

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

Client ID # ██████████
Request #566607

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying her Long Term Care Medicaid benefits from ██████████ 2013 through ██████████, 2013 due to a Transfer of Assets penalty.

On ██████████, 2013, the Appellant requested an administrative hearing to contest the Department's decision to deny Medicaid assistance from ██████████ 2013 through ██████████ 2013.

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 Representative
████████████████████████████████████████ Appellant's Son, Power of Attorney ("POA")
████████████████████████████████████████, Appellant's Daughter, Power of Attorney ("POA")
Laura Cantarino, Department's Representative
Miklos Mencseli, Hearing Officer

The Appellant was not present.

A separate decision will be issued regarding the effective date of Long Term Medicaid benefits.

STATEMENT OF THE ISSUE

The issue is to determine if the Department correctly imposed a Transfer of Assets penalty for the period of [REDACTED] 2013 through [REDACTED] 2013 on the Appellant's Long Term Care Medicaid benefits.

FINDINGS OF FACT

1. On [REDACTED] 2012, the Appellant's son, [REDACTED] sent an email to the Appellant's Attorney. The Appellant's son stated the Appellant has an insurance policy with the Hartford and the spouse had 217 shares of Sun Life Assurance Co Canada stock plus a Sun Life insurance policy. (Exhibit 2: email dated [REDACTED] 12)
2. On [REDACTED] 2012, the Appellant and her spouse, [REDACTED] application for long term care assistance was received by the Department. (Summary, Exhibit 1: Appellant's W-1F application)
3. The Application does not list any insurance policies. (Summary, Exhibit 1)
4. On [REDACTED] 2012, the Department sent the Appellant a W-1348 verification form requesting the assets for the Appellant and her spouse be reduced below \$1600.00, provide the policy number, face value and cash value for the Hartford life policy and the value of the 217 shares of Sun Life stock for the Appellant's spouse. The information was due by [REDACTED] 2012. (Summary, Exhibit 4: Department's W-1348 dated [REDACTED]-12)
5. On [REDACTED] 2012, the Department received an extension request from the Appellant's Attorney. The Attorney provided some of the requested verifications to the Department. (Summary, Exhibit 15: letter dated [REDACTED]-12)
6. On [REDACTED] 2012, the Appellant's spouse, [REDACTED] expired. (Exhibit 10: Sun Life Financial documentation, copy of death certificate included)
7. On [REDACTED] 2012, having not received any additional verifications, the Department sent an email to the Appellant's Attorney inquiring whether the Appellant still required long term care assistance. (Summary, Exhibit 16: email dated [REDACTED]-12)
8. On [REDACTED] 2012, the Department sent the Appellant a W-1348 verification form requesting additional information needed to process the Appellant's application. Items requested included the policy number, face and cash value of the Appellant's insurance policy and the documentation of the

sale of the Sun Life stock. The information was due by [REDACTED] 2012. (Summary, Exhibit 4: Department's W-1348 dated [REDACTED]-12)

9. On [REDACTED], 2012, the Appellant's Attorney responded by providing some verifications requested. The Attorney stated that the Appellant has been trying to liquidate the 217 shares of Sun Life since [REDACTED]. The Appellant also requested an extension. (Summary, Exhibit 17: letter dated [REDACTED]-12)
10. Probate was not opened for the Appellant's spouse due to having only the life insurance policy and the Sun Life shares. (Exhibit 17, Exhibit 24: letter dated [REDACTED]-13, Testimony)
11. On [REDACTED] 1012, the Appellant received a letter from Protective Life Insurance (John Hancock) verifying she had a Whole Life policy with a face amount of \$2,947.01. (Exhibit 13: letter dated [REDACTED]-13)
12. On [REDACTED] 2013, the Department sent the Appellant a W-1348 verification form requesting additional information needed to process the Appellant's application. The Department was still requesting verification of the Appellant's life insurance policy, the Sun Life stocks and asset reduction. The information was due by [REDACTED] 2013. (Summary, Exhibit 4: Department's W-1348 dated [REDACTED]-13)
13. On [REDACTED] 2013, the Appellant's Attorney responded to the Department's W-1348. The Appellant provided some verifications and requested an extension for the additional verifications. (Exhibit 18: letter dated [REDACTED]-13)
14. On [REDACTED] 2013, the Department sent the Appellant a W-1348 verification form requesting additional information needed to process the Appellant's application. The Department was still requesting verification of the Appellant's life insurance policy, the Sun Life stocks and asset reduction. Also requested value of life insurance being deducted from the Appellant's spouse pension. The information was due by [REDACTED] 2013. (Summary, Exhibit 4: Department's W-1348 dated [REDACTED]-13)
15. On [REDACTED] 2013, the Appellant's Attorney provided the Department a letter stating the Appellant had no Hartford Life insurance policy. (Summary)
16. On [REDACTED] 2013, the Department sent the Appellant a W-1348 verification form requesting additional information needed to process the Appellant's application. The Department was still requesting verification of that the Sun Life stock sold. In addition information of a John Hancock policy # [REDACTED] and asset reduction. The information was due by [REDACTED] 2013. (Summary, Exhibit 4: Department's W-1348 dated [REDACTED]-13)

