

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

[REDACTED], 2018
Signature Confirmation

Client ID # [REDACTED]
Request # 115411

NOTICE OF DECISION
PARTY

[REDACTED]

PROCEDURAL BACKGROUND

[REDACTED], 2018, the Department of Social Services (the "Department") sent [REDACTED] (the "Appellant") a Notice of Action ("NOA) denying her application for medical benefits under the Medicare Savings Program ("MSP").

[REDACTED] 2018, [REDACTED], the Appellant's Authorized Representative ("AREP"), requested an administrative hearing to contest the Department's denial of such benefits.

[REDACTED] 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [REDACTED] 2018.

On April 20, 2018, 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:

[REDACTED]
[REDACTED] Appellant's Authorized Representative, [REDACTED]
[REDACTED] Department's Representative
Veronica King, Hearing Officer

The hearing record remained open for the submission of additional information. On [REDACTED] 2018, 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. [REDACTED], 2018, the Department received from the Appellant an application for medical assistance under the MSP. (Exhibit 1: Application Information)
2. The Appellant is married and lives with her spouse in the community. (Exhibit 1 and Hearing Record)
3. The Appellant is [REDACTED] and her spouse is [REDACTED]. (Exhibit 1)
4. The Appellant's spouse does not meet the criteria for aged (65 years old or older) and is not disabled. (Hearing Record)
5. The Appellant receives a gross Social Security benefit of \$803.00 per month. The Appellant receives Medicare Part A and Part B coverage from the Social Security Administration. (Exhibit 1, Hearing Record)
6. The Appellant's husband works at [REDACTED] and earns \$2,657.40 gross per month. (Exhibit 1, Appellant's Exhibit C: Pay stubs and Hearing Record)
7. The Department calculated the Appellant's total household countable income as \$3,460.40 per month (\$803 + \$2,657.40). (Exhibit 2: NOA, [REDACTED] 18 and Hearing Record)
8. The Additional Low Income Medicare Beneficiary ("ALMB") is a program under a medical coverage group under MSP. The currently ALMB income limit for a married couple is \$3,375.12. (Hearing Record)
9. [REDACTED], 2018, the Department sent the Appellant a NOA indicating that her application for MSP under the Additional Low Income Medicare Beneficiary was denied because the Appellant's household income exceeds the MSP income limit. (Exhibit 2)

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 \$3,375.12.
5. Uniform Policy Manual (“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. UPM § 5515.05(C)(2) provides that the needs group for an 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 are applying for or receiving assistance, except in cases involving working individuals with disabilities. In these cases, the spouse (and children) are part of the needs group only in determining the cost of the individual's premium for medical coverage. (Cross Reference 2540.85)
8. The Department correctly determined a needs group of two.
9. UPM § 5050.13(A)(1) provides that income from the Social Security Administrative is treated as unearned income in all programs.
10. The Department correctly determined that the Appellant's Social Security benefit unearned income counted towards the Appellant's applied income
11. UPM § 5020.75(A)(1)(a) provides that the Department deems income from the spouse of an MAABD applicant or recipient if he or she is considered to be living with the assistance unit member, except in cases involving working individuals with disabilities. In these cases, spousal income is deemed only in determining the cost of the individual's premium for medical coverage. (Cross Reference: 2540.85)
12. UPM § 5005(A) provides that inconsideration 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 it is inaccessible; or
 3. Deemed by the Department to benefit the assistance unit.
13. The Department correctly determined that the Appellant's spouse earned income counted towards the Appellant's applied income.
14. UPM § 5020.75 (C)(5)(6)(7) provides for deeming methodology and states in part that that deemed income is calculated from parents and from spouses in the same way as in AABD for members of the following coverage groups: Qualified Medicare Beneficiaries; Specified Low Income Medicare Beneficiaries; Additional Low Income Medicare Beneficiaries.
15. 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:
 - a. 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

- b. 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)
16. UPM § 2540.97(D) provides the income criteria to qualify for Medical Assistance through the Qualified Medicare Beneficiaries Medicaid Coverage Group.
- a. 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.
 - b. 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.
17. 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.
18. 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.
19. The Department incorrectly calculated the Appellant's spouse's earned income is available income for the household.
20. UPM 5020.70(A) provides that there are circumstances in which income is deemed:
- a. The Department deems the income of the spouse of an AABD applicant or recipient if there are considered to be living together.
 - b. The spouse's income is also deemed to the AABD applicant or recipient for the month that they cease living together.
21. 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 following manner:

- a. The deemor's self-employment earnings are reduced by self employment 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.

22. The Department correctly determined that the Appellant's spouse's earned income is counted in the calculation of the applied income.

23. The Department failed to consider any personal employment expenses for the Appellant's spouse in the calculation of the applied income.

24. 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.

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

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

DISCUSSION

The Appellant and her representative are in agreement with the Department's determination of the Appellant's unearned income (Social Security benefits) and her spouse's gross earned income of \$ \$2,657.40. The issue of this hearing it is the calculation of the applied income. The Appellant's representative argues that the Department failed to consider the earned income disregards and deductions.

The Department's Uniform Policy allows for deemor's gross earnings deductions and the Department failed to explore such deductions.

Based on the evidence submitted for the administrative hearing, the determination of medical assistance under the MSP program cannot be determined.

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], 2018.
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 in accordance with UPM 5020.70(A) and UPM 5020.70(C)(3).
3. Compliance of this order is due back to the undersigned by [REDACTED] 2018.

Veronica King

Veronica King
Hearing Officer

Pc: Tania Cook-Becford, Operations Manager, DSS R.O. # 42, Willimantic
Sara Hart, Fair Hearings Liaison, DSS R.O. # 42, Willimantic

[REDACTED], [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.