

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS AND ADMINISTRATIVE HEARINGS
25 SIGOURNEY STREET
HARTFORD, CT06106

██████████ 2013
Signature Confirmation

CL ID # ██████████
Request # 504408

NOTICE OF DECISION AFTER RECONSIDERATION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a notice that she had transferred \$90,605.95 to become eligible for Medicaid, and the Department was imposing a penalty period of ineligibility for Medicaid payment of long term care services effective ██████████ 2012 through ██████████ 2013.

On ██████████ 2013, the Appellant requested an administrative hearing to contest the Department's penalty determination.

On ██████████ 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") scheduled an administrative hearing for ██████████, 2013.

On ██████████, 2013, 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 Power of Attorney ("POA")
██████████, for the Appellant
Shannon Binsmore, Danbury Health Care Center
Sheri Mitchell, Danbury Health Care Center
██████████ for the Appellant
Barbara Brunner, Department's Representative
Thomas Monahan, Hearing Officer

The hearing record remained open for the submission of additional evidence. On [REDACTED] 2013, the hearing record closed.

On [REDACTED] 2013, a Notice of Decision was issued in this matter. On [REDACTED] 2013, this hearing officer reconsidered the decision to correct the effective and penalty dates in finding of fact finding number 27 and to correct the effective date in conclusions of law number 12.

STATEMENT OF THE ISSUE

The issues to be decided are whether the Department was correct to impose a penalty period from [REDACTED] 2012 through [REDACTED] 2013, due to a \$90,605.95 transfer of assets and whether the Appellant meets the undue hardship criteria for waiving the penalty period.

FINDINGS OF FACT

1. On [REDACTED] 2012, the Appellant applied for Medicaid Home and Community Based services. (Hearing Record)
2. At the time of the application, the Appellant resided at [REDACTED] [REDACTED] (Hearing record)
3. On [REDACTED] 2012, the Appellant entered Danbury Health Care Center (the "facility"). (Hearing record)
4. The Appellant is seventy-six years old [D.O.B. [REDACTED]/36]. (Exhibit 5: Rebuttal packet)
5. The Appellant is seeking Long Term Medicaid coverage effective [REDACTED] 2012. (Hearing record)
6. The facility admitted the Appellant with the following medical issues. Chest pain, nausea, large b-cell lymphoma, Parkinson disease with dementia, Chronic pulmonary disease, hypertension, atrial fibrillation, peripheral neuropathy, spinal stenosis with compression fractures status post kyphoplasty, hypothyroidism, osteoarthritis, chronic back pain, hiatal hernia, and diverticulitis. (Appellant's Exhibit G: Letter from Dr. Joythi, [REDACTED]/12)
7. On [REDACTED] 2008, the Appellant had back surgery for a compression fracture after a

fall. At that time, the Appellant's medical history included atrial fibrillation, hypertension, hyperlipidemia, lung cancer, and peripheral neuropathy. (Appellant's Ex. L: Danbury Hospital Consultation, [REDACTED]/08, Appellant's Ex. M: Danbury Hospital Operative Report, [REDACTED]/08)

8. On [REDACTED] 2008, the Appellant had a total left knee replacement due to advanced arthritis of the left knee. (Ex. N: Danbury Hospital Operative Report)
9. On [REDACTED] 2008, the Appellant took a Home Equity Conversion Plan against the home she owned at [REDACTED]. (Hearing record, Ex. 1: Home equity conversion plan worksheet)
10. On [REDACTED], 2008, the Appellant transferred \$50,000.00 from her Webster Bank account to [REDACTED], a friend ("friend").(Ex. 2: Webster Bank worksheet)
11. On [REDACTED], 2008, the Appellant's friend returned \$3,900.00 to the Appellant. (Ex. 2: Webster Bank worksheet)
12. On [REDACTED] 2009, the Appellant transferred \$12,500.00 from her Webster Bank account to her friend. (Ex. 2: Webster Bank worksheet)
13. On [REDACTED] 2009, the Appellant transferred \$10,000.00 from her Webster Bank account to her friend. (Ex. 2: Webster Bank worksheet)
14. On [REDACTED] 2009, the Appellant transferred \$10,000.00 from her Webster Bank account to her friend. (Ex. 2: Webster Bank worksheet)
15. On [REDACTED] 2009, the Appellant transferred \$36,005.95 from her Webster Bank account to her friend. (Ex. 2: Webster Bank worksheet)
16. In [REDACTED] 2010, the Appellant applied for the Supplemental Nutrition Assistance Program. (Ex. 11: Case narrative)
17. On [REDACTED] 2010, the Appellant transferred \$24,000.00 from her Webster Bank account to her friend. (Ex. 1: Home equity conversion plan worksheet)
18. On [REDACTED] 2010, the Appellant transferred \$40,000.00 from her Webster Bank account to her friend. (Ex. 1: Home equity conversion plan worksheet)
19. The Appellant paid her friend \$88,000.00 from [REDACTED] 2008 through [REDACTED] 2009 as repayment for money he loaned to her to care for her husband from 2001 through 2004. (Appellant's Ex. E: Friend's notarized letter [REDACTED]/12, Appellant's Ex. B: Notarized letter, [REDACTED]/12)