17. The Appellant paid premiums of \$26.01 from Webster Checking account # [REDACTED] for the John Hancock policy on [REDACTED] 2012, [REDACTED] 2012, [REDACTED], 2012, [REDACTED], 2012 and [REDACTED] 2013. (Exhibit 12: Webster bank statements and copy of cancelled checks)
18. On [REDACTED], 2013, the Appellant's Attorney responded to the W-1348. The Attorney again stated the Appellant has no Hartford Life insurance and advised the family to request the cash surrender value of the John Hancock policy. (Summary, Exhibit 19: letter dated [REDACTED] 13)
19. On [REDACTED] 2013, the Appellant requested the John Hancock policy, which is with Protective Life pay her the surrender value as soon as possible. (Exhibit 20: letter dated [REDACTED]-13)
20. On [REDACTED], 2013, the Department sent the Appellant a W-1348 verification form requesting additional information needed to process the Appellant's application. The Department was still requesting verification of that the Sun Life stock sold, the value of the John Hancock policy [REDACTED] and asset reduction. The information was due by [REDACTED] 2013. (Summary, Exhibit 4: Department's W-1348 dated [REDACTED]-13)
21. On [REDACTED], 2013, the Appellant completed a notice of withholding on distribution or withdrawals form for the John Hancock policy. (Exhibit 14: form dated [REDACTED]-13)
22. On [REDACTED] 2013, the Department sent the Appellant's a W-495A Preliminary Decision Notice Transfer of Assets form. The Department determined that the Appellant transferred \$6,100.00 for the period of [REDACTED] 2012 through [REDACTED] 2013. A total of 19 checks were written. (Summary, Exhibit 5: Department's notice dated [REDACTED]-13, Exhibit 8: list of gifts, Exhibit 9: Webster Bank # [REDACTED] bank statements and copy of cancelled checks)
23. On [REDACTED] 2013, the Appellant's Attorney responded by email to the W-495A. She objected to the determination of the transfer penalty and would be presenting evidence that certain items were payment for value and other items have been or will be returned. (Exhibit 21: email dated [REDACTED]-13)
24. On [REDACTED] 2013, the Department received a letter from the Appellant's Attorney with verifications. Listed were Christmas gifts for 2012 that correspond to the Department's list of checks for the period. (Exhibit 25: letter dated [REDACTED] 13)
25. The Appellant's Attorney's list does not include all the checks the Department determined to be transferred. (Exhibit 8, Exhibit 9)

26. On [REDACTED] 2013, the Department sent the Appellant a W-495B Transfer of Assets Notice of Response to Rebuttal/Hardship Claim form. The Department determined that the Appellant's transfer of funds did not meet the criteria for an allowable transfer of funds. The Department initiated a penalty period that will last .55 months due to the transfer of funds. (Exhibit 6: W-495B dated [REDACTED]-13)
27. On [REDACTED] 2013, the Department sent the Appellant a W-495C Transfer of Assets Final Decision Notice form. The form states the Appellant is eligible for certain Medicaid benefits effective [REDACTED] 2013, a penalty period will begin [REDACTED] 2013 and continue until [REDACTED], 2013. During the penalty period, Medicaid will not pay for any long term care services. (Exhibit H: W- 495C dated [REDACTED] 13)
28. The Department upon further review subtracted \$1700.00 from the penalty amount giving credit for expenses and payment to a care giver. (Exhibit 26: email dated [REDACTED]-13)
28. The new penalty period is [REDACTED] 2013 through [REDACTED] 2013. (Exhibit 26)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes, authorizes the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.
3. UPM § 3025.10 provides that a transfer of an asset is considered to be for the purpose of qualifying for Medicaid if all of the following circumstances apply: A. Fair market value is not received; and B. There is no convincing evidence that the transfer is for another purpose; and C. The transferor does not retain sufficient funds for foreseeable needs.
4. UPM § 3029.03 provides the transfer of assets policy for transfers that occurred on or after February 8, 2006.
5. UPM § 3029.05 states 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 section C of this policy. This period is called the penalty period, or period of ineligibility.

