

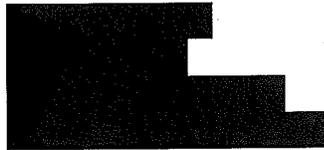


Rhode Island Executive Office of Health and Human Services  
Appeals Office, 57 Howard Ave., LP Building, 2<sup>nd</sup> floor, Cranston, RI 02920  
phone: 401.462.2132 fax: 401.462.0458

Date: March 11, 2015

Docket # 14-1523

Hearing Date: December 29, 2014



### **ADMINISTRATIVE HEARING DECISION**

The Administrative Hearing that you requested has been decided against you. During the course of the proceeding, the following issue(s) and Agency regulation(s) were the matters before the hearing:

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS)  
MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)  
SECTION: 0392.05 POST-ELIGIBILITY TREATMENT OF INCOME  
0392.15.40 MEDICAL/REMEDIAL CARE COSTS**

The facts of your case, the Agency regulation(s) and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the Appellant), the Appellant's mother/guardian, David Kreutter, Esq. the Appellant's attorney, Jacqueline Durand Agency Long Term Care Supervisor and Carol Patras Agency Long Term Care Eligibility Technician.

Present at the hearing were: the Appellant's Mother/Guardian, David Kreutter, Esq. the Appellant's attorney, Jacqueline Durand Agency Long Term Care Supervisor and Carol Patras Agency Long Term Care Eligibility Technician.

**ISSUE:** What is the Appellant's monthly share payable to her health care provider?

#### **EOHHS RULES AND REGULATIONS:**

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Executive Office of Health and Human Services Medicaid Code of Administrative Rules (MCAR).

**APPEAL RIGHTS:**

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

**DISCUSSION OF THE EVIDENCE:**

**The Agency Representatives testified:**

- The Agency issued a notice to the Appellant on April 27, 2014 informing her that she is responsible to pay a share of her medical expenses, per DHS Policy § 0392.05.
- The Appellant filed an appeal on September 15, 2014 stating that the Agency's notice of April 27, 2014 that indicates that the Appellant will have to pay a cost for her care will cause a hardship.
- The Agency's notice further explained that the Appellant's medical expenses are due monthly and are based on gross income, with allowable deductions, the Appellant's share of the medical expenses are \$555.60 and due monthly effective May 1, 2014.

- The Appellant's share of medical expenses are calculated as follows:

Appellant's gross income	\$1653.00
Personal needs deduction (standard)	- 992.50
Medical insurance premiums	- 104.90
Appellant's share amount	<u>\$555.60</u>

- Prior to May 2013, the Appellant's RSDI (\$820.00) was lower than the income limit but as of May 2013 the Appellant started receiving RSDI under her parent's social security number claim and at that time her income went up to \$1628.90 and the cost of care was \$546.00.

- The Agency presented six page document and was labeled Agency I, consisting of: page 1, a copy of an InRhodes computer screen shot "RSDI Data Inquiry" which shows the Appellant's RSDI benefits history (dates & amounts received)

12/2014	1680.90	12/2011	801.00
12/2013	1652.90	12/2008	773.00
05/2013	1628.90	02/2008	731.00
12/2012	815.00	12/2007	731.00

Page 2, a copy of an InRhodes computer screen shot "Approved Shar Segments"

Start	End	Patient Share
01/2014	04/2014	570.60
06/2013	12/2013	546.60
02/2008	05/2013	0.00

Page 3, a copy of an InRhodes computer screen shot "LTC Patient's Share"

Appellant's gross income	1629.00
Adjusted Gross Income	1629.00
Personal Needs Deduction (standard)	- 977.50
Medical Insurance Premiums	- 104.90
Share Start (start) 06/2013 (end) 12/2013	<u>546.60</u>

Page 4, a copy of an InRhodes computer screen shot "LTC Patient's Share"

Appellant's gross income	1653.00
Adjusted Gross Income	1653.00

Personal Needs Deduction (standard)	- 977.50
Medical Insurance Premiums	- 104.90
Share Start (start) 01/2014 (end) 04/2014	570.60

Page 5, a copy of an InRhodes computer screen shot "LTC Patient's Share"

