**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 # 120031

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2018, the Health Insurance Exchange, Access Health CT ("AHCT"), sent [redacted] (the "Appellant") a Notice of Action ("NOA) denying her application for Medicaid Husky A Parents and Caretakers healthcare coverage ("Husky A") for herself.

On [redacted] 2018, the Appellant requested an administrative hearing to contest the AHCT's decision to deny such benefits.

On [redacted] 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for June 6, 2018.

On [redacted] 2018, in accordance with sections 17b-60, 17b-264 and 4-176e to 4- 189, inclusive, of the Connecticut General Statutes, Chapter 45 Code of Federal Regulations ("CFR") §§ 155.505(b) and 155.510 and/or 42 CFR § 457.1130, OLCRAH held an administrative hearing by telephone.

The following individuals called in for the hearing:

[redacted], Appellant
Krystal Sherman-Davis, AHCT Representative
Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether AHCT correctly denied the Appellant's application for healthcare coverage under the Husky A – Parents and Caretakers program effective [redacted] 2018.

FINDINGS OF FACT

1. On [redacted] 2018, the Appellant submitted an application for medical assistance with AHCT for herself and two children, ages [redacted] and [redacted]. (Hearing Record)

2. AHCT granted medical assistance for the two children under the Husky A-Children program effective [redacted] 2018. (Exhibit 2: Notice of Action)

3. The Appellant is [redacted] years old [redacted] years old born on [redacted]. (Exhibit 3: Application [redacted]18)

4. The Appellant claims the two children as tax dependent. (Appellant's Testimony and Exhibit 3: Application [redacted]/18)

5. The Appellant receives $84.00 per week in child support. (Appellant's Testimony)

6. Child support income is excluded when calculating a household's gross monthly income under the Husky A program. (AHCT's Testimony)

7. The Appellant works for [redacted] (the "employer") and earns $2,461.96 gross wages per month. The Appellant is paid $17.34 per hour and works 30-32 hours per week working more during the heating season. (Application [redacted]/18, Exhibit 2: Notice of Action, and Appellant's Testimony)

8. The Appellant contributes $35.00 per week to a 401K account. (Appellant's Testimony)

9. The Husky A income limit for a household of three is $2,390.00 per month or 138% of the Federal Poverty Limit ("FPL") as determined by the State of Connecticut. (AHCT Representative's Testimony and Exhibit 2: Notice of Action)

10. AHCT determined the Appellant ineligible for Husky A because her monthly income of $2,461.96 exceeds the Husky A income limit of $2,390.00 for a household of three. (Exhibit 2: Notice of Action)

11. On [redacted] 2018, AHCT issued a notice to the Appellant. The notice stated the Appellant is not eligible for medical benefits under the Husky A program because her income of $2,461.96 per month exceeds the Husky A income limit of $2,390.00. (Exhibit 3: Notice of Action)

CONCLUSIONS OF LAW

1. Connecticut General Statutes ("Conn. Gen. Stats.") § 17b-260 provides that 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. State statute provides that 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. (Conn. Gen. Stats. § 17b-264)

3. Title 45 of the Code of Federal Regulations ("CFR") § 155.110(a) 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: (1) An entity: (i) Incorporated under, and subject to the laws of, one or more States;(ii) That has demonstrated experience on a State or regional basis in the individual and small group health insurance markets and in benefits coverage; and(iii) Is not a health insurance issuer or treated as a health insurance issuer under subsection (a) or (b) of section 52 of the Code of 1986 as a member of the same controlled group of corporations (or under common control with) as a health insurance issuer; or (2) The State Medicaid agency, or any other State agency that meets the qualifications of paragraph (a)(1) of this section.

4. 45 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) or this section that is designated by the Exchange, if the Exchange establishes an appeals process in accordance with the requirements of this subpart.

5. 45 CFR § 155.505(d) provides that an appeals process established under this

subpart must comply with § 155.110(a).

