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

[redacted] **2016**
Signature Confirmation

Client ID # [redacted]
Hearing Request # 788031

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2016, Access Health CT ("AHCT") sent [redacted] ("the Appellant") a Notice of Action ("NOA") denying Medicaid/HUSKY A - Parents & Caretakers healthcare coverage.

On [redacted] 2016, the Appellant requested a hearing to contest AHCT's action.

On [redacted] 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the 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 Statues, OLCRAH held an administrative hearing. The following individuals participated in the hearing:

[redacted] Appellant
Krystal Sherman-Davis, Access Health CT ("AHCT") Representative
Marci Ostroski, Hearing Officer

The Hearing Record was held open pending additional information. Exhibits were received and the Record closed [redacted] 2016.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly denied the Medicaid/HUSKY A-Parents &Caretakers healthcare coverage.

FINDINGS OF FACT

1. The Appellant's household consists of four members that include herself, her spouse, and two children claimed as tax dependents (Ex. 4: Application [redacted]

2. In [redacted] 2015 the Appellant's family was found eligible for and granted HUSKY A Medicaid for Families based on self-declared monthly income and deductions equaling $3386.40. (AHCT testimony)

3. In June 2015 the Connecticut Special Legislative Session passed a new state law splitting the HUSKY A program into two groups. One group HUSKY A/MEDICAID coverage for children under 19th birthday remained at the income limit of 196%, with a 5% income disregard, of the Federal Poverty Level ("FPL"). The second group became HUSKY A/Medicaid Parents and Caretakers and lowering the income limit to 150% of the FPL with a 5% income disregard. (June Special Session, Public Act No.15-5)

4. On [redacted] 2015, AHCT determined the Appellant did not qualify for HUSKY A Medicaid Parents and Caretakers healthcare coverage due to exceeding the income limit but qualified for TMA ("Transitional Medical Assistance") effective [redacted] 2015 through [redacted] 2016. The children remained eligible for coverage under HUSKY A Medicaid for children under the 19th birthday. (Exhibit 5: Case Comments, Hearing Summary, Ex. 3: Enrollment Details).

5. No action was taken by AHCT or the Department of Social Services ("DSS") to terminate HUSKY A Medicaid for Families coverage in [redacted] 2015 (AHCT's Testimony).

6. No action was taken by AHCT or DSS to grant TMA coverage in [redacted] 2015 (AHCT's Testimony).

7. On [redacted] 2016 AHCT initiated a change reporting application on behalf of the Appellant and redetermined eligibility for healthcare coverage based on the previously reported self-attestation of income in the amount of $3386.40. (Hearing Summary, Ex. 1: Notice of Action [redacted]/16).

8. On [redacted] 2016, AHCT determined the Appellant's rounded monthly income of $3,387.00 exceeded the HUSKY A Medicaid Parents & Caretakers income limit

and issued a notice stating that the Appellant does not qualify for HUSKY A-Parents and Caretakers healthcare coverage because her monthly household income of $3387.00 exceeds the income limit for a household size of four of $3139.00. (Exhibit 1: Notice of Action [redacted]/16).

9. After the administrative hearing the Appellant provided her spouse's wage stub for the hearing record as verification of the family's gross income and deductions. (Ex. 1: Wage Stub)

10. The wage stub reflected gross biweekly wages of $2000.00 which equals 4300.00 monthly (2000*2.15). (Ex. A: Wage Stub)

11. The wage stub does not reflect any pre tax deductions. The wage stub shows a child support garnishment and deductions for dental and medical insurance. (Ex. A: Wage Stub)

12. The FPL for a household of four totals $2025.00 per month effective [redacted] 2016 (Federal Register).

13. As of the date of the administrative hearing neither AHCT nor DSS has taken an action to discontinue the Appellant's HUSKY A Medicaid for Families and they remain actively covered under that program. (AHCT testimony)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes ("CGS") provides for acceptance of federal grants for medical assistance**.** The Commissioner of Social Services is authorized to take advantage of the medical assistance programs provided in Title XIX, entitled "Grants to States for Medical Assistance Programs", contained in the Social Security Amendments of 1965 and may administer the same in accordance with the requirements provided therein, including the waiving, with respect to the amount paid for medical care, of provisions concerning recovery from beneficiaries or their estates, charges and recoveries against legally liable relatives, and liens against property of beneficiaries.

2. Section 17b-264 of the CGS provides for the extension of other public assistance provisions**.** All of the provisions of sections 17b-22, 17b-75 to 17b-77, inclusive, 17b-79 to 17b-83, inclusive, 17b-85 to 17b-103, inclusive, and 17b-600 to 17b-604, inclusive, are extended to the medical assistance program except such provisions as are inconsistent with federal law and regulations governing Title XIX of the Social Security Amendments of 1965 and sections 17b-260 to 17b-262, inclusive, 17b-264 to 17b-285, inclusive, and 17b-357 to 17b-361, inclusive.