Appellant's gross income	1653.00
Adjusted Gross Income	1653.00
Personal Needs Deduction (standard)	- 992.50
Medical Insurance Premiums	- 104.90
Share Start (start) 06/2014 (end) 12/2014	555.60

Page 6, a copy of an InRhodes computer screen shot "LTC Patient's Share"

Appellant's gross income	1679.90
Adjusted Gross Income	1679.90
Personal Needs Deduction (standard)	- 992.50
Medical Insurance Premiums	- 104.90
Share Start (start) 01/2015 (end) 00/0000	582.50

- The Agency presented an eleven page document and was labeled Agency II and read on to the record State Policy §§ 0386.10, 0386.15, 0392.05, 0396.15, 0396.15.05.
- Agency testified that Chief Caseworker Supervisor for the Agency, Deb Castellano, discussed with the Appellant's mother/guardian on September 5, 2014 regarding that BHDDA was requesting that participants start paying their cost of care.
- On September 18, 2014 Deb Castellano discussed with the Appellant's mother/guardian the cost of care calculations, presented a list of over the counter care products that are allowed. This list was presented at hearing as well as Policy § 0392.15.40 Medical/Remedial Care Cost and a copy of US Code § 1396a State plans for medical assistance (r) and was labeled Agency III.
- The Agency submitted a copy of the Federal Policy Title 42, Chapter IV, C, subpart H § 435.726 as well as the RI – EOHHS, Medicaid Code of Administrative Rules §§ 0110.0, 0102.05, 0108.05, 0108.15, 0108.15.05, 0108.15.10, 0108.20, 0110.05, 0110.10, 0110.15, 0110.15.05. This packet was labeled Agency IV.
- The Agency notes that Federal Policy Title 42, Chapter IV, C, subpart H § 435.726 would allow the Appellant to submit prescriptions for over the counter medication and then the cost would be deducted from the the Appellant's cost share.
- The Agency presented a copy of a list of eligible/ineligible medical expenses regarding a Health Savings Account, labeled Agency V.
- The Agency presented a copy of a Flexible spending account explanation, labeled Agency VI.
- The Agency presented a copy of the IRS Publication 502, with special attention to section "Personal Use Items" on page 16, labeled Agency VII.
- The Agency never received a request for Guardianship Fees to be allowed from the Appellant's mother, if/when they are received they would be referred to the legal department for review.

- To the best of the agency's knowledge, the Appellant has never received SSI, her income was over the SSI limit but has received a low RSDI monthly income.
- With regards to exhibit IV, an individual assessment had been made and the Appellant doesn't have any medical/remedial cost of care submitted. The Appellant doesn't have any remedial cost of care, deductions that are reasonable cost for medical services recognized under state law but not covered in the scope of the Medicaid Program.
- The Appellant would be able to claim an automobile deduction had she had an automobile that had accommodating features for her benefit, such as a special hand controls.
- The Agency is unsure as to the time frame to reply to the Guardianship Fees reviewing period due to the review will be done by DHS Legal. The agency representative present today is not sure of their schedule but they will reply as soon as possible.

**The Appellant's Guardian and her attorney testified:**

- By the Agency's own testimony, the Appellant receives RSDI and therefore, Policy § 0396.15, "SSI recipients and individuals receiving Categorically Needy Medical Assistance by virtue of 1619(b) status are NOT subject to the post-eligibility process".
- The Guardian has had to incur expenses on behalf of the Appellant due to the Guardian making purchases of laundry detergent, vitamins and over the counter medicines to name a few.
- The Appellant's father, the Guardian's husband passed away [REDACTED] 2013.
- Appellant's Attorney points out in Agency Exhibit III, Policy § 0392.15.40, "The deduction consists of the cost of medical or remedial care recognized under state law by not covered under the Medical Assistance scope of service. This *includes* the cost of such items as chiropractic services, hearing aids for the Medically Needy, and certain ambulance services"; that it doesn't exclude any kind of costs.
- The State doesn't have a policy or has one but failed to present one with regards Flexible Spending Accounts for Health Savings Accounts (HSA).
- The State through their own admission, just recently started collecting such fees with regards to this Appellant; they should be estopped.
- The attorney is saving same issue for an Appeal.
- In Federal Policy Title 42, Chapter IV, C, subpart H § 435.726 (c)(1) "An amount for the maintenance needs of the individual that the State may set at any level, as long as the following conditions are met: The deduction amount is based on a reasonable assessment of need"; the State has not done an individual assessment of the Appellant's needs.
- Also in this section, in (ii) in states "The State establishes a maximum deduction amount that will not be exceeded for any individual under the waiver." What the State has done here is set the bar so low so the individual assessment that is in federal law doesn't have to be done. The State should raise the bar.

