

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 #536028

CLIENT ID # ██████████

NOTICE OF DECISION

PARTY

██████████
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PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") sent ██████████ ("Appellant") a Final Decision Notice indicating that a transfer of asset penalty from ██████████ 2011 through ██████████, 2011 would be imposed on the his Medicaid benefits due to the transferring of \$41,000.00 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 ██████████ 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
████████████████████ Witness for the Appellant

Edward Swibold, 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 [REDACTED] 2011 through [REDACTED] 2011 wherein Medicaid payments for long term care ("LTC") services would be denied, based on the Appellant's improper transfer of \$41,000.00.

FINDINGS OF FACT

1. In [REDACTED] 2006, a Property Appraiser appraised the Appellant's real property located at [REDACTED] at \$155,000.00. (Hearing Summary; Dept.'s Exhibit #11: Complete Appraisal Summary)
2. There were no known adverse conditions or circumstances influencing the appraised value of the property in question. (See Facts # 1 to 11; Dept.'s Exhibit #11)
3. There were no known adverse environmental conditions influencing the appraised value of the property in question. (See Facts # 1 to 12; Dept.'s Exhibit #11)
4. The property was noted as being reasonably well maintained and cared for, and was in above average condition overall, eliminating the need for any sales concessions. (See Facts # 1 to 13; Dept.'s Exhibit #11)
- 5.
6. On [REDACTED] 2007, the Appellant sold the real property located at [REDACTED] for \$127,500.00. (Hearing Summary; Dept.'s Exhibit #10: Purchase and Sale Agreement)
7. On [REDACTED] 2007, the property in question was then sold by its new owner for \$169,000.00. (See Facts # 1 & 2; Hearing Summary)
8. The Appellant became a resident of Apple Rehab [REDACTED], which is a long-term care facility ("LTCF"). (Dept.'s Exhibit #1: EMS-INST Screen)
9. On [REDACTED] 2011, the Department received the Appellant's application for the Medicaid LTC program (L01). (Hearing Summary; Appellant's Exhibit A: [REDACTED]/13 Memorandum)
10. On [REDACTED] 2013, the Department sent the Appellant's Representative a W-495A, Transfer of Assets Preliminary Decision Notice indicating that it believed that the Appellant transferred \$41,000.00 in countable assets on [REDACTED] 2007, in order to qualify for assistance as he sold his home, valued at \$168,500.00 for \$127,500.00,

which was less than the fair market value. (See Facts #1 to 5; Hearing Summary; Appellant's Exhibit B: █████/13 W-495A-Transfer of Assets-Preliminary Decision Notice)

11. The Appellant's representative responded by stating that the property in question was only appraised at \$155,000.00, the funds received from the sale were needed to pay for the monthly costs of care for the Appellant and his spouse to reside in an assisted living facility, and that the sale was for reason other than to qualify for assistance. (Hearing Summary; Appellant's Exhibit B)
12. On █████ 2013, the Department notified the Appellant's representative that it would be imposing a penalty of 3 months and twenty-one days from █████ 2011 through █████, 2011 on the Appellant's eligibility for Medicaid payment of LTC services. (Hearing Summary; Appellant's Exhibit C: █████/13 W-495C-Transfer of Assets-Final Decision Notice)
13. The Department determined that the Appellant was not eligible for Medicaid payment of LTC services until █████ 2011, due to the imposition of a transfer of asset penalty for Medicaid payment of LTC services from █████ 2011 through █████, 2011. (Hearing Summary; Appellant's Exhibit C)
14. Effective █████ 2011, the Appellant became otherwise eligible for Medicaid payment of LTC services. (Hearing Summary)
15. The Department valued the property sold by the Appellant at of \$168,500.00, based on a comparative market analysis of similar properties recently sold in the area. (Hearing Summary; Dept.'s Exhibit #1: █████/11 Intra-Regional Office Referral)

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. 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)
6. 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)
7. 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)
8. 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)
9. 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)
10. 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. UPM § 3029.10(G)
11. The Appellant's representative failed to provide clear and convincing evidence that the Appellant intended to dispose of the property in question at fair market value.
12. The fair market value of the property sold by the Appellant is \$155,000.00 as established by a reputable certified appraiser.

