

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

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

REQUEST #625134

CLIENT ID # ██████████

NOTICE OF DECISION

PARTY

████████████████████
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PROCEDURAL BACKGROUND

On ██████████, the Department of Social Services (the "Department") sent ██████████
██████████ ("Appellant") a Transfer of Assets Final Decision Notice indicating that it
would impose a penalty on her Long Term Care Medicaid ("LTC") benefits effective
██████████ 2013 through ██████████ 2014 for transfers totaling \$177,300.00.

On ████████ 2014, the Appellant's representative (██████████) requested an
administrative hearing on behalf of the Appellant to contest the Department's decision to
impose a penalty on the Appellant's LTC Medicaid benefits.

On ████████ 2014, the Office of Legal Counsel, Regulations, and Administrative
Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for ████████
██████ 2014 @ ████████ to address the Department's imposition of a penalty period on the
Appellant's LTC Medicaid benefits. OLCRAH granted the Appellant's representative a
continuance.

On ██████████ 2014, the Department revised the amount of uncompensated assets
to \$140,100.00, and revised the Appellant's penalty period for LTC Medicaid benefits to
effective ██████████ 2013 through ██████████, 2014.

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 on the Appellant's
LTC Medicaid benefits.

The following individuals were present at the hearing:

██████████, Appellant's Representative
██████████, Witness for the Appellant
██████████, Witness for the Appellant
██████████, Counsel for the Appellant
Angella A. Querette, Department's Representative
Altricia B. Gethers, Department's Representative
Hernold C. Linton, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly imposed a Transfer of Assets penalty, based on the Appellant's transfer of \$140,100.00 in assets.

FINDINGS OF FACT

1. For the period 1996 through 2012, the Appellant had no serious health issues that prevented her from living at home alone. She was described as being stable without any incidents. (Appellant's Exhibit E: ██████/14 Statement from Dr. Vinnick)
2. The Appellant had a medical history of hypertension, hyperlipidemia, aortic valve replacement, atrial fibrillation, vitamin D deficiency, and a total right hip replacement. (Appellant's Exhibit E)
3. The Appellant was in generally good health until she suffered a stroke in ██████ 2012. (██████████ 2014 Memorandum; Appellant's Exhibit E)
4. For the first six years after her husband died in 1976, the Appellant had no income, and her children provided her with financial assistance to meet her needs. (██████████ 2014 Memorandum)
5. In 1982, the Appellant started to receive a small pension, based on her husband former employment as a school custodian. (██████████ 2014 Memorandum)
6. The Appellant had a short fall between her monthly income and her monthly needs, and her children provided her with financial assistance to make up for the short fall. (██████████ 2014 Memorandum; Appellant's Exhibit F: Receipts for cash payments)
7. Over the last 35 years, the Appellant's son did repairs to the Appellant's home valued at \$30,665.00. (Dept.'s Exhibit #6: List from ██████ Construction, LLC)
8. Over the last 38 years, the Appellant's children paid the following expenses for the Appellant: cable bill, daily newspaper, car repairs and maintenance, snow removal, siding, new windows, and paving the driveway of her home. The cash receipts totaled \$5,598.69. (Dept.'s Exhibit #8: ██████/13 Letter; Memorandum dated ██████/14; Appellant's Exhibit F: Receipts)
9. Ten years ago, the Appellant's children paid \$9,000.00 for a new roof on the

Appellant's house. (Dept.'s Exhibit #8)

