

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

██████████, 2018
SIGNATURE CONFIRMATION

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

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2018, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Final Decision Notice imposing a transfer of assets penalty for the period from ██████████, through ██████████.

On ██████████ 2018, ██████████, Power of Attorney (“POA”) for the Appellant, requested an administrative hearing to contest the Department’s decision to impose a penalty on the Appellant’s Long Term Care Medicaid benefits.

On ██████████, 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████, 2018.

On ██████████, 2018, the Appellant’s attorney requested to reschedule the administrative hearing because he did not receive the hearing notice.

On ██████████ 2018, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2018.

On ██████████, 2018, the Appellant’s attorney requested to reschedule the administrative hearing.

On ██████████ 2018, the OLCRAH issued a notice scheduling the administrative hearing for ██████████, 2018.

On ██████████, 2018, 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:

██████████, Appellant's daughter and Authorized Representative
██████████, Appellant's son-in-law
██████████, Attorney for Appellant
██████████, Paralegal for Attorney
██████████, Eligibility Services Specialist, Department's representative
██████████, Eligibility Services Specialist, Department's representative
Roberta Gould, Hearing Officer

At the request of the Appellant's POA the hearing record remained open for the submission of additional evidence. The hearing record closed on ██████████, 2018.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly determined an effective date of Medicaid based on a Transfer of Assets ("TOA") penalty.

FINDINGS OF FACT

1. In ██████████, the Appellant was admitted to Saint Francis Hospital due to a heart condition. (Exhibit 8: Medical records for the Appellant and POA's testimony)
2. On ██████████, the Appellant was admitted to ██████████ Center for cardiac rehabilitation after surgery. (Exhibit 9: ██████████ records for Appellant and POA's testimony)
3. On ██████████, the Appellant was discharged from ██████████ to her home. (Exhibit 9 and POA's testimony)
4. From ██████████, through the present, ██████████, M.D. treated the Appellant for her heart condition. (Exhibit 7: Note from ██████████ Associates dated ██████████)
5. On ██████████, the Appellant willingly signed a Caregiver Employment Contract with her daughter and POA, ██████████, as well as with her son-in-law, ██████████, that provided for weekly care of the Appellant and her home. (Exhibit 3: Caregiver employment contract and list of services provided)
6. The Caregiver Employment Contract was set up by the Appellant's attorney, ██████████. (Attorney's testimony and POA's testimony)
7. From ██████████, through ██████████, the Appellant's daughter and POA, as well as her son-in-law, provided her assistance with meal preparation, grocery shopping, bathing, medication management, travel to medical appointments,

housecleaning, financial management, home maintenance and repairs. (Exhibit 3, POA's testimony and Son-in-law's testimony)

8. The Appellant did not have the funds to pay for caregiver services at the time the services were provided to her. (POA's testimony)
9. The Appellant's POA and son-in-law were to be paid \$18.00 per hour to perform caregiver services for the Appellant for a total of 3,450 hours. (Exhibit 3 and POA's testimony)
10. In [REDACTED], the Appellant suffered a fall in her home. (POA's testimony)
11. On [REDACTED], the Appellant was admitted to [REDACTED] long-term care facility. (Hearing summary)
12. On [REDACTED], the Appellant's home property located at [REDACTED], CT was sold. Net proceeds were in the amount of \$107,255.47. (Hearing summary)
13. On [REDACTED], the Appellant's POA transferred \$62,100.00 of the Appellant's funds to herself for payment of caregiver services provided. ((Exhibit 2: W-495A Transfer of Assets Preliminary Decision Notice and Hearing summary)
14. On [REDACTED], the Appellant applied for Long-Term Care Medicaid assistance. (Hearing summary)
15. On [REDACTED], the Appellant's physician, [REDACTED], M.D., provided a written statement indicating that the Appellant would not have been able to live independently and would have required nursing home care for at least three years prior without the assistance of her daughter, [REDACTED]. (Exhibit 7)
16. On [REDACTED], the Department sent the Appellant a W-495A Transfer of Assets Preliminary Decision Notice stating that the Department's initial decision regarding her transfer of \$62,100.00 on [REDACTED], was that she made the transfer for less than the fair market value received in order to be eligible for Medicaid assistance. (Exhibit 2 and Hearing summary)
17. On [REDACTED], the Department sent the Appellant a W-495C Transfer of Assets Final Decision Notice stating that the Department would set up a penalty period during which they would not pay for long-term care medical services due to the transfer totaling \$62,100.00. (Exhibit 5: W-495C Transfer of Assets Final Decision Notice and Hearing summary)
18. There is evidence in the record to reflect that funds transferred from the Appellant on [REDACTED], to her daughter, [REDACTED], were used to pay for the Appellant's care received prior to her placement in a long-term care facility. (Hearing record)

