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

[redacted] 2020
Signature Confirmation

Client ID # [redacted]
Case ID [redacted]
Request # 156659

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2020, the Department of Social Services (the "Department") sent [redacted] (the "Appellant") a Notice of Action ("NOA") informing him of a change to the amount of his spenddown under the Husky C-Medically Needy for Aged, Blind, and Disabled Spenddown Program ("MAABD").

On [redacted] 2020, the Appellant requested an administrative hearing to contest the Department's calculation of the spenddown amount under the MAABD.

On [redacted] 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2020.

On [redacted] 2020, the Appellant requested a continuance which OLCRAH granted.

On [redacted] 2020, the OLCRAH issued a notice scheduling the administrative hearing for [redacted] 2020.

On [redacted], 2020, 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 by teleconference.

The following individuals called in for the hearing:

[redacted], Appellant
[redacted] Authorized Representative and Witness for the Appellant
Christine Faucher, Department's Representative
Lisa Nyren, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined the Appellant must meet a spenddown to become eligible for MAABD coverage and a secondary issue is whether the Department correctly calculated the Appellant's spenddown amount.

FINDINGS OF FACT

1. The Appellant receives Medicaid under a spenddown. (Exhibit 5: MAABD Income Test, Exhibit 6: MA-EDG Summary, Exhibit 7: MA-Spenddown and Exhibit 8: Notice of Action, and Department Representative's Testimony)

2. [redacted] ("AREP") is the Appellant's caregiver and Conservator. The AREP is not paid for his caregiver services. (AREP's Testimony)

3. The Appellant receives additional caregiver services not provided by the AREP which the Department pays for. (AREP's Testimony)

4. The Appellant is age [redacted] with a diagnosis of dementia. (AREP's Testimony)

5. The Appellant lives in [redacted]. (Appellant's Testimony)

6. The Appellant receives Social Security Disability ("SSDI") benefits of $1,000.00 per month. (Stipulated)

7. The Appellant has medical coverage under Medicare Part A and Medicare Part B as administered by the Social Security Administration. (AREP's Testimony)

8. The Appellant receives medical benefits under the Medicare Savings Program ("MSP") as administered by the Department. Under the MSP, the Department pays the Appellant's Medicare Part B monthly premium and deductibles and copays associated with Medicare. (Department Representative's Testimony and Exhibit 8: Notice of Action)

9. The medically needy income limit ("MNIL") under the MAABD program is $523.38. (Exhibit 5: MAABD – Income Test and Department Representative's Testimony)

10. The Department determined the Appellant eligible for MAABD under a spenddown totaling $753.72 for the period [redacted] 2020 through [redacted] 2020 because his monthly net income exceeds the Husky C income limit. (Exhibit 5: MAABD Income Test, Exhibit 6: MA-EDG Summary, Exhibit 7: MA-Spenddown and Exhibit 8: Notice of Action, and Department Representative's Testimony)

11. On [redacted] 2020, the Department received a money order receipt from the Appellant confirming an out of pocket medical expense of $31.00 per quarter for [redacted] services which he paid on [redacted] 2020. (Exhibit 2: Postal Money Order, Exhibit 4: Case Notice, Exhibit 6: MA-EDG Summary, Exhibit 7: MA-Spenddown, Witness Testimony, and Department Representative's Testimony

12. On [redacted] 2020, the Department notified the Appellant of a change to the spenddown for the period [redacted] 2020 through [redacted] 2020. The Department determined the remaining spenddown amount as $722.73. {$753.72 total spenddown - $31.00 medical expense = $722.73 remaining spenddown. (Exhibit 8: Notice of Action)

13. The Appellant paid $44.00 for a shower chair approximately two months ago and paid $20.00 in [redacted] 2020 to tint his eyeglasses. The Appellant does not have outstanding out of pocket medical expenses at this time. (AREP's Testimony)

14. The issuance of this decision is timely under Executive Order 7M issued on [redacted] 2020 which extends the time frame required to issue a decision under Connecticut General Statutes § 17b-61(a) from 90 days to 120 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [redacted] 2020. However, the hearing, which was originally scheduled for [redacted] 2020, was rescheduled to [redacted] 2020 at the request of the Appellant causing a [redacted]day delay. Because this [redacted]-day delay resulted from the Appellant's request, this decision is not due until [redacted] 2020, and therefore timely.

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes provides 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.

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. Section 2530.05(B) of the Uniform Policy Manual ("UPM") provides as follows:

   To qualify for the State Supplement or related Medical Assistance programs on the basis of disability, the individual must be disabled as determined by SSA or the Department. The individual must be found to have an impairment which:

   1. Is medically determinable; and
   2. Is severe in nature; and
   3. Can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months; and
   4. Except as provided in paragraph C below, prevents the performance of pervious work or any other substantial gainful activity which exists in the national economy.