13. Based on the fair market value of \$155,000.00 as determined by the appraiser, the Department correctly determined that the Appellant did not receive fair market value for the property that he sold on [REDACTED], 2007, for \$127,500.00.
14. The uncompensated value of the asset transferred by the Appellant for less than fair market is \$27,500.00 (\$155,000.00, fair market value; minus \$127,500.00, proceeds received). This transfer is subject to a transfer of asset penalty.
15. The Department incorrectly determined that the uncompensated value of the asset transferred by the Appellant for less than fair market as \$41,000.00 when he sold the property in question for less than fair market value.
16. 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)
17. The Department considers a transfer to be made for purposes other than to qualify when: 1. the institutionalized individual would have been eligible if the transferor had retained the asset; and 2. the transferred asset was not the institutionalized individual's or the spouse's home; and 3. the transferred asset was not the proceeds of a home equity loan, reverse mortgage or similar instrument that reduces the institutionalized individual's or the spouse's equity in his or her home. [UPM § 3029.15(D)]
18. The Department correctly imposed a transfer of asset penalty against the Appellant's Medicaid eligibility due to the improper transfer of an asset valued at \$155,000.00 for less than fair market value.
19. 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).
20. 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)

21. Because the Appellant became eligible for Medicaid payment of LTC services effective [REDACTED] 2011, the Department's determination of [REDACTED] 2011 as the start date of the period of ineligibility for Medicaid payment of LTC services for the Appellant is correct.
22. The Department was correct to impose a transfer of asset penalty against the Appellant effective [REDACTED] 2011 due to an improper transfer of assets valued at \$27,500.00 for less than fair market value. However, the length of the penalty period as determined by the amount of the uncompensated assets is incorrect.
23. The Department's imposition of a 3-months and twenty-one days penalty period of ineligibility for Medicaid payment of LTC services for the Appellant is incorrect. UPM § 3029.05(F)
24. The Department's determination of [REDACTED] 2011 as the end date for the period of ineligibility for Medicaid payment of LTC services for the Appellant is incorrect. UPM § 3029.05(E)

DISCUSSION

The Appellant's representative testified that the property was sold for \$127,500.00, as it needed repairs. However, the appraisal completed two months prior to the sale found that the property was reasonably well maintained and cared for, and was in above average condition overall, eliminating the need for any sales concessions. The representative did not provide any receipts for repairs completed, so that the cost could be taken into consideration against the fair market value assigned by the appraiser. Additionally, the Appellant's representative failed to provide clear and convincing evidence to establish that the Appellant received fair market value for the property that he sold.

However, the Department's use of comparable market analysis of recent sales in the area to determine the fair market value of the property sold by the Appellant is incorrect. The Appellant's representative provided credible evidence from a certified appraiser establishing the fair market value for property as \$155,000.00 that he then sold on [REDACTED] 2007 for \$127,500.00. Based on the credible evidence provided to rebut the Department's assigned value, the Department has to revise its assigned value (\$168,500.00) for the property that the Appellant sold. Consequently, the Department also has to recalculate the uncompensated value of the asset in question as well as the length of the penalty period.

Although, the Department was correct in imposing a penalty period, the length of the penalty is incorrect based on the revised uncompensated value of the asset in question.

DECISION

The Appellant's appeal is **GRANTED** in part.

ORDER

1. The Department will revise the fair market value assigned to the property in question, based on the findings of this hearing decision.
2. The Department will revise the uncompensated value of the asset in question, based on the findings of this hearing decision.
3. The Department shall revise the penalty period imposed against the Appellant's eligibility for Medicaid, based on the findings of this hearing decision.
4. No later than 30 days from the date of this hearing decision, the Department will provide to the undersigned proof of compliance with this order.



Hernold C. Linton
Hearing Officer

Pc: **Lisa Wells**, Social Service Operations Manager,
DSS, R.O. #10, Hartford

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, CT 06106. 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.