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

[redacted] 2021
Signature confirmation

Case: [redacted]
Client: [redacted]
Request: 160830

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2020, the Department of Social Services (the "Department") denied the [redacted] 2020 Medicare Savings Program-Additional Low Income Medicare Beneficiaries ("Medicare Savings Program/ALMB") application of [redacted] (the "Appellant"), citing as its reason for denial the Appellant's failure to provide necessary verification to establish her eligibility to participate in that program.

On [redacted] 2020, an Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") hearing officer conducted a hearing as to whether the Department was "correct to deny the Appellant's application for the [Medicare Savings Program/ALMB] for failure to provide information."

Immediately following the [redacted] 2020 administrative hearing, the Department rescreened the Appellant's [redacted] 2020 Medicare Savings Program/ALMB application; the Department then denied that application, citing as its reason "the monthly net income of your household is more than the limit for this program."

On [redacted] 2020, the OLCRAH hearing officer dismissed the Appellant's hearing request related to the [redacted], 2020 denial as moot, based on the Department's [redacted], 2020 rescreening of the Appellant's [redacted] 2020 Medicare Savings Program/ALMB application. The NOTICE OF DISMISSAL acknowledged that the Appellant had "appeal rights as to the [redacted] 2020 action and could request a hearing on that eligibility determination if she is aggrieved."

On [redacted], 2020, the OLCRAH received the Appellant's [redacted] 2020 postmarked hearing request as to the [redacted], 2020 denial of her [redacted] 2020 Medicare Savings Program/ALMB application.

On [redacted] 2020, the OLCRAH issued a notice scheduling the administrative hearing for [redacted] 2020. The OLCRAH granted the Appellant's request for a postponement of the [redacted] 2020 hearing date.

On [redacted], 2020, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the undersigned OLCRAH hearing officer held an administrative hearing. The following individuals attended the hearing:

[redacted], Appellant
[redacted], Appellant's Witness
Princess O'Reggio, Department's Representative
Eva Tar, Hearing Officer

The hearing record closed [redacted] 2020.

STATEMENT OF ISSUE

The issue is whether the Department correctly denied the Appellant's [redacted] 2020 Medicare Savings Program/ALMB application on [redacted] 2020.

FINDINGS OF FACT

1. The Appellant is unmarried. (Appellant Testimony)

2. From [redacted] 2019 through [redacted] 2020, the Appellant grossed $3,106.04 in monthly service-connected disability benefits from the U.S. Department of Veterans Affairs as an honorably discharged veteran. (Department Exhibit 1) (Appellant Exhibit C)

3. On [redacted], 2020, the Department denied the Appellant's [redacted], 2020 Medicare Savings Program/ALMB application, citing as its reason "the monthly net income of your household is more than the limit for this program." (Department Exhibit 2)

4. On [redacted] 2020, the U.S. Department of Veterans Affairs ruled that the Appellant was eligible effective [redacted] 2020 for special monthly compensation based on the aid and attendance criteria having been met. (Appellant Exhibits F and H)

5. On [redacted], 2020, the Appellant first notified the Department of the U.S. Department of Veterans Affairs' [redacted] 2020 ruling. (Department Representative Testimony) (Hearing record)

6. In 2020, the annual Federal poverty level for an individual living in one of the 48 contiguous states equaled $12,760.00. *(Federal Register, 1/17/2020)*

7. Connecticut General Statutes § 17b-61 (a), as amended on passage by Section 309 of Public Act No. 19-117 (January Session), provides the deadline for the rendering of a hearing decision.

   Executive Order 7M, Section 3, dated March 25, 2020, extends the period for rendering a hearing decision. Executive Order 7DDD, Section 2, dated June 29, 2020 in part authorizes a further extension to the time frames provided by Executive Order 7M, Section 3, dated March 25, 2020 that would have lapsed on June 28, 2020. Executive Order 9L, Section 1, dated November 9, 2020, provides for an extension of COVID-19 Executive Orders to February 9, 2021, and provides in part that "[a]ny individual section of any such order that is scheduled to expire on any other specific date shall remain in effect until such specific date, and any specific effective date or date for action contained in any such individual section shall remain valid."

   ORDER, (Commissioner Deidre S. Gifford, 4/13/2020) provides in part: "Section 17b-61(a)'s timeframe for the commissioner or commissioner's designated hearing officer to render a final decision is extended from 90 to 'not later than 120 days' after the date the commissioner receives a request for a fair hearing pursuant to Section 17b-60…."

