

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 #643890

CLIENT ID # ██████████

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2014, 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 ██████████ 2014 through ██████████, 2014 for the transfer of assets valued at \$17,988.61 to qualify for Medicaid.

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.

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/Daughter
████████████████████ Witness for the Appellant
Melinda Soisson, Department's Representative
Shannon Beadle, Department's Representative
Janice Kopchick, Department's Representative (By Telephone)
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 \$17,988.61 in assets.

FINDINGS OF FACT

1. On [REDACTED] 2005, the Appellant transferred her ownership interest in the real property located at [REDACTED] to her two children, but retained life use interest in the said property. (Hearing Summary; Appellant's Exhibit A: Memorandum)
2. In 2010, the Appellant was admitted to an assisted living facility as a self-paid resident. (Appellant's Exhibit A)
3. On [REDACTED] 2011, the Appellant's children sold the real property at issue for \$256,000.00, and paid the Appellant \$17,243.42 for her life use interest in the said property. (Hearing Summary; Appellant's Exhibit A)
4. On [REDACTED] 2011, the Appellant had \$35,538.42 in assets to meet her foreseeable needs. (Dept.'s Exhibit #15: Bank Statements)
5. At the time of the sale of her life use interest, the Appellant had a number of annuities that totaled approximately \$245,000.00. (Appellant's Exhibit G: [REDACTED]/14 Letter from Representative)
6. The Appellant had monthly income of \$2,039.85 to cover her basic living expenses in 2011. (Dept.'s Exhibit #15)
7. On [REDACTED] 2012, the Appellant was admitted to Hancock Hall for LTC services. (Hearing Summary; Appellant's Exhibit A)
8. For the period 2010 through [REDACTED] 2012, the Appellant paid for her room and board in assisted living from her own funds. (Appellant's Exhibit A)
9. For the period [REDACTED] 2012 through [REDACTED], 2014, the Appellant paid the private rate her LTC from her own funds. (Appellant's Exhibit A)
10. The Appellant did not anticipate her nursing home placement and that she would be applying for Medicaid payment of LTC. (Appellant's Exhibit A)
11. The Appellant paid privately for her LTC until her funds became depleted. (Appellant's Exhibit A)
12. On [REDACTED], 2014, the Department received the Appellant's application for LTC Medicaid assistance. (Hearing Summary)
13. On [REDACTED] 2014, the Department determined that the Appellant's life use interest in the real property at issue was valued at \$35,232.03. (Hearing Summary)

14. On [REDACTED] 2014, the Department sent the Appellant's representative a preliminary transfer of assets notice stating its initial decision that the Appellant transferred \$17,988.61 to qualify for assistance because she did not receive fair market value for her life use interest in the real property sold on [REDACTED] 2011. (See Facts # 1 to 7; Hearing Summary; Dept.'s Exhibit 1: Transfer of Assets-Preliminary Decision Notice)
15. On [REDACTED] 2014, the Appellant's representative submitted a rebuttal disputing that the Appellant had transferred assets in order to qualify for assistance, and stating that proceeds received by the Appellant for her life use interest were based on the Internal Revenue Services' ("IRS") tables for calculating the value of a life estate. (Hearing Summary; Appellant's Exhibit E: [REDACTED]/10 Letter from [REDACTED])
16. [REDACTED] 2014, 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 rebuttal claim. (See Facts # 1 to 9; Dept.'s Exhibit #12: [REDACTED]/14 Transfer of Assets, Notice of Response to Rebuttal/Hardship Claim)
17. The life use tables found in the approved State Medicaid Plan is used to calculate the value of the Appellant's life use interest in the real property sold on [REDACTED] 2011. (Hearing Summary; Dept.'s Exhibit #6: Remarks Screens)
18. 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] 2014 through [REDACTED] 2014 for a transfer of asset penalty. (Hearing Summary; Dept.'s Exhibit #13: 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 4030.35(A)(1) provides that life use is an asset to the extent that it can be sold by the life tenant.
4. UPM Section 4030.35(A)(2) provides that life use can be an excluded, inaccessible, or counted asset depending on the situation, as follows:
 - a. life use is an excluded asset for as long as the life tenant is residing in the home. The exclusion continues if the life tenant is temporarily absent from the home but intends to return.
 - b. life use is an inaccessible asset if the life tenant leaves the home and

is unable to find someone willing or able to purchase the life use.

- c. proceeds from the sale of life use are a counted asset as of the month the life tenant sells the life use.
5. UPM Section 4030.35(B) provides that the Department computes the value of life use by taking into account the following factors:
 1. life tenant's status as sole or joint owner of the home; and
 2. life tenant's age and sex; and
 3. life tenant's equity in the home; and
 4. life expectancy of the life tenant.
 6. UPM Section 4030.35(C) provides that If life use is an inaccessible asset, as described above and the life tenant is collecting rent derived from the life use, the rent is considered income (cross reference: 5050, Treatment of Specific Types).
 7. The Department correctly determined the fair market value of the Appellant's life use interest as \$35,232.03.
 8. The Department correctly determined that the Appellant did not receive fair market value for the sale of her life use interest in the real property at issue.
 9. 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.
 10. 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.
 11. 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.
 12. Based on the Appellant's monthly needs at the time of the transfer, the Appellant retained sufficient income and assets to meet her foreseeable needs.
 13. 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).

14. It has not been established that the Appellant intended to sell her life use interest for less than fair market value in order to qualify for assistance.
15. 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.
16. 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.
17. Based on the time of the sale and the funds received from the sale were used to help meet her foreseeable needs, the Appellant provided clear and convincing evidence that she sold her life use interest for \$17,243.61 for reasons other than to qualify for assistance.
18. The Department incorrectly imposed a transfer of assets penalty against the Appellant because there was clear and convincing evidence provided to support that she did not intend to sell her life use interest for less than fair market value in order to qualify for assistance.

DISCUSSION

The Department was incorrect to impose a penalty on the Appellant's LTC Medicaid benefits based on the sale of her life use interest for less than fair market value. There was clear and convincing evidence that at the time of the sale, the Appellant thought that she was receiving fair market value for the life use interest. At the time of the sale, the Appellant resided in an assisted living community, and she paid for her room and board. She was in relatively good health until she required LTC in █████ 2012. Neither the Appellant nor her representative anticipated that she would require nursing home care when the Appellant sold her life use interest. The Appellant's representative thought that the using of the IRS tables to determine the value of the Appellant's life use interest would be acceptable for Medicaid eligibility purposes. There were memorandum and bank statements provided by the Appellant's representative in support of her claim that the sale of her life use interest for less than fair market value was for reasons other than to qualify for assistance. Additionally, the Appellant retained sufficient income and assets to meet her foreseeable needs 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 coverage so that eligibility can begin [REDACTED] 2014.
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: **Carol Sue Shannon**, Social Service Operations Manager,
DSS, R.O. #31, Danbury

[REDACTED]
[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.