

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

██████████ 2017
SIGNATURE CONFIRMATION

CL ID # ██████████
Request # 780519

NOTICE OF DECISION

AFTER RECONSIDERATION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████, 2016, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a notice that he had transferred \$40,000.00 to become eligible for Medicaid, and the Department was imposing a Transfer of Asset ("TOA") penalty period of ineligibility for Medicaid payment of Long Term Care ("LTC") services, effective ██████████ 2016 through ██████████ 2016.

On ██████████, 2016, ██████████, the Appellant's Power of Attorney ("POA 1") and ██████████, Power of Attorney ("POA 2"), requested an administrative hearing to contest the Department's imposition of a TOA penalty.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") scheduled an administrative hearing for ██████████, 2016.

On ██████████ 2016, 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:

██████████, Appellant's POA 1 and Son
██████████, Appellant's POA 2 and Daughter
██████████, Appellant's Witness, Regency House
Christine Morin, Department's Representative

John DiLeonardo, Department's Representative
Sybil Hardy, Hearing Officer

On [REDACTED], 2016, a Notice of Decision was issued on this matter. On [REDACTED], 2016, the Appellant requested a reconsideration of the decision issued on [REDACTED] 2016. OLCRAH granted reconsideration based on the evidence and testimony presented at the original hearing.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly imposed penalty period for three months, due to a \$40,000.00 TOA penalty for LTC Medicaid.

FINDINGS OF FACT

1. The Appellant's is [REDACTED] years old (DOB [REDACTED]). (Exhibit 1: Long-Term Care Application, [REDACTED]/16)
2. The Appellant has two children, [REDACTED] and [REDACTED]. (POA 1's Testimony, POA's 2's Testimony)
3. The Appellant is a widow. The Appellant's spouse passed away on [REDACTED] 2007. (Exhibit 1)
4. In [REDACTED] 2007, the Appellant moved to Connecticut from Florida into a 55+ community. (POA 1's Testimony, POA 2's Testimony)
5. The Appellant did not and currently does not own any property. (POA 1's Testimony, POA 2's Testimony)
6. From [REDACTED] 2009 to [REDACTED] [REDACTED], 2013, the Appellant POAs transferred money from their own account to the Appellant's account to help her pay for her expenses and so as not to deplete her funds, which were held mostly in stocks and bonds. The total amount transferred was \$28,805.00. (POA 1's Testimony, Exhibit E: Wells Fargo and Wachovia Bank Statements, POA 1's Testimony, Reconsideration Request)
7. As of [REDACTED] 2016, the Appellant receives a gross monthly amount from the Social Security Administration of \$1,296.00. (Exhibit 1)
8. The Department currently pays for the Appellant's monthly Medicare premium amount. (Hearing Record)

9. During 2010, the Appellant had her first stroke. (POA 2's Testimony)
10. The Appellant has been admitted into nursing facilities for rehabilitation services several times over the past several years. (POA 1's Testimony, POA 2's Testimony)
11. At the very least, the Appellant paid for home care services from [REDACTED] 2010 to [REDACTED] 2014. The record does not have supporting documentation of home care services paid from [REDACTED] 2014 until the Appellant entered the nursing facility in [REDACTED] 2016. (Exhibit E)
12. In 2013 at the age of [REDACTED], the Appellant gifted the following amounts to her family from her bank account:

Date	Amount	Recipient
[REDACTED]/13	\$25,500.00	[REDACTED]
[REDACTED]/13	\$12,000.00	[REDACTED]
[REDACTED]/13	\$14,000.00	[REDACTED]
[REDACTED]/13	\$14,000.00	[REDACTED]
Total	\$65,500.00	

(Exhibit 2: Account Worksheet for Transfers and Funds Returned, Exhibit 10)

13. In 2013 and 2014, the Appellant's POA 1 returned the following amounts to the Appellant and deposited these payments into her Wells Fargo bank account:

Date	Amount	Depositor
[REDACTED]/13	\$5,000.00	[REDACTED]
[REDACTED]/14	\$5,500.00	[REDACTED]
[REDACTED]/14	\$5,000.00	[REDACTED]
[REDACTED]/14	\$5,000.00	[REDACTED]
[REDACTED]/14	\$5,000.00	[REDACTED]
Total	\$25,500.00	

(Exhibit 2, Exhibit 10)

14. On [REDACTED] 2015, [REDACTED] and [REDACTED] were appointed joint Power of Attorney. (Exhibit 3: Durable Power of Attorney, [REDACTED]/16)
15. During autumn 2015, the Appellant's primary care provider determined that the Appellant required 24 hours care. (POA 1's Testimony)
16. On [REDACTED] 2016, the Appellant was admitted from the community to Regency House Health and Rehabilitation Center, [REDACTED] (the "nursing facility"). (Exhibit 1)

