

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

██████████ 2024
Signature Confirmation

██████████
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Request # 227114

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2023, the Department of Social Services (the “Department”) issued a Notice of Action (“NOA”) to ██████████ (the “Applicant”) denying the Qualified Medicare Beneficiaries (“QMB”) also known as Q01 benefits under the Medicare Savings Program (“MSP”) effective ██████████ 2023.

On ██████████ 2023, the Applicant’s Authorized Representative (“AREP”), ██████████, ██████████ and Hearing Specialist, (the “Appellant”) requested an Administrative Hearing to contest the proposed denial.

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

On [REDACTED] 2023, 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 telephonically.

The following individuals participated in the hearing by telephone:

[REDACTED] the Appellant / [REDACTED]
Kirsten Evans, Department's Representative
Jessica Gulianello, Hearing Officer

The Applicant did not attend the administrative hearing.

The hearing record remained open until the close of business on [REDACTED] 2023, to allow both parties time to submit additional information. Additional documents were received from both parties and the hearing record was closed accordingly.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly denied the Applicant's [REDACTED] 2023, application for benefits under the MSP.

FINDINGS OF FACT

1. On [REDACTED] 2023, the Department received an online application ("ONAP") signed by the Applicant and his AREP / the Appellant requesting benefits for the Applicant under the MSP. (*Exhibit 3: ONAP dated [REDACTED] 2023, Hearing Summary, Department's Testimony*)
2. The Department administers three programs under the MSP: Qualified Medicare Beneficiaries (Q01 / "QMB"), Specified Low-Income Medicare Beneficiaries (Q03 / "SLMB"), and Additional Low Income Medicare Beneficiaries (Q04 / "ALMB") with varying income limits and benefits. (*Department's Testimony*)
3. The MSP helps eligible enrollees to pay their Medicare Part B Premium and *may* also cover deductibles and coinsurance. (*Department's Testimony*)
4. The Applicant is [REDACTED] years old (DOB: [REDACTED]). (*Exhibit 3: ONAP dated [REDACTED] 2023*)
5. The Applicant is married. [REDACTED] (the "Applicant's Spouse") is [REDACTED] years old (DOB: [REDACTED]). (*Exhibit 3: ONAP dated [REDACTED] 2023*)
6. The Applicant receives [REDACTED] benefits [REDACTED] from the Social Security Administration ("SSA") in the gross amount of \$2,264.90 per month. (*Exhibit 9: MA – MSP – Income Test, Exhibit 4: NOA dated [REDACTED] 2023, Exhibit 6: NOA dated [REDACTED] 2023, Stipulated*)

7. The Applicant's spouse is employed full-time with [REDACTED]. The Applicant's spouse works 80 hours biweekly at a pay rate of \$19.15 per hour equivalent to gross wages in the amount of \$3,293.80 per month. (*Exhibit A: Biweekly paystubs date range: [REDACTED] 2023-[REDACTED] 2023, Exhibit 3: ONAP, Exhibit 6: NOA dated [REDACTED] 2023, Exhibit 10: Equifax / The Work Number, Hearing Summary, Stipulated*)
8. The Applicant is enrolled in Medicare Part A and Medicare Part B with the SSA. (*Stipulated*).
9. On [REDACTED] 2023, the Department issued the Applicant a NOA. The NOA informed the Applicant the QMB under the MSP was denied for the benefit period beginning [REDACTED] 2023, through [REDACTED] 2023, citing the following reasons: "You cannot receive benefits until the month after you are found eligible" and "Does not meet program requirements." The NOA further informed the Applicant the QMB under the MSP was granted for the benefits period beginning [REDACTED] 2023, through [REDACTED] 2024, and cited SSA income of \$2,264.90 per month. (*Exhibit 4: NOA dated [REDACTED] 2023*)
10. On [REDACTED] 2023, the Department issued the Applicant a second NOA. The NOA again informed the Applicant the QMB under the MSP was denied for the benefit period beginning [REDACTED] 2023, through [REDACTED] 2023, citing the same reasons, "You cannot receive benefits until the month after you are found eligible" and "Does not meet program requirements". The NOA reflected that the Applicant receives two sources of income from the SSA each in the benefit amount of \$2,264.90 month. (*Exhibit 5: NOA dated [REDACTED] 2023*)
11. On [REDACTED] 2023, AREP from Change Healthcare called the Department's Benefit Center concerning the Applicant's eligibility for benefits under the MSP. The Department was unable to locate case notes to coincide with the prior NOA's. The Department confirmed the Applicant's income from the SSA doubled in error and it was incorrectly being counted twice. The Department discovered the Applicant's spouse was not added to the case. The Department added the Applicant's spouse as a non-applicant and the gross wages from her employment with [REDACTED] [REDACTED] as countable income under the MSP. (*Exhibit 13: Case Notes dated [REDACTED] 2023, Hearing Summary, Department's Testimony*)
12. On [REDACTED] 2023, the Department issued the Applicant a third NOA. The NOA informed the Applicant that the QMB under the MSP was denied for the benefit period beginning [REDACTED] 2023, through [REDACTED] 2023, citing the following reasons, "You cannot receive benefits until the month after you are found eligible", "Does not meet program requirements" and, "No household members are eligible for this program". The NOA further informed the Applicant that the ALMB under the MSP was denied for the benefit period beginning [REDACTED] 2023, through [REDACTED] 2023, citing the following reasons, "The monthly net income of your household is more than the limit for this program" and "Does not meet program requirements". The NOA

cited SSA income in the amount of \$2,264.90 per month. (*Exhibit 6: NOA dated [REDACTED] 2023*)

