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

2021
SIGNATURE CONFIRMATION

CASE #
CLIENT ID #
REQUEST #

NOTICE OF DECISION

PARTY

PROCEDURAL BACKROUND

On 2021, the Department of Social Services (the "Department") sent (the "Appellant") a Notice of Action ("NOA") that indicated the Appellant's Medicaid for the Employed Disabled ("S05") premium was recalculated effective 2021, due to recalculation of the Appellant's earned income.

On 2021, a second NOA was sent to the Appellant that indicated the Appellant's S05 premium was recalculated effective 2021, due to recalculation of the Appellant's earned income.

On , 2021, an administrative hearing was requested to appeal the Department's decision.

On , 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the Administrative Hearing for 2021.

On 2021, 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 hearing was held telephonically due to the COVID-19 pandemic with no objection from any party. The following individuals participated in the hearing:

[redacted], Appellant's Representative
Christine Faucher, Department's Representative
Joseph Alexander, Administrative Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined the Appellant is obligated to pay her S05 premium as calculated by the Department.

FINDINGS OF FACT

1. The Appellant was a recipient of the HUSKY Medicaid for the Employed Disabled ("S05") program. (Hearing Record)

2. On [redacted] 2021, the Appellant submitted two earnings statements from her employer [redacted]; Pay date [redacted], 2021 with a gross pay of $497.29 and pay date [redacted], 2021 with a gross pay of $523.70.

3. On [redacted] 2021, the Department calculated the Appellant's total earned income to be $1,097.56 ($497.29 + $523.70 = $1,020.99 / 2 = $510.49 x 2.15 = $1,097.56). (Hearing Record)

4. The Appellant receives $1,359.00 per month from Social Security Disability Income ("SSDI"). (Department's Exhibit 4: MAABD-Income Test)

5. On [redacted] 2021, the Department determined the Appellant's total monthly income was $2,456.56 ($1,359.00 SSDI + $1,097.56 earned income).

6. On [redacted] 2021, the Department calculated the Appellant's monthly premium to be $30.93. (Hearing Record, Department's Exhibit 6: NOA dated [redacted] 2021)

7. On [redacted], 2021, the Department received the following [redacted] earnings statements: Pay date [redacted] 2021 with a gross pay of $497.29, pay date [redacted], 2021, with a gross pay of $523.70 and pay date [redacted] 2021, with a gross pay of $818.30. (Hearing Record, Department's Exhibit 2: Pay Stubs)

8. On [redacted], 2021, the Department calculated the Appellant's total earned income as using the following calculations: (Department's Exhibit 4: MAABD-Income Test)

   $497.29 + $523.70 + $818.30 = $1,839.29 / 3 = $613.10 (anticipated gross pay for [redacted] 2021).

$818.30 + $613.10 = $1,431.40 / 2 = $715.70 x 2.15 = $1538.75

9. On ██████, 2021, the Department determined the Appellant's total monthly income was $2,897.75 ($1,359.00 SSDI + $1,538.75 earned income)

10. On ██████, 2021, the Department calculated the Appellant's premium to be $75.07 For the month of ████2021 and $53.01 for the month of ███ 2021 and ongoing. (Department's Exhibit 5: MA-S05 Working Disabled Premium)

11. On ██████ 2021, a NOA was sent to the Appellant regarding the recalculation of the premium for the months of ████2021, and ███ 2021. (Department's Exhibit 6: NOA dated ██████, 2021)

12. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within ██ days of the request for an Administrative Hearing. The hearing request was received on ██████, 2021. The decision must be issued on or before ██████, 2021.

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 the 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. Conn. Gen. Stat. § 17b-597 provides for working persons with disabilities program. (a) The Department of Social Services shall establish and implement a working persons with disabilities program to provide medical assistance as authorized under 42 USC 1396a(a)(10)(A)(ii), as amended from time to time, to persons who are disabled and regularly employed. (b) The Commissioner of Social Services shall amend the Medicaid state plan to allow persons specified in subsection (a) of this section to qualify for medical assistance. The amendment shall include the following requirements: (1) That the person be engaged in a substantial and reasonable work effort as determined by the commissioner and as permitted by federal law and have an annual adjusted gross income, as defined in Section 62 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, of no more than seventy-five thousand dollars per year; (2) a disregard of all countable income up to two hundred per cent of the

federal poverty level; (3) for an unmarried person, an asset limit of ten thousand dollars, and for a married couple, an asset limit of fifteen thousand dollars; (4) a disregard of any retirement and medical savings accounts established pursuant to 26 USC 220 and held by either the person or the person's spouse; (5) a disregard of any moneys in accounts designated by the person or the person's spouse for the purpose of purchasing goods or services that will increase the employability of such person, subject to approval by the commissioner; (6) a disregard of spousal income solely for purposes of determination of eligibility; and (7) a contribution of any countable income of the person or the person's spouse which exceeds two hundred per cent of the federal poverty level, as adjusted for the appropriate family size, equal to ten per cent of the excess minus any premiums paid from income for health insurance by any family member, but which does not exceed the maximum contribution allowable under Section 201(a)(3) of Public Law 106-170, as amended from time to time.

4. UPM § 2540.85 provides there are two distinct groups of employed individuals between the ages of 18 and 64 inclusive who have a medically certified disability or blindness and who qualify for Medicaid as working individuals with disabilities. These groups are the Basic Insurance Group and the Medically Improved Group. There is a third group of employed individuals consisting of persons at least 18 years of age who have a medically certified disability or blindness who also qualify for Medicaid as working individuals with disabilities. This is the Balanced Budget Act Group. Persons in this third group maybe age 65 or older.

