

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

CASE # ██████████
CLIENT# ██████████
REQUEST# ██████████

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2023, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”), a Notice of Action (“NOA”) denying the Appellant’s application for the Medicare Savings Program, Qualified Medicare Beneficiaries (“MSP”) benefits due to failure to provide requested verifications.

On ██████████, 2023, the Appellant requested an administrative hearing to contest the denial of her application for the MSP benefits due to failure to provide requested verifications.

On ██████████, 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████, 2024.

On ██████████, 2024, in accordance with sections 17b-60, 17b-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
Christopher Filek, Department’s Representative
Joseph Davey, Administrative Hearing Officer

STATEMENT OF THE ISSUE

The original issue is whether the Department correctly denied the Appellant's MSP application due to failure to provide information. During the hearing, it was determined that the issue is whether the Department correctly denied the Appellant's MSP application for exceeding the income limit.

FINDINGS OF FACT

1. On [REDACTED], 2023, the Department received the Appellant's W-1QMB application for MSP benefits. The Appellant resides at home and the address listed on the W-1QMB was [REDACTED] in [REDACTED], CT. (Exhibit 4: W-1QMB Application)
2. The Appellant is [REDACTED] years old (DOB: [REDACTED]) and unmarried. (Exhibit 4, Appellant's Testimony)
3. The Appellant is a recipient of Medicare parts A and B from the Social Security Administration. (Exhibit 3: Case Notes dated [REDACTED]-[REDACTED], Exhibit 10: SOLQ results details)
4. On [REDACTED], 2023, the Department processed the Appellant's W-1QMB application and issued the Appellant a W-1348 Proofs We Need form ("W-1348") requesting "*Proof of income from other reported sources*" and for the Appellant to "*please verified all pages of pages of 2023 tax return of Self-employment pages regarding rental income.*" The due date listed on the W-1348 was [REDACTED], 2023, with a "*Date We Will Take Action By*" listed as [REDACTED], 2023. The W-1348 was sent to [REDACTED] in [REDACTED], CT. (Exhibit 2: W-1348 Proofs We Need form dated [REDACTED])
5. On [REDACTED], 2023, the United States Postal Service ("USPS") returned to the Department the W-1348 sent to the Appellant on [REDACTED], 2023. (Exhibit 6: Document Search Results, Hearing Record)
6. On [REDACTED], 2023, the Department processed the returned W-1348 and acknowledged that it was sent to the incorrect address. The Department updated the Appellant's address to reflect the correct address of [REDACTED] in [REDACTED], CT. (Exhibit 3)
7. On [REDACTED], 2023, the Department issued the Appellant a W-1019N Application Update notice which stated the following in relevant part: "*We have not yet determined your eligibility because of the following reason: We are working on your application but we have been delayed. Please call us if you want to know more.*" (Exhibit 8: W-1019N Application Update notice dated [REDACTED])

8. On [REDACTED], 2023, the Department sent the Appellant a NOA informing her that her [REDACTED], 2023, application for the MSP had been denied for the following reason: *"You did not return all of the required proof by the date we asked."* (Exhibit 1: NOA dated [REDACTED])
9. On [REDACTED], 2023, the Appellant submitted her 2022 IRS tax returns forms 1040 and 1040-SR. (Appellant's Exhibit A)
10. On [REDACTED], 2024, the Department reopened and processed the Appellant's MSP application from the original application date of [REDACTED], 2023. (Hearing Record)
11. The Appellant receives \$2,083.90 per month in Social Security Retirement ("SSA") benefits. (Exhibit 3, Exhibit 4, Exhibit 10)
12. The Appellant receives \$4,379.00 per year ($\$4,379.00 / 12 = \364.92 per month) from an [REDACTED] pension. (Exhibit 4, Appellant's Exhibit A: 2022 Income Tax Return forms 1040 and 1040-SR)
13. The Appellant owns a rental property in [REDACTED], CT and receives \$1,800.00 per month for property rent before allowable deductions. (Appellant's Exhibit B: Appeal letter)
14. The Appellant is self-employed as a [REDACTED] and receives \$22,750.00 per year ($\$22,750.00 / 12 = \$1,895.83$ per month) before allowable deductions. (Appellant's Exhibit A, Appellant's Exhibit B, Appellant's testimony)
15. The gross income limits under the MSP program are as follows: Qualified Medicare Beneficiaries ("QMB") \$2,564.00 per month, Specified Low-Income Medicare Beneficiary ("SLMB") \$2,807.00, and Additional Low-Income Medicare Beneficiary ("ALMB") \$2,989.00. (Exhibit 5: MSP income limits, Hearing Record)
16. On [REDACTED], 2024, the Department sent the Appellant a NOA informing her that her [REDACTED], 2023, application for the MSP, ALMB was denied for the following reason: *"The monthly net income of your household is more than the limit for this program."* The following income was listed on the NOA: *"Other (countable by policy) \$1,800.00, Pension \$375.00, Social Security (SSA) \$2,083.90, Wages \$0.00, Other \$22,750.00"* (Exhibit 9: NOA dated [REDACTED])

