

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

██████████ 2015
Signature Confirmation

Client ID ██████████
Request 640059

NOTICE OF DECISION

PARTY

██████████
C/O ██████████
██
██████████

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") sent ██████████ ██████████ (the "Appellant") a notice that he had transferred \$190,717.00 to become eligible for Medicaid, and the Department was imposing a transfer of asset penalty period for Medicaid payment of Nursing Home services from ██████████ 2014 through ██████████ 2015.

On ██████████ 2014, the Appellant, through his Attorney, ██████████, ("Appellant's Representative") requested an administrative hearing to contest the amount of transfer and undue hardship.

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's Representative requested a rescheduled hearing date.

On ██████████ ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice rescheduling the administrative hearing for ██████████ 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:

██████████, Power of Attorney (“POA”)
██████████, Appellant’s Attorney
Philip Preston, Department’s Representative
Shelley Starr, Hearing Officer

The Appellant, ██████████ was not present at the hearing.

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

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly imposed a Transfer of Assets (“TOA”) penalty in the amount of \$190,717.00 on the Appellant’s Long Term Care Medicaid.

FINDINGS OF FACT

1. On ██████████ 2012, the Appellant appointed his daughter, ██████████ to be his acting Power of Attorney, (hereafter POA). (Appellant’s Ex 10: POA document; ██████████ 2012)
2. On ██████████ 2014, the Appellant with the assistance of his POA, applied for Medicaid for help with nursing home coverage. (Department’s Ex J: W-1E Application)
3. On ██████████ 2014, the Department sent a W-1348LTC request for verification to the POA requesting income, asset and information needed for the Medicaid application process. The information was due by ██████████ 2014. (Department’s Ex D: W-1348 LTC; ██████████ 2014)
4. On ██████████ 2014, the Department reviewed the information submitted by the POA and sent a second (#2) W-1348 LTC request for verification to the POA requesting asset information with explanations for transactions and medical insurance information. The information was due by ██████████ 2014. (Department’s Ex D: W-1348 LTC #2; ██████████ 2014)
5. On ██████████ 2014, the Appellant was admitted to ██████████ Rehab & Care of ██████████ CT. (POA’s Testimony and Department’s Ex F: INST screen print)
6. On ██████████ 2014, the Department reviewed the information submitted by the POA and sent a third (#3) W-1348 LTC request for verification to the POA requesting readable copies of bank statements, explanations and proof for deposits and withdrawals listed on enclosed W-1348 form, and a readable

copy of burial contract. The information was due by [REDACTED] 2014.
(Department's Ex D: W-1348LTC #3; [REDACTED] 2014)

7. On [REDACTED] 2014, the Department reviewed the information submitted by the POA and sent a fourth (#4) W-1348LTC request for verification to the POA requesting, "for all accounts (including those listed below), provide statements as indicated. For all transactions of \$5,000 or more, provide copy of bills, receipts or cancelled checks to show what the transactions were for. For deposits of \$5,000 or more, prove the origin of funds, i.e. other accounts, sale of property or liquidation of other asset(s). DSS requires "Proof" of large transactions along with an explanation. Please provide "proof" (receipts) along with explanations of transactions listed on enclosed W-1348Apdx(s). Provide proof of any other assets you and or your spouse owns (savings bonds, stocks, IRAs, annuities, etc.) Charles Schwab statements for period: [REDACTED] 2012 to [REDACTED] 2014 were requested. We only received statements for dates [REDACTED] 2012 and [REDACTED] 2014. Please provide statements for ALL months for period [REDACTED] 2012, thru [REDACTED] 2014." The information was due by [REDACTED] 2014. (Department's Ex D: W-1348; [REDACTED] 2014)
8. On [REDACTED] 2014, the Department reviewed the information submitted by the POA in response to the fourth #4 W-1348LTC request. (Department's Testimony and Department's Ex A4: Case Narrative)
9. There is no evidence in the hearing as to what information was provided by the POA on [REDACTED] 2014. (Hearing Record)
10. On [REDACTED] 2014, the Department determined that the POA did not provide all of the requested information and that additional information regarding explanations for the [REDACTED]/12 \$5,000.00 withdrawal from Citizens Savings, transfer information pertaining to the \$179,707.00 that was stated to be transferred to the POA's account, and the \$6,010.00 auto loan payoff was needed. (Dept Ex A4: Case Narrative and Department's Testimony)
11. The Department did not issue a fifth (#5) W-1348LTC request for additional information notifying the POA what information was still needed after receiving and reviewing the submitted information from the 4th W-1348LTC request. (Department's Testimony and Hearing Record)
12. On [REDACTED] 2014, the Department sent the POA a W-495A, Transfer of Assets Preliminary Decision Notice. The notice informed the POA that information was reviewed about the transfer of \$190,717.00 from Citizen's Bank accounts # [REDACTED] & # [REDACTED] on 2010 – 2012 and it was determined the transfers were made in order to be eligible for assistance. A response was due by [REDACTED] 2014. (Department's Ex A2: W-495A; [REDACTED] 2014 and Department's Ex A4: Case Narrative)

