

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

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

CL ID # ██████████
Hearing # 778494

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a notice discontinuing his assistance for the Additional Low Income Beneficiary Program ("ALMB") because his income exceeds the program limits.

On ██████████ 2016, the Appellant requested an administrative hearing because he contests the discontinuance of such benefits.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative 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:

██████████, the Appellant
██████████, Appellant's Spouse
Garfield White, Department's Representative
Thomas Monahan, Hearing Officer

STATEMENT OF THE ISSUES

The issue is whether the Department correctly discontinued the Appellant's ALMB benefits effective ██████████ 2016.

FINDINGS OF FACT

1. The Appellant was a recipient of ALMB benefits. (Hearing record))
2. The Appellant's household consists of two persons: the Appellant, [D.O.B. ██████████ 1939] and his wife [D.O.B. ██████████ 1948]. (Appellant's testimony)
3. The Appellant receives a monthly gross social security benefit of \$819.00. (Exhibit C: Department's unearned income screens)
4. The Appellant's spouse receives a monthly gross social security benefit of \$1,197.00. (Ex. C: Department's unearned income screens)
5. The Appellant's spouse receives a monthly gross pension benefit of \$117.00. (Ex. C Department's unearned income screens)
6. The Appellant and his spouse receive monthly rental income of \$1,200.00 for the rental of the first floor apartment of their ██████████ home. (Appellant's testimony)
7. The Department verified the Appellant's Spouse's last day of work as ██████████ 2016. (Ex. A: Case narrative)
8. The Appellant's monthly mortgage interest is \$954.05. The Appellants monthly property taxes and insurance is \$748.15. (Appellant's Exhibit 1: Mortgage statement)
9. On ██████████ 2016, the Department sent the Appellant a notice discontinuing his Additional Low Income Beneficiary assistance effective ██████████ 2016 because his income exceeded the program limit.. (Ex. D: Notice of Discontinuance, ██████████/16)

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. Effective March 1, 2016, the Department established the income limit under the Medicare Savings Program ("MSP") applicable to the QMB program for a household of two persons as \$2,816.85 per month.
6. UPM § 5515.05 (C) (2) provides in part that the needs group for a MAABD unit includes the following: (a) the applicant or recipient; and (b) the spouse of the applicant or recipient when they share the same home regardless of whether one or both applying for or receiving assistance, except in cases involving working individuals with disabilities.

7. The Department correctly determined that the Appellant is a needs group of two, the Appellant and her spouse.
8. UPM § 2540.94(D) provides, in part, that the Department uses AABD income criteria (Cross Reference 5000) to determine eligibility for the Qualified 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. The income to be compared with the Federal Poverty Level is the applied income for MAABD individuals living in the community.
9. UPM § 5050.09 (A) (1) provides that payments received by the assistance unit from annuity plans, pensions and trusts are considered as unearned income.

UPM § 5050.13 (A) (1) provides that income from Social Security is treated as unearned income in all programs.

10. Regulation provides that income received by the assistance unit from renting property to someone else is treated as unearned self-employment income under the Medicaid programs unless the income is derived from a business enterprise. UPM § 5050.69(A)(1)
11. The Appellant's rental income is not derived from a business enterprise.
12. The total self-employment income earned each month is reduced by the following self-employment deductions when they are incurred:
 - a. labor (wages paid to an employee or work contracted out);
 - b. interest paid to purchase income producing property;
 - c. insurance premiums;
 - d. taxes, assessments, and utilities paid on income producing property;
 - e. service and repair of business equipment and property;
 - f. rental of business equipment and property;
 - g. advertisement;
 - h. licenses and permits;
 - i. legal or professional fees;
 - j. business supplies.

UPM § 5050.69(A)(2)

13. When the rental property is:

- a. part of the home-occupied property of the assistance unit, only the expenses associated with the rented portion are considered as a deduction;
- b. not part of the home occupied property, the expenses are considered in total.

The gross income which remains after consideration of self-employment expenses is reduced by all appropriate deduction and disregards. The remaining amount of money is applied income. UPM § 5050.69(A)(3)(4)

14. The Department correctly determined that the Appellant's monthly gross income from Social Security was \$819.00
15. The Department correctly determined that the Appellant's spouse's gross monthly Social Security was \$1,197.00.
16. The Department correctly determined that the Appellant's spouse's gross monthly pension was \$117.00.
17. The Department incorrectly determined that the Appellant's countable monthly rental income was \$1,200.00. The correct monthly rental income is \$348.89. (\$1,200.00 rental income – \$477.03 ½ of the mortgage interest - \$374.08 ½ of taxes and insurance)
18. The Department incorrectly determined that the household's monthly gross unearned income was \$3,333.00. The correct monthly gross unearned income is \$2,481.89 (\$819.00 + \$1,197.00 + \$117.00 + \$348.89).
19. 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).
20. UPM § 5030.15(B)(3) provides that the QMB disregard is used only in the months of January, February and March of each year.
21. The Department correctly determined that the Appellant does not qualify for an income disregard from the assistance unit's gross monthly unearned income.
22. UPM § 5045.10(E) provides that the assistance unit's total applied income is the sum of the unit's applied earnings, applied unearned income, and the amount deemed.
23. The correct applied income for the assistance unit is \$2,481.89.
24. UPM § 2540.94(D)(2) provides in part that for the QMB program, the income to be compared with the Federal Poverty Level is the applied income of MAABD individuals living in the community.

25. The Appellant's applied income is under the Qualified Medicare Beneficiary income limit of \$2,816.85
26. The Appellant is eligible for the Qualified Medicare Beneficiary program.
27. The Department was incorrect when it discontinued the Appellant's Medicare Savings Program benefits.

DECISION

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

ORDER

1. The Department shall void its [REDACTED] 2016 discontinuance of the Appellant's Medicare Savings program coverage through the ALMB program and shall grant QMB assistance back to that date.
2. Compliance with this order is due to the undersigned no later than 15 days from the date of this decision.

Thomas Monahan

Thomas Monahan
Hearing Officer

C: Musa Mohamud, Operations Manager, Hartford Regional Office
Judy Williams, Operations Manager, Hartford Regional Office
Tricia Morelli, Program Manager, Hartford Regional Office
Garfield White, Hearing Liaison, Hartford 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 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.