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

[redacted] 2019
Signature confirmation

Case: [redacted]
Client: [redacted]
Request: 138301

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2019, the Department of Social Services (the "Department") issued [redacted] (the "Appellant") a *Notice of Action* stating the Appellant was eligible to receive HUSKY-C/Working Disabled medical coverage, but that he would be required to pay [redacted] per month in premiums for the service months of [redacted] 2018, [redacted] 2018, [redacted] 2018, [redacted] 2018, [redacted] 2018, and [redacted] 2018.

On [redacted] 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received the Appellant's [redacted] 2019 postmarked hearing request. The Appellant argued that his premium should remain [redacted], based on his Impairment-Related Work Expenses.

On [redacted], 2019, the OLCRAH scheduled the administrative hearing for [redacted] 2019.

On [redacted] 2019, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The following individuals attended:

[redacted], Appellant
[redacted], Appellant's witness
Garfield White, Department's representative
Eva Tar, Hearing Officer

On [redacted], 2019, the hearing record closed.

STATEMENT OF ISSUE

The issue is whether on [redacted] 2019, the Department correctly determined that the Appellant's HUSKY-C/Working Disabled monthly premiums for the service months of [redacted] 2018 through [redacted] 2018 equaled [redacted] per month.

FINDINGS OF FACT

1. The Appellant has the following diagnoses: [redacted], and [redacted]. (Appellant's Exhibit 5)

2. In [redacted] 2018, the Appellant was a participant in the HUSKY-C/Working Disabled Program with a monthly premium of [redacted]. (Department's Exhibit F)

3. In [redacted] 2018, the Department received the Appellant's *Renewal of Eligibility* form, signed by him on [redacted] 2018. (Department's Exhibits A and B)

4. Although the Department received the Appellant's signed [redacted] 2018 *Renewal of Eligibility* form timely, the Department did not complete a review of the form until [redacted] 2019. (Department's Exhibit A)(Department's Exhibit G)

5. The Department's [redacted]-month delay in reviewing the Appellant's [redacted] 2018 renewal form caused the Appellant's HUSKY-C/Working Disabled medical coverage in error to continue with no adjustment to the [redacted] premium. (Department's representative's testimony)

6. On [redacted] 2019, the Department notified the Appellant that he was required to pay a monthly premium of [redacted] per month for the service months of [redacted] 2018, [redacted] 2018, [redacted] 2018, [redacted] 2018, [redacted] 2018, and [redacted] 2018 or his HUSKY-C/Working Disabled medical coverage would terminate. (Department's Exhibit F)

7. On [redacted] 2019, the OLCRAH received the Appellant's hearing request disputing the imposition of a premium. (Hearing record)

8. On [redacted] 2019, the Department issued a demand letter to the Appellant for [redacted] in premium payments—for [redacted] per month for the service months from [redacted] 2018 through [redacted] 2018—payable on receipt. (Department's Exhibit J)

9. On [redacted] 2019, the Department terminated the Appellant's HUSKY-C/Working Disabled medical coverage effective [redacted] 2019. (Department's Exhibit L)

10. The Department reinstated the Appellant's HUSKY-C/Working Disabled medical coverage pending the outcome of this administrative hearing. (Department's representative's testimony)

11. In [redacted], the Appellant grossed [redacted] per month in Social Security disability income ("SSDI"). (Department's Exhibit M)

12. In [redacted], the Appellant had Medicare A and Medicare B coverage. (Department's Exhibit M)

13. In [redacted], the Department paid the Appellant's Medicare B premium. (Department's Exhibits F and M)

14. In [redacted], the Appellant worked as a personal care attendant for the individual with whom he resides. (Appellant's testimony)(Appellant's Exhibit 1)

15. Through [redacted] 2018, the Appellant worked for [redacted]. (Appellant's Exhibit 2 and 4)

16. In [redacted] 2018, the Appellant began to work for [redacted] (Appellant's testimony)(Appellant's Exhibit 3)

17. From [redacted] 2018 through [redacted] 2018, the Appellant had the following gross income:

	SSDI benefits	PCA wages	[redacted] wages	[redacted] wages	Total gross income
[redacted] 2018	[redacted]	[redacted]	[redacted]	--	4,207.00
[redacted] 2018	[redacted]	[redacted]	[redacted]	--	4,445.40
[redacted] 2018	[redacted]	[redacted]	[redacted]	--	5,319.30
[redacted] 2018	[redacted]	[redacted]	[redacted]	--	4,222.20
[redacted] 2018	[redacted]	[redacted]	[redacted]	--	4,119.00
[redacted] 2018	[redacted]	[redacted]	[redacted]	[redacted]	4,404.74