4. "An individual who is considered disabled by SSA is considered disabled by the Department." UPM § 2530.10(A)(1)

5. The Department correctly determined the Appellant meets the disability criteria under the MAABD program because the Appellant receives SSDI disability benefits from the SSA.

6. "When the assistance unit's applied income exceeds the CNIL, the assistance unit is ineligible to receive Medicaid as a categorically needy case." UPM § 5520.25(A)

   "Those assistance units which are determined ineligible as categorically needy cases have their eligibility determined as medically needy." UPM § 5520.25(A)(2)

7. Department policy provides as follows:

   Medically Needy Aged, Blind and Disabled. This group includes individuals who:

1. Meet the MAABD categorical eligibility requirements of age, blindness or disability; and
2. Are not eligible as categorically needy; and
3. Meet the medically needy income and asset criteria.

UPM § 2540.96(A)

8. Department policy provides as follows:

   The Department uses the MAABD medically needy income and asset criteria to determine eligibility under this coverage group, including:

   1. Medically needy deeming rules;
   2. The Medically Needy Income Limit ("MNIL");
   3. The income spend-down process;
   4. The medically needy asset limits.

   UPM § 2540.96(C)

9. "A uniform set of income standards is established for all assistance units who do not qualify as categorically needy." UPM § 4530.15(A)(1)

   Department policy provides as follows:

   The MNIL of an assistance unit varies according to:
   a. the size of the assistance unit; and
   b. the region of the state in which the assistance unit resides.

   UPM § 4530.15(A)(2)

10. "The medically needy income limit is the amount equivalent to 143 percent of the benefit amount that ordinarily would be paid under the AFDC program to an assistance unit of the same size with no income for the appropriate region of residence." UPM § 4530.15(B)

11. The Department correctly determined that the MNIL for the Appellant's assistance unit for one person as $523.38.

12. "Income from Social Security is treated as unearned income in all programs." UPM § 5050.13(A)(1)

13. "If income is received on a monthly basis, a representative monthly amount is used as the estimate of income." UPM § 5025.05(B)(1)

14. The Department correctly determined the Appellant's SSDI benefit as $1,000.00 per month.

15. The Department correctly determined the Appellant's monthly gross unearned income as $1,000.00.

16. "Social Security income is subject to an unearned income disregard in the AABD and MAABD programs." UPM § 5050.13(A)(2)

    "Except as provided in section 5030.15(D), unearned income disregards are subtracted from the unit member's total gross monthly unearned income." UPM § 5030.15(A)

17. "All of the disregards used in the AABD programs are used to determine eligibility for MAABD." UPM § 5030.15(C)(2)(a)

18. Department policy provides as follows:

    The Department uses the following unearned income disregards, as appropriate under the circumstances described: The disregard is [$339.00 effective 1/1/17] for those individuals who reside in their own homes in the community or who live as roomers in the homes of others and those who reside in long term care facilities, shelters for the homeless or battered women shelters. Effective January 1, 2008 and each January 1st thereafter, this disregard shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration.

    UPM § 5030.15(B)(1)(a)

19. Effective January 1, 2020, the standard disregard under the MAABD program increased to $351.00 per month.

20. The Department correctly determined the standard disregard as $351.00.

21. "Except for determining AABD eligibility and benefit amounts for individuals residing in long term care facilities, applied unearned income is calculated by reducing the gross unearned income amount by the appropriate disregard based upon living arrangements." UPM § 5045.10(C)(1)

22. The Department correctly calculated the Appellant's applied unearned income as $649.00. ($1,000.00 SSDI – $351.00 standard disregard = $649.00

23. "The assistance unit's total applied income is the sum of the unit's applied earnings, applied unearned income, and the amount deemed." UPM § 5045.10(E)

24. The Department correctly calculated the Appellant's total applied income as $649.00 per month. ($00.00 applied earned income + $649.00 applied unearned income + $00.00 deemed income = $649.000 total applied income)

25. "The total of the assistance unit's applied income for the six-month period is compared to the total of the MNIL's for the same six-months: when the unit's total applied income, is greater than the total MNIL's the assistance unit is ineligible until the excess income is offset through the spend-down process." UPM § 5520.20(B)(5)(b)

    "When the amount of assistance unit's monthly income exceeds the MNIL, income eligibility for a medically needy assistance unit does not occur until the amount of excess income is offset by medical expenses. This process of offsetting is referred to as a spend-down." UPM § 5520.25(B)

