

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 Notice of Action ("NOA") imposing a transfer of assets penalty for the period from ██████████ 2018, through ██████████ 2018.

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 Applicant'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, 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 son and POA
██████████, Appellant's son
██████████, Appellant's daughter-in-law
██████████, Eligibility Services Specialist, Department's representative
██████████, Eligibility Services Worker, Department's Representative
██████████, 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. The Appellant is [REDACTED] years old. (Hearing record)
2. On [REDACTED], the Appellant was admitted to [REDACTED] because she suffered a stroke. (Exhibit 17: Appellant's medical information and POA's testimony)
3. On [REDACTED], the Appellant was admitted to [REDACTED] for treatment after her stroke. (Exhibit 17)
4. The Appellant was diagnosed with hypertension, hyperlipidemia, macular degeneration, and acute occipital temporal stroke with visual cortex involvement. (Exhibit 17)
5. The Appellant was not taking her prescribed medications on her own. (Exhibit 16: Medical history for Appellant and Exhibit 17)
6. On [REDACTED], the Appellant moved back into her home after receiving rehabilitation services at [REDACTED] (Exhibit 16: Medical history for Appellant and POA's testimony)
7. The Appellant had impaired Activities of Daily Living ("ADL") function and was not independent with self-care due to impaired vision as a result of a stroke (Exhibit 16 and Exhibit 17)
8. The Appellant's gait was affected by the stroke she suffered in [REDACTED]. (Exhibit 16 and Exhibit 13: Affidavit of [REDACTED] dated [REDACTED])
9. At the time of discharge from [REDACTED] the Appellant needed supervision and cueing with mobility, transferring, dressing, medication management, financial management and toileting, and required physical assistance with bathing when she was discharged from [REDACTED] (Exhibit 16 and POA's testimony)
10. In [REDACTED], the Appellant moved in with her son, [REDACTED], because she could not adequately take care of her ADL needs on her own. (POA's testimony and [REDACTED] testimony)
11. From [REDACTED], through [REDACTED], the Appellant resided with her son, [REDACTED], and his family. The care provided by [REDACTED] and his

family was essential to avoid the Appellant's institutionalization. (Exhibit 11: Written statement from ██████████, M.D. dated ██████████, Exhibit 13, Exhibit 14: Affidavit of ██████████ dated ██████████, and Exhibit 15: Affidavit of ██████████ dated ██████████)

12. Dr. ██████████ is the Appellant's primary care physician. (POA's testimony)
13. The Appellant was not able to live independently and would have required institutional level of care during the period she lived with ██████████. (Exhibit 11)
14. During her time of residence with ██████████, the Appellant did not pay him or his family members for Home Health Aide services. (Exhibit 12: Caregiver affidavit dated ██████████ and POA's testimony)
15. On ██████████, the Appellant was admitted to ██████████ due to a fall while in the shower. The Appellant suffered a broken leg in the fall. (Exhibit 16 and POA's testimony)
16. On ██████████, the Appellant signed a Statutory Short Form Power of Attorney with durable power clause appointing her son, ██████████, as her attorney-in-fact. (Exhibit 2: Statutory Power of Attorney dated ██████████)
17. On ██████████, the Appellant was discharged from ██████████ and admitted to ██████████ (Exhibit 18: Fox Hill Center documentation and POA's testimony)
18. On ██████████, the Appellant was discharged from ██████████ and admitted to ██████████ (Exhibit 3: Ascend admission notice and Hearing summary)
19. Based on the average cost of care for a long-term care nursing facility in 2015 (\$12,170.00), the Appellant's minimum cost of long-term care for the period of ██████████, through ██████████, would have been \$304,250.00 (\$12,170.00 x 25 months). (Hearing record)
20. On ██████████, the Appellant's POA issued a check to himself in the amount of \$78,008.99 from the Appellant's bank account. (Exhibit 4: Check ██████████ in amount of \$78,008.99 and Hearing summary)
21. On ██████████, the Appellant applied for Long-Term Care Medicaid assistance. (Exhibit 1: W-1LTC application and Hearing summary)
22. On ██████████, the Appellant's primary care physician, Dr. ██████████, stated that for the period during which the Appellant resided with ██████████ she was unable to live alone and that had she not lived with him, she would

have required institutionalization. (Exhibit 11)

