

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

██████████ 2022
Signature confirmation

Case: ██████████
Client: ██████████
Request: 200800

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2022, the Department of Social Services (the “Department”) issued a *Notice of Action* to ██████████ (the “Appellant”) notifying him that as a HUSKY-C/Medicaid recipient residing in a skilled nursing facility, his patient liability amount or applied income equaled \$1,907.00 per month.

On ██████████ 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received the Appellant’s petition by his conservator, ██████████ (the “Conservator”), to retroactively reduce the Appellant’s applied income due to the ██████████ (the “Facility”) by \$1,250.00 per month.

On ██████████ 2022, the OLCRAH scheduled an administrative hearing for ██████████ 2022. The OLCRAH granted the Conservator’s request for a postponement of the hearing.

On ██████████ 2022, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The Conservator was sworn in for the purpose of providing testimony.

The following individuals participated:

██████████, Conservator
Vanessa Vazquez, Department’s Representative
Katrina Arnott, Department’s Observer
Eva Tar, Hearing Officer

On ██████████ 2022, the hearing record closed.

STATEMENT OF ISSUE

The issue is whether the Department correctly determined the Appellant's monthly patient liability amount or applied income due to the Facility.

FINDINGS OF FACT

1. The Appellant is not married. (Conservator Testimony)
2. The Appellant has HUSKY-C/Medicaid coverage. (Department Exhibits 7 and 8)
3. The Appellant has MSP [Medicare Savings Program] coverage. (Department Exhibit 8)
4. Since [REDACTED] 2021, the Appellant has been a resident of the Facility, a skilled nursing facility. (Department Representative Testimony) (Department Exhibit 2)
5. [REDACTED] administers a Structured Settlement Annuity ([REDACTED] (the "Annuity")). (Conservator Testimony) (Department Exhibit 2) (Appellant Exhibits 2 and 3)
6. The [REDACTED] is the owner of the Annuity; the Appellant did not fund the Annuity. (Conservator Testimony) (Department Exhibit 2) (Appellant Exhibits 2 and 3)
7. Since [REDACTED] 1985, the Annuity has provided an annual \$15,000.00 payment to the Appellant. (Conservator Testimony) (Appellant Exhibits 2 and 3)
8. The Annuity's annual payment to the Appellant will continue for the duration of the Appellant's lifetime. (Conservator Testimony) (Appellant Exhibits 2 and 3)
9. From [REDACTED] through [REDACTED], the Conservator represented the Appellant in litigation arising from a [REDACTED] vehicular accident. (Conservator Testimony)
10. In [REDACTED], the Appellant received a lump sum payment—separate from the Annuity's recurring annual payments—upon settlement of the litigation. (Conservator Testimony)
11. The Annuity's annual payment to the Appellant is for "pain and suffering" as associated with the [REDACTED] vehicular accident. (Conservator Testimony)
12. The Annuity's annual payment to the Appellant is not for the purpose of meeting specifically designated expenses. (Conservator Testimony)
13. Prior to his placement at the Facility, the Appellant has used the Annuity's annual payment to pay his personal bills in the community and maintain a vehicle. (Conservator Testimony)
14. The most recent [REDACTED] 2022 payment from the Annuity remains in the Conservator's client fund. (Conservator Testimony)
15. The Conservator seeks to use the Annuity's annual payment to purchase a burial contract, a refrigerator, and a computer for the Appellant. In addition, the Conservator would accept conservatorship fees, should the Probate Court approve the fees. (Conservator Testimony)

16. In [REDACTED], the Appellant grosses \$732.00 per month in Social Security benefits. (Department Exhibit 4)
17. The Appellant is not responsible for out-of-pocket for health care premiums, community home maintenance costs, a community family allowance, or unpaid medical expenses. (Department Exhibit 8)
18. On [REDACTED], 2022, the Department issued a *Notice of Action* to the Appellant notifying him that his patient liability amount or applied income due to the Facility equaled \$1,907.00 per month. (Department Exhibit 8)
19. The Department arrived at the Appellant's monthly patient liability amount or applied income by dividing the Annuity's annual \$15,000.00 payment by 12 months, adding that result to the Appellant's gross monthly Social Security benefit, and subtracting \$75.00 for a personal needs allowance. (Department Representative Testimony) (Department Exhibit 4)
20. Connecticut General Statutes § 17b-61 (a) provides: "The Commissioner of Social Services or the commissioner's designated hearing officer shall ordinarily render a final decision not later than ninety days after the date the commissioner receives a request for a fair hearing pursuant to section 17b-60, ... , provided the time for rendering a final decision shall be extended whenever the aggrieved person requests or agrees to an extension, or when the commissioner documents an administrative or other extenuating circumstance beyond the commissioner's control...."
21. On [REDACTED], 2022, the OLCRAH received the Conservator's petition, which ordinarily would have required the issuance of this Decision by [REDACTED] 2022. However, the OLCRAH granted the Conservator's request for a postponement of the initial hearing date of [REDACTED] 2022, which extended the deadline to complete the hearing decision by 20 days. This hearing decision would have become due by [REDACTED] 2022. This final decision is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes in part designates the Department as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

"The Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department." Conn. Gen. Stat. § 17b-261b (a).