26. The Department correctly determined the six (6) months applied income as $3,894.00 for the period [redacted] 2020 through [redacted] 2020. ($649.00 monthly applied income x 6 months = $3,894.00)

27. The Department correctly determined the six (6) months MNIL equals $3,140.28 for the spenddown period [redacted] 2020 through [redacted] 2020. (523.38 Monthly MNIL x 6 months = $3,140.28)

28. The Department correctly calculated the Appellant's spenddown as $753.72. ($3,894.00 6 months applied income - 3,140.28 MNIL for 6 months = $753.72)

29. Department policy provides as follows:

    When the amount of the assistance unit's monthly income exceeds the MNIL, income eligibility for a medically needy assistance unit does not occur until the amount of excess income is offset by medical expenses. This process of offsetting is referred to as a spend-down.

    1. Medical expenses are used for a spend-down if they meet the following conditions:
       a. The expenses must be incurred by person whose income is used to determine eligibility;
       b. Any portion of an expense used for a spend-down must not be payable through third party coverage unless the third party is a public assistance program totally financed by the State of Connecticut or by a political subdivision of the State;
       c. There must be current liability for the incurred expenses, either directly to the provider(s) or to a lender for a loan used to pay the provider(s), on the part of the needs group member;

d. The expenses may not have been used for a previous spend-down in which their use resulted in eligibility for the assistance unit.

2. The unpaid principal balance which occurs or exists during the spend-down period for loans used to pay for medical expenses incurred before or during the spend-down period, is used provided that:
   a. The loan proceeds were actually paid to the provider; and
   b. The provider charges that were paid with the loan proceeds have not been applied against the spend-down liability; and
   c. The unpaid principal balance was not previously applied against spend-down liability, resulting in eligibility being achieved.
3. Medical expenses are used in the following order of categories and, within each category, chronologically starting with the oldest bills:
   a. First, Medicare and other health insurance premiums, deductibles, or coinsurance charges. Medical insurance premium expenses which exist at the time of the processing of the application which are reasonably anticipated to exist for the six month prospective period are considered as a six-month projected total;
   b. Then, expenses incurred for necessary medical and remedial services that are recognized under State Law as medical costs but not covered by Medicaid in Connecticut;
   c. Finally, expenses incurred for necessary medical and remedial services recognized under State law as medical costs and covered by Medicaid in Connecticut.
4. When unpaid loan principal balances are used, they are categorized by the type of expense they were used to pay, as in B.3.
5. Expenses used to determine eligibility in a retroactive period are used in the following order:
   a. Unpaid expenses incurred any time prior to the three-month retroactive period; then
   b. Paid or unpaid expenses incurred within the three-month retroactive period but not later than the end of the retroactive month being considered; then
   c. An unpaid principal balance of a loan which exists during the retroactive period.
6. Expenses used to determine eligibility in the prospective period are used in the categorical and chronological order described previously.
7. Income eligibility for the assistance unit exists as of the day when excess income is totally offset by medical expenses:
   a. Any portion of medical expenses used to offset the excess income are the responsibility of the unit to pay.
   b. Medical expenses which are recognized as payable under the State's plan and which are remained unpaid at the time eligibility begins are paid by the Department provided the expenses were not used to offset income.

30. The Department correctly determined the [redacted] medical expense of $31.00 as a qualifying medical expense.

31. The Department correctly applied the $31.00 [redacted] medical expense to the $753.72 total spenddown amount effectively reducing the spenddown from $753.72 to $722.72.

32. The Department correctly determined the Appellant must meet a spenddown in order to become eligible for medical benefits under the MAABD program.

DECISION

With regard to the issue of whether the Appellant must meet a spenddown to qualify for Medicaid under the MAABD program, the Appellant's appeal is denied.

With regard to the issue of whether the Department calculated the Appellant's spend-down amount as $722.72, the Appellant's appeal is denied.

DISCUSSION

The Department correctly determined the Appellant is subject to a spenddown totaling $753.72 under Medicaid. This means the Appellant is liable for medical expenses totaling $753.72 during the period [redacted] 2020 through [redacted], 2020 before Medicaid pays for any medical services and/or expenses **not** paid by Medicare or the MSP during this six month spend-down period. The Appellant submitted proof of out of pocket medical costs of $31.00 which resulted in a reduction of the spenddown amount to $722.72. At the administrative hearing, the Appellant reported additional out of pocket medical expenses totaling $64.00 for a shower chair and tint on eyewear. The Appellant may submit proof of out of pocket medical expenses for the Department to review and apply only those qualifying medical expenses to offset the spenddown.

Lisa A. Nyren
Hearing Officer

CC: [redacted]
Tricia Morelli, DSS RO #11
Christine Faucher, DSS RO #11

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, 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 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.