20. The Appellant's withdrawals on [REDACTED] 2010, [\$24,000.00] and [REDACTED] 2010, [\$40,000.00] were ultimately used for trips. (Appellant's Ex. C: Notarized letter, [REDACTED]/12)
21. On [REDACTED] 2012, the Department issued a Transfer of Assets Preliminary Decision Notice, indicating the transfers made since [REDACTED] 2008 in the amount of \$90,605.95 (in excess of \$88,000.00 loan repayment) were made in order to qualify for Medicaid. (Ex. 4: Preliminary Transfer of Assets Notice, [REDACTED]/12)
22. On [REDACTED] 2012, the Department received a rebuttal and a claim of undue hardship from the Appellant's POA regarding the transfers. The Appellant's POA stated that the Appellant was in good health at the time of the transfers and her foreseeable needs were met. (Ex. 5: Rebuttal packet)
23. The Appellant was competent at the time of the rebuttal but has since had a cognitive decline. (Hearing record)
24. On [REDACTED] 2012, the Department issued a Notice of Response to the POA stating that they did not agree with the rebuttal/claim of undue hardship. (Ex. 6: Notice of Response, [REDACTED] 12)
25. The Appellant reduced her assets to within the Medicaid asset limit of \$1,600 effective [REDACTED] 2012. (Hearing record)
26. On [REDACTED] 2013, the Department issued a Transfer of Assets Final Decision Notice indicating that the transfers made since [REDACTED] 2008 in the amount of \$90,605.95 were made in order to qualify for Medicaid.(Ex. 7: Transfer of Assets Final Decision Notice, [REDACTED]/13)
27. On [REDACTED] 2013, the Department granted Medicaid effective [REDACTED] 2012, with a penalty for long term care services through [REDACTED] 2013. (Ex. 10: Notice of content, [REDACTED] 13, Ex. 7: Transfer of Assets Final Decision Notice, [REDACTED]/13)

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. Conn. Gen. Stat. § 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. The Department shall grant aid only if the applicant is eligible for that aid. Conn. Gen. Stat. § 17b-80(a)
4. 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 was established, on or after February 8, 2006. Uniform Policy Manual ("UPM") § 3029.03.
5. 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. UPM § 3029.05(C)
6. There is a period established, subject to the conditions described in this chapter, 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. UPM § 3029.05(A).
7. The length of the penalty period is determined by dividing the total uncompensated value of all assets transferred on or after the look-back date by the average monthly cost to a private patient for long-term care services in Connecticut. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. UPM § 3029.05(F).
8. 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).
9. Regulation provides that 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. UPM § 3029.10(E)
10. The Department considers a transferor to have met his or her foreseeable needs if, at the time of the transfer, he or she retained other income and assets to cover basic living expenses and medical costs as they could have reasonably been expected to exist based on the transferor's health and financial situation at the time of the transfer. UPM § 3029.15(B)

11. The Appellant did not establish with clear and convincing evidence that she transferred \$90,605.95 (transfers in excess of \$88,000.00) to her friend for a purpose other than qualifying for assistance, such as undue influence, her foreseeable needs were met, transfer to or by legal owner, or that the transferred asset would not affect her eligibility if retained.
12. The Department was correct to impose a transfer of asset penalty against the Appellant effective [REDACTED] 2012, due to uncompensated transfer of assets of \$90,605.95.
13. The Department's imposition of a 260 day penalty period for ineligibility of Medicaid Long Term Care Medicaid Services is incorrect. The correct penalty period equals 8.55 months (\$90,605.95 / average cost of care of \$10,586.00). UPM § 3029.05(F).
14. Federal Law provides that in the case of a transfer of an asset made on or after [REDACTED] 2006, the date specified in this subparagraph [the start date of the penalty period] is the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care described in subparagraph (C) based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur during any other period of ineligibility under this subsection. 42 U.S.C. § 1396p(c)(1)(D)(ii).
15. The penalty period begins as of the date on which the individual is eligible for Medicaid under Connecticut's State Plan and would otherwise be eligible for Medicaid payment of the LTC services described in 3029.05 B based on an approved application for such care but for the application of the penalty period, and which is not part of any other period of ineligibility caused by a transfer of assets. UPM § 3029.05(E)(2).
16. The Departments determination of [REDACTED] 2012, as the start date of the penalty period is correct.
17. The Department's determination of [REDACTED] 2013, as the end date of the period of ineligibility is incorrect. The correct end date of the period of ineligibility is [REDACTED] 2013 (.5 months x 31 days = 15).
18. 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. Stats. Section 17b-261o (a)