13. On [REDACTED] 2014, the POA submitted a rebuttal to the Department's W-495A, Transfer of Assets Preliminary Decision Notice by providing a letter dated [REDACTED] 2014 from [REDACTED] Rehab & Care with an intent to discharge the Appellant on or about [REDACTED] 2014, a [REDACTED] Rehab & Care resident invoice showing a total balance due of \$18,842.72, a bill from Lawrence Memorial Hospital for \$373.00, a Nissan of [REDACTED]h receipt for \$19,384.00 and an Aspen Dental receipt for \$10,242.97. (Department's Ex i: POA's Response to W-495A)
14. The Department did not respond to the Appellant's rebuttal and submitted documents by sending a W-495B Notice of Response to Rebuttal/Hardship Claim form. (Department's Testimony and Hearing Record)
15. On [REDACTED] 2014, the Department approved Medicaid effective [REDACTED] 2014, with a penalty of \$190,717.00 (Department's Ex A5: grant notice of [REDACTED] 2014 and Department's Ex A3: W-495C Final Decision Notice, [REDACTED] 2014)
16. On [REDACTED] 2014, the Department sent the POA a W-495C, Transfer of Assets Final Decision Notice. The notice informed the POA, " We have decided that you transferred \$190,717.00 on [REDACTED]/2012 to become eligible for Medicaid. Although you are eligible for certain Medicaid benefits beginning [REDACTED]/14, we are setting up a penalty period starting [REDACTED]/14. This penalty ends [REDACTED]/15. During this time, Medicaid will not pay for any long-term care services. These services include the daily room and board rate at a nursing home or services that you receive at home so that you do not need to go into a nursing home. We will still cover other medical services that you receive in the community. During the penalty period the long-term care service provider will bill you directly for services. Once the penalty period ends, Medicaid will help pay for your long-term care services. (Department's Ex A3: W-495C; [REDACTED] 2014)
17. The POA was confused by the requests for information and believed she was providing what the Department needed for the application. She informed the Department that money was transferred to the POA's account and was never asked for the POA's account information. (POA's Testimony)

CONCLUSIONS OF LAW

1. Section 17b-2; 17b-262 of the Connecticut General Statutes provides the Department is the state agency in Connecticut that administers the Medicaid program pursuant to Title XIX of the Social Security Act. The Department may make such regulations as they are necessary to administer the medical assistance program.

2. Section 17b-261b(a) of the Connecticut General Statutes provides that the Department is the sole agency to determine eligibility for assistance and services under the programs it operates and administers.
3. Section 17b-80(a) of the Connecticut General Statutes provides the Department shall grant aid only if the applicant is eligible for that aid.
4. Uniform Policy Manual (“UPM”) § 3029.03 provides the transfer of assets policy for transfers that occurred on or after February 8, 2006.
5. Uniform Policy Manual (“UPM”) 3029.05(C) provides that the look-back date for transfers of assets is a date that is 60 months before the first date on which both the following conditions exists:(1) the individual is institutionalized; and (2) the individual is either applying for or receiving Medicaid.

The Department correctly determined that the transfers in 2010 through 2012 occurred within the 60 month look back period.

6. Uniform Policy Manual (“UPM”) § 3029.10(E) provides that an otherwise eligible individual is not ineligible for Medicaid payment of LTC services if the individual, or his or her spouse, provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.

Uniform Policy Manual (“UPM”) § 3029.10(F) provides that an institutionalized individual, or his or her spouse, may transfer an asset without penalty if the individual provides clear and convincing evidence that he or she intended to dispose of the asset at fair market value.

The Department did not provide the Appellant’s Representative the complete opportunity to provide clear and convincing evidence regarding the questionable assets.

7. Section 17b-261a(a) of the Connecticut General Statutes provides any transfer or assignment of assets resulting in the imposition of a penalty period shall be presumed to be made with the intent, on the part of the transferor or the transferee, to enable the transferor to obtain or maintain eligibility for medical assistance. This presumption may be rebutted only by clear and convincing evidence that the transferor’s eligibility or potential eligibility for medical assistance was not based for the transfer or assignment.
8. Uniform Policy Manual (“UPM”) § 1015.05 (C) states that the Department must tell the assistance unit what the unit has to do to establish eligibility

when the Department does not have sufficient information to make an eligibility determination.

Uniform Policy Manual (“UPM”) 1505.40(B)(5)(a)(1)&(2) provide that regardless of the standard of promptness, no eligibility determination is made when there is insufficient verification to determine eligibility when the Department requested verification and at least one item of verification has been submitted by the assistance unit within a time period designated by the Department but more is needed.

Uniform Policy Manual (“UPM”) 1505.40 (B)(5)(b) provides that an additional 10 day extension for submitting verification shall be granted, as long as after each subsequent request for verification at least one item of verification is submitted by the assistance unit within each extension period.

The Department was incorrect, when after receiving at least one requested item from the fourth (#4) W-1348LTC by the [REDACTED] 2014 due date, the Department made an eligibility determination.

The Department was incorrect, when upon receipt of at least one item of verification, the Department did not give an additional 10 day extension for submitting verification and continue to inform the Appellant what was needed to establish eligibility.

DISCUSSION

After reviewing the evidence and testimony presented, the Department’s action to impose a transfer of assets penalty of \$190,717.00 is not upheld. Regulations require that an application must remain pending and the Department must inform the Assistance Unit what the assistance unit has to do to establish eligibility. The Department was premature in the decision to send the W-495A Preliminary Decision Notice without first obtaining all of the necessary verification needed to determine eligibility.

The Power of Attorney argued that she was confused and thought she was providing what the Department needed as verification. She reported to the Department that money was transferred to her POA account and was not asked for additional information. Evidence demonstrates that the Power of Attorney made effort to supply the Department with information that was needed and while she did not submit everything the Department requested on the issued W-1348LTC forms, she promptly submitted at least one of the requested items.

DECISION

The Appellant's appeal is **GRANTED.**

ORDER

1. The Department shall send the POA another W-1348LTC giving her the opportunity to provide documents regarding the proposed transfer.
2. The Department shall issue the Appellant the W-495A, W-495B, and W-495C notices, if applicable.
3. Compliance with this order (providing a copy of the W-1348LTC) shall be forwarded to the undersigned no later than [REDACTED] 2015.



Shelley Starr
Hearing Officer

CC: Cheryl Parsons, Operations Manager Norwich

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, 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.

