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

[redacted] 2018
Signature Confirmation

Client ID #[redacted]
Request #[redacted]

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted], 2018, the Department of Social Services (the "Department") issued a Notice of Action ("NOA") to [redacted](the "Appellant") informing him that his HUSKY C Medicaid benefits would be discontinued effective [redacted] 2018 because the monthly net income of his household was more than the limit for the program.

On [redacted] 2018, the Appellant requested an administrative hearing to contest the Department's decision to discontinue his Medicaid benefits.

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

On [redacted] 2018, at the Appellant's request, because he was unable to locate the location of the hearing on [redacted] 2018, OLCRAH issued a notice rescheduling the hearing for [redacted] 2018.

On [redacted], 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], Appellant's spouse
[redacted], Appellant's daughter and authorized representative

Jacqueline Taft, Department's representative
James Hinckley, Hearing Officer

The hearing record was held open until [redacted] 2018 for the Department to provide additional information, and until [redacted] 2018 for the Appellant to respond to any new information. No additional information was provided by either party and on [redacted] 2018, the hearing record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department was correct when it determined the Appellant was ineligible for the Medicaid benefits he had been receiving, because his household's income exceeded the limits for the program.

FINDINGS OF FACT

1. The Appellant is a 74 year old married man who resides with his 69 year old wife. (Appellant's wife's testimony, Hearing Record)

2. As of [redacted] 2018, the Appellant and his wife were receiving Medicaid benefits under the coverage group, "HUSKY C – Aged, Blind, Disabled not eligible for State Supplement Cash". (Ex. 3: NOA dated [redacted], 2018)

3. The Appellant and his wife are originally from Ukraine. (Appellant's representative's testimony)

4. The Appellant and his wife were married in Ukraine on [redacted], 1969. (Appellant's wife's testimony)

5. The Appellant and his wife both entered the U.S. on the same date, [redacted] 2008, and both entered as, and retain the status of, Lawful Permanent Residents ("LPRs"). (Appellant's wife's testimony)

6. As a condition of their entry into the U.S. as LPRs, the Appellant and his wife were both sponsored by their daughter, [redacted] (their "daughter"). (Appellant's representative's testimony)

7. The Appellant and his wife live with their daughter, who is divorced, and their daughter's four children. (Appellant's representative's testimony)

8. The Appellant's daughter claims both her parents as tax dependents, in addition to her four children. (Appellant's representative's testimony)

9. Neither the Appellant nor his wife is eligible for Supplemental Security Income ("SSI"), and neither is eligible for the Department's State Supplement program,

because neither has eligible income to supplement. (Hearing Record, Department Representative's testimony)

10. The Appellant and his wife each receive a $219.00 monthly cash benefit from the Department from the State Administered General Assistance ("SAGA") program. (Hearing Record)

11. The Appellant and his wife have no work history in the U.S. (Appellant's representative's testimony)

12. The Appellant's daughter is employed by [redacted] and is paid bi-weekly. (Hearing Record, Appellant's representative's testimony)

13. The Appellant's daughter was at one time erroneously coded in the Department's records; the Appellant's daughter was coded as a non-citizen LPR when she was actually a citizen and the sponsor of both her parents. (Department's representative's testimony, Ex. 1: Renewal of Eligibility form, Hearing Record)

14. On [redacted] 2018, the Appellant submitted a Renewal of Eligibility form to the Department; on the pre-printed form, the Appellant's daughter was incorrectly listed as a non-citizen, and a hand-written correction was made by the Appellant reporting that his daughter was a citizen. (Hearing Record, Ex. 1)

15. In processing the renewal, the Department verified the Appellant's daughter's wages at [redacted] through the service, "The Work Number"; on [redacted] 2017 the daughter was paid $3,868.06 gross, and on [redacted] 2018 she was paid $3,559.35 gross. (Hearing Record)

16. On [redacted], 2018, the Department sent the Appellant a NOA advising him that his and his wife's eligibility for HUSKY C would end on [redacted] 2018 because the monthly net income of their household was more than the limit for the program. (Ex. 3)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

2. Uniform Policy Manual ("UPM") § 3005.08(B) discusses non-citizen eligibility in the medical assistance program and provides that an eligible non-citizen is one who arrives in the U.S. on or after August 22, 1996 and: …(10)
   has lawfully resided in the U.S. for at least five years and:
   a. is lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act…

The Appellant and his wife are both eligible non-citizens because they have both resided in the U.S. continuously since [redacted] 2008 as LPRs.