"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 \(1990\)](#)).

In Connecticut, the Department has the sole authority to administer the HUSKY-C/Medicaid program and make regulations governing the same.

2. Section 5000.01 of the Uniform Policy Manual (“UPM”) provides in part the following definitions:

Available Income. Available income is all income from which the assistance unit is considered to benefit, either through actual receipt or by having the income deemed to exist for its benefit.

Counted Income. Counted income is that income which remains after excluded income is subtracted from the total of available income.

Excluded Income. Excluded income is income which is available from certain specified sources and is not counted in determining eligibility and level of benefits.

Intermittent Income. Intermittent income is income which is received at recurrent intervals longer than one month.

Lump Sum. A lump sum is an amount of money which is received by an assistance unit on a one-time basis and is not expected to recur.

Unearned Income. Unearned income is income which does not constitute compensation for work or services performed or business conducted and includes returns from capital investments when the individual is not actively involved in the production of the income.

UPM § 5000.01.

“Payments received by the assistance unit from annuity plans, pensions and trusts are considered unearned income.” UPM § 5050.09 A.

The Annuity’s annual payment to the Appellant is not a lump sum, as the term “lump sum” is defined at UPM § 5000.01; the payment is expected to reoccur at regular intervals for the Appellant’s lifetime.

The Annuity’s annual payment to the Appellant is intermittent income, as the term “intermittent income” is defined at UPM § 5000.01; the payment is received by the Appellant at recurrent intervals longer than a month.

The Annuity’s annual payment to the Appellant is unearned income, as the term “unearned income” is defined at UPM § 5000.01 and is addressed at UPM § 5050.09 A.

3. “Annuities are evaluated as both an asset representing an investment and as income that the beneficiary may receive on a regular basis (cross reference 5050, Treatment of Specific Types). ... *Any payments received from an annuity are considered income.* Additionally, the right to receive income from an annuity is regarded as an available asset, whether or not the annuity is assignable.” UPM § 4030.47. (emphasis added)

In accordance with UPM § 4030.47, the Appellant’s right to receive income from the Annuity is an available asset for the purposes of HUSKY-C/Medicaid, even though the Appellant does not own the Annuity and did not directly fund the Annuity.

In accordance with UPM § 4030.47, the Annuity's annual payments to the Appellant for the duration of his lifetime are income received by the Appellant on a regular basis.

4. Section 5015.10 of the Uniform Policy Manual identifies the specific types of income excluded for the purposes of the Aid to the Aged, Blind, and Disabled and HUSKY-C/Medicaid programs.

The Department correctly treated the Annuity's annual payment to the Appellant as non-excluded income for the purposes of the HUSKY-C/Medicaid program, as recurring annuity payments are not identified at UPM § 5015.10 as excluded income with respect to the HUSKY-C/Medicaid program.

5. "In consideration of income, the Department counts the assistance unit's available income, except to the extent 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 it is inaccessible; or 3. deemed by the Department to benefit the assistance unit." UPM § 5005 A.

As the Annuity's most recent \$15,000.00 payment currently is held in the Conservator's client account, the payment is accessible to the Conservator and is within his control to distribute for the Appellant's benefit.

The Annuity's annual payment is available income, as the term "available income" is defined at UPM § 5000.01 and contemplated at UPM § 5005 for the purposes of the programs the Department administers.

6. "The treatment of intermittent income described in this section involves both earned and unearned income. Some intermittent payments which are sporadically received are distinguished from lump sums on the basis of their probable recurrence." UPM § 5050.53.

"The following types of payments exemplify income which is considered intermittent: 1. payment of money earned over a past period greater than a calendar month; 2. advance payments made subject to contractual agreements for expenses in a future period greater than one month; 3. payments made at intervals greater than one month subject to arrangements made between the payor and payee including, but not limited to, benefits from insurance settlements, payments of dividends and interest, and payments from pensions and annuities; 4. receipt of income from sporadic short-term employment." UPM § 5050.53 A.

"Income which is received intermittently is considered in relation to whether the payment is: 1. one of a series of contracted payments to be received over a period of time from a particular source; or 2. a single payment with no relationship to any former or subsequent payment." UPM § 5050.53 B.