- The Guardian, in accordance with 0392.15.15.05, should be allowed \$30.00 per hour as a guardian, \$125.00 per month as a set-aside at the very least. The Guardian/mother "has been providing care forever".
- There are other issues, Constitutional/Due Process/Equal Protection Violations issues, which will be addressed in an Appeal and/or a class action suit. Also, the State should not allow third parties to collect fees and that by doing so, the State has created an unfair practice allowing for some people to collect and some people not to collect.

The record was held open for seven (7) days from the date of this Hearing to allow the Appellant and her attorney to submit Guardianship Fees to the agency and for the agency to forward a complete copy of IRS Publication 502 to the Appellant's attorney. The agency will be given seven (7) days to review the Guardianship Fees and to report back to both the Appellant's attorney and this Hearing Officer as to the status of the Guardian Fees as they relate to this appeal.

On January 5, 2015 the Appellant's attorney faxed copies of the Guardianship fees to the Appeals Office and the hard copy received January 12, 2015. The fees are as follows:

Billing period April 1 – 30, 2014

- |                                                                                                                                                 |            |
|-------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| • Guardian/Conservator Cost (per §0392.15.15.05)                                                                                                | \$125.00   |
| • Care of the Appellant                                                                                                                         |            |
| ✓ 8 hrs. per day supervision, Monday-Friday<br>(22 days, at \$240.00 per day)                                                                   | \$5,280.00 |
| ✓ 10 hrs. per day of supervision on weekends<br>at \$30.00 per hr. for 8 days                                                                   | \$2,400.00 |
| ✓ Appellant is looked after by a respite worker<br>for approximately 4-5 hrs. on weekends days,<br>otherwise she requires constant supervision. |            |
| Bill for month of April '14                                                                                                                     | \$7,805.00 |

Bill period May 1 – 31, 2014

- |                                                                                                                                                 |            |
|-------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| • Guardian/Conservator Cost (per §0392.15.15.05)                                                                                                | \$125.00   |
| • Care of the Appellant                                                                                                                         |            |
| ✓ 8 hrs. per day supervision, Monday-Friday<br>22 days, at \$240.00 per day)                                                                    | \$5,280.00 |
| ✓ 10 hrs. per day of supervision on weekends<br>at \$30.00 per hr. for 9 days                                                                   | \$2,700.00 |
| ✓ Appellant is looked after by a respite worker<br>for approximately 4-5 hrs. on weekends days,<br>otherwise she requires constant supervision. |            |
| Bill for month of May '14                                                                                                                       | \$7,805.00 |

Bill period June 1 – 30, 2014

- |                                                  |          |
|--------------------------------------------------|----------|
| • Guardian/Conservator Cost (per §0392.15.15.05) | \$125.00 |
| • Care of the Appellant                          |          |

✓ 8 hrs. per day supervision, Monday-Friday 21 days, at \$240.00 per day)	\$5,040.00
✓ 10 hrs. per day of supervision on weekends at \$30.00 per hr. for 9 days	\$2,700.00
✓ Appellant is looked after by a respite worker for approximately 4-5 hrs. on weekends days, otherwise she requires constant supervision.	
Bill for month of June '14	<u>\$7,865.00</u>

Bill period July 1 – 31, 2014

• Guardian/Conservator Cost (per §0392.15.15.05)	\$125.00
• Care of the Appellant	
✓ 8 hrs. per day supervision, Monday-Friday 23 days, at \$240.00 per day)	\$5,520.00
✓ 10 hrs. per day of supervision on weekends at \$30.00 per hr. for 8 days	\$2,400.00
✓ Appellant is looked after by a respite worker for approximately 4-5 hrs. on weekends days, otherwise she requires constant supervision.	
Bill for month of July '14	<u>\$8,045.00</u>

