

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 #: 809448

NOTICE OF DECISION

PARTY

██████████
C/O ██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, based on the notification from Bride Brook that it was going to involuntarily discharge her due to non-payment of services and supplies, ██████████ (the "Appellant"), through ██████████ her attorney, requested a fair hearing on the Department's denial of undue hardship (from ██████████, 2016), which resulted in the imposition of Transfer of Asset (TOA) penalty on her Medicaid for Long Term Care room and board payment.

On ██████████, 2016, the Appellant, through ██████████ her attorney, also submitted an application for undue hardship waiver due to the Department's imposition of the TOA penalty.

On ██████████ 2016, the Department sent the Appellant, through ██████████ her attorney, a letter denying the undue hardship claim (application).

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 [REDACTED] 2017, OLCRAH issued a notice scheduling the administrative hearing for [REDACTED] 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], Appellant's son, Power of Attorney ("POA")
[REDACTED], Counsel for the Appellant
Tiffany Roman, Department's representative
Thomas Monahan, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department was correct when it denied the Appellant's request to waive the TOA penalty due to undue hardship.

FINDINGS OF FACT

1. On [REDACTED] 2015, the Appellant transferred her 10% interest in [REDACTED], a family business, to her son [REDACTED] (Appellant's attorney's brief, Exhibit I: Appellant's signed statement)
2. In [REDACTED] of 2015, the Appellant suffered a fall and was hospitalized near her home in Florida. (Attorney's brief)
3. In [REDACTED] of 2015, the Appellant moved in with [REDACTED] her son and POA in Connecticut, who helped care for her along with an in home health care service. (Attorney's brief)
4. On [REDACTED], 2015, the Appellant applied for Medicaid for Home and Community Based Services. (Ex. D: Application form)
5. On [REDACTED], 2015, the Applicant suffered a stroke and was admitted to the hospital. (Attorney's brief)
6. On [REDACTED], 2015, the Appellant was admitted to Bride Brook Rehab Center (the "facility") in Niantic, CT. (Hearing record)
7. The Appellant is 79 years old (D.O.B. [REDACTED]/1937) and fully incapacitated. (POA's testimony)
8. On [REDACTED] 2016, the Department granted Medicaid for LTC for the Appellant imposing a TOA penalty period, which began [REDACTED] 2016 to continue through [REDACTED] 2016. (Ex. L: Notice of Content, [REDACTED]/16, Ex. M: Case Narrative)

9. The penalty was assessed on a transfer of 10% ownership of the family business, [REDACTED] which the Department valued at \$100,000.00. The 10% ownership was transferred from the Appellant to her son [REDACTED] (Hearing record)
10. The Appellant's son [REDACTED] eventually transferred the asset to the Appellant's other son and POA. (Hearing record)
11. On [REDACTED], 2016, the Appellant requested an administrative hearing to dispute the TOA penalty. (Ex. P: Hearing decision)
12. On [REDACTED] 2016, the Department received the Appellant's request that the Department remove the TOA penalty due to an undue hardship. (Appellant's brief)
13. The Appellant's counsel submitted the following documents to support the Appellant's claim of undue hardship: A [REDACTED] 2016 affidavit from a doctor indicating that the Appellant required nursing care; A [REDACTED] 2016 affidavit signed by the Appellant's son stating that he or other family members were unable to care for the Appellant at home and were not able to pay off her nursing home debt; A [REDACTED] 2016 discharge notice issued to the POA for non-payment of services with a discharge date of [REDACTED], 2016; A [REDACTED] 2016 affidavit from the facility administrator stating that she contacted another nursing home which refused to admit the Appellant because of the \$100,000.00 penalty imposed by the Department. (Appellant's brief)
14. On [REDACTED] 2016, the Department denied the Appellant's claim of undue hardship on the basis that the Appellant made the transfer to deliberately impoverish herself. (Ex. N: Department's undue hardship denial letter, [REDACTED]/16)
15. On [REDACTED] 2016, the OLCRAH held a hearing on the effective date of LTC Services due to the TOA penalty. The undue hardship issue was not addressed at the [REDACTED], 2016 hearing. (Ex. P: Hearing decision)
16. On [REDACTED], 2016, the OLCRAH upheld the TOA penalty but ordered the amount of the transfer to be reduced to \$77,593.67 and the penalty reduced to 6.37 months. (Ex. P: Hearing decision)
17. The penalty expired in [REDACTED] of 2016 and the Appellant is currently receiving Medicaid with LTC Services at the facility but has an outstanding debt for services received during the penalty period. (Hearing record)
18. The Appellant and her family did not have a meeting regarding the facilities' intent to discharge the Appellant. (POA's testimony)