10. On [REDACTED] 2011, the Appellant signed an agreement that she would repay her children a sum of money in excess of \$250,000.00, for the financial assistance that they provided to her, from the sale of her home, a reverse mortgage, or upon her death. ([REDACTED] 2014 Memorandum; Dept.'s Exhibit #7: Notarized Agreement)
11. The Appellant did not anticipate her nursing home placement and that she would be applying for Medicaid payment of LTC. ([REDACTED] 2014 Memorandum)
12. In 2011, the Appellant obtained a reverse mortgage. ([REDACTED] 2014 Memorandum)
13. For the period of [REDACTED] 2011 through [REDACTED] 2012, the Appellant repaid her children \$177,300.00 from the reverse mortgage, and retained \$110,000.00 of the reverse mortgage to meet for her foreseeable needs. ([REDACTED] 2014 Memorandum; Hearing Summary)
14. On [REDACTED] 2012, the Appellant was admitted to Notre Dame Convalescence Home. (Hearing Summary)
15. On [REDACTED] 2013, the Department received the Appellant's application for LTC Medicaid assistance. (Hearing Summary)
16. On [REDACTED] 2014, the Department sent the Appellant's representative a preliminary transfer of assets notice stating its initial decision that the Appellant transferred \$177,300.00 to qualify for assistance. (Hearing Summary; Dept.'s Exhibit 1: Transfer of Assets-Preliminary Decision Notice)
17. The Appellant's representative submitted a rebuttal disputing that the Appellant had transferred assets in order to qualify for assistance. (Hearing Summary)
18. The Appellant's children returned \$37,200.00 to her of the \$177,300.00 that she had repaid them, leaving a remaining balance of \$140,100.00. (Dept.'s Exhibit # 14: [REDACTED]/14 Memorandum)
19. The Department sent the Appellant's representative a Transfer of Assets, Notice of Response to Rebuttal/Hardship Claim indicating that it did not agree with her claim.
20. On [REDACTED] 2014, the Department sent the Appellant's representative a notice indicating that it granted the Appellant Medicaid effective [REDACTED] 2014, and established a penalty period from [REDACTED] 2013 through [REDACTED] 2014 for a transfer of asset penalty. (Hearing Summary; Dept.'s Exhibit #16: Transfer of Assets-Final Decision Notice)

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. Uniform Policy Manual (“UPM”) Section 3029.03 provides that the Department use 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 or annuity was established, on or after February 8, 2006.
4. UPM Section 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.
5. UPM Section 3029.15.B provides that 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.
6. Based on the Appellant’s health and her monthly needs at the time of the transfer, the Appellant retained sufficient funds from her reverse mortgage to meet her foreseeable needs.
7. State Statute provides that any transfer of 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. The 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. Section 17b-261a (a).
8. 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.
9. UPM Section 3029.10.F provides that 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. Based on the money received from the Appellant’s children to help her meet her needs in the community and the Appellant’s agreement to repay them, the Appellant provided clear and convincing evidence that the payments to her children were for reasons other than to qualify for assistance.

11. The Department incorrectly imposed a transfer of assets penalty against the applicant because there was clear and convincing evidence provided to support that her payments to her children were for reasons other than to qualify for assistance.

DISCUSSION

The Department was incorrect to impose a penalty on the Appellant's LTC Medicaid based on the payments that she made to her children for the financial assistance that they provided to her for her needs and for home maintenance and repairs. There was clear and convincing evidence that the intent of the payments to her children was to pay them back for the financial support that they gave her. At the time of the payments, the Appellant lived at home independently. She was in good health until she suffered a stroke in [REDACTED] 2012. Neither the Appellant nor her representative anticipated that she would require nursing home care when the Appellant made the payments to her children. There were receipts and statements provided by her children in support of her claim that the payments were made to them for reasons other than to qualify for assistance. Additionally, the Appellant retained sufficient funds to meet her foreseeable needs in the community at the time. Therefore, the Department's imposition of the transfer of asset penalty is not correct and it must remove the Appellant's penalty period.

DECISION

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

ORDER

1. The Department shall remove the penalty period from the Appellant's LTC Medicaid benefit so that eligibility begins [REDACTED] 2013.
2. Compliance must be provided to the undersigned no later than 30 days from the date of this hearing decision.

Hernold C. Linton

Hernold C. Linton
Hearing Officer

Pc: **Poonam Sharma**, Social Service Operations Manager,
DSS, R.O. #30, Bridgeport

[REDACTED]

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, 55 Farmington Avenue, Hartford, CT 06105-3725.

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, 55 Farmington Avenue, Hartford, CT 06105. 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.