Bill period August 1 – 30, 2014

• Guardian/Conservator Cost (per §0392.15.15.05)	\$125.00
• Care of the Appellant	
✓ 8 hrs. per day supervision, Monday-Friday 21 days, at \$240.00 per day)	\$5,040.00
✓ 10 hrs. per day of supervision on weekends at \$30.00 per hr. for 8 days	\$2,400.00
✓ Appellant is looked after by a respite worker for approximately 4-5 hrs. on weekends days, otherwise she requires constant supervision.	
Bill for month of August '14	<u>\$7,565.00</u>

Bill period September 1 – 30, 2014

• Guardian/Conservator Cost (per §0392.15.15.05)	\$125.00
• Care of the Appellant	
✓ 8 hrs. per day supervision, Monday-Friday 22 days, at \$240.00 per day)	\$5,280.00
✓ 10 hrs. per day of supervision on weekends at \$30.00 per hr. for 8 days	\$2,400.00
✓ Appellant is looked after by a respite worker for approximately 4-5 hrs. on weekends days, otherwise she requires constant supervision.	
Bill for month of September '14	<u>\$7,805.00</u>

Bill period October 1 – 31, 2014

• Guardian/Conservator Cost (per §0392.15.15.05)	\$125.00
• Care of the Appellant	
✓ 8 hrs. per day supervision, Monday-Friday 23 days, at \$240.00 per day)	\$5,520.00
✓ 10 hrs. per day of supervision on weekends at \$30.00 per hr. for 8 days	\$2,400.00
✓ Appellant is looked after by a respite worker for approximately 4-5 hrs. on weekends days, otherwise she requires constant supervision.	
Bill for month of October '14	<u>\$8,045.00</u>

Bill period November 1 – 30, 2014

• Guardian/Conservator Cost (per §0392.15.15.05)	\$125.00
• Care of the Appellant	
✓ 8 hrs. per day supervision, Monday-Friday 20 days, at \$240.00 per day)	\$4,800.00
✓ 10 hrs. per day of supervision on weekends at \$30.00 per hr. for 10 days	\$3,000.00
✓ Appellant is looked after by a respite worker for approximately 4-5 hrs. on weekends days, otherwise she requires constant supervision.	
Bill for month of November May '14	<u>\$7,925.00</u>

Bill period December 1 – 31, 2014

• Guardian/Conservator Cost (per §0392.15.15.05)	\$125.00
• Care of the Appellant	
✓ 8 hrs. per day supervision, Monday-Friday 23 days, at \$240.00 per day)	\$5,520.00
✓ 10 hrs. per day of supervision on weekends at \$30.00 per hr. for 8 days	\$2,400.00
✓ Appellant is looked after by a respite worker for approximately 4-5 hrs. on weekends days, otherwise she requires constant supervision.	
Bill for month of December '14	<u>\$8,045.00</u>

\*\*The Appellant attends a day program from 8:25a.m. to 2:30 p.m. on most days, then requires constant supervision because of her disability – Cri Du Chat Syndrome.

On Friday, February 27, 2015, at approximately 2:45 the Agency finally responded to the Appellant's request for Guardianship Fees to be reviewed. The Agency's response was by e-mail simply stating, "Per the attorney, the fees/bills are not allowed under 0392.15.15.05. Sorry for the delay."

On Monday, March 2, 2015 this Hearing Officer e-mailed the agency requesting some reasoning as to why those fees were not acceptable. A hard copy was also sent to the

Appellant and her attorney that day also. To the date of this decision being issued, the agency has not responded to the March 2, 2015 e-mail.

**FINDINGS OF FACT:**

- The Agency issued a notice to the Appellant on April 27, 2014 informing her that she is responsible to pay a share of her medical expenses, per DHS Policy § 0392.05.
- The Appellant filed an appeal on September 15, 2014 stating that the Agency's notice of April 27, 2014 that indicates that the Appellant will have to pay a cost for her care will cause a hardship.
- The Agency's notice further explained that the Appellant's medical expenses are due monthly and are based on gross income, with allowable deductions, the Appellant's share of the medical expenses are \$555.60 and due monthly effective May 1, 2014.

