

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

██████████ 2018  
Signature Confirmation

Client ID # ██████████  
Request # ██████████

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████, the Department of Social Services (the "Department") issued a Notice of Action ("NOA") to ██████████ (the "Appellant") discontinuing his Medicare Savings Program ("MSP") benefits because his household's monthly net income was more than the limit for the program.

On ██████████, the Appellant requested an administrative hearing to contest the Department's discontinuance of his MSP benefits.

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

On ██████████, in accordance with sections 17b-60, 17b-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:

██████████, Appellant  
Javier Rivera, Department's Representative  
James Hinckley, Hearing Officer

## STATEMENT OF THE ISSUE

The issue is whether the Department was correct when it discontinued the Appellant's MSP program benefits because his household's income exceeded the limit.

## FINDINGS OF FACT

1. The Appellant is 69 years old. (Hearing Record)
2. The Appellant is married and resides with his wife, [REDACTED] (his "wife"), who is also 69 years old. (Hearing Record)
3. Both the Appellant and his wife are eligible for Medicare Part A benefits. (Hearing Record)
4. In [REDACTED] 2016, the Appellant received MSP benefits as an "Additional Low-Income Medicare Beneficiary" ("ALMB"), and his wife did not receive MSP benefits at that time. (Hearing Record)
5. When the Appellant submitted a *Renewal of Eligibility* form to the Department on [REDACTED] 2016, he requested that his benefits be renewed, but did not request that his wife be renewed or added as a household member. (Ex. 8: W-1ER Renewal of Eligibility form received [REDACTED]/16)
6. Despite not receiving MSP benefits in [REDACTED] 2016, the Appellant's wife was erroneously coded by the Department on the Appellant's case to reflect that she was a recipient of MSP, and that her income should be treated according to the deeming rules applied to spouses who are also eligible recipients of the program (financial responsibility code "AS"). (Ex. 3: Assistance Status screen [REDACTED] 2016)
7. The MSP income deeming rules for spouses who are also MSP applicants or recipients treat income more favorably than the deeming rules for spouses who are ineligible for MSP. (Summary, [REDACTED] testimony)
8. When the Appellant renewed his MSP benefits in [REDACTED] 2017, he requested no changes to his case and reported no changes in his household's income, and the Department renewed his benefits with no changes; the Department made no correction to the erroneous coding of the Appellant's wife as a recipient of MSP when she was not. (Ex. 11: W-1ER Renewal of Eligibility form received [REDACTED]/17, Hearing Record)
9. On [REDACTED], a Department eligibility worker was required to work on the Appellant's case to resolve a benefit mismatch; a benefit mismatch occurs when information from an interface with another agency's records does not match the Department's records. (Ex. 1: Case Notes, [REDACTED] testimony)

10. At the time the eligibility worker worked on the Appellant's case on [REDACTED], he or she recognized that the Appellant's wife was erroneously coded as a recipient of MSP when she was not, and corrected the coding. (Ex. 1)
11. On [REDACTED], the Department issued a NOA to the Appellant discontinuing his MSP – Additional Low Income Medicare Beneficiaries program benefits because his monthly net income was more than the limit for the program. (Ex. 2: NOA dated [REDACTED]/18)
12. At the time the Appellant's benefits were discontinued on [REDACTED], the Department's information reflected that the Appellant was receiving \$1,649.00 gross monthly from Social Security, and that his wife was receiving \$1,025.00 gross monthly from Social Security and \$1,257.29 monthly from wages. (Ex. 2)
13. The Social Security benefit amounts reflected in the [REDACTED] NOA are the accurate current amounts for both the Appellant and his wife, and the Appellant's wife's wages have not changed substantially from the figure stated in the NOA. (Ex. 9: BENDEX inquiry for [REDACTED], Ex. 10: SOLQ-I Results for [REDACTED], Appellant's testimony)

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes ("C.G.S.") authorizes the Commissioner to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. UPM § 2540.97(A) provides that the 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).
3. Connecticut General Statutes (C.G.S.) §17b-256(f) provides for regulations for eligibility for Medicare savings programs and provides in part that beginning March 1, 2012, and annually thereafter, the Commissioner of Social Services shall increase income disregards used to determine eligibility by the Department of Social Services for the federal Specified Low-Income Medicare Beneficiary, the Qualified Medicare Beneficiary, and the Qualifying Individual Programs, administered in accordance with the provisions of 42 USC 1396d(p), by an amount that equalizes the income levels and deductions used to determine eligibility for said programs with income levels and deductions used to determine eligibility for the ConnPACE program under subsection (a) of section 17b-492.

