

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

■■■■ 2023  
Signature Confirmation

Client ID ■■■■  
Case ID ■■■■  
Request # 211672

**NOTICE OF DECISION**

**PARTY**

■■■■  
■■■■  
■■■■

**PROCEDURAL BACKGROUND**

On ■■■■ ■■ 2022, the Department of Social Services (the “Department”) sent ■■■■ ■■■■ (the “Appellant”) a Notice of Action (“NOA”) closing her medical benefits under the Medicare Savings Program (“MSP”) Qualified Medicare Beneficiaries (“QMB”) program effective ■■■■ ■■ 2023.

On ■■■■ ■■ 2023, the Appellant requested an administrative hearing to contest the Department’s closure of such benefits.

On ■■■■ ■■ 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ■■■■ ■■ 2023.

On ■■■■ ■■ 2023, 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 were present at the hearing:

■■■■, Appellant  
■■■■, Appellant’s Spouse  
Matt Bartolotta, Department’s Representative  
Lisa Nyren, Hearing Officer

## **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department's [REDACTED] [REDACTED] 2022 decision to close the Appellant's medical benefits under the Medicare MSP effective [REDACTED] [REDACTED] 2023 was correct.

## **FINDINGS OF FACT**

1. Beginning [REDACTED] [REDACTED] 2022, the Appellant received medical benefits under the MSP QMB program as administered by the Department. (Exhibit 5: Notice of Action)
2. The Department administers three programs under the MSP: QMB program, Specified Low Income Medicare Beneficiary (SLMB) program and Additional Low Income Medicare Beneficiaries ("ALMB") each with different income limits and benefits. (Hearing Record)
3. MSP help enrollees pay Medicare Part B premiums, deductibles, and co-insurance. (Hearing Record)
4. Effective [REDACTED] [REDACTED] 2022, the QMB monthly income limit for a married couple equals \$3,220.00. Beginning [REDACTED] [REDACTED] 2023, the QMB income limit for a married couple equals \$3,468.00 per month. (Department Representative's Testimony)
5. Effective [REDACTED] [REDACTED] 2022, the SLMB monthly income limit for a married couple equals \$3,525.00. Beginning [REDACTED] [REDACTED] 2023, the SLMB income limit for a married couple equals \$3,797.00 per month. (Department Representative's Testimony)
6. Effective [REDACTED] [REDACTED] 2022, the ALMB monthly income limit for a married couple equals \$3,754.00 per month effective [REDACTED] [REDACTED] 2022. Beginning [REDACTED] [REDACTED] 2023, the QMB income limit for a married couple equals \$4,043.00 per month. (Department Representative Testimony)
7. The Appellant received gross Social Security Benefits ("SSA") of \$1,352.00 per month in 2022. Beginning [REDACTED] [REDACTED] 2023, the Appellant's SSA increased to \$1,470.00 per month. (Stipulated)
8. As of [REDACTED] [REDACTED] 2005, the Appellant enrolled in Medicare Part A and Medicare Part B with the Social Security Administration. (Exhibit 2: SOLQ-I Results and Appellant Testimony)
9. In [REDACTED] [REDACTED] 2022, the Appellant married [REDACTED] [REDACTED] ("Spouse"). (Appellant Testimony and Spouse Testimony)

10. On [REDACTED] [REDACTED] 2022, the Spouse reported the new marriage to the Department. (Spouse Testimony and Department Representative Testimony)
11. On [REDACTED] [REDACTED] 2022, the Department determined the Spouse's income must be counted to determine the Appellant's continued eligibility under the MSP programs. (Department Representative Testimony, Exhibit 3: MA – EDG Summary, and Exhibit 4: MA MSP Income Test)
12. The Spouse received gross SSA of \$2,810.10 per month in 2022. Beginning [REDACTED] [REDACTED] 2023, the Spouse's SSA increased to \$3,054.90 per month. (Stipulated)
13. The SSA withholds \$433.50 from the Spouse's SSA benefit enforcing the Spouse's legal obligation to pay restitution. (Spouse Testimony)
14. As of [REDACTED] [REDACTED] 2016, the Spouse enrolled in Medicare Part A and Part B as administered by the Social Security Administration. The Spouse pays the monthly premium from his SSA benefit. The Medicare Part B premium decreased from \$170.10 for 2022 to \$164.90 beginning [REDACTED] [REDACTED] 2023. (Exhibit 2: SOLQ-I Results and Spouse Testimony)
15. The Spouse is self-employed managing his ex-wife's fine art sales. The Spouse earned \$60.00 in 2022.  $\$60.00 / 12 \text{ months} = \$5.00 / \text{month}$ . (Spouse Testimony)
16. The Department determined the Spouse's monthly self-employment as \$4.24. (Hearing Record)
17. The Spouse receives an annual dividend of \$184.68 from [REDACTED] [REDACTED] [REDACTED] [REDACTED]  $\$184.68 / 12 \text{ months} = \$15.39 / \text{month}$ . (Stipulated)
18. The Department determined the Spouse's monthly gross income as \$3,074.53 per month. [Gross SSA \$3,054.90 + Dividends \$15.39 + \$4.24 Self-employment = \$3,074.53] (Exhibit 4: MA MSP Income Test)
19. The Department determined the household's monthly gross income as \$4,544.53. Appellant's monthly gross income \$1,470.00 + Spouse's monthly gross income \$3,074.53 = \$4,544.53. (Exhibit 4: MA MSP Income Test)
20. On [REDACTED] [REDACTED] 2022, the Department determined the Appellant ineligible for continued benefits under the MSP because the household's combined income exceeds the income limits under the MSP and closed the Appellant's medical benefits under the QMB program effective

