

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

██████████ 2015
SIGNATURE CONFIRMATION

CL ID # ██████████
Request # 675324

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department") sent Attorney ██████████ the conservator for ██████████ (the "Appellant") a notice that he had transferred \$33,758.85 to become eligible for Long Term Care ("LTC") Medicaid, and the Department was imposing a penalty period of ineligibility for Medicaid payment of long term care services effective ██████████ 2014 through, ██████████ 2015.

On ██████████ 2015, the Appellant requested an administrative hearing to contest the Department's penalty determination.

On ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") scheduled an administrative hearing for ██████████ 2015.

On ██████████ 2015, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The following individuals were present at the hearing:

Attorney ██████████, Appellant's Conservator
██████████, for the Appellant, Touchpoints at Bloomfield
Maureen Harry, Department's Representative
Thomas Monahan, Hearing Officer

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

STATEMENT OF THE ISSUE

The issue to be decided is whether the Appellant transferred assets in the amount of \$33,758.85 during the look-back period for less than fair market value and is consequently subject to a penalty which results in ineligibility for LTC Medicaid from [REDACTED] 2014, through [REDACTED] 2015.

FINDINGS OF FACT

1. On [REDACTED] 2014, the Appellant applied for LTC Medicaid. (Exhibit 1: Long –term Care Application)
2. On [REDACTED] 2014, the Appellant entered Wintonbury Care Center (the “facility”) in Bloomfield, a skilled nursing facility. (Hearing record, Ex. 1: long-term Care Application)
3. The Appellant’s date of birth is [REDACTED] 1952. (Ex. 1: long-term Care Application)
4. The Appellant is seeking Long Term Medicaid coverage effective [REDACTED] 2015. (Hearing record)
5. The Appellant receives a monthly gross pension from the U.S. Postal service of \$1,810.00. There is a \$257.23 deduction monthly for medical insurance costs from the pension. (Ex. 8: Grant letter, [REDACTED]/15)
6. [REDACTED] is the conservator for the Appellant. (Hearing record)
7. The Appellant suffers from depression, alcoholism and PTSD. (Hearing record)
8. The Appellant suffered an injury from a fall at a shelter in [REDACTED] of 2014. The Appellant was homeless and living in various shelters prior to [REDACTED] 2014. (Hearing record)
9. On [REDACTED] 2011, the Appellant withdrew \$33,758.85 from his two Bank of America savings accounts. (Ex. 2: Bank of America withdrawal slips)
10. On [REDACTED] 2011, the Appellant issued a cashier’s check of \$33,785.85 to his mother [REDACTED] (Ex. 3: Cashier’s check, [REDACTED]/11)
11. As of [REDACTED] 2014, the Appellant’s assets were within the Medicaid program asset limit of \$1,600.00. (Ex. 11: Financial Eligibility screens, Ex: 12: Asset screens)
12. The Appellant was otherwise eligible for Medicaid payment of long-term care services as an institutionalized individual effective [REDACTED] 2014. (Hearing record, Ex. 6: Transfer of Assets Final Decision Notice)

13. On [REDACTED] 2014, the Department issued a Transfer of Assets Preliminary Decision Notice to the Appellant which stated that the transfers made on [REDACTED] 2011, in the amount of \$33,758.85 were made in order to qualify for Medicaid. (Ex. 4: Preliminary Transfer of Assets Notice, [REDACTED]/14)
14. On [REDACTED] 2015, the Department received a rebuttal from the Appellant's conservator indicating that the transfers were made to protect money from his creditors due to an auto accident on [REDACTED] 2011. (Hearing record, Ex. 5: Response from conservator, [REDACTED]/15)
15. The Appellant settled the auto accident claims in [REDACTED] of 2014. (Appellant's Ex. A: General releases)
16. The \$33,758.85 transferred to the Appellant's mother was not returned to the Appellant after the accident claims were settled. Some of the \$33,758.85 was spent by the Appellant's mother on her own medical care. (Hearing record)
17. On [REDACTED] 2015, the Department issued a Transfer of Assets Final Decision Notice to the Appellant stating that the transfers made on [REDACTED] 2011, in the amount of \$33,758.85 were made in order to qualify for Medicaid. (Ex. 6: Notice of Response to Rebuttal, Final Decision Notice, [REDACTED]/15)
18. On [REDACTED] 2015, the Department granted Medicaid effective [REDACTED] 2014 with a penalty for long term care services through [REDACTED] 2015. (Ex. 5: Notice of Approval, [REDACTED]/14)

CONCLUSIONS OF LAW

1. The Department is the state agency that administers the Medicaid program pursuant to Title XIX of the Social Security Act. The Department may make such regulations as are necessary to administer the medical assistance program. Conn. Gen. Stat. § 17b-2; Conn. Gen. Stat. § 17b-262
2. The Department is the sole agency to determine eligibility for assistance and services under the programs it operates and administers. Conn. Gen. Stat. § 17b-261b(a)
3. The Department shall grant aid only if the applicant is eligible for that aid. Conn. Gen. Stat. § 17b-80(a)
4. The Department uses the policy contained in this chapter to evaluate asset transfers, including the establishment of certain trusts and annuities, if the transfer

occurred, or the trust was established, on or after February 8, 2006. Uniform Policy Manual ("UPM") § 3029.03.