3. Title 45 of the Code of Federal Regulations ("CFR") § 155.505(c)(1) provides that Exchange eligibility appeals may be conducted by a State Exchange appeals entity or an eligible entity described in paragraph (d) of this section that is designated by the Exchange, if the Exchange establishes an appeals process in accordance with the requirements of this subpart.

4. 45 CFR § 155.505(d) provides that an appeals process established under this subpart must comply with § 155.110(a).

5. 45 CFR § 155.110(a)(2) provides that the State may elect to authorize an Exchange established by the State to enter into an agreement with an eligible entity to carry out one or more responsibilities of the Exchange. Eligible entities are: the State Medicaid agency, or any other State agency that meets the qualification of paragraph (a)(1) of this section.

6. 42 CFR § 435.110(b)(c)(2)(i) provides that the agency must provide Medicaid to parents and caretaker relatives whose income is at or below the income standard established by the agency in the State Plan.

7. 42 CFR § 435.603(e) provides that MAGI-based income means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in section 36B(d)(2)(B) of the Code, with the following exceptions-

   (1) An amount received as a lump sum is counted as income only in the month received.
   (2) Scholarships, awards, or fellowship grants used for education purposes and not for living expensed are excluded from income.
   (3) American Indian/Alaska Native exceptions. The following are excluded from income:
      (i) Distributions from Alaska Native Corporations and Settlement Trusts;
      (ii) Distributions from any property held in trust, subject to Federal restrictions, located within the most recent boundaries of a prior Federal reservation, or otherwise under the supervision of the Secretary of the Interior;
      (iii) Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from –
         (A) Rights of ownership or possession in any lands described in paragraph (e)(3)(ii) of this section; or
         (B) Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;

(iv) Distributions resulting from real property ownership interests related to natural resources and improvements –
(A) Located on or near a reservation or within the most recent boundaries of a prior Federal reservation; or
(B) Resulting from the exercise of federally-protected rights relating to such real property ownership interests;

(v) Payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable Tribal Law or custom;

(vi) Student financial assistance provided under the Bureau of Indian Affairs education programs.

8. Title 26 of the Internal Revenue Code ("IRC") section 36B(d)(2)(B) provides that the term "modified adjusted gross income" means adjusted gross income increased by –
(i) any amount excluded from gross income under section 911,
(ii) any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax, and
(iii) an amount equal to the portion of the taxpayer's social security benefits (as defined in section 86(d)) which is not included in gross income under section 86 for the taxable year.

9. Title 26 of the IRC Chapter 1 Subchapter A Part 1 section 1.71-1T provides for child support; A payment which under the terms of the divorce or separation instrument is fixed (or treated as fixed) as payable for the support of a child of the payor spouse does not qualify as an alimony or separate maintenance payment. Thus, such a payment is not deductible by the payor spouse or includible in the income of the payee spouse.

10. AHCT used the Appellant's self-declared monthly MAGI of $3387.00 in [redacted] 2016. Based on the wage stub provided the Appellant's actual monthly MAGI is $4300.00.

11. Public Act 15-5 June Sp. Session, Section 370 (a) provides in part Except as provided in section 17b-277, as amended by this act, and section 17b-292, as amended by public act 15-69 and this act, the medical assistance program shall provide coverage to persons under the age of nineteen with household income up to one hundred ninety-six per cent of the federal poverty level without an asset limit and to persons under the age of nineteen, who qualify for coverage under Section 1931 of the Social Security Act, with household income not exceeding one hundred ninety-six per cent of the federal poverty level without an asset limit, and their parents and needy caretaker relatives, who qualify for coverage under Section 1931 of the Social Security Act, with household income

not exceeding one hundred fifty per cent of the federal poverty level without an asset limit.

12. One hundred fifty percent of the FPL for a household of four for a parent or caretaker relative totaled $3037.50 ($2025.00 x 1.50) per month in [redacted] 2016.

13. 42 CFR §435.603(d)(1)(4) provides for the application of the household's modified adjusted gross income ("MAGI"). The household's income is the sum of the MAGI-based income, as defined in paragraph (e) of this section, of every individual included in the individual's household. Effective January 1, 2014, a state must subtract an amount equivalent to 5 percentage points of the Federal Poverty Level for the applicable family size only to determine the eligibility of an individual for medical assistance under the eligibility group with the highest income standard using MAGI-based methodologies

14. Five percent of the FPL for a family of four equaled $101.25 ($2025.00 x .05) per month in [redacted] 2016.

15. The Appellant's countable self-declared MAGI totaled $3285.75 ($3387.00 - $101.25) in [redacted] 2016.

16. AHCT correctly determined the Appellant's self–declared countable MAGI ($3285.75) exceeded the Medicaid/HUSKY A income limit ($3037.50) for parents and caretaker relatives in [redacted] 2016.