(Department's Exhibit M)/(Appellant's Exhibits 1, 2, and 3)

18. With respect to its [redacted] 2019 retroactive calculation of the Appellant's monthly premiums for the HUSKY-C/Working Disabled coverage months from [redacted] 2018 through [redacted] 2018, the Department used "$2,342.51" to represent the Appellant's gross monthly income from all sources. (Department's Exhibit E)

19. In order to remain employed, the Appellant uses the following medications that are not covered by his insurance: [redacted] and [redacted] (Appellant's Exhibit 5)

20. [redacted], APRN, recommended that the Appellant use or receive the following in order to remain employed: the services of a registered dietician/personal trainer, a service dog, a smartphone, and custom shoes and orthotics. (Appellant's Exhibit 5)

21. The Appellant submitted receipts, invoices, and credit card statements to the Department for: [redacted] prescriptions, [redacted] prescriptions, bills for three different telephone numbers, vet bills, dog food, dog washing, and nutritionist services. (Appellant's Exhibits 6, 7, 8, 9, 10, and 11)

22. The Appellant did not establish that he needs three phones with three different telephone numbers as an Impairment-Related Work Expense to continue his employment in his own home as a PCA to his roommate or outside of his home for his [redacted] employment in the relevant period.

23. The Department does not consider telephone fees to be an acceptable Impairment-Related Work Expense; telephones are a common household expense unrelated to impairment. (Department's representative's testimony)

24. From [redacted]2018 through [redacted]2018, registered dietician [redacted] (the "nutritionist") charged the Appellant $8,925.00 for "nutritional counseling sessions." (Appellant's Exhibit 6)

25. From [redacted] 2018 through [redacted]2018, the Appellant used his credit card to pay his nutritionist $10,925.00. (Appellant's Exhibit 7)

26. Connecticut General Statutes § 17b-61 (a) provides that a final decision be issued within 90 days of a request for an administrative hearing. On [redacted], 2019, the OLCRAH received the Appellant's [redacted], 2019 postmarked hearing request. This decision is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes provides in part that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

   "The Department of Social Services shall establish and implement a working persons with disabilities program to provide medical assistance as authorized under 42 USC 1396a (a)(10)(A)(ii), as amended from time to time, to persons who are disabled and regularly employed." Conn. Gen. Stat. § 17b-597 (a).

2. "The department's uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178

(1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance,* 214 Conn. 601, 573 A.2d 712 (1990)).

3. "The individual meets the income eligibility test under this group by passing one of the following income tests: a. having a gross monthly income equal to or less than $6250; or b. having an applied monthly income (gross income minus the following: a $20 general disregard; the first $65 of gross monthly earnings; Impairment-Related Work Expenses described at UPM 5035.10 C, if applicable; and 1/2 the remaining earnings) equal to or less than $3082.50." Uniform Policy Manual ("UPM") § 2540.85 A. 2. b.

   The Appellant passed the income eligibility test for the HUSKY-C/Working Disabled program as his gross monthly income in the relevant period was less than $6,250.00 per month.

4. Section 17b-597 (b) of the Connecticut General Statutes provides in part:

   > The Commissioner of Social Services shall amend the Medicaid state plan to allow persons specified in subsection (a) of this section to qualify for medical assistance. The amendment shall include the following requirements: (1) That the person be engaged in a substantial and reasonable work effort as determined by the commissioner and as permitted by federal law and have an annual adjusted gross income, as defined in Section 62 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, of no more than seventy-five thousand dollars per year; (2) a disregard of all countable income up to two hundred per cent of the federal poverty level; (3) … ; (4) … ; (5) … ; (6) … ; and (7) a contribution of any countable income of the person or the person's spouse which exceeds two hundred per cent of the federal poverty level, as adjusted for the appropriate family size, equal to ten per cent of the excess minus any premiums paid from income for health insurance by any family member….

   Conn. Gen. Stat. § 17b-597 (b).

   "The commissioner shall define "countable income" for purposes of subsection (b) of this section which shall take into account impairment-related work expenses as defined in the Social Security Act. Such policies and procedures shall be valid until the time final regulations are effective." Conn. Gen. Stat. § 17b-597 (c).

   "The individual may be required to pay the Department a monthly premium for medical coverage if the gross monthly counted income of the individual and spouse (minus Impairment-Related Work Expenses described at UPM 5035.10 (C)) exceeds 200% of the federal poverty level (FPL) for the appropriate family size, including dependent children living in the home." UPM § 2540.85 A. 4.