B. Individuals Affected

1. The policy contained in this chapter pertains to institutionalized individuals and to their spouses.
2. An individual is considered institutionalized if he or she is receiving:
 - a. LTCF services; or
 - b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; or
 - c. home and community-based services under a Medicaid waiver (cross references: 2540.64 and 2540.92).

C. Look-Back Date for Transfers

The look-back date for transfers of assets is a date that is 60 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
6. The Department correctly determined that the transfers in ██████████ 2012 and ██████████ 2013 occurred within the 60 month look back period.
 7. UPM § 3029.05 D (1) (2) provides the Department considers transfers of assets made within the time limits described in 3029.05 C, on behalf of an institutionalized individual or his or her spouse by a guardian, conservator, person having power of attorney or other person or entity so authorized by law, to have been made by the individual or spouse. In the case of an asset that the individual holds in common with another person or persons in joint tenancy, tenancy in common or similar arrangement, the Department considers the asset (or affected portion of such asset) to have been transferred by the individual when the individual or any other person takes an action to reduce or eliminate the individual's ownership or control of the asset.
 8. UPM § 3029.10 (E) provides 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.
 9. UPM § 3029.10 (F) provides 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.

10. UPM § 3029.10 (G) provides 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. (Cross Reference: 3029.20)
11. The Appellant and her Representatives did not provide clear and convincing evidence that the transfer was made exclusively for a purpose other than to qualify for assistance.
12. UPM § 3029.05 (E) (1) (2) provides the penalty period begins as of the later of the following dates: the first day of the month during which assets are transferred for less than fair market value, if this month is not part of any other period of ineligibility caused by a transfer of assets; or 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.
13. UPM § 3029.05 (F) (1) (2) (a) (b) (1) (2) (3) (4) provides the length of the penalty period consists of the number of whole and/or partial months resulting from the computation described in 3029.05 F. 2. 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 described in 3029.05 C by the average monthly cost to a private patient for LTCF services in Connecticut. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application. For recipients, the average monthly cost for LTCF services is based on the figure as of: the month of institutionalization; or the month of the transfer, if the transfer involves the home, or the proceeds from a home equity loan, reverse mortgage or similar instrument improperly transferred by the spouse while the institutionalized individual is receiving Medicaid, or if a transfer is made by an institutionalized individual while receiving Medicaid (Cross Reference: 3029.15). Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. A single penalty period is then calculated, and begins on the date applicable to the earliest transfer. Once the Department imposes a penalty period, the penalty runs without interruption, regardless of any changes to the individual's institutional status.
14. UPM § 3029.05 (G) (1) (a) (b) (c) (2) provides that during the penalty period, the following Medicaid services are not covered: LTCF services; and services provided by a medical institution which are equivalent to those provided in a long-term care facility; and home and community-based services under a

Medicaid waiver. Payment is made for all other Medicaid services during a penalty period if the individual is otherwise eligible for Medicaid.

15. The Department incorrectly determined that the \$6,100.00 transfer of assets was done for the purpose of qualifying for assistance.
16. The Department reduced the Appellant's penalty amount by \$1,700.00.
17. The Department revised its determination that \$4,400.00 transfer of assets occurred.
18. The Department incorrectly calculated a .55 months penalty period ($\$6100.00 / 11,183.00$ average cost of care equals .55 months.)

DISCUSSION

The Department on its own merit reduced the penalty amount. At the hearing the Appellant's Representatives clarified payments made for the Appellant's expenses and care giver. This reduced the penalty amount and reduces the penalty period. The Department is to apply the new penalty period in conjunction with the new effective date of Medicaid eligibility as determined by the hearing decision issued regarding the Appellant's effective date.

DECISION

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

ORDER

1. The Department shall recalculate the Appellant's penalty period based on the \$4,400.00 transfer amount.
2. The Department shall grant Long Term Care Medicaid benefits for room and board based on the new penalty period.
3. No later than [REDACTED] 2013, the Department will provide to the undersigned proof of compliance with this order.


Miklos Mencseli
Hearing Officer

C: Lisa Wells, 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 Legal Counsel, Regulations, and Administrative Hearings, 25 Sigourney Street, Hartford, CT 06106.

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 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.

