

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

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

REQUEST #562506

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 ██████████ 2013 through ██████████ 2013 would be imposed on the Appellant's Medicaid benefits due to the Appellant transferring \$44,483.64 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 scheduling an administrative hearing for ██████████ 2013 @ ██████████ to address the Department's imposition of a penalty period. OLCRAH granted the Appellant's representative a continuance.

On ██████████ 2014, 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
██████████, Witness for the Appellant
██████████, Witness for the Appellant

Amy Kreidel, Department's Representative
Kathryn Schneider, 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] 2013 through [REDACTED] 2013 wherein Medicaid payments for long term care ("LTC") services would be denied, based on the Appellant's improper transfer of \$44,483.64 in assets.

FINDINGS OF FACT

1. The Appellant is [REDACTED] years of age (DOB [REDACTED]). (Hearing Summary)
2. The Appellant has a history of cancer, and had a mastectomy and an abdominal Hysterectomy. (Appellant's Exhibit #2: Medical Records)
3. In [REDACTED] 2005, the Appellant sold her home in Florida and relocated to Connecticut to live with her son and daughter-in-law. (Dept.'s Exhibit C: Correspondence from POA)
4. In [REDACTED] 2006, the Appellant moved from her son's home into elderly housing. (Dept.'s Exhibit C)
5. In [REDACTED] 2009, the Appellant gifted \$10,000.00 to her son. (Hearing Summary; Dept.'s Exhibit I: Spreadsheets)
6. In [REDACTED] 2010, the Appellant gifted \$13,008.64 to her son. (Hearing Summary; Dept.'s Exhibit I)
7. In [REDACTED] 2011, the Appellant gifted \$5,475.00 to her son. (Hearing Summary; Dept.'s Exhibit I)
8. In [REDACTED] 2011, the Appellant gifted \$10,000.00 to her son. (Hearing Summary; Dept.'s Exhibit I)
9. On [REDACTED] 2012, the Appellant was reported as having memory problems, being more forgetful, and had not been taking her medications. (Appellant's Exhibit #2)
10. On [REDACTED] 2012, the Appellant appointed her son to be her Power of Attorney. (Dept.'s Exhibit B: Durable Power of Attorney)
11. In [REDACTED] 2012, the Appellant gifted \$6,000.00 to her son. (Hearing Summary; Dept.'s Exhibit I)
12. In [REDACTED] 2013, the Appellant entered a hospital on two occasions. A physician diagnosed her with Dementia/Alzheimer, and determined that she needed LTC

assistance. (Dept.'s Exhibit C)

13. Due to her illness, the Appellant has substantial functional limitations in self-care and in her capacity for living independently. (Dept.'s Exhibit G: Pre-Admission Screening Form)
14. On [REDACTED] 2013, the Department received the Appellant's application for the Medicaid LTC (L-01) program. (Hearing Summary; Dept.'s Exhibit A: Narrative Screens)
15. On [REDACTED] 2013, the Appellant entered Litchfield Woods Health Care Center for LTC. (Dept.'s Exhibit G)
16. On [REDACTED] 2013, the Department sent the Appellant a W-495A, Transfer of Assets, Preliminary Decision Notice indicating that it believed that the Appellant transferred \$44,483.64 in countable assets in order to qualify for assistance. (Hearing Summary; Dept.'s Exhibit D: [REDACTED]/13 Transfer of Assets, Preliminary Decision Notice)
17. The Appellant's son received \$10,000.00 from the Appellant in [REDACTED] 2009 to pay the cost to repair his basement due to water damages and mold issues. (Dept.'s Exhibit C)
18. The Appellant's son received \$10,000.00 from the Appellant in [REDACTED] 2011 to offset tax payments he owed to the Internal Revenue Service ("IRS") and the Department of Revenue Service ("DRS") for the early withdrawal of funds from his Individual Retirement Account ("IRA") used for repairs on his house. (Dept.'s Exhibit C)
19. The Appellant's son used the proceeds he received from the Appellant to replace the air condition unit in his attic. (Dept.'s Exhibit C)
20. The Appellant intended to return to live with her son in his home when she could no longer live on her own. (Dept.'s Exhibit C)
21. The Appellant's and his wife work full time jobs and are not able to care for the Appellant in their home. (Dept.'s Exhibit C)
22. On [REDACTED] 2013, the Department notified the Appellant that it would be imposing a penalty of 116 days from [REDACTED] 2013 through [REDACTED], 2013 on Medicaid payment of LTC services for the Appellant. (Hearing Summary; Dept.'s Exhibit D: Transfer of Assets-Final Decision Notice)
23. The Department determined that the Appellant was not eligible for Medicaid payment of LTC services until [REDACTED], 2013, due to the imposition of a transfer of asset penalty for Medicaid payment of LTC services from [REDACTED] 2013 through [REDACTED] 2013. (Hearing Summary; Dept.'s Exhibit D)
24. Effective [REDACTED] 2013, the Appellant became otherwise eligible for Medicaid payment of LTC. (Hearing Summary)

25. The statements provided by the Appellant's Representatives as to the reasons for the Appellant's gifting of money to her son lack credibility. (Hearing Record)

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. The Appellant did not establish with clear and convincing evidence that her transfer of assets valued at \$44,483.64 to her son was for a purpose other than to qualify for assistance. [UPM § 3029.10(E)]
11. 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, 42 United States Code ("U.S.C.") § 1396p(c)(1)(D)(ii).
12. 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)]
13. Because the Appellant became otherwise 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.
14. If the transferor retains other counted assets in an amount sufficient to meet the average cost of private nursing home care, as determined by the Department, for a period of no less than 24 months (\$277,944.00), the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility. [UPM § 3025.15(E)]
15. The Appellant needed to retain counted assets sufficient to meet her foreseeable needs for the transfer of assets to her son not to be considered for the purpose of establishing eligibility.
16. The Appellant did not retain sufficient in counted assets to meet her foreseeable needs, giving her health situation and advanced age at the time of the transfers.
17. The Department was correct to impose a transfer of asset penalty against the Appellant effective ██████ 2013 due to the uncompensated transfer of assets valued at \$44,483.64.

18. The Department's imposition of 116 days penalty period of ineligibility for Medicaid payment of LTC services for the Appellant is correct. [UPM § 3029.05(F)]
19. The Department's determination of [REDACTED], 2013 as the end date for the period of ineligibility for Medicaid payment of LTC services for the Appellant is correct. [UPM § 3029.05(E)]

DISCUSSION

The Appellant's representatives failed to provide clear and convincing evidence to establish that the Appellant benefited from the \$44,483.64 that she gave them to repair their home and to pay off their tax liability the IRS and DRS. The Appellant's representatives also argued that it was their intention that the Appellant would move back to live with them whenever she was no longer able to live on her own, based on a verbal agreement. However, they testified that they both work full time jobs, and are not available to provide her with the care essential for her to safely reside with them in their home. In sum, the Appellant did not receive fair market value in return for the \$44,483.64 in assets that she transferred to her son. Consequently, the Department had to consider the uncompensated value an improper transfer of assets.

Therefore, the Department was correct in imposing a penalty period and an eligibility effective date of [REDACTED] 2013 for Medicaid payment of LTC services for the Appellant.

DECISION

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



Hernold C. Linton
Hearing Officer

Pc: **Annette Lombardi**, Social Service Operations Manager,
DSS, R.O. #62, Torrington

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.