

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

██████████ 2020
Signature Confirmation

Case # ██████████
Client ID # ██████████
Request # ██████████

NOTICE OF DECISION

PARTY

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██
██

PROCEDURAL BACKGROUND

On ██████████, 2020, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") indicating his Medical Assistance for the Aged, Blind or Disabled ("MAABD") spend-down would be \$21,891.42 from ██████████ 2020 to ██████████, 2020.

On ██████████, 2020, the Appellant requested an administrative hearing to contest the Department's calculation of the spend-down.

On ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████, 2020.

On ██████████ 2020, the Appellant requested a continuance of the hearing, which was granted.

On ██████████, 2020, OLCRAH issued a Notice scheduling the administrative hearing for ██████████ 2020.

On ██████████ 2020, the Appellant requested a continuance of the hearing, which was granted and re-scheduled for ██████████, 2020.

On ██████████ 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. The following individuals were present at the hearing:

██████████, Appellant
Jennifer Miller, Departments Representative
Almelinda McLeod, Hearing Officer

The hearing record was held open for the submission of additional evidence. On ██████████, 2020 the hearing record was closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly calculated the amount of Appellant's spend-down amount.

FINDINGS OF FACT

1. The Appellant had been on a Medical spend-down under the Medicaid for the Aged, Blind and disabled ("MAABD") program since ██████████ 2018.
2. On ██████████ 2020, the Department issued a NOA to the Appellant indicating that he would have to meet a spend-down totaling \$21,891.42 for the period between ██████████ 2020 and ██████████, 2020. (Hearing summary, Exhibit 3 and Department testimony)
3. The Appellant resides with his spouse and █ year old child in ██████████ CT. (Appellant testimony)
4. At the time of the MAABD spend-down review, the Appellant was █ years old and disabled with SSDI income of \$1090.00 per month. (Hearing summary)
5. The Appellant has been paying the Medicare Part B premium since at least 2010. (Department testimony)
6. The Appellant's spouse has employment with ██████████ earning \$3605.98 per month. (Hearing summary, Department & Appellant testimony)
7. The categorical Monthly Needs Income Limit ("MNIL") was \$696.41 for a household of two adults. (Hearing summary)
8. The Department allowed the Appellant an Unearned Income disregard of \$351.00. (Hearing summary)

9. The Department did not review the Appellant's Medicare Part B premiums. (Department testimony)
10. The issuance of this decision under Connecticut General Statutes 17b-61 (a) which requires that a decision be issued within 90 days of the request for an administrative hearing has been extended to "not later than 120 days " after a request for a fair hearing pursuant to Section 17b-60 by order of Department of Social Services Commissioner dated ■■■ ■■ 2020. The Appellant requested an administrative hearing on ■■■ ■■ 2020. However, the hearing record, which had been anticipated to close on ■■■■■ 2020, did not close due to the Appellant's request for a re-schedule. The administrative hearing subsequently had to be re-scheduled again causing a total delay of 57 days. The decision is now due ■■■■■ 2020 and is therefore timely.

CONCLUSIONS OF LAW

1. Connecticut General Statutes ("Conn. Gen. Stat.") § 17b-2 provides that the Department of Social Services is designated as the state agency for the administration of (6) the Medicaid program pursuant to Title XIX of the Social Security Act.
2. "The department's Uniform Policy Manual ("UPM") is the equivalent of 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. UPM § 2540.01 (A) provides in order to qualify for Medicaid; an individual must meet the conditions of a least one coverage group.
4. UPM § 2540.01 (C) provides for medically needy eligibility. Generally, individuals qualify for MA as medically needy if: 3. their income either: a. (a) is within the Medically Needy Income Limit ("MNIL"); or b. can be reduced to the MNIL by a spend-down of medical expenses (cross reference : 5520)
5. UPM § 2540.96 (A) provides for the MAABD coverage group to include 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.
6. **The Department correctly determined the Appellant is considered aged and disabled under the MAABD program and meets the medically needy income and asset criteria.**

7. UPM § 5515.05 (C) (2) provides in relevant 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.
8. **The Department correctly determined that the Appellant and his spouse are deemed a needs group of two under the MAABD unit.**
9. UPM § 4510.10 (A) (1) provides the State of Connecticut is divided into three geographic regions based on similarity in the cost of housing.
10. UPM § 4510.10 (A) (2) provides separate standards of need are established for each state region.
11. UPM § 4510.10 (A) (3) provides the standard of need which is applicable to a particular assistance unit is based on: (a) the current region of residence; and (b) the appropriate needs group size.
12. UPM § 4510.10 (B) (3) provides that [REDACTED] is part of Region C.
13. **The Department correctly determined that the Appellant resides in Region C.**
14. UPM § 4530.15 (A) (1) provides that a uniform set of income standards is established for all assistance units who do not qualify as categorically needy.
15. UPM § 4530.15 (A) (2) provides that 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.
16. UPM § 4530.15 (B) provides that the MNIL is the amount equivalent to 143 percent of the benefit amount that ordinarily would be paid under the AFDC (TFA) program to an assistance unit of the same size with no income for the appropriate region of residence.
17. **The Department correctly determined the Temporary Family Assistance grant for two residing in Region C is \$487.00.**
18. **The Department correctly determined that the MNIL for the Appellant's assistance unit of two is \$696.41 (\$487.00 x 1.43).**
19. UPM § 5025.05 (B) (2) provides that if income is received on other than a monthly basis, the estimate of income is calculated by multiplying 4.3 by a representative weekly amount that is determined as follows: b. if income varies from week to week, a representative period of at least four consecutive weeks is averaged to determine the representative weekly amount. d. if income is received on other than a weekly or monthly basis, the income is