23. On [REDACTED], the Department sent the Appellant's medical records and affidavits to the Department's Medical Review Team ("MRT") to determine whether or not the criteria for valuable consideration had been met. (Exhibit 10: W-10A MRT routing slip and social information report and Hearing summary)
24. On [REDACTED], the Department's MRT requested additional information because they were unable to make a determination of whether or not valuable consideration criteria had been met. (Exhibit 5: MRT request dated [REDACTED] and Hearing summary)
25. On [REDACTED], the Department's MRT stated that it was undetermined as to whether or not the Appellant would have required institutionalization for at least two years prior to entering a long-term care facility. (Exhibit 6: MRT decision dated [REDACTED] and Hearing summary)
26. On [REDACTED], the Department issued the Appellant a W-495A Notice of Possible Improper Transfer of Assets Notice stating that the Department's initial decision regarding her transfer of \$78,008.99 was that she made the transfer in order to be eligible for Medicaid assistance. (Exhibit 7: W-495A and Hearing summary)
27. On [REDACTED], the Department sent the Appellant a W-495B Response to Your Transfer of Assets Explanation 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 \$78,008.99. (Exhibit 8: W-495B and Hearing summary)
28. There is evidence in the record to reflect that funds removed from the Appellant's bank account on [REDACTED], in the amount of \$78,008.99, were used to pay for care provided to the Appellant. (Hearing record)
29. On [REDACTED], the Department granted Medicaid for Long-Term Care assistance effective [REDACTED]. A penalty was applied for the period of [REDACTED] 2018, through [REDACTED] 2018, due to a transfer of income from the Appellant. (Exhibit 7: Notice of approval for long-term care Medicaid and Hearing summary)
30. The issuance of this decision is timely under Connecticut General Statutes §17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED] 2018. Therefore, this decision is due on [REDACTED] 2018. However, the close of the hearing record did not close for the admission of evidence until [REDACTED] 2018, at the Appellant's representative's request. Because of the eight day delay in the close of the hearing record, this final decision was not due until

██████████, and is therefore timely.

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") § 3029.10(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. **The Department correctly verified the circumstances that led to the Appellant's institutionalization via affidavits from other family members.**
8. UPM § 3029.10(G) 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 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: 3029.20)
9. UPM § 3029.20(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.
10. **The Department received documentation that the Appellant had impaired ADL function and needed supervision and cueing with mobility, transferring, dressing, medication management, financial management and toileting, required physical assistance with bathing, that she lived with the POA, [REDACTED] for more than two years prior to her institutionalization, and that the home health aide services provided were by [REDACTED]. and his family while she resided with them.**
11. 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.
12. UPM § 3029.20(A)(3) provides that the value of the other valuable consideration, as described in 3029.20 B, is equal to the average monthly cost to a private patient for long-term care services in Connecticut, multiplied by the number of months the transferee avoided the need for the transferor to be institutionalized.
13. **The Department was incorrect when it determined that the Appellant did not provide clear and convincing evidence that she lived with her caregiver, who provided homemaker and home health aide services that prevented her from being institutionalized for more than two years, and that the value of the services received was greater than the average monthly cost of care for long-term care services in Connecticut, or \$12,170.00 per month.**
14. On [REDACTED], 2018, the Department incorrectly imposed a transfer of assets penalty for the period from [REDACTED] 2018, through [REDACTED], 2018.
15. **The Department incorrectly determined that the Appellant improperly transferred assets of \$78,008.99 during the Medicaid eligibility look-back period.**

DISCUSSION

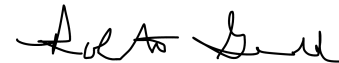
After reviewing the evidence and testimony presented at the hearing, I find that the Department's action to impose a Medicaid period of ineligibility for long-term care coverage is not upheld. It is credible that the Appellant required full-time care after her stroke in [REDACTED] 2013, that she could not adequately take care of her ADL needs on her own after being discharged from [REDACTED]. It is also credible that the care provided by [REDACTED] and his family prevented her from being institutionalized during the period of [REDACTED] 2014, through [REDACTED] 2017, which is more than two years. The Appellant's primary care physician as well as her medical records from that time period all indicate that she was not able to live independently and would have required institutional level of care during the period she lived with [REDACTED]. It is credible that the withdrawal of \$78,008.99 on [REDACTED] 2018, was received by [REDACTED] for homemaker and home health aide services provided during the time the Appellant resided with her son and his family, as he was not compensated for the care he provided her. The Appellant's POA provided affidavits from other family members that all documented her physical decline and her need for care. I find that the bank withdrawal in the amount of \$78,008.99 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] 2018, application for Medicaid and continue the eligibility process.
2. No later than [REDACTED] 2018, the Department will submit to the undersigned verification of compliance with this order.



Roberta Gould
Hearing Officer

Pc: Carol Sue Shannon, Social Services Operations Manager, DSS Danbury
Michael Briggs, Eligibility Services Specialist, DSS New Haven

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.