

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

██████████ 2019
Signature Confirmation

████████████████████
Request # 132275

NOTICE OF DECISION

PARTY

████████████████████
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PROCEDURAL BACKGROUND

On ██████████, 2018, the Department of Social Services (the "Department") sent ██████████ (the "Appellant"), a Notice of Action ("NOA") discontinuing the Qualified Medicare Beneficiaries ("QMB") benefit under the Medicare Savings Program ("MSP") due to excess income effective ██████████ 2018.

On ██████████, 2018, the Appellant requested an administrative hearing to contest the Department's determination.

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

On ██████████ 2018, the Appellant requested the administrative hearing to be rescheduled.

On ██████████, 2018, OLCRAH issued a notice rescheduling the administrative hearing for ██████████, 2019.

On ██████████ 2019, the Appellant withdrew his request for the administrative hearing.

The Appellant rescinded the [REDACTED] 2019, administrative hearing withdrawal.

On [REDACTED], 2019, OLCRAH issued a notice rescheduling the administrative hearing for [REDACTED], 2019.

On [REDACTED] 2019, 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
 Zayda Santos-Smith, Department's Representative
 Carla Hardy, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to deny the Appellant's medical coverage under the MSP due to excess income was correct.

FINDINGS OF FACT

1. The Appellant and his spouse, [REDACTED] reside at [REDACTED] [REDACTED] (Appellant's Testimony, Department's Testimony)
2. On [REDACTED] 2018, the Department completed the Appellant's renewal of medical benefits under the MSP. The Appellant's coverage under the Qualified Medicare Beneficiaries ("QMB") was continued for the [REDACTED] 2018 through [REDACTED] 2019 redetermination period. (Exhibit 3: NOAs dated [REDACTED]/18 and [REDACTED]/18 and Notice of Renewal of Eligibility, [REDACTED]/18)
3. The Appellant's monthly Social Security ("SSA") income is \$2,301.00 per month. (Exhibit 3; Appellant's Testimony; Hearing Summary)
4. On [REDACTED], 2018, the Department was notified that the Appellant's spouse was approved for \$1,245.00 in Social Security Disability ("SSD") income per month effective [REDACTED] 2018. (Exhibit 1: Unearned Income Details)
5. The Appellant's household income totals \$3,546.00 (\$2,301.00 SSA + \$1,245.00 SSD = \$3,546.00) monthly. (Facts 3 and 4; Hearing Summary)
6. On [REDACTED], 2018, the Department discontinued the Appellant's MSP benefit under the QMB program. (Exhibit 3)

7. On [REDACTED], 2018, the Appellant requested an administrative hearing. He indicated that he is separated from his spouse. (Hearing Officer's Exhibit AA: Hearing Request)
8. The administrative hearing was scheduled for [REDACTED] 2018, and then rescheduled for [REDACTED] 2019. (Hearing Record)
9. On [REDACTED] 2019, the Appellant appeared for his administrative hearing. He was informed by the Department that he and his spouse would be considered separate households if he wrote a statement stating that he and his spouse were separated. (Appellant's Testimony; Department's Testimony)
10. The Appellant wrote the statement and withdrew the hearing because he was informed by the Department that the MSP benefits would be reinstated. (Exhibit 7 : Hearing Withdrawal Letter, [REDACTED] 19; Appellant's Testimony)
11. The Department discussed the case with its superior and was informed that information that was given to the Appellant was not correct and that the Appellant and his spouse would not be considered separate households. (Department's Testimony)
12. The Department did not reinstate the MSP benefit. (Hearing Record)
13. The Appellant realized his MSP was not reinstated when he tried to use the medical card and it didn't work. (Appellant's Testimony)
14. The Appellant rescinded his withdrawal of the administrative hearing that he gave to the Department on [REDACTED], 2019. (Hearing Record)
15. On [REDACTED] 2019, OLCRAH rescheduled another administrative hearing for [REDACTED] 2019.
16. On [REDACTED], 2019, the administrative hearing was held. (Hearing Record)
17. The Appellant and his spouse [REDACTED] reside in the same home. (Appellant's Testimony).
18. The Appellant and his spouse are not divorced or legally separated. (Appellant's Testimony)
19. On [REDACTED], 2018, the Federal Poverty Limit ("FPL") for a household of two was \$1,372.00. (Federal Register)

20. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on November 26, 2018. Therefore, this decision was due not later than February 24, 2019. However, the hearing which was originally scheduled for December 21, 2019, was rescheduled for January 14, 2019 and rescheduled again for February 13, 2019, at the request of the Appellant, which caused a 54-day delay. Because this 54-day delay resulted from the Appellant's request, this decision is not due until April 19, 2019, and is therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorized 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-256f provides in relevant part for 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 Commissioner shall not apply an asset test for eligibility under MSP. 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. The Commissioner of Social Services, pursuant to section 17b-10, may implement policies and procedures to administer the provisions of this section while in the process of adopting such policies and procedures in regulation form, provided the Commissioner prints notice of the intent to adopt the regulations on the department's Internet web site and the eRegulations System not later than twenty days after the date of implementation. Such policies and procedures shall be valid until the time final regulations are adopted.

The ALMB program is the Department's Qualifying Individual Program and has the highest limit of the three MSP coverage groups.

4. Uniform Policy Manual ("UPM") § 2540.94(A)(1) provides for Qualified Medicare Beneficiaries ("QMB") coverage group to include individuals who:
 - a. are entitled to hospital insurance benefits under part A of Title XVIII of the Social Security Act; and
 - b. have income and assets equal to or less than the limits described in paragraph C and D.

5. UPM § 2540.94(D) provides for the income criteria under the QMB.
 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 income must be equal to or less than 100% percent of the Federal Poverty Level for the appropriate needs group size.
 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.

6. UPM § P-4530.25(4) provides that in determining the eligibility for Qualified Medicare Beneficiaries (QMB-Q01) the Department compares the applied earned income and gross unearned income of the needs group to 211% of the Federal Poverty Level. If the combined income is below the monthly income level the individual is eligible for QMB.

<u>Needs Group Size</u>	<u>Monthly Income Level</u>
-	
1	\$2,135.32
2	\$2,894.92

7. Effective March 1, 2018, the Department established the income limit under the MSP applicable to the QMB program for a household of two as \$2,894.92. ($\$1,372.00 \times 211\% = \$2,894.92$)
8. UPM § 2540.95(A) provides for Specified Low Income Medicare Beneficiaries (“SLMB”) coverage group to include individuals who would be Qualified Medicare Beneficiaries described in § 2540.94, except that their applied income exceeds 100 percent of the Federal Poverty Level, but is less than 120 percent of the Federal Poverty Level.
9. UPM § P-4530.26(4) provides that in determining the eligibility for Specified Low Income Medicare Beneficiaries (SLMB-Q03) the Department compares the applied earned income and gross unearned income of the needs group to 231% of the Federal Poverty Level. If the combined income is below the monthly income level the individual is eligible for Q03.

<u>Needs Group Size</u>	<u>Monthly Income Level</u>
1	\$ 2,337.72
2	\$ 3,169.32

10. Effective March 1, 2018, the Department established the income limit under the MSP applicable to the SLMB program for a household of two as \$3,169.32 ($\$1,372.00 \times 231\% = \$3,169.32$).
11. UPM § 2540.97(A) provides for Additional Low Income Medicare Beneficiaries (“ALMB”) coverage group to include individual who would be Qualified Medicare Beneficiaries described in § 2540.94, except that their applied income exceeds 120 percent of the Federal Poverty Level, but is less than 135 percent of the Federal Poverty Level.
12. UPM § P-4530.27(4) provides that in determining the eligibility for Additional Low Income Medicare Beneficiaries (ALMB-Q04) the Department compares the applied earned income and gross unearned income of the needs group to 246% of the Federal Poverty Level. If the combined income is below the monthly income level the individual is eligible for Q04.