██████████ 2023. The Department determined the Appellant ineligible for all three MSP's: QMB, SLMB, and ALMB.

MSP	QMB	SLMB	ALMB
2022 Income Limits	\$3,220.00	\$3,525.00	\$3,754.00
2023 Income Limits	\$3,468.00	\$3,797.00	\$4,043.00
Total household Income	\$4,544.53	\$4,544.53	\$4,544.53

(Hearing Record)

21. On ██████████ 2022, the Department issued the Appellant a Notice of Action. The notice stated the Department closed the Appellant's medical benefits under the MSP – QMB program effective ██████████ 2023 because the monthly net income of your household is more than the limit for this program and does not meet program requirements. (Exhibit 5: Notice of Action)
22. Due to an error under the Department's computer system, the Department failed to apply the earned income disregard of \$65.00 to the Spouse's earnings. However, the error does not change the Department's decision to close the Appellant's benefits under the QMB program since the difference between the computer's calculation of the Spouse's income and the correct calculation equals \$4.24. (Department Representative's Testimony)
23. On ██████████ 2023, the Department rescinded their decision to close the Appellant's medical benefits under the MSP – QMB program because a Connecticut Executive Order under the Public Health Emergency ("PHE") extended Medicaid eligibility for Medicaid recipients through the end of the PHE. The Department extended the Appellant's eligibility under the PHE through ██████████ 2023. (Department Representative's Testimony and Exhibit 6: Case Notes)
24. 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 ██████████ 2023. This decision is not due until ██████████ 2023, and therefore timely.

### **CONCLUSIONS OF LAW**

1. Section 17b-2(6) of the Connecticut General Statutes ("Conn. Gen. Stats.") provides as follows:

The Department of Social Services is designated as the state agency for the administration of 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. State statute provides as follows:

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. 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 on the department's Internet web site and the eRegulations System not later than twenty days after the date of

implementation. Such policies and procedures shall be valid until the time final regulations are adopted.

Conn. Gen. Stat. § 17b-256f

The Department of Health and Human Services lists the 2022 annual poverty guideline for a household of two as \$18,310.00. [Federal Register/Vol. 87, No. 14/Friday, January 21, 2022/Notices p.3316]

\$18,310.00 / 12 months = \$1,525.833 monthly federal poverty limit (“FPL”)

**Effective [REDACTED] 2022, the Department correctly calculated the MSP Income Limits as follows:**

**211% x \$1,525.83 = \$3,219.501 or \$3,220.00 QMB income limit**  
**231% x \$1,525.83 = \$3,524.667 or \$3,525.00 SLMB income limit**  
**246% x \$1,525.83 = \$3,753.55 or \$3,754.00 ALMB income limit**

The Department of Health and Human Services lists the 2023 annual poverty guideline for a household of two as \$ 19,720.00. [Federal Register/Vol. 88, No. 12/ Thursday, January 19, 2023/Notices p. 3424]

\$19,720.00 / 12 months = \$1,643.333 monthly FPL

**Effective [REDACTED] 2023, the Department correctly calculated the MSP Income limits are as follows:**

**211% x \$1,643.33 = \$3,467.426 or \$3,468.00 QMB income limit**  
**231% x \$1,643.33 = \$3,796.092 or \$3,797.00 SLMB income limit**  
**246% x \$1,643.33 = \$4,042.60 or \$4,043.00 ALMB income limit**

4. “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))
5. Section 2015.05(A) of the Uniform Policy Manual (“UPM”) provides as follows:

The assistance unit in AABD and MAABD consists of only one member. In these programs, each individual is a separate assistance unit.

