

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

██████████ 2014
SIGNATURE CONFIRMATION

CLIENT ID #: ██████████
HEARING ID #: 555081

NOTICE OF DECISION

PARTY

██████████ Power of Attorney
██████████
██████████

Client: ██████████

PROCEDURAL BACKGROUND

On ██████████, the Department of Social Services (the "Department") sent ██████████, (the "Appellant") a Notice of Action ("NOA") granting her application for Long Term Care Medicaid benefits effective ██████████ 2013, with a transfer of assets penalty from ██████████ 2013 through ██████████ 2013 .

On ██████████ 2013, ██████████, Power of Attorney (the "POA") requested an administrative hearing to contest the Department's decision to impose a penalty on the Appellant's Long Term Care Medicaid benefits.

On ██████████ 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the 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, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

██████████, Appellant's Daughter and POA
Lindsey Jesshop, Department's Representative
Swati Sehgal, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department correctly imposed a Transfer of Assets ("TOA") penalty based on withdrawals from the appellant's account.

FINDINGS OF FACT

1. The Appellant is █ years old. (Hearing record)
2. The Appellant and her partner were struck with pneumonia and were hospitalized in █ 2013, and were discharged to the St Joseph Rehab Facility. (POA's Testimony)
3. The Appellant's partner was discharged from the St. Joseph Rehab Facility two weeks after the admission. The appellant encountered another infection at the Facility and needed to stay longer. (POA's Testimony)
4. Prior to entering the hospital in █ of 2013, the Appellant lived with her partner in the community. (POA's testimony)
5. The Appellant needed assistance with activities of daily living. The Appellant's partner provided that assistance for her.(POA's testimony)
6. The POA was in process of getting services approved from CCCI as appellant's partner is █ years old and not able to provide assistance with all daily living activity.(POA's Testimony, Exhibit B: CCCI Summary)
7. On █ 2013 The POA submitted an application for Long Term Care with a letter from the Appellant's Physician, in which it states that the Appellant is in Rehab Facility with a possibility to return home with CCCI support in next 6 months. (Exhibit A: letter from Physician, Exhibit 3: Department's narrative dated █/13)
8. The Appellant owns a mobile home and is responsible to pay Mortgage for her mobile home and rent for the land it is located at. The Appellant's partner is responsible to pay for utilities. (POA's testimony)
9. On █ 2013, a check in the amount of \$10,500.00 was made out to First Niagara bank as prepayment for the Appellant's mortgage and on █ 2013, another check in the amount of \$5,328.00 was made out to

Stonegate Manor for prepayment of the Appellant's rent. (Exhibit #2:First Niagara bank statement)

10. On [REDACTED] 2013, the Department determined that the Appellant transferred monies in the amount of \$15,828.00 in order to establish eligibility therefore penalty was enforced from [REDACTED]/13 through [REDACTED]/13. The Appellant was denied [REDACTED] 2013 assistance for over asset.(Exhibit #3: Narrative dated [REDACTED]/13)
11. On [REDACTED] 2013 the Department approved rental diversion for six months. (Exhibit #3: narrative dated [REDACTED]/13)
12. On [REDACTED] 2013, the Department mailed W495A, Preliminary Decision Notice, to the POA. (Exhibit #3: Narrative dated [REDACTED]/13)
13. On [REDACTED] 2013, the Department mailed out w495C, Final Notice, to the POA. (Exhibit #3)

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 the Department 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-261(a) of the Connecticut General Statutes provides that any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, person authorized to make such disposition pursuant to a power of attorney, or other person so authorized by law shall be attributed to such applicant, recipient, or spouse.
4. Uniform Policy Manual ("UPM") Section 1500.01 provides the following definition:

An applicant is the individual or individuals for whom assistance is requested.
5. UPM § 3029.03 provides that 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.

6. UPM § 3029.05 (C) provides 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.
7. UPM § 3029.05 (A) provides that 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.
8. UPM § 3029.05 (F) states 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.
9. 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).
10. UPM Section 3029.10.E 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.
11. The POA provided clear evidence that the withdrawals from the Appellant's account in the amount of \$15,828.00 were used to prepay for Appellant's mortgage and rent.
12. The POA also provided clear and convincing evidence that family's plan was to bring the Appellant back home from St. Joseph Rehab Facility.
13. The Department incorrectly determined that fair market value for the transfer was not received, as the intent was for Applicant to return home at the time payments were made to First Niagara Bank for Mortgage and to Stonegate Manor for rent.
14. The Department incorrectly determined that the transfer of assets made in [REDACTED] 2013 and [REDACTED] 2013 were made in order to qualify for assistance and

fair market value was not received.

DISCUSSION

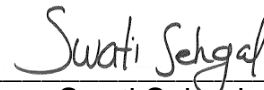
The POA provided evidence and testimony as to the family's intent for the Appellant to return back to her home in the community with her partner. It is reasonable to believe that Mortgage and rent was paid in advance to secure a place for her to return home to. The Department did not give POA an opportunity to rebut the Department's preliminary decision as preliminary notice was sent to the POA after the decision of transfer of asset was rendered.

DECISION

The Appellant's appeal is **Granted** in regards to transfers made on [REDACTED] 2013 in the amount of \$10,500.00 and [REDACTED] 2013, in the amount of \$5,325.00.

ORDER

1. The Department is ordered to remove penalty imposed from [REDACTED] 2013 through [REDACTED] 2013 and grant Medicaid for Long Term care effective [REDACTED] 2013.
2. Proof of compliance with this order is due to the undersigned by [REDACTED] 2014.



Swati Sehgal
Hearing Officer

CC: Albert Williams, Operations Manager, RO #42, Willimantic Office.

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.