

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

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

REQUEST #640443

CLIENT ID # ██████████

NOTICE OF DECISION

PARTY

██████████
C/O ██████████
██████████
██████████

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 ██████████ 2015 for the transfer of assets valued at \$161,642.24 to qualify for Medicaid.

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

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice of Administrative Hearing scheduling a hearing for ██████████ 2014 @11:00 AM to address the Department's imposition of a penalty period on the Appellant's LTC Medicaid benefits. OLCRAH granted 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 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
Attorney ██████████, Counsel for the Appellant
Victor Robles, 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 \$161,642.24 in assets.

FINDINGS OF FACT

1. On ██████████ 2012, the Appellant signed two quit claim deeds transferring properties located at ██████████ and ██████████ to her son for no consideration, while retaining life use of ██████████, valued at \$27,176.75 at the time. (Hearing Summary; Dept.'s Exhibit #10: Quit Claim Deed)
2. The Appellant continued to receive rental income for ██████████ through ██████████ 2014. (Hearing Summary)
3. On ██████████ 2013, the Appellant applied for Medicaid benefits. (Hearing Summary)
4. At the time of the ██████████ 2103 application, it was determined that the Appellant had excess assets and the Appellant withdrew the application. (Hearing Summary)
5. In 2012, the fair market value for the property located ██████████ was valued at \$126,333.00, less the Appellant's life use interest valued at \$27,176.75. (See Facts # 1 to 4; Hearing Summary)
6. On ██████████ 2014, the Appellant received \$35,652.39 from the net proceeds of the sale of the property located at ██████████. (Hearing Summary)
7. In 2012, the fair market value for the property located ██████████ was valued at \$142,975.00. (See Facts # 1 to 6; Hearing Summary)
8. On ██████████ 2014, the Appellant received \$46,494.72 from the net proceeds of the sale of the property located at ██████████. (See Facts # 1 to 7; Hearing Summary)
9. The Appellant received a total of \$15,150.00 in monthly rental income through ██████████ 2014 from the sale of the property located at ██████████. (See Facts # 1 to 8; Hearing Summary)
10. On ██████████ 2014, the Department received the Appellant's reapplication for Medicaid benefits. (Hearing Summary)

11. The Appellant reported that she quit claimed her ownership of two real properties to her son for no consideration for providing her with care over the years. (See Facts # 1 to 10; Hearing Summary)
12. The Appellant did not live with her son during the period that he provided her with care. (Hearing Summary)
13. The Appellant did not have a legally enforceable agreement with her son regarding compensation for the care that he provided to her. (Hearing Summary)
14. On [REDACTED] 2014, the Department sent the Appellant's Representative a W-495A, Transfer of Assets Preliminary Decision Notice indicating that it believed that the Appellant transferred real properties located at [REDACTED] and [REDACTED], in order to qualify for assistance. (See Facts #1 to 13; Hearing Summary; Dept.'s Exhibit #16: [REDACTED]/14 W-495A-Transfer of Assets-Preliminary Decision Notice)
15. On [REDACTED] 2014, the Department sent the Appellant's Representative a revised W-495A, Transfer of Assets Preliminary Decision Notice indicating that it believed that the Appellant transferred real properties located at [REDACTED] and [REDACTED], valued at \$176,795.24 for less than the fair market value in order to qualify for assistance. (See Facts #1 to 14; Hearing Summary; Dept.'s Exhibit #16: [REDACTED]/14 W-495A-Transfer of Assets-Preliminary Decision Notice)
16. On [REDACTED] 2014, the Department sent the Appellant's Representative a revised W-495A, Transfer of Assets Preliminary Decision Notice indicating that it believed that the Appellant transferred real properties located at [REDACTED] and [REDACTED], valued at \$161,642.24 for less than the fair market value in order to qualify for assistance. (Hearing Summary; Dept.'s Exhibit #17: [REDACTED]/14 W-495C-Transfer of Assets-Final Decision Notice)
17. The Department determined that the Appellant was not eligible for Medicaid payment of LTC services until [REDACTED] 2015, due to the imposition of a transfer of asset penalty for Medicaid payment of LTC services from [REDACTED] 2014 through [REDACTED] 2015. (Hearing Summary; Dept.'s Exhibit #17)
18. Effective [REDACTED] 2014, the Appellant became otherwise eligible for Medicaid payment of LTC services, based on the date of her application and her countable assets at the time. (Hearing Summary)
19. The combined fair market value of the two properties transferred by the Appellant is \$269,308.00 (\$126,333.00 for [REDACTED]; plus \$142,975.00, for [REDACTED]), based on a comparative market analysis of similar properties recently sold in the area, and the assistance of a certified appraiser. (See Facts # 1 to 18; Hearing Summary)