19. On [REDACTED], the Department granted the Appellant Medicaid for Long-Term Care assistance effective [REDACTED]. A penalty was applied for the period of [REDACTED], through [REDACTED], due to a transfer of income from the Appellant. (Exhibit 1: Notice of approval for long-term care Medicaid and Hearing summary)

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. Section 17b-261a(a) of the Connecticut General Statutes provides that 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.
4. Uniform Policy Manual ("UPM") § 3028.10(E) provides that an institutionalized individual or his or her spouse may transfer an asset without penalty if he or she provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.
5. UPM § 1540.15(C)(1) provides that in the absence of available documentary evidence, the Department verifies information through contacts with persons who are not members of the assistance unit.
6. UPM § 1540.15(C)(2) provides that verification through collateral contacts consists of obtaining oral or written affirmations of the unit's statements from persons who are capable of providing first-hand testimony.
7. UPM § 3028.10(G) provides that an institutionalized individual or his or her spouse may transfer an asset without penalty if it is demonstrated with clear and convincing evidence that he or she intended to dispose of the asset in return for other valuable consideration. The value of the other valuable consideration must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty. (Cross Reference: 3028.20)
8. UPM § 3028.20(B) provides that other valuable consideration must be in the form of services or payment for services which meet all of the following conditions:

1. the services rendered are of the type provided by a homemaker or a home health aide; and
2. the services are essential to avoid institutionalization of the transferor for a period of at least two years; and
3. the services are either:
 - a. provided by the transferee while sharing the home of the transferor; or
 - b. paid for by the transferee.
9. 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.
10. **The Department was incorrect when it determined that the Appellant did not provide clear and convincing evidence that she paid her daughter and son-in-law for caregiver homemaker and home health aide services that prevented her from being institutionalized.**
11. **On [REDACTED], the Department incorrectly imposed a transfer of assets penalty for the period from [REDACTED], through [REDACTED].**
12. **The Department incorrectly determined that the Appellant improperly transferred assets of \$62,100.00 during the Medicaid eligibility look-back period.**

DISCUSSION

After reviewing the evidence and testimony presented at the hearing, I find that the Department's action to impose a Medicaid period of ineligibility for long-term care coverage is not upheld. It is credible that the Appellant received caregiver services from her daughter and son-in-law during the period of [REDACTED], through [REDACTED], and that the transfer of \$62,100.00 was used to pay for caregiver services rendered. The Appellant's attorney testified that he set up the Caregiver Employment Contract in [REDACTED], and that the Appellant willingly signed it. Also, the Appellant's POA provided credible evidence that the services provided for the Appellant were akin to homemaker and/or home health aide services and enabled the Appellant to avoid institutionalization for a period of more than two years. I find that the transfer totaling \$62,100.00 is not subject to a Medicaid penalty and that the POA provided clear and convincing evidence that she did not transfer the assets in order to qualify for Medicaid.

DECISION

The Applicant's appeal is **GRANTED**

ORDER

1. The Department shall reopen the Appellant's [REDACTED], application for Medicaid and continue the eligibility process.
2. No later than [REDACTED], the Department will submit to the undersigned verification of compliance with this order.



Roberta Gould
Hearing Officer

Pc: Patricia Ostroski, Social Services Operations Manager, DSS New Britain
Joanne Crist, Eligibility Services Specialist, DSS Waterbury

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 06105-3725.

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.