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

[redacted], 2019
Signature Confirmation

Client ID # [redacted]
Request # 143442

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2019, the Department of Social Services (the "Department") sent [redacted] (the "Appellant") a Notice of Action ("NOA") discontinuing her *HUSKY C – Individuals Receiving Home and Community Based Services* medical benefits effective [redacted] 2019, because her monthly gross income was more than the limit for the program.

On [redacted], 2019, the Appellant, through her sister and conservator, [redacted] (the Appellant's "Sister"), requested a fair hearing to appeal the discontinuance of her medical benefits.

On [redacted], 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling 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, OLCRAH held an administrative hearing. The following individuals were present at the hearing:

The Appellant's Sister
Noel Lord, Department's Representative, via telephone
Kristen Alves, Department employee, not participating in the hearing
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department was correct when it discontinued the Appellant's HUSKY C benefits for individuals receiving home and community based services because her income exceeded the program limit.

FINDINGS OF FACT

1. The Appellant receives services provided by the Department of Developmental Services ("DDS") through its Autism Waiver. (Appellant's Sister's testimony)

2. The Appellant receives income from a monthly gross payment of $1,149.00 from Social Security. (Ex. 5: [redacted] record of Social Security Direct Deposit)

3. The Appellant receives income from a monthly gross payment of $300.00 from a Teacher's pension. (Ex. 4: Teacher's pension check stub)

4. The Appellant is employed at [redacted]. (Hearing Record)

5. The Appellant has, until [redacted], 2019, qualified for Medicaid under *HUSKY C – Individuals Receiving Home and Community Based Services* coverage, commonly referred to by the Department as "W01" coverage. (Hearing Record)

6. On [redacted], 2019, the Appellant submitted a completed renewal form to the Department, for her annual renewal of Medicaid eligibility. (Ex. 9: Case Notes, Ex. 1: Renewal Form)

7. The Appellant included four consecutive wage stubs from her employer, [redacted], with her Renewal Form, to verify her earnings. The pays had the following dates and gross amounts: [redacted] 2019 - $189.60; [redacted], 2019 - $269.50; [redacted], 2019 - $196.00; [redacted], 2019 - $196.00. (Ex. 3: Pay Stubs)

8. The Department arrived at a monthly average of the Appellant's earnings as follows: $189.60 + $269.50 +$196.00 + $196.00 = $851.10, divided by 4 weeks = $212.78, multiplied by 4.3 weeks = $914.93 monthly. (Hearing Record)

9. On [redacted], 2019, the Department made a determination of the Appellant's Medicaid eligibility based on its calculation that her total gross monthly income was $2,363.93 ($300.00 Teacher's pension + $1,149.00 Social Security + $914.93 [redacted] earnings). (Hearing Record)

10. On [redacted], 2019, the Department issued a NOA to the Appellant discontinuing her *HUSKY C for Individuals Receiving Home and Community Based Services* effective

[redacted], 2019, because her monthly gross income was more than the limit for the program. (Ex. 8: NOA dated [redacted] 2019)

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. The Department's Uniform Policy Manual ("UPM") "is the equivalent of a state regulation and, as such, carries the force of law." Bucchere v. Rowe, 43 Conn. Supp. 175, 177 (1994) (citing Conn. Gen. Stat. 17-3f(c) [now 17b-10]; Richard v. Commissioner of Income Maintenance, 214 Conn. 601, 573 A. 2d 712(1990)

3. Section 435.217 of Title 42 of the Code of Federal Regulations ("CFR") authorizes State Medicaid agencies to provide Medicaid to certain individuals receiving home and community-based services. The group or groups of individuals who qualify for the coverage must meet certain requirements including that "[t]he group would be eligible for Medicaid if institutionalized".

4. 42 CFR § 435.236 authorizes State Medicaid agencies to provide Medicaid to certain aged, blind and disabled individuals in institutions who are eligible under a special income level. The individuals must: (a)(2) "Have income below a level specified in the plan under § 435.722. (See § 435.1005 for limitations on FFP in Medicaid for individuals specified in this section.)"

5. 42 CFR § 435.1005 provides as follows:

> For beneficiaries in institutions whose Medicaid eligibility is based on a special income standard established under § 435.236, FFP is available in expenditures for services provided to those individuals only if their income before deductions, as determined by SSI budget methodology, does not exceed 300 percent of the SSI benefit amount payable under section 1611(b)(1) of the Act to an individual in his own home who has no income or resources.