3. Section 421 of the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA) [Public Law 104-193] provides as follows:

SEC. 421 FEDERAL ATTRIBUTION OF SPONSOR'S INCOME AND RESOURCES TO ALIEN.

a. IN GENERAL.—Notwithstanding any other provision of law, in determining the eligibility and the amount of benefits of an alien for any Federal means-tested public benefits program (as provided under section 403), the income and resources of the alien shall be deemed to include the following:
   (1) The income and resources of any person who executed an affidavit of support pursuant to section 213A of the Immigration and Nationality Act (as added by section 423) on behalf of such alien.
   (2) The income and resources of the spouse (if any) of the person.

b. DURATION OF ATTRIBUTION PERIOD.—Subsection (a) shall apply with respect to an alien until such time as the alien—
   (1) achieves United States citizenship through naturalization pursuant to chapter 2 of title III of the Immigration and Nationality Act; or
   (2) (A) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act or can be credited with such qualifying quarters as provided under section 435, and (B) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 403) during any such period.

4. UPM § 5020.60 discusses Deemed Income from Sponsors of Non-citizens

UPM § 5020.60(A)(1) provides that:

The Department deems the income of a non-citizen's sponsor and the sponsor's spouse, if the spouse signed the Revised Affidavit of Support (I-864) or the Contract Between Sponsor and Household Member (I-864A) to the non-citizen under the following circumstances:

a. the sponsor and the sponsor's spouse are not members of the same assistance unit as the non-citizen; and
b. the non-citizen must have a sponsor under USCIS rules; and
c. the sponsor and the sponsor's spouse have executed an Affidavit of Support (I-864) or the Contract Between Sponsor and Household Member (I-864A) pursuant to 8 U.S.C. § 1183a(a) (section of the Personal Responsibility and Work Opportunity Act of 1996, amending Title II of the Immigration and Nationality Act by adding section 213(a) on behalf of the non-citizen; and
d. the sponsor is an individual rather than an institution; and
e. none of the exceptions set forth in Paragraph C of this section are applicable.

The Appellant's daughter meets the conditions described in UPM § 5020.60(A)(1) a, b, c and d requiring the deeming of income. She is an individual, and not a member of the Appellant's assistance unit. As of [redacted] 2008, the date the Appellant and his wife entered the U.S., sponsorship would have been required in order for them to be permitted entry as LPRs, and the Appellant's daughter provided such sponsorship. Pursuant to the requirements in section 423 of PRWORA, as sponsor, she was required to execute an Affidavit of Support that was a legally enforceable contract.

UPM § 5020.60(C) provides that the Department does not deem the income of the non-citizen's sponsor and the sponsor's spouse to the non-citizen under the following circumstances:

1. Indigence…

   The Appellant and his wife cannot be considered indigent because they reside with their sponsor [UPM § 5020.60(C)(1)(3)].

2. Battery or Extreme Cruelty…

   The Appellant has made no claim of, nor is there any evidence that he or his wife has been the victim of, battery or extreme cruelty.

3. Good Cause…

   Good cause applies when the non-citizen, due to extenuating circumstances, is unable to provide accurate and complete information concerning the sponsor's income. This does not apply to the Appellant's case, because the sponsor's income is known and no verification is lacking.

   The Appellant does not meet any of the exceptions to deeming listed in paragraph (C) of UPM § 5020.60.

   UPM § 5020.60(A)(3) provides that the Department deems income in accordance with Paragraph A.1 until one of the following events occurs:
   a. the non-citizen becomes a citizen of the United States; or
   b. the non-citizen works 40 qualifying quarters, as defined under Title II of the Social Security Act; or
   c. the non-citizen is credited for having worked 40 qualifying quarters if, beginning January 1, 1997, the qualifying quarters were worked when the non-citizen did not receive any federal means-tested public benefit, and either
      (1) the qualifying quarters were worked by a parent of such non-citizen while the non-citizen was under 18 years of age; or
      (2) the qualifying quarters were worked by a spouse of such non-citizen during the couple's marriage and the non-citizen remains married to such spouse or such spouse is deceased; or

(3) the non-citizen or the sponsor dies.

The provisions of UPM § 5020.60(A)(3) are consistent with section 421(b) of PRWORA. Neither the Appellant nor his wife has acquired U.S. citizenship, and neither spouse has any work history that would credit them with any qualifying work quarters. No event has occurred which would end the requirement to deem income from the Appellant's sponsor to the Appellant and his spouse in accordance with UPM § 5020.60(A)(1).

