A. Community Family Allowance (CFA)

- 1. The CFA is used as an income deduction in the calculation of the post-eligibility applied income of an institutionalized spouse (IS) when any of the following individuals are living with the community spouse (CS):
 - a. a minor child of either spouse; or
 - b. a child, parent, or sibling who is a legal tax dependent of either spouse.

(Cross Reference: 5035.25)

- 2. For the purpose of using a CFA, the Department considers a CS to include a spouse receiving home and community based services under a Medicaid waiver.

B. Calculating the CFA

The Department calculates the CFA deduction for each eligible family member by:

- 1. subtracting the gross monthly income of each eligible family member from 150 percent of the monthly poverty level for a unit of two persons; and
- 2. multiplying the result of Step 1 by 33 1/3%.

16. The Department incorrectly calculated the CFA as both children receive Social Security benefits. The Department only has one child receiving Social Security benefits.
17. The Department has the child Social Security as \$575.00 and used \$525.00 in its calculations.
18. UPM Section 5045.20 provides that 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.
19. As a resident of a LTCF, the applicant is responsible for contributing a portion of his income towards the monthly cost of his care.
20. UPM Section 5045.20.A provides that 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.
21. UPM Section 5045.20.B.1.b provides that total gross income is reduced by post eligibility deductions (Cross reference: 5035-"Income Deductions") to arrive at the amount of income to be contributed.
22. The Department incorrectly calculated, effective [REDACTED] 2015, the Appellant's monthly applied income of \$2,618.79

DISCUSSION

The Department incorrectly determined the Appellant's applied income amount. The Department did not accurately calculate the Appellant's allowable deductions. In addition it is unclear to the undersigned whether the Appellant's Spouse income from her employment was calculated correctly.

DECISION

The Appellant's appeal is **REMANDED to the Department for further action.**

COMPLIANCE

1. The Department shall request the Appellant provide verifications of wages, mortgage payment, home insurance premium and Social Security income for both children in addition to any other verifications it needs.
2. The Department shall re-calculate the Appellant's applied income with the updated verifications.
3. The Department shall issue a new notice to the Appellant with the new applied income amount.
4. No later than [REDACTED] 2016, the Department will provide to the undersigned proof of compliance with this order.



Miklos Mencseli
Hearing Officer

C: Karen Law, Medical Care Administration, MFP, Central Office
Nancy Luddy, Administrator, [REDACTED]

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, 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.