

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

██████████ 2015
SIGNATURE CONFIRMATION

CLIENT ID #: ██████████
Hearing ID# 615837

NOTICE OF DECISION

PARTY

██████████
For ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Transfer of Assets Final Decision Notice indicating that it would grant ██████████ (the "applicant") Long Term Care Medicaid ("LTC") benefits effective ██████████ 2013, with a transfer of assets penalty effective ██████████ 2013 through ██████████ 2013.

On ██████████ 2014, ██████████, counsel for the Appellant, requested an administrative hearing to contest the Department's decision regarding the applicant's eligibility for Long Term Care Medicaid benefits.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████ 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.

The following individuals were present at the hearing:

██████████ POA for Appellant
██████████, Witness for the Appellant
██████████, Witness for the Appellant
██████████, Counsel for the Appellant
Noah Cass, Department's Representative
Liza Perez, Department's Representative
Alyssa Planas, Department's Representative
Shelley Starr, Hearing Officer

The Appellant, ██████████ was not present at the hearing.

The hearing record remained open for the submission of additional evidence. On ██████████ 2014, the record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department's decision to impose a Transfer of Assets ("TOA") penalty on the applicant's Medicaid benefits beginning ██████████ 2013 and ending ██████████ 2013 is correct.

FINDINGS OF FACT

1. On ██████████ 1990, ██████████ ██████████ ("the applicant") was granted life use of property located at ██████████, (hereafter "the property") by the owner ██████████. (Ex. P: Quit Claim deed dated ██████████,1990)
2. On ██████████, 1992, ██████████ and ██████████ quit claimed one half interest of the property to ██████████, ██████████, ██████████ and ██████████. (Ex. Q: Quit Claim deed dated ██████████ 1992)
3. On ██████████ 1993, ██████████ and ██████████ quit claimed the remaining one half interest in the property to ██████████, ██████████, ██████████ and ██████████ (Ex. R: Quit Claim Deed dated ██████████ 1993)
4. On ██████████, 2011, the applicant appointed ██████████ and ██████████ ██████████ to act severally and not jointly as Power Of Attorney. Ex.5: POA document, signed ██████████/11)
5. The applicant resided in the property until ██████████ 2012, when he was unable to return home and remains in a long term care facility as of the date of the administrative hearing. (Ex. BB: Ascend document and W-10 dated ██████████/12)
6. On ██████████ 2013, ██████████ ██████████, ██████████ ██████████ (AKA ██████████), and ██████████ by his attorney in fact ██████████, conveyed their interests in the property to ██████████ for the sum of \$126,000.00. (Ex. 5: Warranty Deed dated ██████████/13)

7. On [REDACTED] 2013, the applicant was 86 years old (DOB [REDACTED]/[REDACTED]/[REDACTED] (Ex: BB Ascend document)
8. The applicant did not receive any proceeds from the sale of the property. (Hearing Record)
9. On [REDACTED] [REDACTED], 2013 the applicant applied for Medicaid. (Department's Testimony)
10. On [REDACTED], 2014, the Department issued a W-495A, Preliminary Decision Notice Transfer of Assets indicating that a total of \$41,797.08 was transferred by the Appellant as the uncompensated amount of life use, as a result of the [REDACTED] 2013 property transaction. (Ex. I: W-495 A Transfer of Assets Preliminary Decision Notice dated [REDACTED]/14)
11. On [REDACTED], 2014 the Appellant rebutted the W-495A, specifically the calculation of life use. (Ex. 1: Attorney Rubinow's letter [REDACTED]/14)
12. On [REDACTED], 2014 the Department determined that the fair market value for the property was valued at \$219,570.00 and the value of the applicant's life use based on the value and his age at the time of the sale of the property was \$32,899.27. (Ex. O: Fair Hearing Memorandum dated [REDACTED]/14)
13. On [REDACTED], 2014 the Department determined that the fair market value based on an appraiser's report for the property was \$155,000.00 and the value of the appellant's life use was \$23,244.43.(Ex .O: Fair Hearing Memorandum dated [REDACTED]/14)
14. On [REDACTED] 2014 the Department issued a W-495C, Transfer of Assets Final Decision Notice indicating that the Appellant transferred \$23,244.43 on [REDACTED] [REDACTED] 2013 and would not be eligible for Medicaid for long term care for the period beginning [REDACTED] 2013 through [REDACTED] 2013. (Ex. M : Transfer of Assets Final Decision Notice and Ex. N: Case Narrative)

CONCLUSIONS OF LAW

1. 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.
2. 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.

3. Section 17b-261 of the Connecticut General Statutes provides the Department is the sole agency to determine eligibility for assistance and services under the programs it operates and administers.
4. Uniform Policy Manual (“UPM”) § 1500.01 provides the following definition: an **applicant** is the individual or individuals for whom assistance is requested.
5. UPM § 4030.35 provides Life Use as an Asset

A. Status of Life Use as an Asset

1. Life use is an asset to the extent that it can be sold by the life tenant.
2. 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.

