

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
25 SIGOURNEY STREET  
HARTFORD, CT 06106-5033

██████████ 2014  
Signature Confirmation

Client ID # ██████████  
Request # 579837

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA) informing her that effective ██████████ of 2014 she must pay \$645 in applied income towards her cost of care under the Long Term Care Medical Assistance program.

On ██████████ 2013, the Appellant requested an administrative hearing to contest the Department's calculation of the applied income amount.

On ██████████ ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████, 2014.

On ██████████ 2014, the Appellant requested a continuance of the hearing due to illness.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice rescheduling the administrative hearing to ██████████ 2014.

On ██████████, 2014, 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:

██████████, the Appellant

[REDACTED], the Appellant's daughter  
 Serina Kissko, Social Worker at Torrington Health and Rehabilitation  
 Christine Aloma, Business Office at Torrington Health and Rehabilitation.  
 Jennifer Bucci, DSS Hearing Liaison  
 Kathryn Schneider, DSS Hearing Liaison  
 Ledi Trifoni, DSS Long term care eligibility worker, via telephone conference call  
 Maureen Foley-Roy, Hearing Officer

The hearing record remained open for the submission of additional evidence. On [REDACTED], 2014, the hearing record closed.

### **STATEMENTS OF THE ISSUE**

The issue to be decided is whether the Department's decision that the Appellant must pay applied income of \$645 beginning in [REDACTED] of 2014 was correct.

### **FINDINGS OF FACT**

1. The Appellant was a recipient of Medicaid for Low Income Adults (LIA) when she was admitted to the facility on [REDACTED] 2013. (Department's summary)
2. The Department granted Medicaid for Long term care effective [REDACTED] 2013. (Department's summary)
3. At the time she was admitted to the facility, the Appellant's only income was a \$694 per month Social Security benefit. (Department's summary)
4. The Appellant entered the facility for a short term stay for the purpose of rehabilitation and the Department allowed \$650 per month to be diverted from the Appellant's income to pay the rent on her apartment. ( Department's summary)
5. After the Appellant was admitted to the facility, her adult daughter moved into her apartment to care for the Appellant's animals. (Appellant's testimony)
6. The rent at the Appellant's apartment is \$700 per month. (Appellant's testimony)
7. The Appellant has been diagnosed with COPD and uses oxygen. She does not foresee going home in the near future because she is unable to climb the 19 steps required to enter her apartment. (Appellant's testimony)
8. The Appellant will need to have pulmonary rehabilitation before she can come home. (Appellant's daughter's testimony)

9. On ██████████ 2013, the Department sent the Appellant a letter advising her that she must pay \$645 for her cost of care beginning in ██████████ of 2014. (Exhibit 4: DSS notice dated ██████████ 2013)
10. The Appellant currently receives \$705 per month from Social Security. (Department's summary, Appellant's testimony)
11. As of the date of the hearing, ██████████ 2014, the Appellant will not be able to return to her home in the foreseeable future. (Appellant's testimony)

### **CONCLUSIONS OF LAW**

1. Section 17b-2, section (9) of the Connecticut General Statutes, designates the Department of Social Services as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Uniform Policy Manual ("UPM") § 5045.20 provides that assistance units who are residents of Long Term Care Facilities (LTCF) or receiving community based services (CBS) are responsible for contributing a portion of their income toward the cost of their care.
3. UPM § 5045.20 A provides that the amount of income to be contributed is calculated using the post eligibility method starting with the month in which the 30<sup>th</sup> day of continuous LTCF care or receipt of community based services occurs, and ending with the month in which the assistance unit member is discharged from the LTCF or community based services are received.
4. UPM § 5035.20 provides that for residents of long term care facilities (LTCF) and those individuals receiving community-based services (CBS) when the individual does not have a spouse living in the community, total gross income is adjusted by certain deductions to calculate the amount of income which is to be applied to the monthly cost of care.
5. UPM § 5045.20 (B)(1)(b) provides for the amount of income to be contributed in LTCF cases and states that total gross income is reduced by post-eligibility deductions (Cross reference: 5035-"Income Deductions") to arrive at the amount of income to be contributed.
6. UPM § 5035.20 B provides that the following monthly deductions are allowed from the income of assistance units in LTCF's:
  1. for veterans whose VA pension has been reduced to \$90.00 pursuant to P.L. 101-508, and for spouses of deceased veterans whose pension has been similarly reduced pursuant to P.L. 101-508, as amended by Section 601 (d) of P.L. 102-568, a personal needs allowance equal to the amount of their VA pension and the personal needs allowance described in 2. below;