5. The look-back date for transfers of assets is a date that is sixty months before the first date on which both the following conditions exist: 1) the individual is institutionalized; and 2) the individual is either applying for or receiving Medicaid. UPM § 3029.05(C)
6. There is a period established, subject to the conditions described in this chapter, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back date specified in UPM 3029.05(C). This period is called the penalty period, or period of ineligibility. UPM § 3029.05(A).
7. The length of the penalty period is determined by dividing the total uncompensated value of all assets transferred on or after the look-back date by the average monthly cost to a private patient for long-term care services in Connecticut. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. UPM § 3029.05(F).
8. 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 a basis for the transfer or assignment. Conn. Gen. Stat. § 17b-261a(a).
9. Regulation provides that an otherwise eligible institutionalized 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. UPM § 3029.10(E)
10. Regulation provides in that an institutionalized individual is considered to have transferred an asset exclusively for a purpose other than qualifying for assistance under circumstances which included, but are not limited to, undue influence. If the transferor has become incompetent since the transfer and is incompetent at the time the Department is dealing with the transfer the transferor's conservator must provide the information. UPM § 3029.15
11. The Department considers a transferor to have met his or her foreseeable needs if, at the time of the transfer, he or she retained other income and assets to cover basic living expenses and medical costs as they could have reasonably been expected to exist based on the transferor's health and financial situation at the time of the transfer. UPM § 3029.15(B)

12. The Department considers a transfer to have been made to return the asset to its legal owner if: the individual proves with clear and convincing evidence that the transferee had entrusted the asset to him or her with the intent of retaining beneficial interest; or the individual who receives the asset or who actually makes the transfer: holds the asset jointly with the assistance unit at the time of the transfer; and is a legal owner of the asset (Cross Reference: 4010). UPM 3029.15
13. The Appellant did not establish with clear and convincing evidence that he transferred \$33,758.85 for a purpose other than qualifying for assistance, such as undue influence, his foreseeable needs were met, transfer to or by legal owner, or that the transferred asset would not affect his eligibility if retained.
14. The Department was correct to impose a transfer of asset penalty against the Appellant effective [REDACTED] 2014, due to uncompensated transfer of assets of \$33,758.85.
15. The Department's imposition of an 87 day [2.85 months] penalty period for ineligibility of Medicaid Long Term Care Medicaid Services is incorrect. The correct penalty period equals 86 days [2.85 months] (\$33,758.85 transfer / \$11,851.00 average cost of care). UPM § 3029.05(F).
16. Federal Law provides that in the case of a transfer of an asset made on or after February 8, 2006, the date specified in this subparagraph [the start date of the penalty period] is the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care described in subparagraph (C) based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur during any other period of ineligibility under this subsection. 42 U.S.C. § 1396p(c)(1)(D)(ii).
17. The penalty period begins as of the date on which the individual is eligible for Medicaid under Connecticut's State Plan and would otherwise be eligible for Medicaid payment of the LTC services described in 3029.05 B based on an approved application for such care but for the application of the penalty period, and which is not part of any other period of ineligibility caused by a transfer of assets. UPM § 3029.05(E)(2).
18. Regulation provides that the length of the penalty period is determined by dividing the total uncompensated value of all assets transferred on or after the look-back date described in 3029.05 C by the average monthly cost to a private patient for LTCF services in Connecticut. UPM 3029.05(F)

19. The Department's determination of [REDACTED] 2014, as the start date of the penalty period is correct as assets were within \$1,600.00 limit in that month.
20. The Department's determination of [REDACTED] 2015 as the end date of the period of ineligibility is incorrect. The correct end date of the period of ineligibility is [REDACTED] 2015., (2.85 months [28 days in Feb x .85 = 24days])

DISCUSSION

After reviewing the evidence and testimony presented, the Department's action to impose a Medicaid period of long term care coverage is upheld. The Appellant transferred \$33,758.85 to his mother and did not provide clear and convincing evidence that the transfers were for reasons other than qualifying for assistance.

The Appellant's conservator stated that the money was transferred to avoid creditors due to an auto accident that occurred in [REDACTED] of 2011. The accident claim was settled in [REDACTED] of 2014. At that time the money was not returned to the Appellant. The money was used by the transferee, the Appellant's mother, to care for her medical needs. The evidence indicates that's the Appellant did not retain any assets for his foreseeable needs and lived only on his pension. With his ongoing medical history it cannot be said his foreseeable were met by transferring all of his assets. He in fact lived in various shelters prior to his admission to the facility.

As to the Appellant's eligibility begin date, no additional evidence was presented to dispute the Department's claim that the first month the Appellant reduced his assets to within the \$1,600.00 asset limit was [REDACTED] 2014.

DECISION

The Appellant's appeal is DENIED in respect to the imposition of a penalty and GRANTED in respect to the length of the penalty.

ORDER

1. The Department is ordered to adjust the penalty period to 2.85 months, or 86 days.
2. Compliance with this order should be forwarded to the undersigned no later than

fifteen days of the date of this decision.

Thomas Monahan

Thomas Monahan
Hearing Officer

Pc: Musa Mohamud, Operations Manager, Hartford Regional Office
Elizabeth Thomas, Operations Manager, Hartford Regional Office
Maureen Harry, Hearing Liaison

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 Legal Counsel, Regulations, and Administrative Hearings, 55 Farmington Avenue, Hartford, CT 06105-3725.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105-3725. 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 his 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.