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes (“Conn. Gen. Stat.”) authorizes the Commissioner of the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.

Conn. Gen. Stat. § 17b-260 provides for the acceptance of federal grants for medical assistance and states the Commissioner of Social Services is authorized to take advantage of the medical assistance programs provided in Title XIX, entitled “Grants to States for Medical Assistance Programs”, contained in the Social Security Amendments of 1965 and may administer the same in accordance with the requirements provided therein, including the waiving, with respect to the amount paid for medical care, of provisions concerning recovery from beneficiaries or their estates, charges and recoveries against legally liable relatives, and liens against property of beneficiaries.

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

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)).

UPM § 2540.94(A) provides for coverage group description for the Qualified Medicare Beneficiaries and states: (A)(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 is a recipient of Medicare Part A and B.

3. 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 § 5515.05(C)(2) provides in part that the needs group for an MAABD unit includes the following: (a) The applicant or recipient.

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.

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

4. UPM § 5005 provides for consideration of income and states 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 it is inaccessible; or (3) deemed by the Department to benefit the assistance unit. B. The Department does not count income which it considers to be inaccessible to the assistance unit. C. The Department computes applied income by subtracting certain disregards and deductions, as described in this section, from counted income. D. The Department uses the assistance unit's applied income to determine income eligibility and to calculate the amount of benefits.

UPM § 5050.09(A) provides for treatment of income, annuity, pension and trust payments and states payments received by the assistance unit from annuity plans, pensions, and trusts are considered unearned income.

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.

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

UPM § 5030.15(B)(1)(d) provides for the amount and duration of unearned income 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 unearned income disregards and states the QMB disregard is used only in the months of January, February, and March of each year.

The Department correctly determined the Appellant's SSA benefits as countable unearned income.

The Department correctly determined the Appellant's █████ pension as countable unearned income.

5. UPM § 5050.69(A) provides for rental income. 1. Income received by the assistance unit from renting property to someone else is treated as: a. earned self-employment income under the AFDC and AABD programs; b. unearned self-employment income under the Medicaid programs unless the income is derived

from a business enterprise. 2. The total self-employment income earned each month is reduced by the following self-employment deductions when they are incurred: a. labor (wages paid to an employee or work contracted out); b. interest paid to purchase income producing property; c. insurance premiums; d. taxes, assessments, and utilities paid on income producing property; e. service and repair of business equipment and property; f. rental of business equipment and property; g. advertisement; h. licenses and permits; i. legal or professional fees; j. business supplies. 3. When the rental property is: a. part of the home-occupied property of the assistance unit, only the expenses associated with the rented portion are considered as a deduction; b. not part of home-occupied property, the expenses are considered in total; 4. The gross earned income which remains after consideration of self-employment expenses is reduced by all appropriate deductions and disregards; 5. The remaining amount of money is applied income.

UPM § 5025.15 provides for converting self employment to monthly amounts. When self-employment income is received less frequently than monthly, the amount of monthly income is estimated by: A. analyzing the income over a 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.

UPM § 5030.10(A)(B)(1) provides for Earned Income Disregard. A. Income From Which the Disregard is Subtracted. Except for determining AABD eligibility and benefit levels for assistance units residing in long term care facilities, earned income disregards are subtracted from the assistance unit's monthly total available gross earned income. Total available gross earned income is counted in full in determining AABD eligibility and benefit levels for assistance units residing in long term care facilities. B. Amount of the Disregard The following amounts are disregarded from income earned by the groups indicated: 1. \$65.00 per month plus 1/2 of the remaining income is disregarded from the earnings of: a. applicants for assistance to the disabled and aged; b. recipients of assistance to the aged who did not receive assistance to the disabled or blind in the month before they became 65 years of age.

