

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
25 SIGOURNEY STREET
HARTFORD, CT 06106-5033

██████████ 2013
SIGNATURE CONFIRMATION

REQUEST #535191

CLIENT ID # ██████████

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") sent ██████████ ██████████ (the "Appellant") a Final Decision Notice indicating that a transfer of asset penalty from ██████████ 2013 through ██████████ 2013 would be imposed on his Medicaid benefits due to the transfer of \$2,768.05 in assets for less than fair market value.

On ██████████ 2013, the Appellant's representative ██████████ ██████████ requested an administrative hearing on behalf of the Appellant to contest the Department's imposition of a penalty period.

On ██████████ 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice of Administrative Hearing scheduling an administrative hearing for ██████████ 2013 @ 10:00 AM to address the Department's imposition of a penalty period.

On ██████████ 2013, 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 to address the Department's imposition of a penalty period.

The following individuals were present at the hearing:

██████████ Appellant's Representative/son
Liza Perez, Department's Representative
Hernold C. Linton, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly imposed, a penalty period of ██████████ 2013 through ██████████ 2013 wherein Medicaid payments for long term care ("LTC") services would be denied, based on the Appellant's improper transfer of assets valued at \$2,768.05.

FINDINGS OF FACT

1. On ██████████ 2013, the Appellant was admitted to Kimberly Hall Health Care Center as a permanent resident, receiving long-term care ("LTC"). (Hearing Summary; Dept.'s Exhibit #9: Narrative Screens)
2. On ██████████ 2013, the Department received the Appellant's application for the Medicaid LTC program (L01). (Hearing Summary; Dept.'s Exhibit #1: Application Part 2)
3. On ██████████ 2013, the Department sent the Appellant's representative a We Need Verification from You (Form "W-1348LTC") and Attachment to W-1348 requesting additional information or verifications due by ██████████ 2013, needed to determine the Appellant's eligibility for medical assistance under the Medicaid program. (Hearing Summary; Dept.'s Exhibit #2: ██████████/13 W-1348LTC and Attachment)
4. The W-1348LTC and Attachment informed the Appellant and his representative of the outstanding verifications needed to process his application for medical assistance under the Medicaid program, and the due date by which to provide the requested information, or else his application would be denied. (Hearing Summary; Dept.'s Exhibit #2)
5. On ██████████ 2013, the Appellant's representative provided the Department with copies of his AARP and AILS American Income life insurance policies with combined face value of \$8,028.00. (Hearing Summary; Dept.'s Exhibit #4: ██████████/13 Premium Notice; Dept.'s Exhibit #6: Policy Verification)
6. On ██████████ 2013, the Department sent the Appellant's representative another W-1348LTC and Attachment to W-1348 requesting verification of the cash surrender value for the Appellant's two life insurance policies by ██████████, 2013, needed to determine his eligibility for medical assistance under the Medicaid program. (Hearing Summary; Dept.'s Exhibit #3: ██████████/13 W-1348LTC and Attachment)
7. On ██████████ 2013, the Department received verification that the Appellant is the owner of an AARP life insurance policy with a face value of \$5,000.00, and a cash surrender value of \$1,388.80. (Hearing Summary; Dept.'s Exhibit #5: ██████████/13 AARP Policy Verification)
8. On ██████████ 2013, the Department received verification that the Appellant is the owner of an AIL American Income life insurance policy with a face value of

\$3,028.00, and a cash surrender value of \$1,379.25. (Hearing Summary; Dept.'s Exhibit #6)