**The Department correctly determined an assistance unit of one, the Appellant.**

6. Departmental policy provides as follows:

The needs group for an MAABD unit includes the following:

- a. The applicant or recipient; and
- b. 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)

UPM § 5515.05(C)(2)

**The Department correctly determined a needs group of two, the Appellant and the Spouse.**

7. Departmental policy provides as follows:

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 provide that it is inaccessible; or
3. Deemed by the Department to benefit the assistance unit.

UPM § 5005(A)

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

"If income is received on a monthly basis, a representative monthly amount is used as the estimate of income." UPM § 5025.05(B)(1)

**The Department correctly determined the Appellant's monthly Social Security Benefits of \$1,470.00 as counted income under the MSP.**

8. Department policy provides as follows:

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 § 5020.75(A)(1)(a)

“Deemed income is calculated from parents and from spouses in the same way as in AABD for members of the following coverage groups: Qualified Medicare Beneficiaries; Specified Low Income Medicare Beneficiaries; Additional Low Income Medicare Beneficiaries.” UPM § 5020.75(C)

**The Department correctly determined the spouse’s income is deemed available to the Appellant.**

**The Department correctly determined the spouse’s monthly Social Security benefit of \$3,054.90 deemed available to the Appellant.**

9. “Money from these sources [Dividends, Interest, Trusts, and Royalties] is counted as unearned income when it is paid or could be paid to a member of the assistance unit.” UPM §5050.21(A)(1)

“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 sum on the basis of their probable recurrence.” UPM § 5050.53

“The following types of payments exemplify income which is considered intermittent: 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 interests, and payments from pensions and annuities.” UPM § 5050.53(A)(3)

“The amount of the payment is prorated over a period of time in the following situations: when the income consists of unearned income paid on installment basis either resulting from the nature of the source of 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)

**The Department correctly determined the spouse’s annual dividend as intermittent counted income and calculated the spouse’s annual dividend of \$184.00 per year as \$15.39 monthly.  $\$184.00 / 12 \text{ months} = \$15.39 \text{ monthly}$ .**

10. Department policy provides as follows:

When self-employment income is received less frequently than monthly, the amount of monthly income is estimated by:



A. Analyzing the income over 12-month period:

1. when quarterly tax records are available, the annualized period consists of the 12-month period ending with the last complete calendar quarter prior to the time of determination;
2. when quarterly tax records are not available, the period will consist of the last calendar year prior to the time of determination; or

B. Dividing the total gross earnings by the number of months in which the self-employment income was earned if:

1. the income was intended to meet the unit's needs for only part of the 12-month period; or
2. the self-employment has existed for less than 12 months.

UPM § 5025.15

**Based on the hearing record, the spouse's annual 2022 self-employment income equaled \$60.00; therefore the monthly amount equals \$5.00, rather than \$4.24 as determined by the Department**

11. Centers for Medicare and Medicaid Services ("CMS") State Medicaid Manual Chapter V Section § 3490.2 states in part that for purposes of determining financial eligibility of a QMB individual, use the methodologies of the SSI program, unless more liberal methodologies are approved by HCFA under § 1902(r)(2) of the Act.

12. Social Security Program Operations Manual System ("POMS") § SI 01320.400(A)<sup>1</sup> states Spouse-to-spouse deeming of income can be involved in the eligibility or the payment determination, or both, for an eligible individual who lives with an ineligible spouse. For spouse-to-spouse deeming to apply, the SSI applicant or recipient must be eligible based on his or her own income. The following subsections explain the rules to follow when deeming income from an ineligible spouse.

In order to deem income, first determine the amount of the ineligible spouse's earned and unearned income applying the appropriate exclusions in SI 01320.100. Then use the rules in SI 01320.400B and SI 01320.400C in this section to determine the individual's eligibility and payment amount.

Social Security POMS § SI 00830.115(A) and (B) provides that unearned income includes amounts withheld from unearned income because of a

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<sup>1</sup> Reference Title 20 Sections 416.101 – 416.2227 of the Code of Federal Regulations, Supplemental Security Income for the Aged, Blind, and Disabled.

garnishment or to make certain other payments (such as payment of Medicare premiums). Unearned income includes amounts withheld from unearned income whether the withholding is: purely voluntary; to repay a debt; or to meet a legal obligation.

Some items for which amounts may be withheld but considered received are: health or life insurance premiums; loan payments; garnishments.

