

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

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

CLIENT ID #: ██████████
HEARING ID #: 804111

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent a notice to ██████████ (the "Appellant") advising him that the Department did not agree with his claim that a transfer of asset penalty placed on his Medicaid for Long Term care ("LTC") benefits be waived due to undue hardship.

On ██████████ 2016, the Appellant requested an administrative hearing to contest the Department's decision not to waive the penalty it had imposed on the Applicant's LTC Medicaid benefits due to undue hardship.

On ██████████ 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2017.

On ██████████ 2017, the Appellant's Counsel requested a continuance which OLCRAH granted.

On ██████████ 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2017.

On [REDACTED] 2017, in accordance with sections 17b-60, 17b-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:

[REDACTED] the Appellant,
[REDACTED], Counsel for the Appellant
Thomas Russo, Kimberly Hall Administrator
Terry Barone, Kimberly Hall Business Manager
Ruth Epner, Kimberly Hall, Director of Nursing
Amanda Angell, Kimberly Hall Business Manager
Teri Moriarty, Kimberly Hall Administrator
Lee Sauerhoff, Observer
Felicia Andrews, Department's representative
Christine Morin, Department's Representative
Thomas Monahan, Hearing Officer

The record remained open for the submission of additional information. On [REDACTED] 2017, the record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department was correct when it denied the Applicant's request to waive the Transfer of Assets ("TOA") penalty due to undue hardship.

FINDINGS OF FACT

1. On [REDACTED] 2015, the Appellant entered Kimberly Hall South (the "facility"). (Hearing record)
2. On [REDACTED] 2015, the Appellant applied for Medicaid LTC benefits. (Hearing record)
3. The Appellant is 84 years old (D.O.B. [REDACTED]/1932). (Ex. 1: Application form, [REDACTED]/15)
4. On [REDACTED] 2016, the Department granted Medicaid for LTC for the Appellant imposing TOA penalty period, which began [REDACTED] 2015, the date the Appellant became asset eligible through [REDACTED] 2016. (Exhibit 3: Grant notice, [REDACTED]/16; Exhibit 5: Transfer of Assets Final Decision Notice, [REDACTED]/16)
5. The Appellant did not receive a Preliminary Decision Notice from the Department notifying him of the TOA penalty and his right to rebut the proposed penalty or claim undue hardship. (Hearing record, Appellant's post hearing brief)
6. The Department assessed a penalty on the transfer of \$140,355.49. The

Appellant does not know what happened to the \$140,355.49. (Hearing summary, Ex. 5: Transfer of Assets Final Decision Notice, [REDACTED]/16, Appellant's post hearing brief)

7. On [REDACTED] 2016, the Appellant received a letter from the facility notifying him that the facility intended to discontinue providing him LTC services. (Appellant's Ex. A: Long term Care services letter, [REDACTED]/16)
8. On [REDACTED] 2016, the Appellant requested a waiver of his TOA penalty due to undue hardship. (Appellants Ex. A: Undue Hardship request)
9. On [REDACTED] 2016, the Department received a letter from Gilberto Ramirez MD, from Kimberly Hall South. The doctor's letter stated that the Appellant requires 24 hour care, and assistance with all activities of daily living. The letter states that the Appellant's life would be endangered if he were discharged to the community. (Doctor's letter, [REDACTED] 16)
10. On [REDACTED] 2016, the Department denied the Appellant's request for undue hardship because the TOA penalty had expired. (Appellant's Ex. A: Denial letter, [REDACTED]/16)
11. On [REDACTED] 2016, the Appellant requested a hearing on the denial of his request for a waiver of the TOA penalty due to undue hardship. (Appellant's Ex. A: Hearing request: [REDACTED] 16)
12. At the hearing the Department determined that undue hardship existed effective [REDACTED] 2016, the date the Department received the undue hardship request. The Department shortened the end date for the TOA penalty to [REDACTED] 2016, from the previous end date of [REDACTED] 2016. (Ex. 7: Department's email response to Appellant's post hearing brief, [REDACTED]/17)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Section 17b-260 of the Connecticut General Statutes authorizes the Commissioner of Social Services to take advantage of the medical assistance programs provided in Title XIX, entitled "Grants to States for Medical Assistance Programs", contained in the Social Security Amendments of 1965.
3. If the Commissioner of Social Services, in determining an applicant's eligibility for medical assistance pursuant to section 17b-261, intends to impose a penalty period as a result of a transfer or assignment of assets pursuant to