- The Appellant's share of medical expenses are calculated as follows:

Appellant's gross income	\$1653.00
Personal needs deduction (standard)	- 992.50
Medical insurance premiums	<u>- 104.90</u>
Appellant's share amount	\$555.60

- The Agency presented six page document and was labeled Agency I, consisting of: page 1, a copy of an InRhodes computer screen shot "RSDI Data Inquiry" which shows the Appellant's RSDI benefits history (dates & amounts received)

12/2014	1680.90	12/2011	801.00
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01/2014	04/2014	570.60
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Page 3, a copy of an InRhodes computer screen shot "LTC Patient's Share"

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Page 6, a copy of an InRhodes computer screen shot "LTC Patient's Share"

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Personal Needs Deduction (standard)	- 992.50
Medical Insurance Premiums	- 104.90
Share Start (start) 01/2015 (end) 00/0000	582.50

- The Agency never received a request for Guardianship Fees to be allowed from the Appellant's mother, if/when they are received they would be referred to the legal department for review.
- To the best of the agency's knowledge, the Appellant has never received SSI, her income was over the SSI limit but has received a low RSDI monthly income.
- The Appellant would be able to claim an automobile deduction had she had an automobile that had accommodating features for her benefit, such as a special hand controls.
- The Agency is unsure as to the time frame to reply to the Guardianship Fees reviewing period due to the review being done by DHS Legal. The agency representative present today is not sure of their schedule but they will reply as soon as possible.
- The Appellant's attorney submitted Guardianship Fees on January 5, 2015 for the months of April 2014 through December 2014.
- The Agency replied by e-mail on February 27, 2015 as to the Appellant's request to have the Agency accept these Guardian Fees but the fees were denied by the agency's attorney(s).

**CONCLUSION:**

The issue to be decided is what is the Appellant's monthly share payable to her healthcare provider. The Appellant's Medical Assistance share payment to her medical provider is allowed to be reduced by certain allowable agency deductions from the Appellant's gross income. As per Policy § 0392.05 provides:

"The individual may protect certain prescribed amounts of income for specific needs. ONLY the prescribed amounts for the specific purposes may be protected. ALL of the institutionalized individual's remaining income must be used to reduce the Medicaid payment for institutional care. The applicant's income, protected amounts, and allocation to the cost of care are computed on a monthly basis.

The Appellant's share of medical expenses are due monthly and are based on the gross income and after allowable deductions are reported. The Agency calculated the

Appellant's share of the medical expenses as of May 1, 2014 is \$555.60; this figure was reached by the following formula.

Appellant's gross income	\$1653.00
Personal needs deduction (standard)	- 992.50
Medical insurance premiums	<u>- 104.90</u>
Appellant's share amount	\$555.60 per month

The Appellant receives \$1,653.00 per month from her RSDI benefit, she received a maintenance needs deduction (standard) in the amount of \$922.50, as per Policy § 0396.15.05 and the Appellant receives a deduction for her medical insurance premium in the amount of \$104.90 (Part "B"); which leaves the Appellant to pay her health care provider \$555.60 as her share of the medical expenses for each month.

The Agency was asked to review the Guardian Fees for consideration submitted by the Appellant's attorney, which were then referred to DHS attorney(s) for review. The only reply to these Guardian Fee that the DHS attorney(s) sent back was, "Per the attorney, the fees/bill are not allowed under 0392.15.15.05."

The Appellant and her attorney are appealing due to the agency not giving any credit to the Appellant/Guardian for other expenses which are regularly incurred. It has been suggested by the Appellant's doctor that the Guardian/mother purchase certain over the counter medications and the Appellant's dentist suggested an electric toothbrush and replacement heads should be purchased. The Appellant's attorney points out some of the eligible/ineligible expenses from Agency's exhibit V, Health Savings Account, which states bandages, cars, eye exams, and eye glasses, are only some of the many items that are eligible expenses and some of what the Appellant is not receiving deductions for. The attorney also points out Agency's exhibit VII, the IRS Publication 502 for 2013, does not provide an exclusive list of what medical expenses are deductible.