5. Section 5035.10 C. 4. of the Uniform Policy Manual states:

   Impairment-related work expenses may be deducted when the following conditions have been met:

   a. The unit member must be:
      (1) considered disabled or blind, according to SSI criteria; and
      (2) less than sixty-five years of age or, if sixty-five or more years of age, must have received SSI in the month before the individual became sixty-five.
   b. The expenses must be for items or services which are necessary to enable the individual to maintain gainful employment;
   c. Deductions are allowed for payment made by the unit member which are not reimbursable by third party coverage;

   UPM § 5035.10 C. 4.

   Section 5035.10 C. 3. of the Uniform Policy Manual provides:

   Impairment-related work expenses include, but are not limited to, the following:

   a. attendant services including help with personal or employment functions;
   b. medical equipment such as canes, crutches, pacemakers, and hemodialysis equipment
   c. prosthetic devices;
   d. work-related equipment which enables the individual to function on the job such as one-hand typewriters, telecommunication devices for the deaf, and special tools necessitated by the impairment;
   e. modifications to the residence of the individual which can be associated with maintaining employment in or outside the home, except when claimed as a business expense by a self-employed person;
   f. non-medical equipment which can be associated with enabling the individual to be employed;
   g. drugs and medical services directly related to reducing, controlling or eliminating an impairment or its symptoms;
   h. all other miscellaneous expenses not cited above but which can be associated with the individual's disability and with enabling the individual to be employed including transportation, medical supplies, vehicular medications, etc.;
   i. the cost of installing, repairing, and maintaining the cited equipment and supplies.

   UPM § 5035.10 C.3.

6. Title 20, Section 404.1576 of the Code of Federal Regulations (“C.F.R.”) addresses Impairment-related work expenses with respect to the Social Security disability benefits. Subsection (f)(1) of this section notes that there are limits to these deductions:

   Limits on deductions. (1) *We will deduct the actual amounts you pay towards your impairment-related work expenses unless the amounts are*

unreasonable. With respect to … medical services, and similar medically-related items and services, we will apply the prevailing charges under Medicare (part B of title XVIII, Health Insurance for the Aged and Disabled) to the extent that this information is readily available. Where the Medicare guides are used, we will consider the amount that you pay to be reasonable if it is no more than the prevailing charge for the same item or service under the Medicare guidelines. *If the amount you actually pay is more than the prevailing charge for the same item under the Medicare guidelines, we will deduct from your earnings the amount you paid to the extent you establish that the amount is consistent with the standard or normal charge for the same or similar item or service in your community.* For items and services that are not listed in the Medicare guidelines, and for items and services that are listed in the Medicare guidelines but for which such guides cannot be used because the information is not readily available, we will consider the amount you pay to be reasonable if it does not exceed the standard or normal charge for the same or similar item(s) or service(s) in your community.

20 C.F.R. § 404.1576 (f)(1) (emphasis added).

Section 5035.10 C. 5. of the Uniform Policy Manual states:

Expenses incurred for impairment-related work needs may be allocated in the following ways:

a. Both recurrent expenses and installment payment are deducted;
b. Down-payments may be prorated over twelve months starting with the month of payment or used in the month paid;
c. Payment made for an item during the eleven months preceding the initial month of employment can be prorated over twelve months starting with the month of payment. Only portions allocated to months of employment are deducted.
d. The amounts paid for the items or services must be:
(1) not more than the rate paid by the Medicare program; or
(2) if the Medicare rate is exceeded, not more than the prevailing rate charged in that particular community;
e. Both need for the item or service and payment made must be verified;
f. The expense must be incurred or paid after 11/30/80.

UPM § 5035.10 C. 5. (emphasis added).

The Department did not compare the Appellant's nutritionist's fees to the Medicare rate associated with nutritionist services or the prevailing rate for nutritionist services in his community.

The Department failed to evaluate the Appellant's individual Impairment-Related Work Expenses to determine whether the goods and services met the criteria provided at UPM § 5035.10 C. 5.d.

7. An individual eligible for Medicaid under the Working Individuals with Disabilities coverage group may be required to pay a monthly premium for Medicaid coverage if the gross counted income of the individual and his or her spouse, minus Impairment-Related Work Expenses (IRWE's), exceeds 200% of the federal poverty level for the appropriate family size (Cross Reference: 2540.85)." UPM § 5045.21 A.

   Section 5045.21 B. of the Uniform Policy Manual provides:

   The premium amount is calculated as follows:

   1. Gross counted monthly income of the individual and spouse, minus IRWE's, is compared to 200% of the federal poverty level for the appropriate family size, including dependent children living in the home.
   2. The premium is generally equal to 10% of the amount by which the income described in paragraph 1 exceeds 200% of the FPL, minus the amount of any payments for health insurance made by the individual or spouse for any family member (see paragraph C below).

   UPM § 5045.21 B.1. and B.2.