   On [redacted] 2020 the OLCRAH received the Appellant's [redacted] 2020 postmarked hearing request. This final decision initially would have become with the extended deadlines due to the COVID-19 pandemic by [redacted] 2020. However, the Appellant requested a postponement of the initial hearing date to [redacted] 2020, after the Appellant failed to appear for the scheduled [redacted] 2020 administrative hearing. The 63-day postponement further extended the deadline for the rendering of a final decision through [redacted] 2021. This final decision is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes designates the Department as the state agency for the administration of so identified state and federal programs.

   "The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program…." Conn. Gen. Stat. § 17b-262.

   "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)).

Answers to Frequently Asked Questions (FAQs) as provided on the Department's website are <u>not</u> part of the Department's Uniform Policy Manual and do not have the force and effect of regulation.

2. Section 17b-256f of the Connecticut General Statutes provides for eligibility for Medicare savings programs and 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.…"*

Conn. Gen. Stat. § 17b-256f (emphasis added).

Uniform Policy Manual ("UPM") § 5050.13 A.1. provides in part that income from Veteran's Benefits is treated as unearned income in all programs.

For the purposes of the Medicare Savings Program/ALMB, the Appellant's monthly service-connected disability benefits from the U.S. Department of Veterans Affairs in the relevant period are counted, unearned income in each month that the monthly service-connected disability benefits had not been designated as "aid and attendance" by the U.S. Department of Veterans Affairs.

An eligibility requirement of the Medicare Savings Program/ALMB is that the applicant's applied income must fall at or below $2,615.80 per month, i.e., 246 percent of the Federal poverty level for an individual. [$31,389.60 (246 percent of the annual Federal poverty level for an individual living in one of the 48 contiguous States) divided by 12 months]

3. The Department uses Aid to the Aged, Blind, and Disabled ("AABD") income criteria (Cross Reference 5000), including deeming methodology, to determine eligibility for [the Medicare Savings Program/ALMB] 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. UPM § 2540.97 D.1.

"The income to be compared with the Federal Poverty Level is the applied income for MAABD [Medicaid for Aged, Blind, and Disabled] individuals living in the community (Cross Reference: 5045) …." UPM § 2540.97 D.2.

"The Department computes applied income by subtracting certain disregards and deductions, as described in this section, from counted income." UPM § 5005 C.

"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.

The disregard is $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 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.

In 2020, the standard unearned disregard for an individual living in the community equaled $351.00 per month.

For the purposes of the Medicare Savings Program/ALMB, the Appellant's monthly applied income in the relevant period of [redacted] 2020 (date of application) through [redacted] 2020 (date of denial) equaled $2,755.04. [$3,106.04 minus $351.00 (standard unearned income disregard)]

The Appellant's monthly applied income of $2,755.04 per month in the relevant period exceeded the Medicare Savings Program/ALMB income limit of $2,615.80 per month.

On [redacted] 2020, the Department correctly denied the Appellant's [redacted] 2020 Medicare Savings Program/ALMB application, as the Appellant's applied income exceeded the program's limits.

DISCUSSION

The Appellant argues that her disability benefits issued by the U.S. Department of Veterans Affairs are "Veterans Program benefits" and should be excluded as income from the Medicare Savings Program/ALMB. The Appellant points to a sentence on Page 5 of the Frequently Asked Questions (FAQ) section of the Department's website that states in full: "Money received from the Veterans' Program and Aid and Attendance is not counted towards eligibility." (Appellant Exhibit D)

The Appellant's argument in error relies on a poorly written sentence on the Department's website.[1] The FAQ section of the Department's website does not have the force and effect of regulation.

The language found in section 17b-256f of the Connecticut General Statutes is unambiguous. The Legislature only designated "Aid and Attendance pension benefits granted to a veteran, …, or the surviving spouse of such veteran" as meeting the criteria for exclusion as income from Connecticut's version of the Medicare Savings Program/ALMB. For the undersigned hearing officer to broaden the scope of Conn. Gen. Stat. § 17b-256f to exclude ALL veterans' benefits would be an impermissible abuse of discretion.

At the time of the Department's [redacted] 2020 denial of the Appellant's Medicare Savings Program/ALMB application, the Medicare Savings Program/ALMB had an upper income limit of $2,615.80 for a single individual. The Appellant's monthly applied income of $2,755.04 exceeded that upper income limit.

DECISION

The Appellant's appeal is DENIED.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

Pc: Princess O'Reggio, DSS-Bridgeport
Yecenia Acosta, DSS-Bridgeport
Tim Latifi, DSS-Bridgeport

[1] The Appellant also argues that the Internal Revenue Service rules regarding taxable income with respect to the filing of individual Federal income tax returns also apply to the Medicare Savings Program/ALMB. This argument is without merit.

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, 165 Capitol Avenue, 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.