19. Regulation provides that "undue hardship" exists when 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. CGS 17b-261o (b)(1)
20. Regulation provides that the commissioner may waive imposition of a penalty if (A) the applicant suffers from dementia or other cognitive impairment and cannot explain the transfer of assignment of assets, (B) the applicant suffered from dementia or other cognitive impairment at the time the transfer of assets was made, (C) the applicant was exploited into making the transfer or assignment of assets due to dementia or other cognitive impairment, or (D) the applicant's legal representative or record owner of a jointly held asset made the transfer of assignment of assets without the authorization of the applicant.
21. Because the penalty has expired, the Applicant's life or health is not endangered by the deprivation of medical care, food, clothing, shelter or other necessities of life.
22. Because the Appellant was competent at the time of the transfers in 2008 through 2010 and at the time of her affidavits explaining the transfers in 2012, undue hardship does not exist.
23. The imposition of the penalty period from [REDACTED] 2012 through [REDACTED] 2013 does not create undue hardship.

DISCUSSION

After reviewing the evidence and testimony presented, the Department's action to impose a Medicaid period of long term care coverage is upheld; however, the end date of the penalty period is not correct. I found that the penalty period to be 8.5 months.

Counsel argued that the Department accepted the Appellant's original sworn statement of repayment of a loan of \$88,000.00 without proof but would not accept the same explanation when the Appellant submitted a new sworn statement with a repayment amount of \$114,600.00. The Appellant's original affidavit explained that she repaid her friend \$88,000.00 over time for loans she received from him in 2001 through 2004. Her second affidavit stated that that amount was \$114,600.00 not \$88,000.00. The second affidavit also stated that the additional \$64,000.00 of transfers was money she used for trips and gambling in Nevada and Arizona. The affidavit states that the checks were cashed by her friend and the cash was then returned to the Appellant. Per the regulation, in the absence of clear and convincing evidence that these transfers were made for a reason other than to qualify for medical assistance, the transfers shall be presumed to have been made for the purpose of qualifying for Medicaid assistance. As there is no other evidence of the loans other than the conflicting statements of the Appellant and her

friend, it is not clear and convincing that the amount of transfers in excess of \$88,000.00 were not made for a reason other than to qualify for medical assistance. There is also no clear and convincing evidence that the transfers made in [REDACTED] and [REDACTED] of 2010 were made for reasons other than to qualify for medical assistance. Counsel argued that there is no penalty as the Appellant's foreseeable needs were met, however, within the time period of the transfers the Appellant applied for SNAP benefits which indicates that she was not able to pay her basic expenses.

State statute provides that the penalty shall not be imposed if the imposition would cause an undue hardship. However, it goes on to state that undue hardship exists if the health or life of the applicant or recipient was endangered, or if the Applicant was deprived of food, clothing, shelter or other life necessities. The penalty period has expired and the Appellant's health and life is in no danger.

State statute also provides that the penalty shall not be imposed if the Appellant suffers from dementia and cannot explain the transfers or if the Appellant suffered from dementia at the time of the transfers. The Appellant was not suffering from dementia at the time of the transfers and was competent at the time she provided sworn statements as to the reason for the transfers.

DECISION

The Appellant's appeal is DENIED.

ORDER

1. The Department is ordered to adjust the penalty period to 8.55 months.
2. Compliance with this order should be forwarded to the undersigned no later than fifteen days of the date of this decision.

Thomas Monahan

Thomas Monahan
Hearing Officer

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 Legal Counsel, Regulations, and Administrative Hearings, 25 Sigourney Street, Hartford, CT06106.

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, 25 Sigourney Street, Hartford, CT06106. 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 his 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.