converted to a representative weekly amount by dividing the income by the number of weeks covered.

20. UPM § 5030.10 (A) provides except for determining AABD eligibility and benefit levels for assistance units residing in long term care facilities, earned income disregards are subtracted from the assistance unit's monthly total available gross earned income. Total available gross earned income is counted in full in determining AABD eligibility and benefit levels for assistance units residing in long term care facilities.
21. UPM § 5030.10 (B) provides for the amount of the disregard. The following amounts are disregarded from income earned by the groups indicated: 1. \$65.00 per month plus 1/2 of the remaining income is disregarded from the earnings of: a. applicants for assistance to the disabled and aged; b. recipients of assistance to the aged who did not receive assistance to the disabled or blind in the month before they became 65 years of age.
22. **The Department correctly determined the wages for the Appellant's ■ year old spouse of \$3605.98 as total available gross income because the Appellant's spouse was neither applying for nor receiving Medicaid for AABD or MAABD.**
23. UPM § 5050.13(A) (1) provides that income from Social Security is treated as unearned income for all programs.
24. UPM § 5050.13 (A) (2) provides that Social Security income is subject to unearned income disregards in the AABD and MAABD programs.
25. UPM § 5030.15 (A) provides that except as provided in section 5030.15 (D), unearned income disregards are subtracted from the unit member's total gross monthly unearned income.
26. UPM § 5030.15 (B) (1) (a) provides that the disregard was \$227.00 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 1 thereafter, this disregard shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration. Effective January 1, 2020, the disregard is \$351.00 for those individuals who reside in their own homes in the community.
27. UPM § 5045.10 (C) (1) provides that except for determining Aid to the Aged, Blind, and Disabled ("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.

- 28. The Department correctly determined the Appellant's SSDI income of \$1090.00 as unearned income.**
- 29. The Department correctly calculated the Appellant's applied unearned income as \$739.00 [\$1090 - \$351.00]**
30. UPM § 5520.20 (B) provides the following method is used to determine the assistance unit's eligibility in the prospective period: 1. A six-month period for which eligibility will be determined is established to include the month of application and the five consecutive calendar months which follow. 2. The needs group which is expected to exist in each of the six months is established. 3. An MNIL is determined for each of six months is determined on the basis of: a. the anticipated place of residency of the assistance unit in each of the six months; and b. the anticipated composition of the needs group for each of the same six months. 4. The assistance unit's applied income is estimated for each of the six months. 5. 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: a. when the unit's total applied income equals or is less than the total MNIL's the assistance unit is eligible; b. 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.
31. UPM § 5520.25 (B) provides that 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.
32. UPM § 5520.25 (B) (1) provides medical expenses are used for a spend-down if they meet the following conditions: a. the expenses must be incurred by the 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 providers or to a lender for a loan used to pay the providers, on the part of the needs group members; d. the expenses may not have been used for a previous spend-down in which their use resulted in eligibility for the assistance unit.
- 33. Because the Appellant was not active on the State's Qualified Medicare Beneficiary or QMB program under the Medicare Savings Program; the Department incorrectly failed to consider 6 months Medicare Part B premium payments in the calculation of his spend-down.**
- 34. The Department in-correctly determined that the Appellant's six-month spend-down amount was \$21,891.42.**

DISCUSSION

The Appellant testified that his income has changed and that he has a lot of out of pocket medical expenses, which according to the hearing record was not submitted to the Department. The Appellant is encouraged to do so for the calculation of future spend-down.

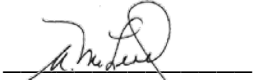
Regarding this particular spend-down from [REDACTED] 2020 to [REDACTED], 2020, the Department failed to consider the Appellant's 6 months of Medicare part B premiums and thus the spend-down balance of \$21, 891.42 is incorrect.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department is ordered to re-calculate the Appellant's spend-down period between [REDACTED] 2020 and [REDACTED], 2020 adding the Appellant's 6 months of Medicare Part B premiums.
2. Compliance with this order is due no later than [REDACTED] 2020 to the undersigned..


Almelinda McLeod
Hearing Officer

CC: Jamel Hilliard, SSOM Waterbury
Jennifer Miller, Fair Hearing Liaison, Waterbury

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.