9. The Appellant has total countable assets from the combined cash value of his life insurance policies of \$2,768.05. (1 to 8; Hearing Summary)
10. The allowable asset limit for the Medicaid program is \$1,600.00 per month. (Hearing Summary)
11. On ██████ 2013, the Appellant transferred the ownership of both of his life insurance policies to his representative/son. (See Facts # 1 to 10; Hearing Summary)
12. On ██████ 2013, the Department notified the Appellant's representative of its initial determination that the Appellant transferred assets valued at \$2,768.05 in order to qualify for assistance, and that the transfer could affect his eligibility for Medicaid payment for LTC services. (Hearing Summary; Dept.'s Exhibit #7: ██████/13 W-495A-Transfer of Assets-Preliminary Decision Notice)
13. Effective ██████ 2013, the Appellant became otherwise eligible for Medicaid payments of LTC services. (Hearing Summary; Dept.'s Exhibit #8: ██████/13 W-495A-Transfer of Assets-Preliminary Decision Notice)
14. On ██████ 2013, the Department notified the Appellant's representative that it would be imposing a penalty of 7 days from ██████ 2013 through ██████ 2013 on the Appellant's eligibility for Medicaid payment of LTC services. (Hearing Summary; Dept.'s Exhibit #8)
15. The Department determined that the Appellant was not eligible for Medicaid payment of LTC services until ██████ 2013, due to the imposition of a transfer of asset penalty for Medicaid payment of LTC services from ██████ 2013 through ██████ 2013. (Hearing Summary; Dept.'s Exhibit #8)

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. UPM § 4030.30(A)(1) provides that the owner of a life insurance policy is the insured unless otherwise noted on the policy, or if the insurance company confirms that someone else, and not the insured, can cash in the policy.
5. UPM § 4030.30(A)(2) provides that policies such as term insurance policies having no cash surrender value are excluded assets.
6. UPM § 4030.30(C)(1) provides that if the total face value of all life insurance policies owned by the individual does not exceed \$1,500, the cash surrender value of such policies is excluded. In computing the face value of life insurance, the Department does not count insurance such as term insurance which has no cash surrender value.
7. UPM § 4030.30(C)(2) provides that except as provided above, the cash surrender value of life insurance policies owned by the individual is counted towards the asset limit.
8. The Department correctly determined that the combined cash surrender value for the Appellant's life insurance policies as a countable asset for Medicaid eligibility purposes.
9. 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
10. 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)
11. 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)
12. 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)
13. 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)

14. 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. UPM § 3029.10(F)
15. The Appellant's representative failed to provide clear and convincing evidence that the Appellant intended to dispose of the property for fair market value.
16. Based on the policies combined cash value of \$2,768.05, the Department correctly determined that the Appellant did not receive fair market value for his life insurance policies.
17. The Department correctly determined that the Appellant transferred assets valued at \$2,768.05 for less than fair market value when he transferred the ownership of his life insurance policies to his son.
18. The Department correctly determined the uncompensated value of the assets transferred by the Appellant as \$2,768.05. This transfer is subject to a transfer of asset penalty.
19. The Department correctly imposed a transfer of asset penalty against the Appellant's Medicaid eligibility due to the improper transfer of assets for less than fair market value.
20. Federal Law provides that in the case of a transfer of an asset made on or after February 8, 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, 42United States Code ("U.S.C.") § 1396p(c)(1)(D)(ii).
21. 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)
22. Because the Appellant became eligible for Medicaid payment of LTC services effective ██████ 2013, the Department's determination of ██████ 2013 as the start date of the period of ineligibility for Medicaid payment of LTC services for the Appellant is correct.
23. The Department was correct to impose a transfer of asset penalty against the Appellant effective ██████ 2013 due to an improper transfer of assets for less than fair market value or compensation.

24. The Department correctly calculated the Appellant's transfer of asset penalty period as 7 days.
25. The Appellant is ineligible for Medicaid payment of LTC services from [REDACTED] 2013 through [REDACTED] 2013 due to the transfer of assets valued at \$2,768.05 for less than fair market value, in order to qualify for assistance.

DISCUSSION

After reviewing the evidence and testimony presented, the Department's action to impose a Medicaid period of ineligibility for long-term care coverage is upheld. There was no evidence presented that would indicate that the Appellant transferred the ownership of his life insurance policies to his son, for less than fair market value, for reason other than to qualify for assistance.

The record reflects that at the time of the transfers, the Appellant was advanced in age and not in the best of health. There is no clear and convincing evidence that the transfers were for a purpose other than to qualify for assistance, such as undue influence, or that the Appellant retained sufficient assets to meet his foreseeable needs. Therefore, the Department was correct to impose a penalty on the Appellant's eligibility for Medicaid payment of long-term care services. The Department's length of the penalty period is upheld.

DECISION

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



Hernold C. Linton
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 Administrative Hearings and Appeals, 25 Sigourney Street, Hartford, CT 06106-5033.

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 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.