19. The Appellant is appealing the OLCRAH's [REDACTED], 2016 decision regarding the TOA penalty to the Superior court. (Hearing record)

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. The commissioner may waive the imposition of a penalty period pursuant to this subsection if (A) the applicant suffers from dementia or other cognitive impairment and cannot explain the transfer or assignment of assets, (B) the applicant suffered from dementia or other cognitive impairment at the time the transfer or assignments of assets was made, (C) the applicant was exploited into making the transfer or assignment of assets due to dementia or cognitive impairment, or (D) the applicant's legal representative or the record owner of a jointly held asset made the transfer or assignment of assets without the authorization of the applicant. Conn. Gen. Stats. Section 17b-261o(c).
4. There is no evidence that the Applicant suffered from a cognitive impairment at the time of the transfers, or that the Applicant was exploited into making the transfers due a cognitive impairment or the Applicant's legal representative made the transfers without the Applicant's authorization.
5. UPM § 3029.25 A 1 and 2 provides for undue hardship and states that an institutionalized individual is not penalized based on a transfer of assets made by the individual or his or her spouse if denial or discontinuance of payment for services would create an undue hardship, which exists if the individual would be deprived of medical care such that his or her life would be endangered or food, clothing, shelter or other necessities of life.
6. UPM § 3029.25 B 1 and 2 provides for the conditions of undue hardship and states in relevant part that when an individual would be in danger of losing payment for long term care facilities solely because of the imposition of a penalty period, the Department does not impose such penalty under the following conditions: the long term care facility or medical institution has threatened the individual with eviction due to non-payment and the individual has exhausted all legal methods to prevent the eviction and the transferor establishes that the transferee is no longer in possession of the transferred

asset and the transferee has no other assets of comparable value with which to pay the cost of care and there is no family member or other individual or organization able and willing to provide care to the individual.

7. The Department was correct when it determined that the Applicant did not qualify to have the transfer penalty waived for reason of undue hardship because the evidence does not indicate that the Appellant was deprived of medical care or other necessities of life. The Appellant has remained at the facility since her [REDACTED] 2015 admission and is currently receiving Long Term Care Medicaid since the expiration of her transfer of asset penalty.

DISCUSSION

Counsel argued that the reason for the Department's denial of the undue hardship, that the Appellant intentionally impoverished herself, was not valid because the 10% ownership of the business has no value and at the time of the proposed discharge undue hardship did exist. OLCRAH's previous hearing decision placed a value of \$77,593.67 on the transferred business asset. Counsel for the Appellant is appealing OLCRAH's [REDACTED] 2016 TOA decision upholding the TOA penalty although reducing the amount of penalty.

The evidence does not indicate that the Appellant's life was endangered or that she would be deprived of the necessities of life. The Appellant's representatives contacted only one facility when the discharge was proposed. The Appellant's POA did not meet with facility representatives about the proposed discharge and did not indicate concern that there was a threat of discharge. The Appellant remained at the facility and currently is an active Medicaid recipient at the facility.

DECISION

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

Thomas Monahan
Thomas Monahan
Hearing Officer

C: [REDACTED], Counsel for the Appellant
Cheryl Parsons, Operations Manager, Norwich Regional Office
Tiffany Roman, 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 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.