17. Public Act 15-5 June Sp. Session, Section 371(a) provides The Commissioner of Social Services shall review whether a parent or needy caretaker relative, who qualifies for Medicaid coverage under Section 1931 of the Social Security Act and is no longer eligible on and after August 1, 2015, pursuant to section 17b-261 of the general statutes, as amended by this act, remains eligible for Medicaid under the same or a different category of coverage before terminating coverage

18. UPM § 2540.09 (A) (1) provides that the group of people who qualify for Extended Medical Assistance includes members of assistance units who lose eligibility for HUSKY A for Families ("F07") (cross reference: 2540.24) under the following circumstances:

> the assistance unit becomes ineligible because of hours of, or income from, employment; or the assistance unit was discontinued, wholly or partly, due to new or increased child support income.

19. UPM § 2540.09 (B) provides for the duration of eligibility.
(1) Individuals qualify for HUSKY A under this coverage group for the twelve month period beginning with the first month of ineligibility for HUSKY A (F07).

(2) If ineligibility for HUSKY A for Families (F07) occurs prior to the termination of assistance, the Extended Medical Assistance period begins with the first month that the family was not eligible for HUSKY A for Families (F07).

20. AHCT correctly determined the Appellant became eligible for TMA effective [redacted] 2015 when the family exceeded the income limit for a household of four.

21. AHCT correctly determined that eligibility for the TMA ended on [redacted] 2016, which was twelve months after eligibility for the Medicaid/HUSKY A (F07) ended.

22. The Department was correct to determine that the Appellant does not qualify for HUSKY A-Parents & Caretakers ongoing as she exceeds the income limit.

DISCUSSION

Based on the Appellant's family's self-declared Modified Adjusted Gross Income AHCT correctly found them to be ineligible for HUSKY A Medicaid for Parents. The Appellant's main argument disputing this action was that the child support that is garnished from the Appellant's spouse's wages should be considered as a deduction. One of the key changes under the Medicaid MAGI methodology is the elimination of various deductions and disregards that once were used to calculate eligibility for the Medicaid program. The Affordable Care Act now implements a standard disregard of 5% FPL. According to federal regulations, child support payments are not considered allowable deductions for the determination of Husky A Medicaid. It should be noted that based on the wage stub provided by the Appellant the family's countable MAGI income is in actuality higher than reported on the application and used in the eligibility determination.

AHCT determined the Appellant was no longer eligible for Medicaid/HUSKY A effective [redacted] 2015 but was eligible for TMA effective [redacted] 2015. Neither AHCT nor DSS took action at that time to discontinue the Medicaid/HUSKY A and grant the TMA. The Appellant incorrectly remained active on Medicaid/HUSKY A for Families.

On [redacted] 2016, AHCT reviewed the Appellant for continued coverage and correctly determined the Appellant's income exceeded the HUSKY A income limit for parent and caretaker relatives. The Appellant's HUSKY A coverage remained active as of the date of this hearing. Regulations provide that if an individual is found to be eligible for TMA, that coverage would start effective the date that the income first exceeded the HUSKY A income guidelines. Under those regulations the family would have been eligible for TMA effective [redacted] 2015 through [redacted] 2016. As the family received HUSKY A for Families for that time period; a TMA grant would be moot. AHCT correctly determined the Appellant's income exceeded the income limit and the Appellant was no longer eligible for HUSKY A on [redacted] 2016, however, AHCT has not taken action to discontinue this benefit.

DECISION

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

Marci Ostroski
Hearing Officer

Pc: Krystal Sherman-Davis, Judy Boucher, Health Insurance Exchange Access Health CT

APTC/CSR

Right to Appeal

For APTC or CSR eligibility determinations, the Appellant has the right to appeal to the United States Department of Health and Human Services (HHS) within 30 days of the date of this decision. To obtain an Appeal Request Form, go to https://www.healthcare.gov/can-i-appeal-a-marketplace-decision/ or call 1-800-318-2596 (TTY: 1-855-889-4325). HHS will let the Appellant know what it decides within 90 days of the appeal request. There is no right to judicial review of the decision by HHS.

There is no right to request reconsideration for denials or reductions of Advanced Premium Tax Credits (APTC) or Cost Sharing Reduction (CSR).

MEDICAID AND CHIP

Right to Request Reconsideration

For denials or reductions of MAGI Medicaid and CHIP, 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 06105-3725.

There is no right to request reconsideration for denials or reductions of Advanced Premium Tax Credits (APTC) or Cost Sharing Reduction (CSR).

Right to Appeal

For denials, terminations or reductions of MAGI Medicaid and CHIP eligibility, 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.