4. Section 17b-492(a) C.G.S. provides in part that: Eligibility for participation in the program shall be limited to any resident (1) who is sixty-five years of age or older or who is disabled, (2) whose current annual income at the time of application or redetermination, if unmarried, is less than twenty thousand eight hundred dollars or whose annual income, if married, when combined with that of the resident's spouse is less than twenty-eight thousand one hundred dollars; and that on January 1, 2012, and annually thereafter, the commissioner shall increase the income limits established under this subsection over those of the previous fiscal year to reflect the annual inflation adjustment in Social Security income, if any, and that each such adjustment shall be determined to the nearest one hundred dollars.

The current MSP income limit for ALMB for a couple is \$3,375.12.

5. UPM § 2540.97(D) provides that for the ALMB program, AABD income criteria, including deeming methodology, is used (Cross Reference 5000).

UPM § 5020.70 discusses deemed income from spouses for the AABD program.

UPM § 5020.70(C) provides that:

1. income which is excluded from that of an assistance unit member is also excluded from the income of the deemor.
2. The amount deemed to the unit from the unit member's spouse is calculated in the following manner when the spouse has applied and has been determined eligible to receive AABD:
  - a. the deemor's self-employment earnings are reduced by self-employment expenses, if applicable;
  - b. the deemor's gross earnings are reduced by the appropriate deductions and disregards allowed under the program for which he or she has been determined eligible (Cross References: 5030 – Income Disregards, 5035 – Income Deductions).
  - c. the deemor's gross unearned income is reduced by the standard disregard (Cross Reference: 5030 – Income Disregards);
  - d. the applied earned and applied unearned income amounts are added together for a total amount of deemed income.
3. 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 of deductions 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 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.
4. If both spouses are applying or receiving assistance, this process is performed for each spouse to determine the amount deemed to the other.

UPM § 5030.15(B) provides for a standard disregard that is deducted from the unearned income of eligible recipients.

UPM § 5030.10(B) provides that eligible recipients will have \$65.00 per month plus ½ of the remaining income disregarded from their earned income.

**MSP programs use AABD income criteria, including deeming methodology. Under AABD deeming methodology, eligible recipients have significantly less of their income counted, because they are entitled to disregards from their earned income and from their unearned income that ineligible individuals are not entitled to [note the difference in methodologies between UPM 5020.70(C)(2) vs. 5020.70(C)(3)].**

**The Appellant's MSP eligibility was being determined incorrectly until [REDACTED], when a Department worker corrected a code that erroneously identified the Appellant's wife as a recipient of MSP assistance. Until that time, the income of the Appellant's spouse that was being counted was being reduced by disregards to her earned and unearned income that she was not actually entitled to. After correcting the coding to reflect that the Appellant's wife was not a recipient of MSP, a recalculation of the Appellant's household's countable income determined that it exceeded the MSP-ALMB income threshold of \$3,375.12 for a couple.**

**The Department was correct when it discontinued the Appellant's MSP program benefits on [REDACTED], because a corrected calculation of his household's income determined that it exceeded the limit for the program.**

## DISCUSSION

The Appellant and his wife are both over the age of 65, and both are eligible for Medicare. Therefore, they are both potentially eligible for MSP benefits.

The Appellant's wife never applied for MSP benefits, even though she was potentially eligible for them.

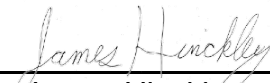
The reason the Appellant is now ineligible for MSP is because his wife is not eligible. Because his wife does not qualify for benefits, a larger share of her income is counted toward her husband, making him ineligible.

The rules for the program are admittedly somewhat difficult to understand, but:

If the Appellant and his wife are both interested in receiving MSP benefits, they ***should both file new applications for the program.*** If their income has not changed substantially from what it was at the time the Appellant's benefits were discontinued, ***both of them should qualify.*** If the Appellant applies only for himself, he will not qualify.

## 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, 25 Sigourney Street, Hartford, CT 06106-5033.

### **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, 25 Sigourney Street, Hartford, CT 06106. 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.