B. Value of Life Use

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.

The Applicant's life use became accessible on [REDACTED], 2013, when the property was sold by the Joint Tenant's as named on the Warranty Deed.

6. UPM § P 4030.30 provides the procedure for Computing a Life Use Estate

1. Obtain the appraised value of property (current market value).
2. Deduct encumbrances from the appraised value of property.

3. Multiply the life tenant's percentage interest (e.g., 1/3,) by the figure arrived at in step 2.
4. Multiply 5% of the figure arrived at in step 3.
5. See "U.S. Life Table for Total Population" chart below. Multiply the result of step 4 by the figure in the second column (\$1.00 annuity value column) opposite the figure representing the present age of the life tenant in the chart. This final computation will result in the present value of the life tenant's interest in the property in question.

The Department was correct to use the appraisal amount of \$155,000.00.

The Department was correct to deduct a total of \$0 encumbrances from the costs of selling the home.

The Department was correct to use the life tenant's percentage interest of 100% based on the original 1990 deed that granted 100% life use of the property.

The Department was correct to determine the applicant was an 86 year old male when he sold his life use.

The Department correctly used the "U.S. Life Table for Total Population" chart in determining the life use value.

The Department's life use amount of \$23,244.43 is incorrect.

The Appellant's life use amount is \$23,224.43 as follows:

\$155,000.00	appraised Value of Property (Appellant's 100% interest)
X .05	annual Rate of Return 5%
<hr/>	
\$7,750.00	
X 2.9967	Value of life use at age 86- male
<hr/>	
\$23,224.43	

7. Section 17b-261a (a) of the Connecticut General Statutes 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.

UPM § 3029.03 provides 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 or annuity was established, on or after February 8, 2006.

UPM § 3001.01 defines a "transfer of an asset" as the conveyance of interest in property, the disposal of an asset in some way or the failure to exercise one's

right to property.

UPM § 3029.05(A) 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.

UPM § 3029.05(B)(1) provides the policy contained in this chapter pertains to institutionalized individuals and to their spouses.

UPM§ 3029.05(B)(2) provides that 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).

UPM §3029.05(C) provides that 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.

UPM § 3029.05(D) provides that 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.

UPM § 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.

The applicant did not provide clear and convincing evidence that they tried to dispose of the life use for fair market value.

The applicant did not receive compensation at the time of the sale of the property for his life use.

8. UPM § 3029.05(E) provides that the penalty period begins as of the later of the following dates:

1. 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
2. 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(F)(1) provides that 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.

UPM § 3029.05(F)(2) provides that 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.

- a. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.
- b. For recipients, the average monthly cost for LTCF services is based on the figure as of:
 - (1) the month of institutionalization; or
 - (2) 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...

UPM §3029.05(F)(4) provides that once the Department imposes a penalty period, the penalty runs without interruption, regardless of any changes to the individual's institutional status.

UPM §3029.05(G)(1) provides that during the penalty period, the following Medicaid services are not covered:

- a. LTCF services; and
- b. services provided by a medical institution which are equivalent to those provided in a long-term care facility;and
- c. home and community-based services under a Medicaid waiver.

UPM § 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.

The applicant's penalty period begins [REDACTED] 2013 and ends [REDACTED] 2013, (\$23,224.43 divided by \$11,581.00 average cost of care, equals 2.005 months)

DISCUSSION

After reviewing the evidence and testimony, I uphold the Department's action to impose a transfer of assets penalty.

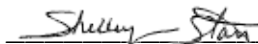
The Applicant did not receive the life use compensation he was entitled to receive when the property sold on [REDACTED], 2013. Regulations provide that proceeds from the sale of life use are a counted asset as of the month the life tenant sells the life use. I found no language on prior deeds relinquishing the Appellant's 100 percent life use he obtained on [REDACTED] 1990 until the [REDACTED] 2013 selling of the property. I found no evidence supporting the Attorney's argument that the life estate was not available or accessible to the Applicant and that he had no power to obtain his entitled life use. It became accessible when the property sold.

Testimony was clear that the [REDACTED] family was a close family that maintained the [REDACTED] Homestead for many generations. The intent of the original grantor was to preserve a home for the Applicant's use and he remained in the home until [REDACTED] 2012, when he required skilled care due to his failing health. Regulations provide that life use is excluded for as long as the life tenant resides in the home. When the Appellant could not return home and sold his life use, he was entitled to the value of his life estate at the time of the property sale.

It should be noted the Department made a \$20.00 mathematical error and did not correctly calculate the life use penalty calculation when they calculated \$23,244.43. The correct calculation is \$23,224.43.

DECISION

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



Shelley Starr
Hearing Officer

cc: Cheryl Parsons, Operations Manager, DSS Regional Office # 40 Norwich

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, 55 Farmington Avenue, Hartford, CT 06105-9902.

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 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.