20. The Department's combined assigned value of the two properties transferred by the Appellant is \$269,308.00, based on a comparative market analysis of similar properties recently sold in the area, and the assistance of a certified appraiser. (Hearing Summary; Appellant's Exhibit A: [REDACTED]/14 Rebuttal on FMV)
21. The Appellant received \$107,662.76 (\$18,841.29, net proceeds less life use for [REDACTED]; plus \$27,176.75, value of life use during 2012; \$46,494.72 net proceeds for [REDACTED], and \$15,150.00 in rental income) for the two properties in question. (See Facts # 1 to 20; Hearing Summary)
22. Based on the combined fair market value of \$269,308.00, the Appellant did not receive fair market value for the two properties that she transferred to her son on [REDACTED] 2012. (See Facts # 1 to 21)
23. The uncompensated value of the assets transferred by the Appellant is \$161,645.24. (See Facts # 1 to 22, Hearing Summary)

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. 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. UPM § 3029.10(G)
11. The Department correctly determined that the Appellant did not receive fair market value for the two properties that she transferred to her son on [REDACTED] 2012, for no consideration.
12. Compensation in exchange for a transferred asset is counted in determining whether fair market value was received. When an asset is transferred, compensation is counted when it is received at the time of the transfer or any time thereafter. UPM § 3028.30(A).
13. The Department correctly determined that the uncompensated value of the assets transferred by the Appellant as \$161,645.24 when she transferred properties her son on [REDACTED] 2012, for no consideration.
14. 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. UPM § 3029.15(B)

15. The Department considers a transfer to be made for purposes other than to qualify when: 1. the institutionalized individual would have been eligible if the transferor had retained the asset; and 2. the transferred asset was not the institutionalized individual's or the spouse's home; and 3. the transferred asset was not the proceeds of a home equity loan, reverse mortgage or similar instrument that reduces the institutionalized individual's or the spouse's equity in his or her home. [UPM § 3029.15(D)]
16. The Department correctly imposed a transfer of asset penalty against the Appellant's Medicaid eligibility due to the improper transfer of \$161,645.24 to her son for less than fair market value.
17. 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, 42United States Code ("U.S.C.") § 1396p(c)(1)(D)(ii).
18. 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)
19. Because the Appellant became eligible for Medicaid payment of LTC services effective ██████████ 2014, the Department's determination of ██████████ 2014 as the start date of the period of ineligibility for Medicaid payment of LTC services for the Appellant is correct.
20. The Department's imposition of a 13-months and twenty-eight days penalty period of ineligibility for Medicaid payment of LTC services for the Appellant is correct. UPM § 3029.05(F)
21. The Department's determination of ██████████ 2015 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 testified that the properties in question were in need of repairs. However, the representative did not provide any receipts for repairs completed,

so that the cost could be taken into consideration against the fair market value assigned by the Department. Additionally, the Appellant's representatives failed to provide clear and convincing evidence to establish that the Appellant received fair market value for the properties that she transferred her son on [REDACTED] 2012 for no consideration, which he later sold.

The Department's use of comparable market analysis of recent sales in the area and the assistance of a certified appraiser to determine the fair market value of the properties in question is correct. The Appellant's representatives failed to provide credible evidence to establish that the fair market value for the properties is less than the amount determined by the Department. Based on the lack of credible evidence to rebut the Department's assigned value, the undersigned find the Department's combined assigned value (\$269,308.00) for the properties in question to be reasonable and determined in accordance with applicable policy and procedures. Consequently, the Department's calculation of the uncompensated value of the assets in question as well as the length of the penalty period is correct.

The Department was correct in imposing a penalty period. The length of the penalty is correct based on the uncompensated value of the assets in question.

DECISION

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



Hernold C. Linton
Hearing Officer

Pc: **Musa Mohamud**, Social Service Operations Manager,
DSS, R.O. #10, Hartford

Attorney [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.