UPM § 5020.60(B) provides that the amount of income deemed from a sponsor and the sponsor's spouse is calculated in the following manner:

1. income which is excluded from consideration for assistance unit members is excluded from the sponsor's income;
2. self-employment earnings are adjusted by subtracting the applicable self-employment expenses;
3. the gross monthly earned income amount is reduced by 20% to allow for personal work expenses;
4. the remaining earnings plus gross unearned income is totaled and reduced by the Supplemental Nutrition Assistance Program Gross Income Limit as determined by the family size of the sponsor and any other person who is claimed or who could be claimed by the sponsor or the sponsor's spouse as a dependent for federal income tax purposes;
5. this amount is prorated for the non-citizen if the sponsor is also sponsoring other non-citizens; and
6. this amount is deemed to the assistance unit as unearned income to determine the non-citizen's eligibility.
7. In addition to the amount deemed, any amount in excess of the deemed amount which is paid by the sponsor to each non-citizen is also counted as unearned income.

The Appellant's daughter's monthly gross earnings are calculated by taking the average of two bi-weekly pays and multiplying by 2.15. Her [redacted] 2017 pay of $3,868.06, added to her [redacted] 2018 pay of $3,559.35, totals $7,427.41. The average of the two pays is $3,713.71, multiplied by 2.15 equals $7,984.47 monthly.

20% of $7,984.47 is $1,596.89. After subtracting a 20% personal work expense deduction, the remaining earnings equal $6,387.58.

The Appellant's daughter claims 6 persons as dependents for federal income tax purposes; her family size is 7.

The current SNAP monthly gross income limit for a household size of seven persons that is based on 130% of the federal poverty level is $4,024.00.

After subtracting a 20% deduction for personal work expenses, the Appellant's daughter's remaining earnings of $6,387.58 are further reduced by $4,024.00 representing the daughter's family size, leaving $2,363.58 which is deemed to the sponsored non-citizens. The available income is pro-rated by the number of non-citizens sponsored, so half, $1,181.79, is deemed to the Appellant, and the other half to the Appellant's wife.

The total unearned income for the Appellant's household is $2,801.58, consisting of: $1,181.79 sponsor income deemed to the Appellant, $1,181.79 sponsor income deemed to the Appellant's wife, $219.00 SAGA benefit paid to the Appellant, and $219.00 SAGA benefit paid to the Appellant's wife.

It is excessive detail to cite all the Department's policy relating to its previous finding that the Appellant and her husband were categorically needy for Medicaid under the "HUSKY C – Aged, Blind, Disabled not eligible for State Supplement Cash" coverage group. The previous calculation was erroneous because it failed to deem income from the Appellant's sponsor, and the correct calculation exceeds the income limit for the program by multiples.

In short, and without citation to policy, categorical eligibility for "S02" and "S03" HUSKY C Medicaid exists when income falls short of needs using AABD standards. Needs for AABD consist of a shelter component and a personal needs allowance ("PNA"). The Appellant's only need is the $171.10 personal needs allowance because he has no rental expense. He qualifies for a $339.00 disregard from his unearned income. To determine eligibility, the couple's combined income is compared to their combined needs. The wife's circumstances represent a mirror image, and she would also qualify for a PNA of $171.10 and a disregard of $339.00. The couple's combined income of $2,801.58, minus ($339.00 x 2) disregard, equals $2,123.58 which exceeds their combined needs of $342.20 ($171.10 + $171.10).

The Department was correct when it discontinued the Appellant's HUSKY C effective [redacted] 2018 because his income exceeded the limit for the program.

DISCUSSION

The figures cited in the Department's NOA were incorrect because the Department failed to calculate the deemed sponsor income correctly, not allowing the 20% earned income deduction, and not reducing the income available for deeming based on the number of tax dependents in the sponsor's household. The action taken by the Department was still correct, however.

Individuals who do not qualify for Medicaid as categorically needy may potentially qualify as medically needy with a spend-down requirement. The determination of whether the Appellant may qualify as medically needy is beyond the scope of this hearing, however, and requires information not available. For instance, sponsor deeming rules require that the sponsor's resources be deemed also, which are unknown.

DECISION

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

James Hinckley
Hearing Officer

cc: [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 06105-3725.

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.