13. The income limit for the QMB under the MSP for a married couple is \$3,468.00 per month. (*Exhibit 7: DSS Program Standards Chart: Income Limits & Standards for DSS Benefit Programs as of [REDACTED] 2023, effective [REDACTED] 2023*)
14. The income limit for the SLMB under the MSP for a married couple is \$3,797.00 per month. (*Exhibit 7: DSS Program Standards Chart: Income Limits & Standards for DSS Benefit Programs as of [REDACTED] 2023, effective [REDACTED] 2023*)
15. The income limit for the ALMB under the MSP for a married couple is \$4,043.00 per month. (*Exhibit 7: DSS Program Standards Chart: Income Limits & Standards for DSS Benefit Programs as of [REDACTED] 2023, effective [REDACTED] 2023*)
16. The Department determined that the Applicant failed the net income tests for benefits under the MSP based on the following calculation: earned income of non-applicant: \$3,293.80 plus (+) unearned income of Applicant: \$2,264.90 equals (=) net income of \$5,558.70. (*Exhibit 9: ImpaCT: MA (MSP) – Income Test*)
17. The Appellant argued that the Department did not follow the processing guidelines under the Social Security Program Operations Manual System (“POMS”) and failed to provide the standard income exclusions including the \$20.00 general income disregard, the \$65.00 earned income disregard, and subtracting half of the non-applicants remaining earned income. (*Exhibit B: Social Security POMS, Appellant’s Testimony*)
18. 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 [REDACTED] 2023. This decision was due no later than [REDACTED] 2024, and it is therefore timely. (*Hearing Record*)

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.

The Department has the authority to administer the MSP.

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)

The Department correctly determined the Applicant to be a recipient of Medicare.

3. “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))
4. 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 Applicant.

5. 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 incorrectly determined a needs group of one, the Applicant.

The Department subsequently corrected its error and determined a needs group of two, the Applicant and his Spouse.

6. 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.
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 Applicant’s gross █████ in the amount of \$2,264.90 from the SSA as countable income under the MSP.

The Applicant’s income was later duplicated due to a system glitch that the Department corrected upon discovery.

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)

Income which is counted in determining the unit's eligibility and calculating its benefits must be converted into monthly amounts if it is not already received in that manner. This chapter describes the methods of conversion used under various circumstances.

UPM § 5025

The Department initially failed to consider the Spouse's income.

The Department correctly later determined that the spouse's earned income in the gross amount of \$3,293.80 per month is deemed available to the Applicant.

9. 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

10. Centers for Medicare and Medicaid Services (“CSM”) § 3490.2 states 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®(2) of the Act.

11. 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.

Based on SSA and SSI Benefit -2023 edition the FBR was \$1371 per month for an eligible couple and \$914 per month for an eligible individual.

The difference between FBR for an eligible couple and the ineligible spouse is \$457(\$1371-\$914). The Applicant’s spouse’s earned income is \$3,293.80, which is more than the difference between the Federal Benefits Rates (“FBR”) for an eligible couple and the FBR for an eligible individual, therefore the eligible individual and the ineligible spouse are treated as an eligible couple.

12. 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 Department failed to apply for the appropriate income exclusions.

The Department incorrectly calculated the Applicant’s Spouse’s applied income under the MSP.

DISCUSSION

The Appellant is in agreement with the Department's determination of the Applicant's unearned income / benefits from the SSA and his spouse's gross earned income of \$3,293.80 per month from [REDACTED]. The issue of this hearing is the calculation of the applied income. The Appellant argued that the Department failed to consider the POM's processing guidelines and apply the proper disregards and deductions.

Based on the evidence, the Department's UPM fails to comply with federal regulations. Specifically, in this case, the Department should be using the same calculation methodology that the SSA uses with calculating SSI eligibility.

DECISION

The Appellant's appeal is GRANTED.

ORDER

- 1). The Department shall re-evaluate the Applicant's eligibility for benefits under the MSP honoring his original application of [REDACTED] 2023.
- 2). The Department shall recalculate the Applicant's Spouse's applied earnings using the correct methodology and appropriate income exclusions in compliance with federal regulations.
- 3). The Department shall provide the Applicant and the Appellant an updated NOA accordingly.
- 4). Proof of compliance with this order is due to the undersigned no later than [REDACTED] 2024.

Jessica Gulianello

Jessica Gulianello
Hearing Officer

Cc: Kirsten Evans, ESW – FH Liaison
Sarah Chmielecki, Tim Latifi, and Ralph Filek – SSOM's DO # [REDACTED]

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, 55 Elm Street, 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.