**The Department correctly determined the Spouse's SSA gross benefit of \$3,054.90 is counted in full. Garnishments on SSA income are not excluded under SSI deeming rules and therefore not excluded from the MSP.**

**The Department correctly determined the Spouse's dividend of \$15.39 as counted income.**

**The Department correctly determined the Spouse's self-employment income as counted income; however, the correct amount equals \$5.00.**

13. Social Security POMS § SI 00810.300 provides for countable earned income as the amount of earned income remaining after applying all appropriate income exclusions and countable unearned income as the amount of unearned income remaining after applying all appropriate income exclusions.

Social Security POMS § SI 00810.007(B) defines excluded income as an amount, which is income but does not count in determining eligibility and payment amount.

Social Security POMS § SI 00820.500 and 00820.520 provides for earned income exclusions which includes \$65 of earned income in a month plus one-half of the remaining earned income in the month. An eligible couple receives one \$65 exclusion per month.

Social Security POMS § SI 00810.420 and 00830.050 provides for unearned income exclusions which includes the \$20 general income exclusion in a month. An eligible couple receives one \$20 exclusion per month.

The \$20 general and \$65 earned income exclusions are applied only once to a couple, even when both members (whether eligible or ineligible) have income, since the couple's earned income is combined in determining SSI payments.

The total available household income equals \$4,520.29 which exceeds the income limits under the MSP's administered by the Department.

\$5.00 self-employment earnings - \$65.00 earned income deduction = \$00.00 countable earned income

\$1,470.00 Appellant SSA + \$3,054.90 Spouse SSA + \$15.39 Spouse dividend = \$4,540.29 total unearned income - \$20.00 unearned income exclusion = \$4,520.29 available unearned income

\$00.00 countable earned income + \$4,520.29 countable unearned income = \$4,520.29

MSP	QMB	SLMB	ALMB
2022 Income Limits	\$3,220.00	\$3,525.00	\$3,754.00
2023 Income Limits	\$3,468.00	\$3,797.00	\$4,043.00
Total household Income	\$4,520.29	\$4,520.29	\$4,520.29

The Department correctly determined the Appellant's countable income exceeds the established income limits under the MSP – QMB, SLMB, and ALMB programs.

14. "When eligibility has been determined to no longer exist, the last day for which the assistance unit is entitled to the benefits of the program is: the last day of the month preceding the month in which ineligibility is caused by: excess income or excess assets – AFDC, AABD, MA." UPM § 1565.05(A)(1)(a)

The Department correctly determined the Appellant's eligibility under the MSP ended [REDACTED] 2023 because the Appellant's countable income, which includes deemed income from her Spouse, exceeds the MSP income limits.

15. "Except in situations described below, the Department mails or gives adequate notice at least ten days prior to the date of the intended action if the Department intends to: discontinue, terminate, suspend or reduce benefits." UPM § 1570.10(A)(1)

On [REDACTED] 2022, the Department correctly issued the Appellant a Notice of Action informing her the Department intends to close her medical benefits under the MSP – QMB program effective [REDACTED] 2023 because her income exceeds the program limits.

### **DISCUSSION**

The Appellant disagrees with the Department's determination of ineligibility under the MSP because she cannot afford to pay the Medicare Part B monthly premium along with the co-pays and deductibles associated with Medicare without the assistance from the MSP – QMB program.

The Department determined the Appellant eligible for the QMB program prior to her [REDACTED] 2022 marriage. Once married, income from both spouses is considered jointly and an income limit for a household of two is utilized. The Department correctly included the Spouse's income to make a determination of eligibility under the MSP for the Appellant. The Department's failure to apply the earned income deduction does not impact the outcome; the Appellant remains ineligible under the MSP's.

It is noted, the Department reinstated the Appellant's MSP – QMB eligibility due to the public health emergency (PHE) and Connecticut Executive Order 71 signed by Governor Ned Lamont on [REDACTED] [REDACTED] 2020 which suspended the Department's requirement to conduct reinvestigations, known as redeterminations, and continue Medicaid eligibility for those eligible at the start of the pandemic. However, this order is scheduled to expire on [REDACTED] [REDACTED] 2023 when the public health emergency declarations related to the COVID-19 pandemic are scheduled to end and the Appellant's eligibility will not be guaranteed by the PHE declarations.

### **DECISION**

The Appellant's appeal is denied.

*Lisa A. Nyren*

Lisa A. Nyren  
Fair Hearing Officer

CC: Brian Sexton, DSS RO #50  
Christopher Filek, DSS RO #50  
Matthew Bartolotta, DSS RO #50

### **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.