

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

██████████ 2021
Signature Confirmation

██████████
██████████
Request # 167804

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2020, the Department of Social Services (the "Department") sent ██████████ (the "Appellant"), a Notice of Action ("NOA") denying his application for medical benefits under the Medicare Savings Program ("MSP").

On ██████████, 2020, the Appellant requested an administrative hearing to contest the Department's denial of the MSP.

On ██████████, 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing 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 participated in the hearing:

██████████ Appellant
██████████, Appellant's Spouse
Carmen Ferrer, Department's Representative
Carla Hardy, Hearing Officer

Due to the COVID-19 Pandemic, the hearing was held as a telephonic hearing.

The hearing record remained open until [REDACTED] 2020, in order for the Appellant to submit additional information which was received.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly denied the Appellant's application for medical assistance benefits under the MSP.

FINDINGS OF FACT

1. On [REDACTED], 2020, Department reviewed the Appellant's application for medical assistance under the MSP. This application was received by the Department on [REDACTED] 2020. (Exhibit 4: Case Notes; Hearing Summary)
2. The Appellant is married and resides with his spouse, [REDACTED] ("Appellant's Spouse). (Exhibit 1: Application; Appellant's Testimony)
3. The Appellant receives a gross monthly Social Security ("SSA") income of \$2,403.50 and a \$1,016.00 monthly pension. His spouse receives \$834.60 in SSA monthly. (Exhibit 1; Exhibit 2: Bendex Inquiry Details; Appellant's Testimony; Department's Testimony)
4. The Appellant's monthly household income totals \$4,254.10 ($\$2,403.50 + \$1,016.00 + \$834.60 = \$4,254.10$). (Fact 3)
5. The Appellant pays for his Medicare Part B premiums. (Appellant's Testimony)
6. The Appellant previously incurred \$700,000.00 in business debt that he is currently writing off on his income tax return. (Appellant's Exhibit A: 2018 Income Tax Return; Exhibit B: 2019 Income Tax Return; Appellant's Testimony)
7. The monthly Federal Poverty Limit ("FPL") for a household of two persons equals \$1,437.00. (Federal Register)
8. On [REDACTED], 2020, the Department notified the Appellant that his application for MSP under the Additional Low Income Medicare Beneficiary ("ALMB") was denied because the Appellant's household income exceeds the MSP income limit for the program. (Exhibit 5: NOA, [REDACTED]/20)
9. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on

██████████ 2020. Therefore, this decision is due not later than ██████████ 2021. However, the hearing remained open until ██████████ 2020, at the Appellant's request causing a 1-day delay. Because this 1-day delay resulted from the Appellant's request, this decision is not due until ██████████ 2021, and is therefore timely. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Federal Statutes provide for the definition of a qualified Medicare beneficiary as an individual:

Who is entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter (including an individual entitled to such benefits pursuant to an enrollment under section 1395I-2 of this title, but not including an individual entitled to such benefits only pursuant to an enrollment under section 1351I-2a of this title.) [42 United States Code (U.S.C.) § 1396d(p)(1)(A)]

Whose income (as determined under section 1382(a) of this title for purposes of the supplemental security income program, except as provided in paragraph 2(D)) does not exceed an income level established by the state consistent with paragraph 2. [42 U.S.C. § 1396d(p)(1)(B)]

3. Connecticut General Statutes Section 17b-256(f) provides in relevant part for eligibility for Medicare savings programs. 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 MSP. 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. The Commissioner of Social Services, pursuant to section 17b-10, may implement policies and procedures to administer the provisions of this section while in the process of adopting such policies and procedures in regulation form, provided the Commissioner prints notice of the intent to adopt the

regulations in the Connecticut Law Journal not later than 20 days after the date of implementation. Such policies and procedures shall be valid until the time final regulations are adopted.

The ALMB program is the Department's Qualifying Individual Program and has the highest income limit of the three MSP coverage groups.

4. "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, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990)).
5. UPM § 2015.05(A) provides that the assistance unit in AABD and MAABD consists of only one member. In these programs, each individual is a separate assistance unit.
6. The Department correctly determined that the Appellant is an assistance unit of one.
7. UPM § 5515.05(C)(2) provides that the needs group for an MAABD unit includes the following:
 1. The applicant or recipient; and
 2. The spouse of the applicant or recipient when they share the same home regardless of whether one or both are applying for or receiving assistance, except in cases involving working individuals with disabilities. In these cases, the spouse (and children) are part of the needs group only in determining the cost of the individual's premium for medical coverage. (Cross Reference 2540.85)
8. The Department correctly determined a needs group of two.
9. UPM § 5005(A) provides that in consideration of income, the Department counts the assistance unit's available income, except to the extent that it is specifically excluded. Income is considered available if it is:
 1. Received directly by the assistance unit, or
 2. Received by someone else on behalf of the assistance unit and the unit fails to prove that is inaccessible, or
 3. Deemed by the Department to benefit the assistance unit.
10. UPM § 5050.13(A)(1) provides that income from the Social Security Administration is treated as unearned income in all programs.
11. UPM § 5050.09(A) provides that income from annuities, pensions and trust payments are treated as unearned income in all programs.

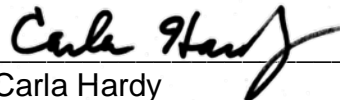
12. UPM § 5025.05(B)(1) provides that if income is received on a monthly basis, a representative monthly amount is used as the estimate of income.
- 13. The Department incorrectly determined the assistance unit's gross monthly income equals \$4,223.20.**
- 14. The Appellant's gross monthly income equals \$4,254.10.**
15. UPM § 5515.10(C) provides that the income limit used to determine Medicaid eligibility is the limit for the number of persons in the needs group.
16. Effective [REDACTED] 2020, the Federal Poverty Limit ("FPL") for a household of two is \$1,437.00 monthly.
17. Effective [REDACTED] 2020, the Department established the income limit under the MSP application to the ALMB program for a household of two as \$3,535.02 ($\$1,437.00 \times 246\% = \$3,535.02$)
- 18. The Department correctly determined the Appellant's gross monthly applied income of \$4,254.10 exceeds the ALMB income limit of \$3,535.02.**
19. On [REDACTED] 2020, the Department correctly denied the Appellant's application for benefits under the MSP effective [REDACTED] 2020.

DISCUSSION

The Appellant provided testimony that he incurred \$700,000.00 in business debt which is reducing his actual income. Unfortunately, there is no policy that allows the Department to deduct debt from monthly income. The Department correctly denied the MSP.

DECISION

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



Carla Hardy
Hearing Officer

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 06105-3725.

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 06105-3725. 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.