2. a personal needs allowance ("PNA") of \$50.00 for all other assistance units, which, effective July 1, 1999 and annually thereafter, shall be increased to reflect the annual cost of living adjustment used by the Social Security Administration;(note: prior to July 2011, the PNA was \$69 per month; in July of 2011, the PNA was reduced to \$60)
  3. an amount of income diverted to meet the needs of a family member who is in a community home to the extent of increasing his or her income to the MNIL which corresponds to the size of the family;
  4. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for by Medicaid or any other third party;
  5. costs for medical treatment approved by a physician which are incurred subsequent to the effective date of eligibility and which are not covered by Medicaid;
  6. expenses for services provided by a licensed medical provider in the six month period immediately preceding the first month of eligibility providing the following conditions are met:
    - a. the expenses were not for LTCF services, services provided by a medical institution equivalent to those provided in a long term care facility, or home and community-based services, when any of these services were incurred during a penalty period resulting from an improper transfer of assets; and
    - b. the recipient is currently liable for the expenses; and
    - c. the services are not covered by Medicaid in a prior period of eligibility.
7. UPM § 5035.20 B 7 a and b provides that the cost of maintaining a home in the community for the assistance unit is allowed as a monthly deduction from the income of an assistance unit in a LTCF **subject to the conditions that the amount is not deducted for more than six months and the likelihood of the institutionalized individual's returning to the community within six months is certified by a physician.**
8. For the period from [REDACTED] of 2013 through [REDACTED] 2013, the Appellant was entitled to the personal needs allowance of \$60 per month and was also entitled to deduct the cost of maintaining her apartment in the community; resulting in the Appellant having no applied income obligation to the facility. (\$694 - \$650-\$60)

9. The Department was incorrect when it issued a notice on [REDACTED] 2013 stating that the Appellant was obligated to pay \$645 effective [REDACTED] of 2014.
10. In calculating the Appellant's share of the cost of care, the deduction for maintaining a home in the community is allowed for six months only.
11. The Appellant is responsible to pay \$645 in applied income to the facility beginning [REDACTED] 2014. (\$705 -\$60[personal needs allowance])

### DISCUSSION

The regulations are clear in that a Medicaid recipient who is residing in a long term care facility must contribute to the cost of their care. This is referred to as "applied income." In calculating the amount of that contribution, the regulation allows for deductions based on specific conditions. The Appellant anticipated being in the facility for a short term stay; therefore the amount of rent that she paid for her apartment in the community was considered when determining how much she needed to contribute to the cost of her care. The calculations correctly resulted in her initially not having to make any contribution. However, the regulation specifically states that the amount deducted for maintaining a home in the community is not to be allowed for longer than six months. The Department was correct when it allowed the deduction for the six months from [REDACTED] of 2013 through [REDACTED] of 2014. The Appellant is responsible to pay the applied income beginning in [REDACTED] of 2014; the first month that she is not entitled to the deduction to maintain her home in the community.

The Department's summary and testimony at the hearing indicated that the Appellant was responsible to pay the applied income beginning in [REDACTED] of 2014. The notice that was sent by the Department and received subsequent to the hearing states that applied income is due for [REDACTED] of 2014. That is an incorrect notice as the applied income is due beginning in [REDACTED] of 2014.

### DECISION

The Appellant's appeal is **DENIED** in regards to the fact that she is not allowed to deduct the cost of maintaining her home in the community and is responsible to pay applied income to the facility.

The Appellant's appeal is **GRANTED** in regards to the date that she is responsible to pay the applied income; which is [REDACTED] of 2014.

*Maureen Foley-Roy*  
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Maureen Foley-Roy  
Hearing Officer

CC: Annette Lombardi, Operations Manager  
DSS #62, Torrington

### **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, 25 Sigourney Street, Hartford, CT 06106-5033.

### **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, 25 Sigourney Street, Hartford, CT 06106. 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.