6. 42 CFR § 435.110(c) provides for the *income standard.* The agency must establish in its State plan the income standard as follows:

    1. The minimum income standard is a State's AFDC income standard in effect as of May 1, 1988 for the applicable family size converted to a MAGI-equivalent standard in accordance with guidance issued by the Secretary under section 1902(e)(14)(A) and (E) of the Act.
    2. The maximum income standard is the higher of-
        i. The effective income level in effect for section 1931 low-income families under the Medicaid State plan or waiver of the State plan as of March 23, 2010 or December 31, 2013, if higher, converted to a MAGI-equivalent standard in accordance with guidance issued by the Secretary under section 1902(e)(14)(A) and (E) of the Act; or
        ii. A state's AFDC income standard in effect as of July 16, 1996 for the applicable family size, increased by no more than the percentage increase in the Consumer Price Index for all urban consumers between July 16, 1996 and the effective date of such increase.

7. The 2018 Supplement to the Connecticut General Statutes § 17b-261(a) provides that medical assistance shall be provided for any otherwise eligible person whose income, including any available support from legally liable relatives and the income of the person's spouse or dependent child, is not more than one hundred forty-three per cent, pending approval of a federal waiver applied for pursuant to subsection (e) of this section, of the benefit amount paid to a person with no income under the temporary family assistance program in the appropriate region of residence and if such person is an institutionalized individual as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3), and has not made an assignment or transfer or other disposition of property for less than fair market value for the purpose of establishing eligibility for benefits or assistance under this section. Any such disposition shall be treated in accordance with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). Any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, person authorized to make such disposition pursuant to a power of attorney or other person so authorized by law shall be attributed to such applicant, recipient or spouse. A disposition of property ordered by a court shall be evaluated in accordance with the standards applied to any other such disposition for the purpose of determining eligibility. The commissioner shall establish the standards for eligibility for medical assistance at one hundred forty-three per cent of the benefit amount paid to a household of equal size with no income under the temporary family assistance program in the appropriate region of residence. In determining eligibility, 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. Except

as provided in section 17b-277 and section 17b-292, 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 thirty-three per cent of the federal poverty level without an asset limit. Such levels shall be based on the regional differences in such benefit amount, if applicable, unless such levels based on regional differences are not in conformance with federal law. Any income in excess of the applicable amounts shall be applied as may be required by said federal law, and assistance shall be granted for the balance of the cost of authorized medical assistance. The Commissioner of Social Services shall provide applicants for assistance under this section, at the time of application, with a written statement advising them of (1) the effect of an assignment or transfer or other disposition of property on eligibility for benefits or assistance, (2) the effect that having income that exceeds the limits prescribed in this subsection will have with respect to program eligibility, and (3) the availability of, and eligibility for, services provided by the Nurturing Families Network established pursuant to section 17b-751b. For coverage dates on or after January 1, 2014, the department shall use the modified adjusted gross income financial eligibility rules set forth in Section 1902(e)(14) of the Social Security Act and the implementing regulations to determine eligibility for HUSKY A, HUSKY B and HUSKY D applicants, as defined in section 17b-290. Persons who are determined ineligible for assistance pursuant to this section shall be provided a written statement notifying such persons of their ineligibility and advising such persons of their potential eligibility for one of the other insurance affordability programs as defined in 42 CFR 435.4.

State statute defines Husky A as Medicaid provided to children, caretaker relatives and pregnant and postpartum women pursuant to section 17b-261 or 17b-277. [Conn. Gen. Stats. § 17b-290]

8. Effective January 1, 2018, the Federal Poverty Limit (“FPL”) for a household of three is $1,732.00 per month. ($20,780.00 per year / 12 months = $1,731.666 per month) [Federal Register, Vol. 83, No. 12, January 18, 2018, pp. 2642-2643]

9. 42 CFR § 435.603(d)(4) provides that effective January 1, 2014, in determining the eligibility of an individual using MAGI – based income, 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 in the applicable Title of the Act, but not to

determine eligibility for a particular eligibility group.