5. UPM § 2540.85(A) provides for the Basic Insurance Group. An individual in this group, which is authorized under the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA), is subject to the conditions described below. 1. An individual in this group must be engaged in a substantial and reasonable work effort to meet the employment criterion. (a) Such effort consists of an activity for which the individual receives cash remuneration and receives pay stubs from his or her employer. (b) If the individual is self-employed, he or she must have established an account through the Social Security Administration and must make regular payments based on earnings as required by the Federal Insurance Contributions Act. (c) that an individual who meets the employment criterion but then loses employment through no fault of his or her own, for reasons such as a temporary health problem or involuntary termination, continues to meet the employment criterion for up to one year from the date of the loss of employment. The individual must maintain a connection to the labor market by either intending to return to work as soon as the health problem is resolved or by making a bona fide effort to seek employment upon an involuntary termination.

   The Department correctly determined the Appellant is a single individual eligible for the Basic Insurance Group as she at least ██ years of age and younger than ██, has substantial and reasonable work effort and receives SSDI.

6. UPM § 5025.05 (A) (2) provides that for current and future months the Department uses the best estimate of the amount of income the unit will have, if the exact amount is unknown. This estimate is based upon:

    a. information about what the unit received in similar past periods of time; and
    b. a reasonable anticipation of what circumstances will exist to affect the receipt of income in future months

7. 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.

The Department calculated the Appellant's earned income as follows:

2021 (Calculated on 2021):
$497.29 + $523.70 = $1,020.99 / 2 = $510.40 x. 2.15 (Appellant paid bi-weekly) = $1,097.36

2021 (Calculated on , 2021):
$818.30 + $613.10 = $1,431.40 / 2 = $715.70 x 2.15 = $1538.76

2021 (Calculated on , 2021):
$497.29 + $523.70 + $818.30 + $613.10 = $2,452.39 / 4 = $613.10

$613.10 x 2.15 = $1,318.16

8. UPM § 2540.85(A)(4) provides that an individual may be required to pay the Department a monthly premium for medical coverage if the gross monthly counted income of the individual and spouse (minus Impairment-Related Work Expenses described at UPM 5035.10 C) exceeds 200% of the federal poverty level (FPL) for the appropriate family size, including dependent children living in the home.

9. UPM § 3545.15(A)(2) provides the amount of the individual's monthly Medicaid premium is equal to 10% of the excess monthly income described above, minus the amount of any monthly payments for health insurance made by the individual or spouse for any family member

10. UPM § 5035.10 (C) provides that for Impairment Related Work Expenses:

   1. certain work expenses which are related to enabling the individuals to be employed are deducted from earned income in determining eligibility and calculating benefits for:

      a. recipients of assistance to the disabled; and
      b. recipients of assistance to the aged who received assistance to the disabled in the month before they became 65 years of age.

   2. Impairment related work expenses are not used to determine the initial eligibility of an applicant for assistance based upon disability.

   3. Impairment-related work expenses include but are not limited to, the following:

      a. attendant services including help with personal or employment functions;
      b. medical equipment such as canes, crutches, pacemakers, and hemodialysis equipment.
      c. prosthetic devices;
      d. work-related equipment which enables the individual to function on the job such as one-hand typewriters, telecommunication devices for the deaf, and special tools necessitated by the impairment;
      e. modifications to the residence of the individual which can be associated with maintaining employment in or outside the home, except when claimed as a business expense by a self-employed person;
      f. non-medical equipment which can be associated with enabling the individual to be employed;
      g. drugs and medical services directly related to reducing, controlling or eliminating an impairment or its symptoms;
      h. all other miscellaneous expenses not cited above but which can be associated with the individual's disability and with enabling the individual to be employed including transportation, medical supplies, vehicular medications, etc.;
      i. the cost of installing, repairing, and maintaining the cited equipment and supplies

The Department correctly excluded Impairment Related Work Expenses as none were declared by the Appellant.

The Department correctly determined the Appellant's S05 premium was $75.07 for the month of ████ 2021. $2,897.76 ($1,359.00 SSDI + $1,318.16. earned income) - $2,147.00 (200% Federal Poverty Level) = $750.07 x .10 (10%) = $75.01.

The Department correctly determined the Appellant's S05 premium is $53.01 for the month of ████ 2021 and ongoing. $2,677.16 ($1,359.00 SSDI + $1,318.16 earned income) – $2,147.00 (200% FPL) = $530.10 x .10 (10%) = $53.01.

DISCUSSION

The Appellant's representative believes the Department did not calculate the S05 premium correctly because the Department calculated an anticipated gross pay for Compass Two LLC earning statement dated [redacted] and because the Department did not use earnings statements prior to [redacted] when calculating the Appellant's monthly income. The Department explained that due to the Public Health Emergency ("PHE") declaration, the Appellant's S05 will not be closed due to non-payment of the premium during the PHE period. The Department stated the Appellant's S05 premium has been reduced to $0.00 and will remain at $0.00 until the PHE period is over. Once the PHE period ends, the premium would remain at $0.00 until the Appellant's next medical renewal. The Appellant's representative testified the Appellant's employment will end once the [redacted] closes for the summer. The Department reviewed the continued eligibility for S05 based on the Appellant's representative's testimony.

DECISION

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

Joseph Alexander

Joseph Alexander
Administrative Hearing Officer

CC: Tricia Morelli, Operations Manager, DSS, Manchester
Christine Faucher, Administrative Hearing Liaison, DSS, Manchester

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 §4-1181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, 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 with 45 days of the mailing of this decision, or 45 days after the agency denies 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 her 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.