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

SIGNATURE CONFIRMATION

CASE ID #
CLIENT ID #
REQUEST # 203652

NOTICE OF DECISION

PARTY

PROCEDURAL BACKGROUND

On the Department of Social Services (the "Department") sent (the "Appellant"), a Notice of Action ("NOA") discontinuing his medical benefits under the Medicare Savings Program ("MSP") Additional Low Income Medicare Beneficiaries ("ALMB") program effective because his household's net income exceeded the program limits.

On the Appellant requested an administrative hearing to contest the Department's discontinuance of the MSP ALMB.

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

On in accordance with sections 17b-60, 17-61 and 4-176e to 4-184 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals participated in the hearing:

Appellant
Kostoula Karachristos, Department's Representative
Amy MacDonough, Fair Hearing Officer Observer
Sara Hart, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department correctly discontinued the Appellant's medical assistance benefits under the MSP ALMB.

FINDINGS OF FACT

1. The Appellant was a recipient of the MSP ALMB program for the certification cycle dates of [redacted] through [redacted] *(Exhibit 9: W1ERL)*

2. The Appellant is married to [redacted] (the "spouse") and resides with her in the community. *(Appellant's Testimony)*

3. The Appellant is [redacted] years old (DOB: [redacted]6) and disabled. The Appellant's spouse is [redacted] years old (DOB: [redacted]) and is not disabled. *(Hearing Record, Appellant's Testimony)*

4. The Appellant receives Medicare Part A and Part B coverage from the Social Security Administration. *(Exhibit 6, Hearing Record)*

5. The Appellant receives a gross monthly Social Security Disability ("SSDI") payment of $1659.00. *(Exhibit 4: SOLQ Results)*

6. [redacted] employs the spouse. She is scheduled to work 32 hours per week earning $20.25 per hour. *(Exhibit 5: [redacted] letter)*

7. On [redacted] the Department processed the Appellant's MSP renewal and issued a NOA discontinuing the Appellant's MSP coverage effective [redacted] [redacted], because his household's monthly net income exceeded the program limits. *(Exhibit 5: NOA [redacted], Exhibit 3: Case Notes)*

8. The Additional Low Income Medicare Beneficiary ("ALMB") is a program under the MSP. The ALMB income limit for a married couple was $3754.00 per month in [redacted] *(Hearing Record, Exhibit 7: DSS Program Standards Chart)*

9. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that the Department issue a decision within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [redacted] Therefore, this decision is due no later than [redacted] and is 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.

   The Department has the authority to administer and determine eligibility for the MSP program.

2. "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)).

3. 42 United States Code § 1396d(p)(1) provides the term "qualified medicare beneficiary" means an individual – (A) 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 1395i–2a of this title. (B) whose income (as determined under section 1382a 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).

   The Appellant is a recipient of Medicare Parts A and B.

4. UPM § 2540.94 (A) provides for the coverage group description for the Qualified Medicare Beneficiaries ("QMB"/ "MSP"). 1. This group includes individuals who: a. are entitled to hospital insurance benefits under part A of Title XVIII of the Social Security Act; and b. have income and assets equal to or less than the limits described in paragraphs C and D. 2. A Qualified Medicare Beneficiary (QMB) may be eligible for full Medicaid benefits under another coverage group during the same period he or she is also eligible under the QMB coverage group.

   UPM §2540.97(F)(3) provides that eligibility for the ALMB program must be redetermined annually.

   The Department correctly required an annual review of the Appellant's eligibility for the MSP ALMB program.

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.

UPM § 5515.05(C)(2) provides in relevant part 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.

The Department correctly determined the Appellant an assistance unit of one and a needs group of two.

6. UPM § 5020.75(A)(1)(a) provides that the Department deems income from the spouse of an MAABD applicant or recipient if he or she is considered to be living with the assistance unit member, except in cases involving working individuals with disabilities. In these cases, spousal income is deemed only in determining the cost of the individual's premium for medical coverage. (Cross Reference: 2540.85)

   UPM § 5020.70(A)(1) provides that there are circumstances in which income is deemed: The Department deems the income of the spouse of an AABD applicant or recipient if there are considered to be living together.

   The Department correctly considered the spouse's income in determining the Appellant's eligibility for the MSP.

7. UPM § 5050.13(A)(1) provides that income from the Social Security Administration is treated as unearned income in all programs.

   The Department correctly considered the Appellant's $1659.00 monthly SSDI as unearned income in determining MSP eligibility.

8. UPM § 5025.05(B)(1) provides for the prospective budgeting system. If income is received on a monthly basis, a representative monthly amount is used as the estimate of income

   UPM § 5025.05(B)(2) provides 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:

   a. if income is the same each week, the regular weekly income is the representative weekly amount;

   The Appellant's monthly SSDI income equals $1659.00. The Department correctly determined the spouse's monthly gross earned income equaled $2786.40 *(32*20.25=$648.00*4.3).*

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.