<u>Needs Group Size</u>	<u>Monthly Income Level</u>
1	\$2,489.52
2	\$3,375.12

13. Effective March 1, 2018, the Department established the income limit under the MSP application to the ALMB program for a household of two persons as \$3,375.12 ($\$1,372.00 \times 246\% = \$3,375.12$).
14. 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.
15. The Department correctly determined an assistance unit of one.
16. 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)
17. UPM § 5020.75(A)(3) provides that a spouse who is considered to be living with an assistance unit member is a member of the needs group when determining the assistance unit's eligibility.
18. The Department correctly determined that the Appellant's spouse is a member of the needs group.
19. The Department correctly determined a needs group of two.
20. UPM § 5025.05(B)(1) pertains to the treatment of prospective income; if income is received on a monthly basis, a representative monthly amount is used as the estimate of income.
21. UPM § 5050.13(A)(1) provides that income from the Social Security and Veteran's Benefits is treated as unearned income in all programs.
22. The Department correctly determined the Appellant's income from SSA was \$2,301.00 per month.
23. 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).

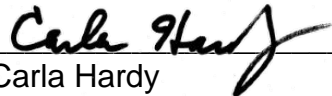
24. UPM § 5020.75(B)(1)(a)(b) provides that the Department does not deem income from spouses who are living apart, or parents who live apart from their children.
25. UPM § 5020.75(B)(2) provides that spouses are considered to be living apart under the following circumstances:
 - a. One spouse has left the home and does not return; or
 - b. Both are residing in different rooms in the same boarding home; or
 - c. Both are residing in the same long term care facility; or
 - d. One spouse is receiving home and community based services (CBS) under a Medicaid waiver.
26. The Appellant's spouse resides in the same home as the Appellant.
27. The Department correctly determined that the Appellant's spouse is a deemor.
28. UPM § 5020.75(C) provides that deemed income is calculated from parents and from spouses in the same way as in AABD for members of the following groups:
 1. Recipients of AABD;
 2. AABD-Eligible Non-Recipients;
 3. Eligible for AABD except for a Non-Medicaid Requirement;
 4. Medically Needy Aged, Blind, and Disabled;
 5. Qualified Medicare Beneficiaries;
 6. Specified Low Income Medicare Beneficiaries;
 7. Additional Low Income Medicare Beneficiaries.
29. 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 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 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.
30. The Department correctly determined the Appellant's spouse receives \$1,245.00 monthly in SSD income.
31. The Department correctly determined the amount deemed from the Appellant's spouse is \$1,245.00 per month.
32. 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.
33. The Department correctly determined the Appellant's gross Social Security Benefit as \$2,301.00 per month.
34. The Department correctly determined the Appellant's spouse's Social Security benefit as \$1,245.00 per month.
35. The Department correctly determined the Appellant's household's monthly applied income equals \$3,546.00 ($\$2,301.00 + \$1,245.00 = \$3,546.00$) per month.
36. The Department correctly determined the Appellant's monthly household income of \$3,546.00 exceeds the \$2,894.92 QMB program limit.
37. The Department correctly determined the Appellant's \$3,546.00 monthly household limit exceeds the \$3,169.32 SLMB program limit.
38. The Department correctly determined the Appellant's \$3,546.00 monthly household limit exceeds the \$3,375.12 ALMB program limit.

39. On [REDACTED] 2018, the Department correctly issued a notice discontinuing the Appellant's MSP under the QMB program effective [REDACTED] 2018.

DECISION

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



Carla Hardy
Hearing Officer

Pc: Musa Mohamud, Greater Hartford Office
Judy Williams, Greater Hartford Office
Jessica Carroll, Greater Hartford Office
Jay Bartolomei, Greater Hartford Office
Zayda Santos-Smith, Greater Hartford Office

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 Legal Counsel, Regulations, and Administrative Hearings, 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 06105-3725. 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 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.