section 17b-261 or section 17b-261a, the commissioner shall provide a preliminary notice to the applicant. Such notice shall include a statement that the applicant may contest the imposition of a penalty period by (1) filing a claim of undue hardship, as defined in section 17b-261o, or (2) providing evidence to rebut the presumption resulting in the imposition of a penalty period pursuant to subsection (a) of section 17b-261a. The applicant shall have fifteen days after the date on which the preliminary notice is postmarked to contest the imposition of a penalty period indicated in such preliminary notice. The commissioner shall grant one extension of time to file such claim or provide such evidence if requested by the applicant and shall grant additional extensions of time if reasonable. Failure to file a claim of undue hardship under this subsection shall not prohibit an applicant from making a claim of undue hardship at an administrative hearing. Conn. Gen. Stat. 17b-261p(b).

4. The Department did not notify the Appellant of his undue hardship rights.
5. If, during the course of a penalty period, an applicant receives notice from a provider of long-term care services that the provider intends to (1) discharge the applicant, (2) discontinue providing long-term care services to the applicant, or (3) refuse to provide long-term care services to the applicant because of the imposition of a penalty period against the applicant pursuant to subsection (a) of section 17b-261 or subsection (a) of section 17b-261a, the applicant shall have not more than sixty days after receiving such notice to file a claim of undue hardship with the commissioner. Not later than ten days after receiving such claim, the commissioner shall provide a final decision notice to the applicant. Such final decision notice shall inform the applicant whether or not (A) the commissioner has determined that undue hardship exists, and (B) the penalty period shall be waived. Conn. Gen. Stat. 17b-261p(e)
6. The Appellant filed a claim on [REDACTED] 2016 for undue hardship within 60 days of receiving a letter from the facility notifying him that the facility would no longer provide LTC services.
7. Imposition of penalty period when undue hardship exists. Except as provided in subsection (c) of this section, the Commissioner of Social Services shall not impose a penalty period pursuant to subsection (a) of section 17b-261 or subsection (a) of section 17b-261a if such imposition would create an undue hardship. Conn. Gen. Stat. 17b-261o(a)
8. For purposes of this section, "undue hardship" exists when (1) the life or health of the applicant would be endangered by the deprivation of medical care, or the applicant would be deprived of food, clothing, shelter or other necessities of life, (2) the applicant is otherwise eligible for medical assistance under section 17b-261 but for the imposition of the penalty period, (3) if the

applicant is receiving long-term care services at the time of the imposition of a penalty period, the provider of long-term care services has notified the applicant that such provider intends to discharge or discontinue providing long-term care services to the applicant due to nonpayment, (4) if the applicant is not receiving long-term care services at the time of the imposition of a penalty period, a provider of long-term care services has refused to provide long-term care services to the applicant due to the imposition of a penalty period, and (5) no other person or organization is willing and able to provide long-term care services to the applicant. Conn. Gen. Stat. 17b-261o(b)

9. The Department incorrectly approved the Appellant's claim for undue hardship effective [REDACTED] 2016 and reduced the penalty period to [REDACTED] 2016.
10. The Appellant's claim of undue hardship is approved. The TOA penalty is waived.
11. The Appellant is entitled to Medicaid for LTC effective [REDACTED] 2015 with no penalty period.

DISCUSSION

The Department testified that the Appellant met the undue hardship criteria on [REDACTED] 2016. The Department waived the TOA penalty from [REDACTED] 2016 forward. There is no provision in state statute or regulations that allow waiving only a portion of a TOA penalty if undue hardship exists. Shortening the penalty does not affect the eligibility or requirements of undue hardship. The Department waives the TOA penalty "if such imposition would create an undue hardship". The Department agreed that undue hardship exists and therefore the entire TOA penalty is waived.

DECISION

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

ORDER

1. The Department will remove the \$140,355.49 TOA penalty and grant Medicaid

for LTC services effective [REDACTED] 2015, the date the Appellant was asset eligible.

2. Compliance with this order is due to the undersigned no later than 15 days from the date of this decision.

Thomas Monahan

Thomas Monahan

Hearing Officer

- C: [REDACTED] Counsel for the Appellant
Musa Mohamed, Operations Manager, Hartford Regional Office
Judy Willimas, Operations Manager, Hartford Regional Office
Tricia Morelli, Program Manager, Hartford Regional Office
Felicia Andrews, DSS, Hartford
Christine Morin, DSS Hartford
Jay Bartolomei, DSS Hartford

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.