    The Department determined the Appellant's countable monthly income equaled $4445.40 *($1659.00 + $2786.40)*

10. UPM § 5020.70(C)(3)(b) provides that when the spouse has not applied for AABD or has applied and has been determined to be ineligible for benefits, the amount deemed to the unit from the unit member's spouse is calculated in the following manner: The deemor's gross earnings are reduced by deducting the following personal employment expenses, as appropriate:

    1. Mandatory union dues and cost of tools, materials, uniforms, or other protective clothing when necessary for the job and not provided by the employer;
    2. Proper federal income tax based upon the maximum number of deductions to which the deemor is entitled;
    3. FICA, group life insurance, health insurance premiums, or mandatory retirement plans;
    4. Lunch allowance at .50 cents per working day;
    5. Transportation allowance to travel to work at the cost per work day as charged by private conveyance or at .12 cents per mile by private car or in a car pool. Mileage necessary to take children to or to pick them up from a child care provider may also be included.

    UPM § 5020.70(C)(3)(c) provides the combined total of the deemor's gross unearned income and applied earned income after the appropriate deductions are made is deemed available to the assistance unit member.

    The Department incorrectly determined the spouse's applied earned income because it failed to consider the spouse's personal employment expenses.

11. 42 U.S.C. § 1396a(a)(10)(C) provides for state plans for medical assistance. If medical assistance is included for any group of individuals described in section 1396d(a) of this title who are not described in subparagraph (A) or (E), then—(i) the plan must include a description of (I) the criteria for determining eligibility of individuals in the group for such medical assistance, (II) the amount, duration, and scope of medical assistance made available to individuals in the group, and (III) the single standard to be employed in determining income and resource eligibility for all such groups, and the methodology to be employed in determining such eligibility, which shall be no more

restrictive than the methodology which would be employed under the supplemental security income program in the case of groups consisting of aged, blind, or disabled individuals in a State in which such program is in effect, and which shall be no more restrictive than the methodology which would be employed under the appropriate State plan (described in subparagraph (A)(i)) to which such group is most closely categorically related in the case of other groups;

The Department incorrectly utilized income-deeming techniques more restrictive than methodologies applied in the SSI program.

12. Social Security Program Operations Manual System ("POMS") § SI 01320.400 (B)(1)(d) states that when there is income to deem from the ineligible spouse to the eligible individual and the remaining income (both earned and unearned income) of the ineligible spouse is more than the difference between the Federal Benefits Rates ("FBR") for an eligible couple and the FBR for an eligible individual, the eligible individual and the ineligible spouse are treated as an eligible couple.

    POMS § SI 01320.400 (B)(1)(e) states that when the eligible individual and the ineligible spouse are treated as a couple by applying all appropriate income exclusions, including the first $20 of unearned income , $65 of any earned income in a month, and one-half of remaining earned income in a month; and subtracting the couple's countable income from the FBR for an eligible couple.

    The Appellant and his spouse are an eligible couple for purposes of MSP eligibility. The Department failed to apply the appropriate earned income exclusions in its calculation of the spouse's earned income.

13. UPM § 2540.97(D)(1) provides for income criteria to qualify for Medical Assistance through the Qualified Medicare Beneficiaries Medicaid Coverage Group. The Department uses AABD income Criteria (Cross Reference: 5000), including deeming methodology, to determine eligibility for this coverage group except for the following:

    a. The annual cost of living (COLA) 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)(2) provides in relevant part that the income to be compared with the Federal Poverty Level is the applied income for MAABD individuals living in the community.

    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.

Section 17b-256(f) of the Connecticut General Statutes 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 percent of the federal poverty level qualifying for the Qualified Medicare Beneficiary program, (2)at or above two hundred eleven percent of the federal poverty level but less than two hundred thirty-one percent of the federal poverty level qualifying for the Specified Low-Income Medicare Beneficiary program, and (3) at or above two hundred thirty-one percent of the federal poverty level but less than two hundred forty-six percent of the federal poverty level qualifying for the Qualifying Individual program. The Commissioner shall not apply an asset test for eligibility under MSP.

Effective March 1, 2022, the Federal Poverty Limit ("FPL") for a household of two is $1,526.00 monthly. [*Federal Register: January 31, 2022 [Vol. 87, No. 14, pg. 3315-3316]*

The Department correctly determined the income limit for the ALMB MSP for a married couple is $3754.00 per month *($1526.00 * 246% = $3753.96 rounded up).*

14. UPM § 2540.97(A) provides for the ALMB and maintains this group includes individuals who would be Qualified Medicare Beneficiaries except that their applied income exceeds the program limit.

    UPM § 2540.97(B) provides an individual who qualifies for this coverage group received payment of one's Medicare B premium.

    The Appellant's applied income cannot be determined based on the hearing record; therefore, the Department incorrectly determined the Appellant's income exceeded the $3754.00 income limit for ALMB eligibility.

DECISION

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

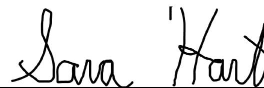
ORDER

1. The Department shall reopen the Appellant's MSP coverage, effective [redacted] [redacted] and continue to process to determine eligibility.

2. The Department shall provide the Appellant an opportunity to supply information regarding the spouse's earned income disregards in accordance with UPM § 5020.70 (C)(3) and issue a W1348 if necessary.

3. The Department shall recalculate the Appellant's spouse's earned income in accordance with UPM § 5020.70(C)(3) and POMS § SI 01320.400 (B)(1)(e)

4. Compliance with this order is due to the undersigned no later than [redacted]



Sara Hart
Hearing Officer

Pc: Kostula Karachristos, Department Representative New Haven Regional Office
Rachel Anderson, Operations Manager New Haven Regional Office
Matthew Kalarickal, Operations Manager, New Haven Regional Office

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.