   In 2018, 100 percent of the Federal Poverty Level for a household of one residing in Connecticut equaled $12,140.00 per year, or $1,011.67 per month.

   The Appellant was subject to an annual premium calculation with respect to the Medicaid for the Employed Disabled program, as his gross counted monthly income exceeded 200 percent of the Federal Poverty Level for a household of one.

8. "The commissioner, … , shall in determining need, take into consideration any available income and resources of the individual claiming assistance. The commissioner shall make periodic investigations to determine eligibility and may, at any time, modify, suspend or discontinue an award previously made when such action is necessary to carry out the provisions of the … medical assistance program…." Conn. Gen. Stat. § 17b-80 (a).

   The Department has the authority under Section 17b-80 of the Connecticut General Statutes to at any time modify or adjust the Appellant's previously determined $0.00 premium amount to be in compliance with the rules associated with the HUSKY-C/Working Disabled medical program.

9. "An administrative overpayment is an overpayment caused by the Department's incorrect action or failure to act within the appropriate time limits." UPM § 7000.01.

   "An overpayment occurs in the Medicaid program if the Department pays for a medical service provided to an assistance unit or to a unit member and: … 2. the assistance unit or unit member is required to use excess income to pay part of the medical bill, but the Department understates the unit's or unit member's liability and pays more than the appropriate amount on behalf of the unit." UPM § 7040.05 A.2.

"Changes that cause a decrease in [Medicaid] benefits or ineligibility are taken into consideration in the month the change occurred, regardless of when the change is reported." UPM § 1555.35 B.1.

When recalculating benefit eligibility for a historic benefit period, "[t]he Department uses the exact amount of the unit's available income received or deemed in the month." UPM § 5025.05 A.1.

The Department failed to use the exact amount of the Appellant's gross monthly income received in those individual months.

On [redacted] 2019, the Department incorrectly determined the amount of the that the Appellant's HUSKY-C/Working Disabled monthly premiums for the service months of [redacted] 2018 through [redacted] 2018.

DISCUSSION

The Department's delay in reviewing the Appellant's [redacted] 2018 renewal form caused the Appellant (in error) to receive medical coverage without the imposition of a premium from [redacted] 2018 through [redacted] 2018. On [redacted] 2019, the Department discovered its oversight and calculated the Appellant's premiums.

As the Department was taking a corrective action by determining applied income in a historic benefit period, the Department should have used the Appellant's exact gross income in its premium calculation for each of those service months. Instead, the Department used an estimate of $2,342.51 to represent his gross monthly income to arrive at the [redacted] premium calculation. The Appellant's exhibits verify that his gross monthly income far exceeded $2,342.51.

It should also be noted that there is a cap to individual medical expenses with respect to Impairment-Related Work Expenses. The maximum allowable Impairment-Related Work Expense amount for a medical service is "(1) not more than the rate paid by the Medicare program; or (2) if the Medicare rate is exceeded, not more than the prevailing rate charged in that particular community…." UPM § 5035.10 C.5.d.

For example: In [redacted] 2018, the Appellant's nutritionist charged the Appellant $2,850.00 for 38 nutritional counseling sessions. As the hearing record is silent as to both the Medicare rate for nutritionist services and the prevailing rate for such services charged in the county where the Appellant's community resides, it was impossible to determine how much of the $2,850.00 nutritionist counseling expense may be utilized as an Impairment-Related Work Expense in [redacted] 2018.

The Department must take appropriate action regarding recalculating the Appellant's premium liability in the relevant period of [redacted] 2018 through [redacted] 2018, inclusive.

DECISION

The issue is REMANDED to the Department to correct its premium calculations associated with the Appellant's medical coverage for the service months from [redacted] 2018 through [redacted] 2018, inclusive.

ORDER

1. The Department will incorporate the Appellant's verified gross monthly income from all sources in each of the service months spanning from [redacted] 2018 through [redacted] 2018, inclusive. The Department also will evaluate the Appellant's claimed Impairment-Related Work Expenses to take into account the maximum cap permitted by its policy with respect to claimed medical services.

2. Upon completion of its review, the Department will recalculate the Appellant's premiums for each month from [redacted] 2018 through [redacted] 2018.

3. Within 21 calendar days of the date of this decision, or [redacted] 2019, documentation of compliance with this order is due to the undersigned.

Eva Tar – electronic signature
Eva Tar
Hearing Officer

cc: Garfield White, DSS-Windsor/Hartford
Jay Bartolomei, DSS-Windsor/Hartford
Musa Mohamud, DSS-Windsor/Hartford
Judy Williams, DSS-Windsor/Hartford
Jessica Carroll, DSS-Windsor/Hartford

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.