IRS Publication 502 has a section "What Are Medical Expenses" which state:

Medical expenses are the costs of diagnosis, cure, mitigation, treatment, or prevention of disease, and the costs for treatments affecting any part or function of the body. These expenses include payments for legal medical services rendered by physicians, surgeons, dentists, and other medical practitioners. They include the costs of equipment, supplies, and diagnostic devices needed for these purposes.

Medical care expenses must be primarily to alleviate or prevent a physical or mental defect or illness. They do not include expenses that are merely beneficial to general health, such as vitamins or a vacation.

Medical expenses include the premiums you pay for insurance that covers the expenses of medical care, and the amounts you pay for transportation to get medical care. Medical expenses also include amounts paid for

qualified long-term care services and limited amounts paid for any qualified long-term care insurance contract.

The Appellant's attorney also points out that the Guardian should be receiving some compensation for her time and care that she is providing to the Appellant. The Guardian, who is also the Appellant's mother, spends eight hours on a weekday and ten hours on the weekend providing supervision to the Appellant.

The Appellant's mother, as well as her father who has since passed away in May of 2014, had applied for and had qualified as Co-Guardians by order of the Cumberland Probate Court in June of 2013. The Probate Order does not specifically approve any hours at the rate of compensation identified per Policy § 0392.15.15.05; the policy states that, "the total amount allowed must be reasonable and shall be based on the hours approved by the particular Probate Court..." Furthermore, the Probate Court Order submitted does not identify any approved guardian expenses and/or hours as required per policy. This policy also states that, "the expense must be required for the individual to make income or resources available, or in the case of an incompetent individual who needs a court appointed guardian required to access or consent to necessary medical treatment (including applying for Medicaid)."

The Appellant's attorney, on behalf of the Appellant and Guardian, submitted itemized monthly bills for Guardianship/Conservatorship expenses to the Agency, which were then referred to DHS's legal counsel, as well as the Probate Order granting Guardianship. After review, it was determined that "the fees/bills are not allowed under 0392.15.15.05." Although the agency provided no reasoning or rationale for denying the Guardian Fees that had been presented. When reviewing the Guardianship Fees AND the Probate Order as required by policy, the answer seems apparent. The Probate Order is silent as to "deductions reasonable court-approved expenses (not covered by other sources)", fee schedule rates and monthly deductions. If the Probate Order addressed some of the Appellant's requests/needs there possibly could be a different conclusion.

As for the Agency's formula in determining the cost of the Appellant's share for her medical expenses, a review of the Appellant's gross income must be done. The Appellant has a gross income of \$1,653.00 per month which comes from a RSDI benefits, of which she receives a "personal needs deduction (standard)" in the amount of \$992.50 and a "Medical Insurance Premium" deduction in the amount of \$104.90 for her Medicare Part B; leaving the Appellant with a share amount of \$555.60 per month.

In summary, the agency issued a notice to the Appellant on April 27, 2014 informing her that she is responsible to pay a share of her medical expenses, per policy § 0392.05. The Agency determined that the Appellant's share of her medical expenses by reviewing her gross income and once all the deduction are applied, you are left with the value of the share of medical expenses that are to be paid.

The Appellant receives \$1,653.00 per month from her RSDI benefit, she receives a "Personal needs deduction" (standard) in the amount of \$992.50 and a Medical Insurance Premium deduction in the amount of \$104.90 for her Medicare Part B premium; which leaves the Appellant responsible to pay a share of her medical expenses in the amount of \$555.60. The Appellant's representative could present prescription for over the counter medications and then the cost would be deducted from the Appellant's cost share.

Due to this April 27, 2014 Agency notice, the Appellant's Guardian filed an appeal of the Agency's action, indicating that she supplies everything to the Appellant and the cost would cause a hardship. The Guardian presented a long list of items that are purchased from over the counter, not prescribed, for the Appellant ranging from Mucinex DM to laundry detergent to vitamins.