"The amount of the payment is prorated over a period of time in the following situations: 1. ... ; 2. ... ; 3. when the income consists of unearned income paid on installment basis either resulting from the nature of the source or pursuant to an agreement between the payor and payee, the payment is averaged over the number of months the amount is intended to cover." UPM § 5050.53 C.3.

“When the payments are received less frequently than monthly, each payment is averaged forward over the number of months for which it was intended to obtain an amount of gross monthly income. (Cross Reference: 5050.53 - Intermittent Income)” UPM § 5050.09. B.

The Department correctly pro-rated the Annuity’s annual \$15,000.00 payment to the Appellant to equal \$1,250.00 per month, in accordance with the directives located at UPM §§ 5050.53 C.3. and 5050.09. B.

7. Section 5050.13 A.1. of the Uniform Policy Manual provides that income from Social Security and Veterans’ Benefits is treated as unearned income in all programs.

The Department correctly determined that the Appellant’s \$732.00 per month in gross income from Social Security was counted, unearned income for the purposes of the HUSKY-C/Medicaid program.

8. Section 17b-261 (a) of the Connecticut General Statutes provides in part: “The commissioner shall establish the standards for eligibility for medical assistance at one hundred forty-three per cent of the benefit amount paid to a household of equal size with no income under the temporary family assistance program in the appropriate region of residence. ... Any income in excess of the applicable amounts shall be applied as may be required by said federal law, and assistance shall be granted for the balance of the cost of authorized medical assistance....”

“Assistance units who are residents of Long Term Care Facilities (LTCF) or receiving community based services (CBS) are responsible for contributing a portion of their income toward the cost of their care....” UPM § 5045.20.

Section 17b-261r of the Connecticut General Statutes addresses the determination of applied income, notice, and the legal recourse by a nursing home facility to recover unpaid applied income from a patient.

“For purposes of this section, “applied income” means the income of a recipient of medical assistance, pursuant to section 17b-261, that is required, after the exhaustion of all appeals and in accordance with state and federal law, to be paid to a nursing home facility for the cost of care and services.” Conn. Gen. Stat. § 17b-261r (a).

“In determining the amount of applied income, the Department of Social Services shall take into consideration any modification to the applied income due to revisions in a medical assistance recipient's community spouse minimum monthly needs allowance, as described in Section 1924 of the Social Security Act, and any other modification to applied income allowed by state or federal law.” Conn. Gen. Stat. § 17b-261r (b).

The Department correctly determined that the Appellant was required to contribute a portion of his income as a patient liability amount or applied income toward the monthly cost of his care at the Facility.

9. Section 17b-272 of the Connecticut General Statutes, as codified at the 2022 Supplement to the General Statutes of Connecticut (revised to January 1, 2022), provides for a

personal fund allowance: "The Commissioner of Social Services shall permit patients residing in nursing homes, chronic disease hospitals and state humane institutions who are medical assistance recipients under sections 17b-260 to 17b-262, inclusive, 17b-264 to 17b-285, inclusive, and 17b-357 to 17b-361, inclusive, to have a monthly personal fund allowance of seventy-five dollars."

Section 5035.20 B. of the Uniform Policy Manual specifies the deductions from income permitted to unmarried Medicaid recipients residing in long-term care facilities. These deductions include: an increased personal needs allowance for veterans whose Veterans Administration pension was reduced to \$90.00; a standard personal needs allowance of \$50.00; an amount of income diverted to meet the needs of a family member in a community home with certain limitations; Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for by Medicaid or any other third party; costs for medical treatment approved by a physician which are incurred subsequent to the effective date of eligibility and which are not covered by Medicaid; expenses for services provided by a licensed medical provider in the six-month period immediately preceding the first month of eligibility under certain conditions; the cost of maintaining a home in the community subject to certain conditions.

In accordance with UPM § 5035.20 B., an unmarried HUSKY-C/Medicaid recipient's personal expenses, such as conservator fees and one-time purchases of a burial contract, refrigerator, and computer are not allowable deductions from income with respect to the patient liability amount or applied income calculation.

The Department correctly calculated the amount of the Appellant's patient liability amount or applied income to equal \$1,907.00 per month. [\$1,250.00 (Annuity's annual payment pro-rated by 12) plus \$732.00 (monthly gross Social Security benefit) minus \$75.00 (personal needs allowance)]

DECISION

The Appellant's appeal is DENIED.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

Pc: [REDACTED]
Vanessa Vazquez, DSS-Willimantic
Gary Sardo, DSS-Norwich
Jessica Carroll, DSS-Norwich

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.