17. On [REDACTED] 2016, the Department received from the Appellant's POA 2, a long-term care Medicaid application for the Appellant. (Exhibit 1, Exhibit 10: Eligibility Management System ["EMS"] Narrative Screen)
18. The Appellant prepaid the nursing facility through [REDACTED] 2016. (Exhibit 10)
19. On [REDACTED] 2016, the Department issued the Appellant a Transfer of Assets, Preliminary Decision Notice ("W-495A"), proposing to apply a penalty resulting from the alleged improper transfer of assets in the amount of \$40,000. (Exhibit 4: W-495A Notice, [REDACTED]/16, Exhibit 3: W-495A, [REDACTED]/15)
20. On [REDACTED], 2016, the Appellant's POAs rebutted the Department's proposal to implement a penalty due to an improper asset transfer claiming that the Appellant did not transfer the asset in order for his mother to qualify for Medicaid. (Exhibit 6: [REDACTED]'s and [REDACTED]'s Rebuttal)
21. Prior to being admitted into the nursing facility, the POAs helped their mother with the following activities: grocery shopping, doctor appointments, hair appointments and organize her medication box. (POA 1's Testimony)
22. The Appellant wanted to have money in her account to pay her bills. She paid her own bills until the age of [REDACTED]. (POAs Testimony)
23. The Appellant's POAs helped pay her pay expenses because they did not want to deplete the funds in her account because she needed the money. (Exhibit 5: Nursing Home Response With Attachments, Exhibit 6)
24. The Appellant gifted her children \$65,000.00 from her bank account because they helped pay her expenses in the past. The Appellant knew her children had hardships and needed financial help. (Exhibit 6)
25. The Appellant's grandson has severe emotional and medical problems. The Appellant wanted to help her daughter pay for the grandson's medical bills. The money given to the grandson was used to pay for his medical bills and there is no money remaining. (POA 2's Testimony)
26. The Appellant and her children did not have written agreement regarding the transferring of funds to and from one another. They did not see a reason to have an agreement to help their mother and for their mother to help them. (POA 2's Testimony)
27. The testimony and evidence submitted by the Appellant's POAs is credible. (Hearing Record)

28. On [REDACTED] 2016, the Department sent the Appellant a Transfer of Assets, Notice of Response to Rebuttal/Hardship Claim ("W-495B"), stating they did not agree with the POA's claim of undue hardship and would setup a penalty period that would last 3.287 months. (Exhibit 4: W-495B, [REDACTED]/16)
29. The Department based their determination of a transfer of asset penalty based on whether or not the money was transferred in order to qualify for assistance by looking at any transactions, agreements, and the family's circumstances based on specific Departmental policy during the five year look back period. (Department's Testimony)
30. The Department did not consider that the family simply made these transactions exclusively for a purpose other than qualifying for assistance. (Department's Testimony)
31. On [REDACTED], 2016, the Department issued a Transfer of Assets, Final Decision Notice ("W-495C"), indicating that the Department decided that the transfer of \$40,000 was made for the purpose of qualifying for Medicaid, and set up a period of ineligibility beginning [REDACTED] 2015 and ending on [REDACTED] 2016, during which time the Department would not pay for his long-term care services. (Exhibit 8: W-495C, [REDACTED]/16)

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. Connecticut General Statutes § 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. Subsection (a) of section 17b-261(a) of the Connecticut General Statutes provides that any disposition of property made on behalf of an applicant for recipient by a person authorized to make such disposition pursuant to a power of attorney, or other person so authorized by law shall be attributed to such applicant.
4. Uniform Policy Manual ("UPM") Section 1500.01 provides that an applicant is "the individual or individuals for whom assistance is requested."
5. UPM § 3029.03 provides that 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 or annuity was established, on or after February 8, 2006.

6. UPM 3029.05(A) provides there is a period established, subject to the conditions described in chapter 3029, 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.
7. UPM § 3029.05(C) 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.
8. UPM § 3029.05(D) Any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, person authorized to make such disposition pursuant to a power of attorney, or other person so authorized by law shall be attributed to such applicant, recipient, or spouse. Conn. Gen. Stat. §17b-261(a)
9. The Department correctly determined that the look-back period date for the Appellant is [REDACTED], 2011.
10. 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)
11. UPM § 3029.10(E) 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.
12. The Appellant's representatives provided clear and convincing evidence and testimony that the \$40,000.00 determined by the Department to be subject to a TOA penalty were made exclusively for a purpose other than qualifying for assistance.
13. The Department incorrectly determined that the Appellant transferred \$40,000.00 in order to qualify for assistance.
14. The Appellant is not subject to a transfer of asset penalty.

DISCUSSION

The Department incorrectly imposed a transfer of asset penalty against the Appellant due to money transfers from her bank account to her children. The Appellant's POAs provided credible testimony and evidence that the transactions between them and their mother (the Appellant) was done to help her pay her bills and in return to help them financially. There was no agreement because the money was not given based on the Department's policy of "compensation." It was clear that the Appellant's POAs did not view the transfers as compensation; they merely argued this concept because that was the argument given by the Department. The Department focused on specific sections of the Department's policy to find a way to reduce what they considered to be a TOA from the Appellant to her children so that she could qualify for assistance. The Department did not consider that the transfers were made between the Appellant and her children solely because they were family and helping each other when needed. I conclude that these transfers were made exclusively for a purpose other than to qualify for assistance.

DECISION

The Appellant's appeal **UPHELD**.

ORDER

1. The Department shall remove the transfer of asset penalty in the amount of \$40,000 and the penalty period of 3.287 months.
2. Compliance of this order is due back to the undersigned no later than [REDACTED] 2017.

Sybil Hardy
Hearing Officer

Pc: Brian Sexton, Operations Manager, DSS, New Britain Regional Office
Sue Debevec, Regency House Health and Rehabilitation Center, [REDACTED], CT
Christine Morin, DSS, Fair Hearings Liaison
John DiLeonardo, DSS, Fair Hearings Liaison

[REDACTED] POA,
[REDACTED] POA,

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 06105-3725.

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. 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.