The Appellant's rental income is countable earned self-employment income.

The Appellant's business income as a [REDACTED] is countable earned self-employment income.

6. UPM § 2540.97(A) provides for Coverage Group Description for Additional Low Income Medicare Beneficiaries Under 135% of Poverty (Q04). This group includes individuals who would be Qualified Medicare Beneficiaries described in 2540.94, except that: 1. their applied income is equal to or exceeds 120 percent of the Federal Poverty Level, but is less than 135 percent of the Federal Poverty Level; or 2. their applied income is less than 135 percent of the Federal Poverty Level,

and they have assets valued at more than twice the SSI limit (Cross Reference: 4005.10).

UPM § 2540.97(D) provides for Income Criteria for Additional Low Income Medicare Beneficiaries. 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 less than a percentage of the Federal Poverty Level for the appropriate needs group size, as described in paragraph A. 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 § 5045.10(A) provides for the calculation method of applied income. A. Earned Income - Aged and Disabled Except for determining AABD eligibility and benefit amounts for individuals residing in long term care facilities, applied earned income is calculated for those who are aged or disabled by reducing the monthly earnings by the following in the order presented: 1. self-employment expenses, when applicable; 2. a disregard of \$65.00; 3. impairment related expenses for those recipients who are eligible for them; 4. 1/2 of the remaining difference; 5. any earned income an individual receives and uses to fulfill an approved plan to achieve self-support if that individual is disabled and under age 65 or is disabled and received SSI as a disabled person the month prior to reaching age 65.

UPM § 5045.10(E) provides for applied income amount. The assistance unit's total applied income is the sum of the unit's applied earnings, applied unearned income, and the amount deemed.

Conn. Gen. Stat. § 17b-256(f) 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 March 1, 2023, the FPL for a household of one is \$14,580.00 yearly, or \$1,215.00 monthly. (*Federal Register: January 19, 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], 2023, to be \$2,564.00 ($\$1,215.00 \times 211\% = \$2,563.65$ 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 ($\$1,215.00 \times 231\% = \$2,806.65$ rounded up).

The Department correctly determined the income limit for the MSP ALMB for an individual, as of [REDACTED], 2023, to be \$2,989.00 ($\$1,215.00 \times 246\% = \$2,988.90$ rounded up).

The Department failed to consider possible self-employment and earned income deductions. As a result, the Appellant's total applied income cannot be determined. Therefore, the Department incorrectly determined the Appellant's applied monthly income exceeds the income limits for the QMB, SLMB, and ALMB coverage groups for a single individual under the MSP.

DISCUSSION

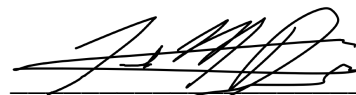
The MSP, ALMB coverage group is subject to AABD income rules as outlined in UPM § 2540.97(D) and UPM § 5045.10. In calculating the Appellant's gross monthly income, the Department failed to request or consider possible allowable self-employment deductions from the Appellant's rental income and self-employment income as a [REDACTED]. In addition, the Department did not classify the Appellant's rental income and self-employment income as earned self-employment income. As a result, the Appellant was not considered for earned income deductions as outlined in UPM § 5030.10(A)(B)(1). As the Appellant's correct applied income amount cannot be determined, the undersigned finds Department's denial for excess income to be incorrect.

DECISION

The Appellant's appeal is **REMANDED** back to the Department for correction.

ORDER

1. The Department will reopen the Appellant's MSP application from [REDACTED], 2023.
2. The Department will update the Appellant's rental income and self-employment income to reflect as earned self-employment income.
3. The Department will issue a W-1348 requesting verification of the appropriate allowable rental and self-employment expenses and provide the Appellant 10 days to provide the information.
4. The Department shall demonstrate compliance with this order no later than (10) days from the date of this decision. Verification of compliance shall be sent to the undersigned via email confirmation.



Joseph Davey
Administrative Hearing Officer

CC: Christopher Filek, Department's Representative, Middletown Regional Office
Brian Sexton, SSOM, 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.