IRS Publication 502 provides a partial list of some item that are allowable but ultimately,

"Medical care expenses must be primarily to alleviate or prevent a physical or mental defect or illness. They do not include expenses that are merely beneficial to general health, such as vitamins or a vacation. "

With regards to the Appellant's request for Guardian Fees to be paid to her mother for the care provided, a review of the Probate Order that granted Guardianship is needed. The Cumberland Probate Court does not state any fees that the Guardian is to be paid for while performing specific tasks or at what rate fees are to be charged. Policy § 0392.15.15.05 states that, "the total amount allowed must be reasonable shall be based the hours approved by the particular Probate Court for items as provided above at the rate of compensation paid for guardians ad litem in Family Court as specified in the then current Rhode Island Supreme Court Executive Order on fee schedules." The only thing that the Cumberland Probate Court approved was granting the Appellant's mother and father as co-guardians and that is all.

After a careful review of the Agency's policies, as well as the evidence and testimony given, this Appeals Officer finds that the Appellant has a monthly share payable to her healthcare provider in the amount of \$555.60 per month. The appellant's request for relief is therefore denied.

Appeals Officer

## APPENDIX

**EXECUTICE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS)  
MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)**

**0392 Post-Eligibility Treatment of Income**

**0392.05 Overview**

REV: 06/1994

Institutionalized Medicaid recipients are required to apply their income toward the cost of institutional care. Once Categorically Needy or Medically Needy eligibility has been established, and the applicant has been determined eligible for payment of institutional care services, a determination is made of the amount of income that the institutionalized individual must allocate to the cost of care.

The individual may protect certain prescribed amounts of income for specific needs. ONLY the prescribed amounts for the specific purposes may be protected. ALL of the institutionalized individual's remaining income must be used to reduce the Medicaid payment for institutional care. The applicant's income, protected amounts, and allocation to the cost of care are computed on a monthly basis.

The policy in this section applies to individuals who reside in nursing facilities and public medical facilities. See Section 0396 for the specific post-eligibility policies which apply to individuals who receive home and community based services under a waiver. For eligibility determination purposes, children receiving Medicaid under the "Katie Beckett" provisions are considered to be institutionalized. However, "Katie Beckett" eligible children are not subject to the post-eligibility process since only regular covered medical services are provided.

**0392.10 Income for Post-Eligibility Purposes**

REV: 03/1995

There are differences between the definition of income for determining Medicaid financial eligibility and the definition of income for post-eligibility purposes. In the post-eligibility process, income means all income that is defined to be part of the client's gross income when determining financial eligibility.

The income disregards which were excluded in the eligibility determination process are added back as countable income in the post-eligibility process.

Generally, certain types of income that are paid to a client for medical or social services and are excluded in determining financial eligibility are counted as

income in the post-eligibility process. However, Aid and Attendance (A&A) benefits or benefits for unusual medical expenses (UME) paid by the Veterans Administration are excluded in determining financial eligibility and are also excluded as income in the post-eligibility process.

Likewise, SSI benefits are not considered to be income in the Medicaid eligibility process and are "invisible" (not countable) in the post-eligibility treatment of income as well.

### **392.10.05 Income Ownership**

REV: 06/1994

During any month in which an institutionalized spouse is in the institution, except with respect to trust property as provided below, no income of the community spouse shall be deemed available to the institutionalized spouse.

In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined to be eligible for Medicaid, the following rules apply, regardless of any state laws relating to community property or the division of marital property:

#### **NON-TRUST PROPERTY**

Non-trust property is all property not subject to a trust. The caseworker reviews the instruments, if any, which provides the income and applies its specific provisions regarding payment and availability of income. If the instrument providing the income lacks specific provisions relating to payment and availability of income, the following provisions apply:

- If payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;
- If payment of income is made in the names of the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them;
- If payment of income is made in the names of the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to that spouse's interest. If payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse.

In the case of income not from a trust in which there is no instrument establishing ownership, subject to Section 0392.10.05.05, one-half of the joint interest shall be considered available to the institutionalized spouse and one-half to the community spouse.

## TRUST PROPERTY

In the case of a trust, income shall be considered available to each spouse as provided in the trust, or, in the absence of a specific provision in the trust:

- If payment of income is made solely to the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;
- If payment of income is made to both the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them;
- If payment of income is made to the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest. If payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse.

