

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

CLIENT No # ██████████
Request # ██████████

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2018, the Department of Social Services - (“the Department”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) discontinuing the Q03 Specified Low Income Medicare Beneficiaries (“SLMB”) under the Medicare Savings Program (“MSP”) due to excess income.

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 ██████████ 2019.

On ██████████ 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:

██████████, Appellant
██████████, Appellant’s daughter
Amy Koropatkin, Department’s Representative
Almelinda McLeod, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department's decision to discontinue benefits under the Medicare Savings Program (MSP) due to excess income was correct.

FINDINGS OF FACT

1. The Appellant is married living with her spouse in the community. (Hearing record)
2. The Appellant's monthly income consists of Social Security of \$897.00 per month. (Exhibit B- MA Income Test)
3. The Appellant's spouse income consists of Social Security of \$1783.00 per month and a gross monthly pension of \$479.40. His total monthly income is \$2262.40.(Exhibit B- MA Income Test)
4. The Appellant's total household income was \$3159.40. (Exhibit C- MA Income Test.
5. The SLMB Income Limit for a married couple is \$3169.32. (Income Limits & Standards 4/1/18)
6. From [REDACTED] 2017 through [REDACTED], 2018, the Appellant received benefits under the MSP- Specified Low Income Medicare Beneficiaries ("SLMB"). (Exhibit D- Eligibility Determination Results)
7. On [REDACTED] 2018, the Appellant applied for M03 Home Care assistance program. (Exhibit D)
8. On [REDACTED] 2018, The Appellant's application for the M03 was denied. (Exhibit D)
9. On [REDACTED] 2018, the Department's Impact system generated a community member allowance ('CA") of \$238.40 and included this new income towards the Appellants monthly income as a household of one. In doing so, the Appellant became ineligible for the SLMB effective [REDACTED] 2018. (Exhibit A)
10. The Appellant disputes this new income of \$238.40 and has never heard of "community member allowance". She questions where this income came from. (Appellant testimony)

11. The Department acknowledges that this income may be invalid given the denial of the M03 application and the fact that the Appellant and spouse are still married living together in the community; however the Department have been unable to remove this income. (Hearing summary & record)
12. A request to override the system had been made to the Department's supervisor for both the Appellant and her spouse for the month of [REDACTED] 2018 and [REDACTED] 2019 while they continue to look into correcting the case. (Department's Hearing summary & testimony)
13. The issuance of this decision is timely under the Code of Federal Regulations §273.15 which states that a decision must be reached and the household notified within 90 days of the request for a fair hearing. The Appellant requested an administrative hearing on [REDACTED], 2018, therefore this decision was not due not later than [REDACTED], 2019. However, the administrative hearing was re-scheduled upon the Appellant's request and the close of the hearing record was extended to [REDACTED] 2019. Because of the 20 day delay in the close of the hearing record, this final decision was not due until [REDACTED] 2019; and is therefore timely.

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.
2. 42 U.S.C. § 1396d (p) (1) (B) 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.
3. Section §17b-256(f) of the Connecticut General Statutes provides for the Medicare Saving Program Regulations. 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 the Medicare Savings Program. 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 in the Connecticut Law Journal not later than twenty days after the date of implementation. Such policies and procedures shall be valid until the time final regulations are adopted.

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. Effective January 1, 2018, the 2018 federal poverty guidelines for the 48 contiguous States and the District of Columbia for a household of two is \$16,460; which converted and rounded up is \$1372.00 per month. (Federal Register)
6. As of July 1, 2018, the Department established the income limit under the Medicare Savings Program (“MSP”) applicable to the SLMB program for a household of two as \$3169.32 per month.
7. UPM §2540.95 (A) provides that the SLMB coverage group includes 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.

8. UPM P-4530.26 (4) provides that in determining 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 (“FPL”). If the combined income is below the monthly income level the individual is eligible for Q03.

Needs Group size	Monthly Income Level
1	\$2337.72
2	\$3169.32


9. **Effective July 1, 2018, the FPL for an assistance unit of two people is \$1372. The income limit for SLMB is \$3169.32, or 231% of the FPL. (\$1372 x 231%)**
10. UPM §2540.95(D) (1) provides that 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 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.
11. Section §17b-492(a) also provides 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.
12. UPM §5050.13(A) (1) provides benefits from Social Security and Veteran’s Benefits income is treated as unearned income in all programs.
13. UPM §5050.09 (A) provides that payments received by the assistance unit from annuity plans, pensions and trusts are considered unearned income.
14. UPM § 5515.05 (C) (2) provides in part that the needs group for a 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 applying for or receiving assistance, except in cases involving working individuals with disabilities.
15. **The Department correctly determined that the Appellant is a needs group of two.**

16. 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.
- 17. The Department correctly determined the Appellant's monthly gross income from Social Security was \$897.00 per month.**
- 18. The Department correctly determined the Appellant's spouse monthly gross income from Social Security was \$1783.00 and his monthly gross income from his pension was \$479.40.**
- 19. The Department acknowledged that the \$238.40 community member allowance may have been invalid due to the denial of the M03 application; therefore the Department incorrectly determined the \$238.40 community member allowance as the Appellant's income.**
20. UPM § 545.10 (E) provides that the assistance unit's total applied income is the sum of the unit's applied earnings, applied unearned income and the amount deemed.
- 21. The correct applied income for the assistance unit is \$3159.40 (\$897.00 + \$1783.00 + \$479.40)**
22. UPM § 2540.95 (D) (2) provides in part that for the SLMB program, the income to be compared with the Federal Poverty Level is the applied income of MAABD individuals living in the community.
- 23. The Department incorrectly determined that the assistance unit's applied income of \$3159.40 exceeded the SLMB income limit of \$3169.32.**
24. On [REDACTED] 2018, the Department incorrectly discontinued the Appellant's MSP under the SLMB- Q03 program due to excess income.

DECISION

The Appellant's appeal is GRANTED.

1. The Department will re-open the Appellant's MSP, SLMB effective [REDACTED] 2018.
2. The Department shall remove the \$238.40 community member allowance and recalculate the Appellant's applied income based on the Appellant's social security income and her spouses' social security income and pension.
3. Compliance with this order shall be provided to the undersigned no later than [REDACTED], 2019.


Almelinda McLeod
Hearing Officer

CC: Patricia Ostroski, SSOM, New Britain Regional Office
Amy Koropatkin, Fair Hearing liaison, New Britain Regional 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.

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 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.