

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

██████████ 2023
Signature Confirmation

████████████████████
████████████████████
Request #: 213286

NOTICE OF DECISION

PARTY

████████████████████
████████████████████
████████████████████

PROCEDURAL BACKGROUND

On ██████████, 2023, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) discontinuing her Medicare Savings Program (“MSP”) Qualified Medicare Beneficiaries (“QMB”) effective ██████████ 2023.

On ██████████, 2023, the Appellant requested an administrative hearing to contest the Department’s discontinuance of the MSP QMB.

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, 17b-61 and 4-176e to 4-184 inclusive, of the Connecticut General Statutes, OLCRAH held a telephonic administrative hearing.

The following individuals participated in the hearing:

████████████████████, Appellant
Christopher Filek, Department’s Representative
Amy MacDonough, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department correctly discontinued the Appellant's medical assistance benefits under the MSP QMB program effective [REDACTED] 2023, due to excess income.

FINDINGS OF FACT

1. The Appellant is [REDACTED] years old [Date of Birth: [REDACTED]] and resides with her adult son. (*Appellant's Testimony*)
2. On [REDACTED] 2023, the Appellant's gross monthly income from Social Security Disability ("SSDI") increased from \$2,370.00 to \$2,576.00. (*Appellant's Testimony; Department's Testimony; Exhibit 2: SOLQ-I Results*)
3. The Appellant receives Medicare Part A and Part B coverage from the Social Security Administration. (*Appellant's Testimony; Exhibit 2*)
4. The Appellant has no other sources of income. (*Appellant's Testimony*)
5. On [REDACTED], 2023, the Department issued a NOA to the Appellant indicating that her MSP – Qualified Medicare Beneficiaries medical program was closed as of [REDACTED], 2023, because her monthly net income is more than the limit for this program. The NOA informed the Appellant that the Department approved the MSP – SLMB medical program as of [REDACTED] 2023. (*Department's Testimony; Exhibit 3: Notice of Action*)
6. On [REDACTED] 2023, the income limit for the MSP QMB program increased from \$2,390.00 to \$2,564.00 for a single individual. (*Department's Testimony; Exhibit 4: DSS Program Standards Chart*)
7. On [REDACTED] 2023, the income limit for the MSP Specified Low Income Medicare Beneficiaries ("SLMB") program increased from \$2,617.00 to \$2,807.00 for a single individual. (*Department's Testimony; Exhibit 4*)
8. On [REDACTED] 2023, the Appellant returned home from caring for her parents and received the notice on this date. (*Appellant's Testimony*)
9. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that the Department issued a decision within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED] 2023; therefore, this decision is due no later than [REDACTED] 2023.

CONCLUSIONS OF LAW

1. Section 17b-2(6) 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. "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. Title 42 United States Code ("U.S.C") § 1396d(p)(1) provides in part for Qualified Medicare beneficiary and states the term "qualified medicare beneficiary" means an individual-
 - (A) who is entitled to hospital insurance benefits under part A of subchapter XVIII (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) or who is enrolled under part B for the purpose of coverage of immunosuppressive drugs under section 1395o(b) 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).

UPM § 2540.94(A) provides for coverage group description for the Qualified Medicare Beneficiaries and states:

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 paragraph 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.

The Department correctly determined the Appellant as a recipient of Medicare Part A and B.

4. UPM § 2015.05(A) provides for assistance unit composition and states the assistance unit in AABD and MAABD consists of only one member. In these programs, each individual is a separate assistance unit.

UPM § 5515.10(C) provides for needs and income limits and states the income limit used to determine Medicaid eligibility is the limit for the number of persons in the needs group.

UPM § 5020.10(C)(2) provides in 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 as an assistance unit of one and a needs group of one for determining eligibility for MSP QMB.

5. Section 17b-256(f) of the Connecticut General Statutes provides for Eligibility for Medicare savings programs; Regulations and states 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.

Effective [REDACTED] 2022, the Federal Poverty Limit ("FPL") for a household of one is \$13,590.00 yearly, or \$1,133.00 monthly (*rounded up from \$1,132.50*). (*Federal Register: [REDACTED] 2022 [Vol. 87, No. 14, pg. 3315-3316]*)

Effective [REDACTED] 2023, the FPL for a household of one is \$14,580.00 yearly, or \$1,215.00 monthly. (*Federal Register: [REDACTED], 2023 [Vol. 88, No. 12, pg. 3424-3425]*)

The Department correctly determined the income limit for the MSP QMB for an individual, as of [REDACTED] 2022, to be \$2,390.00 per month ($\$1,132.50 \times 211\% = \2389.58 rounded up). The Department correctly determined the income limit for the MSP QMB for an individual, as of [REDACTED] 2023, to be \$2,564.00 ($\$1,215.00 \times 211\% = \2563.65 rounded up).

The Department correctly determined the income limit for the MSP SLMB for an individual, as of [REDACTED] 2022, to be \$2,617.00 ($\$1,215.00 \times 231\% = \$2,616.07$ rounded up). The Department correctly determined the income limit for the MSP SLMB for an individual, as of [REDACTED] 2023, to be \$2,807.00 ($\$1,215.00 \times 231\% = \2806.65 rounded up)

6. UPM § 5050.13(A) provides for treatment of income for Social Security and Veterans' Benefits and states that (1) income from these sources is treated as unearned income in all programs.

The Department correctly determined the Appellants income of \$2,576.00 from Social Security, as of [REDACTED], 2023, as unearned income.

7. UPM § 2440.94(D) provides for income criteria for the Qualified Medicare Beneficiaries and states:
1. 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 income must be equal to or less than 100% percent of the Federal Poverty Level for the appropriate needs group size.
 2. The income to be compared with the Federal Poverty Level is the applied income for MAABD individuals living in the community (cross reference: 5045). This is true whether the individual lives in an LTCF or in the community.

UPM § 5030.15(A) provides for unearned income disregards and income from which the disregards is subtracted and states except as provided in section 5030.15 D., unearned income disregards are subtracted from the unit member's total gross monthly unearned income.

UPM § 5030.15(B)(1)(d) provides for the amount and duration of the disregards and states for the QMB disregard, the disregard is the amount of additional benefits received from Social Security each year which result from the annual Cost of Living Allowance (COLA).

UPM § 5030.15(B)(3) provides for the amount and duration of the disregards and states the QMB disregard is used only in the months of January, February, and March of each year.

The Department did not allow for the disregard of the COLA increase for the first 3 (three) months of the 2023 calendar year: January, February, and March.

The Department incorrectly discontinued the Appellant's MSP QMB effective [REDACTED], 2023.

The Appellant's income of \$2,370.00, SSDI with the COLA increase disregard, does not exceed the income limit for the MSP QMB for the month of [REDACTED] 2023.

DISCUSSION

The Department did not allow for the MSP QMB disregard for the first three months of the calendar year which excludes the COLA increase from affecting the eligibility of the MSP QMB medical program as stated in Conclusion of Law #7.

DECISION

The Appellant's appeal is **GRANTED**

ORDER

1. The Department shall reopen the Appellant's MSP QMB program for the month of [REDACTED] 2023.
2. The Department should review the Appellant's eligibility for all MSP's, effective [REDACTED] 2023.
3. Compliance with this order is due to the undersigned no later than [REDACTED] 2023.


Amy MacDonough
Fair Hearing Officer

CC: Brian Sexton, Operations Manager, DSS, Middletown Regional Office
Christopher Filek, Hearing Liaison, Middletown 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.

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.