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

[redacted] **2017**
Signature Confirmation

Client ID # [redacted]
Request # 808977

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2016, the Department of Social Services (the "Department") sent [redacted] (the "Appellant") a Notice of Action ("NOA) denying his application for medical benefits under the Medicare Savings Program ("MSP").

On [redacted] 2017, [redacted] the Appellant's Authorized Representative ("AREP"), requested an administrative hearing to contest the Department's denial of such benefits.

On [redacted] 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2017.

On [redacted] 2017, in accordance with sections 17b-60, 17-61 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:

Vicki Jessup, Appellant's Authorized Representative, Altegra Health, Weston, Florida (via telephone)

Glenn Guerrera, Department's Representative
Sybil Hardy, Hearing Officer

The hearing record remained open for the submission of additional information. On [redacted] 2017, the hearing record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly denied the Appellant's application for medical assistance benefits under the MSP.

FINDINGS OF FACT

1. On [redacted] 2016, the Department received from the Appellant an application for medical assistance under the MSP. (Hearing Record, Exhibit 9: Eligibility Management System [" EMS"] Narrative Screen)

2. The Additional Low Income Medicare Beneficiary ("ALMB") is a program under a medical coverage group under MSP. (Hearing Record)

3. The Appellant is married and lives with his spouse in the community. (AREP's Testimony, Hearing Record, Exhibit 1: Medicare Savings Programs Application, [redacted]/16)

4. The Appellant is 69 years old (DOB [redacted]/47) and his spouse is 63 years old (DOB [redacted]/53). (Exhibit 1)

5. The Appellant's spouse does not meet the criteria for aged (65 years old or older) and is not disabled. (Hearing Record)

6. The Appellant receives a gross Social Security benefit of $2,000.90 per month. (Hearing Record, Exhibit 1, Exhibit 3: SVES General Information ["SVIN"] / SVES Title II Information ["SVII"] Screen, Exhibit 6: Unearned Income ["UINC"] Screen)

7. The Appellant pays for his Medicare Part B premiums. (Appellant's Testimony)

8. On [redacted] 2016, the Department screened the Appellant's application request using the incorrect application date of [redacted] 2016 and also incorrectly coded the Appellant's spouse as an applicant spouse ("AS") instead of a non-applicant spouse ("NA"). (Hearing Record, Exhibit 8: Assistance Status ["STAT"] / MA Financial Eligibility ["MAFI"] Screen, Exhibit 9)

9. On [redacted] 2016, the Department sent the Appellant a Verification We Need ("W-1348") Form requesting clear copies of the Appellant's Spouse's gross income. The Department did not indicate how many weeks of wage stubs would be sufficient. This verification was due back to the Department by [redacted] 2016. (Exhibit 9, Exhibit 10: W-1348, [redacted]/17)

10. [redacted] (the "employer") employs the Appellant's spouse full time. (Exhibit C: Appellant's Hearing Request Information, Exhibit: 2: Wage Stub from [redacted].)

11. The Appellant's spouse received the following gross wages from her employer:

Check Date	Gross Amount
[redacted]/16	$ 999.61
[redacted]/16	$ 996.30
[redacted]/16	$1,002.92
[redacted]/16	$ 996.29
[redacted]/16	$1,002.92
[redacted]/16	$1,050.95
[redacted]/16	$ 996.30
Total	$7,038.67

(Exhibit C, Exhibit 2)

12. The Department used only one wage stub received on [redacted] 2016 in the calculation of the Appellant's applied income. (Exhibit 2)

13. During [redacted] 2016, the Department granted the Appellant's application for medical assistance under MSP using the incorrect financial responsibility code for the Appellant's spouse. This cause the Appellant's applied an incorrect calculation of the Appellant's applied income. No NOA was issued for this action. (Hearing Record, Exhibit 8, Exhibit 9)

14. On [redacted] 2016, the Department reviewed the Appellant's application at the Appellant's AREP's request and realized that the Department used the wrong application date and that the Department incorrectly used the wrong financial responsibility code for the Appellant's spouse. (Hearing Record, Exhibit 9)

15. On [redacted] 2016, the Department corrected the Appellant's spouse's responsibility code effective [redacted] 2017 and determined that the Appellant's income exceeded the income limit for medical assistance under MSP. (Hearing Record,

16. On [redacted] 2016, the Department sent the Appellant a NOA indicating that his application for MSP under the Additional Low Income Medicare Beneficiary ("ALMB")

was denied because the Appellant's household income exceeds the MSP income limit. (Exhibit 5: NOA, [redacted]/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. Connecticut General Statutes ("CGS") Section 17b-256(f) provides in part that regarding eligibility for Medicare savings programs. 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 ALMB program is the Department's Qualifying Individual Program and has the highest income limit of the three MSP coverage groups.

4. The ALMB income limit for a couple is $3,284.10.

5. UPM § 2015.05(A) provides that the assistance unit in AABD and MAABD consists of only one member. In these programs, each individual is a separate assistance unit.