6. **In order to qualify for Medicaid for Individuals receiving home and community-based services, an individual must meet the requirement that they would qualify for Medicaid if institutionalized. The special income level of 300 percent of the maximum SSI benefit that is an income cap for institutionalized individuals, also applies to individuals receiving home and community-based services.**

7. "The maximum Federal Supplemental Security income (SSI) monthly payment amounts for 2019 under title XVI of the Act will be $771 for an eligible individual." *Federal Register / Vol 83, No. 206 / Wednesday, October 24, 2018 / p. 53702*

8. **Three times the maximum SSI monthly payment of $771.00 for 2019 is $2,313.00.**

9. UPM § 2540.92(A) provides that the coverage group for Individuals Receiving Home and Community Based Services (W01) includes individuals who:

    1. would be eligible for MAABD if residing in a long term care facility (LTCF); and

    2. qualify to receive home and community-based services under a waiver approved by the Centers for Medicare and Medicaid Services; and

    3. would, without such services, require care in an LTCF.

10. UPM § 2540.92(C) provides for the income and asset criteria for the W01 coverage group as follows:

    1. Except as described in subparagraph 3 below, the Department determines income eligibility under this coverage group by comparing the individual's gross income to the Special Categorically Needy Income Limit (CNIL), set at 300% of the maximum SSI amount for one person. To qualify as categorically needy, the individual's gross income must be less than the special CNIL.

    2. Except as described in subparagraph 3 below, the Department uses the AABD asset limit to determine eligibility.

    3. Individuals who are eligible for Medicaid under the "Working Individuals with Disabilities" coverage group, the "Severely Impaired" coverage group or the "Severely Impaired Non-SSI Recipients" coverage group, and who also meet the non-financial eligibility criteria described in paragraph A to receive home and community-based services under the Personal Care Assistance waiver, the Acquired Brain Injury waiver, the Department of Developmental Services Comprehensive waiver or the Department of Developmental Services Individual and Family Support waiver are considered to meet the income and asset criteria of this coverage group (Cross Reference: 2540.85, 2540.76, 2540.77).

11. **The Appellant's total monthly gross income of $ 2,363.93 exceeded the special CNIL of $2,313.00.**

12. **The Appellant did not fall into any of the categories listed in subparagraph 3 of UPM § 2540.92(C) of groups of individuals not required to meet the standard income and asset criteria for the W01 Medicaid coverage group. The Appellant qualified to receive home and community-based services under the DDS Autism waiver, but recipients of Autism waiver services are not listed in subparagraph 3 of UPM § 2540.92(C) as one of the excepted groups.**

13. **The Department was correct when it discontinued the Appellant's *HUSKY C – Individuals Receiving Home and Community Based Services* medical benefits effective [redacted], 2019, because her gross monthly income exceeded the limit for the program.**

DISCUSSION

The Appellant's Sister's understandable concern was whether her sister's services from the Autism waiver would continue. This hearing decision cannot answer that question, and the question would best be addressed to DDS, the agency that administers the waiver. There are other ways to qualify for Medicaid and, in fact, the Appellant now qualifies for coverage under the "Medicaid for the Employed Disabled" coverage group, but the Department's representative at the hearing could not say whether this coverage would pay for the Appellant's waiver services.

The Appellant no longer qualifies for "W01" coverage because her gross income exceeds the "special income standard" established in federal law that is equal to three times the maximum SSI benefit payable to a single individual. The Appellant submitted proof of medical expenses that she wanted the hearing officer to consider, but they do not have a bearing on her eligibility for the program. The special CNIL is compared to an individual's gross income, with no consideration of expenses or deductions.

The Appellant's income from fixed sources, her Social Security and Teacher's pension, by themselves, are well below the special income standard. It is the addition of her [redacted] earnings to the other two income sources that puts her over the limit, and only by $50.93. If the Appellant worked fewer hours, she would very likely qualify for W01 coverage again. The pays used by the Department in its determination were all from [redacted] 2019. If the Appellant's more recent pays have been lower than those used in the Department's calculation, a reapplication for the program would be worthwhile.

DECISION

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

James Hinckley
Hearing Officer

cc: [redacted]
Noel Lord
Rachel Anderson
Cheryl Stuart
Lisa Wells

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.