10. AHCT correctly determined the Medicaid Husky A income limit for a household of three as $2,390.00 per month by adding 5% of the FPL to the Medicaid income limit for a household of three which is 133% rather than subtracting the 5% of the FPL from the Appellant's gross wages. [133% + 5% = 138%, $1,732.00 FPL for household of 3 x 138% = $2,390.16]

11. 42 CFR § 435.603(a)(1) that this section implements section 1902(e)(14) of the Act.

12. 42 CFR § 435.603(a)(2) provides that effective January 1, 2014, the agency must apply the financial methodologies set forth in this section in determining the financial eligibility of all individuals for Medicaid, except for individual identifies in paragraph (j) of this section and as provided in paragraph (a)(3) of this section.

13. 42 CFR § 435.603(b) provides for purposes of this section - *family size* means the number of persons counted as members of an individual's household. In the case of determining the family size of a pregnant woman, the pregnant woman is counted as herself plus the number of children she is expected to deliver. In the case of determining the family size of other individual who have a pregnant woman in their household, the pregnant woman is counted, at State option, as either 1 or 2 person(s) or as herself plus the number of children she is expect to deliver.

14. AHCT correctly determined the family size as three (3) members of the Appellant's household: the Appellant and the two children.

15. 42 CFR § 435.603(c) provides that except as specified in paragraph (i), (j), and (k) of this section, the agency must determine financial eligibility for Medicaid based on "household income" as defined in paragraph (d) of this section.

16. 42 CFR § 435.603(d)(1) provides for household income. Except as provided in paragraphs (d)(2) through (d)(4) of this section, household 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.

    42 CFR § 435.603(d)(2)(i) provides for *income of children and tax dependents.* The MAGI-based income of an individual who is included in the household of his or her natural, adopted or step parent and is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which eligibility for Medicaid is being determined, is not included in household income whether or not the individual files a tax return.

    42 CFR 435.603(h)(1) provides for *applicants and new enrollees.* Financial eligibility for Medicaid for applicants, and other individuals not receiving

Medicaid benefits at the point at which eligibility for Medicaid is being determined, must be based on current monthly household income and family size.

17. 42 CFR § 435.603(e) provides for MAGI-based income. For the purposes of this section, 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 expenses are excluded from income
    3. Provides for American Indian/Alaska Native exceptions.

18. United States Code ("U.S.C.") § 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.

19. Title 26 of the United States Code ("U.S.C.") § 62(a)(7) provides for adjusted gross income defined. For purposes of this subtitle, the term "adjusted gross income" means in the case of an individual, gross income minus the following deductions: retirement savings, the deduction allowed by section 219 (relating to deduction of certain retirement savings).

    26 U.S.C § 219(a) provides that in the case of an individual, there shall be allowed as a deduction an amount equal to the qualified retirement contributions of the individual for the taxable year.

20. Based on the hearing record, eligibility for the retirement savings deduction under the adjusted gross income cannot be determined. More information is necessary to determine if the Appellant's weekly contribution of $35.00 to her 401k is a qualified retirement contribution.

21. Based on the hearing record, the Appellant's modified adjusted income cannot be determined. Without clarification of the Appellant's adjusted gross income, the Appellant's modified adjusted income cannot be determined.

DECISION

The Appellant's appeal is remanded back for further action.

ORDER

1. AHCT must reopen the Appellant's application for Medicaid under the Husky A program effective [redacted] 2018 and request documentation of the weekly 401K deduction in order to correctly determine the Appellant adjusted gross income and recalculate the Appellant's modified adjusted gross income to determine eligibility under the Husky A program.

2. Compliance is due [redacted] 2018.

Lisa A. Nyren
Fair Hearing Officer

CC: Becky Brown, Access Health CT
Mike Towers, Access Health CT
Krystal Sherman-Davis, Access Health CT

Modified Adjusted Gross Income (MAGI) Medicaid and Children's Health Insurance Program (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.

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 extensions 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.