6. The Department correctly determined that the Appellant was an assistance unit of one.

7. Uniform Policy Manual ("UPM") Section 2540.97(A) provides that the Additional Low Income Medicare Beneficiaries (ALMB) coverage group includes individuals who would be Qualified Medicare Beneficiaries described in 2540.94 except that:

    1. Their applied income is equal to or exceeds 120 percent of the Federal Poverty Level, but is less than 135 percent of the Federal Poverty Level; or

    2. Their applied income is less than 135 percent of the Federal Poverty Level, and they have assets valued at more than twice the SSI limit (Cross Reference 4005.10)

8. UPM § 2540.97(D) provides the income criteria to qualify for Medical Assistance through the Qualified Medicare Beneficiaries Medicaid Coverage Group.

    1. The Department uses AABD income Criteria (Cross Reference: 5000), including deeming methodology, to determine eligibility for this coverage group except for the following:

        a. The annual cost of living (COLA) percentage increase received by SSA and SSI recipients each January is disregarded when determining eligibility in the first three months of each calendar year;
        b. For eligibility to exist the income must be less than a percentage of the Federal Poverty Level for the appropriate needs group size as described in paragraph A.

    2. The income to be compared with the Federal Poverty Level is the applied income for MAABD individuals living in the community (cross reference: 5045). This is true whether the individual lives in an LTCF or in the community.

9. UPM § 4530.20 provides in part that the Federal Poverty Level is used as the basis for determining income eligibility for the Qualified Medicare Beneficiaries; Specified Low Income Medicare Beneficiaries.

10. UPM § 5005(A) provides that in consideration of income, the Department counts the assistance unit's available income, except to the extent that 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 is inaccessible, or
3. Deemed by the Department to benefit the assistance unit.

11. The Department correctly determined that the Appellant's unearned income from SSA of $2,000.90 per month is counted in the calculation of the Appellant applied income.

12. The Department incorrectly calculated the Appellant's spouse's earned income is available income for the household.

13. UPM 5020.70(A) provides that there are circumstances in which income is deemed:
    1. The Department deems the income of the spouse of an AABD applicant or recipient if there are considered to be living together.
    2. The spouse's income is also deemed to the AABD applicant or recipient for the month that they cease living together.

14. UPM 5020.70(C)(3) provides that when the spouse has not applied for AABD or has applied and has been determined to be ineligible for benefits, the amount deemed to the unit from the unit member's spouse is calculated in the flowing manner:

    a. The deemor's self-employment earnings are reduced by self employement expenses, if applicable;

    b. The deemor's gross earnings are reduced by deducting the following personal employment expenses, as appropriate:
        1) Mandatory union dues and cost of tools, materials, uniforms, or other protective clothing when necessary for the job and not provided by the employer;
        2) Proper federal income tax based upon the maximum number fo deduction to which the deemor is entitled;
        3) FICA, group life insurance, health insurance premiums, or mandatory retirement plans;
        4) Lunch allowance at .50 cents per working day;
        5) Transportation allowance to travel to work at the cost per work day as charged by private conveyance or at .12 cents per mile by private car or in a car pool. Mileage necessary to take children to or to pick them up from a child care provider may also be included.

    c. The total applied earned income of the deemor is added to his or her total monthly gross unearned income;
    d. The combined total of the deemor's gross unearned income and applied earned income after the appropriate deductions are made is deemed available to the assistance unit member.

15. The Department correctly determined that the Appellant's spouse's earned income is counted in the calculation of the applied income.
16. The Department failed to consider any personal employment expenses for the Appellant's spouse in the calculation of the applied income.

17. UPM § 5025.05(B)(1) provides that if income is received on a monthly basis, a representative monthly amount is used as the estimate of income.

18. UPM § 5045.10(A) provides that except for determining AABD eligibility and benefit amounts for individuals residing in long term care facilities, applied earned income is calculated for those who are aged or disabled by reducing the monthly earnings by the following in the order presented:

    1. Self-employment expenses, when applicable;
    2. A disregard of $65.00;
    3. Impairment related expenses for those recipients who are eligible for them;
    4. ½ of the remaining difference;
    5. Any earned income an individual receives and uses to fulfill an approved plan to achieve self-support if that individual is disabled and under age 65 or is disabled and received SSI as a disabled person the month prior to reaching age 65.

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

20. It is unclear how the Department calculated the earned income and the calculations provided during the hearing conflict with the calculation provided by the Department.

21. The Department incorrectly calculated the Appellant's applied income for the MSP program.

22. Based on the hearing record, the determination of medical assistance under the MSP program cannot be determined.

DISCUSSION

Based on the evidence submitted for the administrative hearing, the Appellant applied for medical assistance on [redacted] 2016, but the Department did not review the application until [redacted] 2016 and also screened the application for [redacted] 2016.

The Appellant reported that his spouse is employed and is paid bi-weekly. The Department used only one wage stub to make a determination of eligibility of medical

assistance under the MSP program. Also, the Department used the incorrect application date and financial responsibility codes for the Appellant's spouse.

DECISION

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

ORDER

1. The Department shall reopen the Appellant's application using the correct application date of [redacted] 2016.

2. The Department shall recalculate the Appellant's spouse's earned income using the available wage information and apply any appropriate earned income disregards and deductions

3. Compliance of this order is due back to the undersigned by [redacted] 2017.

Sybil Hardy
Hearing Officer

Pc: Tricia Morelli, Operations Manager, DSS R.O. # 62, Torrington
Glenn Guerrera, Fair Hearings Liaison, DSS R.O. # 62, Torrington
Vicki Jessup, Altegra Health, 1725 North Commerce Parkway, Weston, FL 33326

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.