### **0396.15.05 Post-Eligibility Treatment of Income**

REV: April 2014

The following is a list of allowable deductions in the order they are to be deducted:

- **Maintenance Needs Allowance**

The Maintenance Needs Allowance is nine hundred and ninety-two dollars and fifty cents (\$992.50) per month. This amount is in lieu of the Personal Needs Deduction and the Home Maintenance Deduction available to other institutionalized (non-Waiver) individuals.

For employed individuals eligible under the Waiver for the Developmentally Disabled (Section 0398.10), the Maintenance Needs Allowance is equal to nine hundred and ninety-two dollars and fifty cents (\$992.50) plus all gross earned income per month, an amount not to exceed the federal cap. To qualify for this expanded Maintenance Needs Allowance, the individual's employment must be in accordance with the plan of care.

- **Spouse/Dependent Allowance**

This deduction is an allowance for the support of a spouse and any dependents. The basic allowance for a spouse is equal to the monthly medically needy income limit for an individual, less any income of the spouse.

If there are also dependent children to be supported, the Medically Needy Income Limit for the number of children is used.

- **Medical Insurance Premiums**

This deduction is insurance premiums paid by the individual, such as Medicare and Medigap policies such as Blue Cross and Plan 65.

- **Allowable Costs Incurred for Medical or Remedial Care**

This deduction is reasonable costs for medical services recognized under state law but not covered in the scope of the Medicaid Program.

Any balance of income remaining after these expenses are deducted is allocated toward cost of home-based services according to the plan worked out with the Case Manager.

### **392.15.15.05 Guardian/Conservator Costs**

REV: 04/2001

Individuals who have court-appointed guardians or conservators are allowed to retain income in the form of an additional Personal Needs Deduction to pay for certain court-approved guardian/conservator's fees or court-ordered fees relating to the guardianship/conservatorship. Such fees include but are not limited to:

- Court filing fees;
- The cost of a Probate Bond;
- Court-approved guardianship/conservatorship fees; and
- Court-approved legal fees.

To be considered, the expense must be required for the individual to make income or resources available, or in the case of an incompetent individual who needs a court-appointed guardian, required to access or consent to necessary medical treatment (including applying for Medicaid). The individual must submit a copy of the Probate Court Order and any supporting documentation, including an itemized bill for allowable guardianship/conservatorship expenses, to the Medicaid agency.

Such cases are referred to the Office of Legal Services by the Administrator of Long Term Services and Supports (or his designee). The referral must contain a

brief description of the case, a copy of the Probate Court Order, an itemized bill from the guardian, and any other supporting documentation submitted by the individual.

The Office of Legal Services may consider as deductions reasonable court-approved expenses (not covered by other sources) listed above, subject to the Rhode Island Supreme Court approved fee schedule (currently \$30 per hour for guardians under "Executive Order" Number 95-01). When such guardianship fees have been approved by the Probate Courts, related guardian ad litem fees not exceeding \$250 may also be recognized.

The total amount allowed must be reasonable shall be based the hours approved by the particular Probate Court for items as provided above at the rate of compensation paid for guardians ad litem in Family Court as specified in the then-current Rhode Island Supreme Court Executive Order on fee schedules.

Monthly deductions of up to one hundred twenty five dollars (\$125) may be allowed for guardianship expenses. Monthly deductions up to one hundred twenty five dollars (\$125) may also be allowed for related legal fees. An additional deduction from income of up to two hundred fifty dollars (\$250) is recognized for allowable expenses related to a guardian-ad-litem during the month in which the individual pays the expense.

**0392.15.40 Medical/ Remedial Care Costs**  
REV: 06/1994

The deduction consists of the cost of medical or remedial care recognized under state law but not covered under the Medicaid scope of services. This includes the cost of such items as chiropractic services, hearing aids for the Medically Needy, and certain ambulance services. Medical/remedial items which may be included in this deduction from the institutionalized individual's gross income are identified on the STAT/MEDX panel.

### **NOTICE OF APPELLATE RIGHTS**

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.