

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

Client ID # ██████████
Request # 642591

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
██████████

Applicant: ██████████

PROCEDURAL BACKGROUND

On ██████████, 2014, the Department of Social Services (the "Department") sent ██████████ (the "Applicant") a Transfer of Assets Final Decision Notice that he transferred \$76,000.00 to become eligible for Medicaid and the Department was imposing a penalty period of ineligibility for Medicaid payment of long term care services effective ██████████ 2014 through ██████████, 2015.

On ██████████, 2014, the Applicant requested an administrative hearing to contest the Department's penalty determination.

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

On ██████████, 2014, OLCRAH issued a Notice scheduling the administrative hearing for ██████████, 2014. OLCRAH rescheduled the hearing at the Appellant's request.

On [REDACTED] 2015, OLCRAH issued a Notice scheduling the administrative hearing for [REDACTED] 2015. OLCRAH rescheduled the hearing at the Appellant's request.

On [REDACTED] 2015, OLCRAH issued a Notice scheduling the administrative hearing for [REDACTED] 2015. OLCRAH rescheduled the hearing at the Appellant's request.

On [REDACTED] 2015, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The following individuals were present at the hearing:

[REDACTED], Administrator of the Estate
[REDACTED], Applicant's Case Manager
Laynette Serrano, Department's Representative
Carla Hardy, Hearing Officer

The record remained open until [REDACTED] 2015 for additional information from the Department.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly imposed a Transfer of Asset ("TOA") penalty on the applicant's Medicaid benefits.

FINDINGS OF FACT

1. On [REDACTED] 2009, the applicant was admitted to [REDACTED] Hospital, [REDACTED] Campus ("[REDACTED]"). He was homeless, disheveled, and had poor hygiene. He was disoriented to time and exhibited altered thought processes. He appeared to have persecution delusions, He did not appear to understand his illness or feel that treatment was necessary. He seemed unconcerned with his present condition (Appellant's Exhibit A1: Partial Patient Cumulative Report, [REDACTED] for the [REDACTED]/09 hospital admission).
2. On [REDACTED], 2009, the applicant was admitted to [REDACTED] C. He arrived by ambulance. He was unkempt, wearing soiled clothing and smelled of urine and feces. Paramedics reported that he lived in an unheated trailer without heat, water or electricity (Appellant's Exhibit B: Partial Patient Cumulative Report, [REDACTED] for the [REDACTED]/09 hospital admission).
3. On [REDACTED], 2009, a registered nurse from [REDACTED] documented that the applicant was confused/forgetful at all times (Exhibit B).
4. The applicant has a history of diabetes mellitus. He did not have medications because he was very suspicious and did not trust society (Exhibit B).

5. The applicant was discharged from his [REDACTED] 2009 admission. The physician found no indication for admission to the psychiatry floor. The psychiatrist did not find that the applicant was overtly psychotic or paranoid. There were no grounds for commitment against his will. No psychiatric medications were prescribed at this time (Exhibit B).
6. On [REDACTED], 2009, the applicant was admitted to [REDACTED] (Appellant's Exhibit C: Partial [REDACTED] Patient Cumulative Report for the [REDACTED]/09 hospital admission).
7. On [REDACTED] 2009, the applicant was documented by a [REDACTED] registered nurse. The applicant was confused/forgetful at all times (Exhibit C).
8. On [REDACTED] 2009, the applicant was documented by [REDACTED] who notated that the applicant was confused/forgetful at all times (Exhibit C).
9. On [REDACTED] 2009, the applicant was documented by [REDACTED] who notated that the applicant's judgement is impaired. He has lack of safety awareness and intermittent confusion (Exhibit C).
10. On [REDACTED] 2009, the applicant was admitted to [REDACTED]. He was documented as being slightly agitated and confused (Appellant's Exhibit D: Partial [REDACTED] C Patient Cumulative Report for the [REDACTED]/09 hospital admission).
11. On [REDACTED] 2010, the [REDACTED] Progress and Procedures notes document that the applicant is refusing to go to another rehab facility and wants to go back to [REDACTED] house (Exhibit E: Partial Patient Cumulative Report for the [REDACTED]/10 hospital admission).
12. On [REDACTED], 2010, the applicant was admitted to [REDACTED] C. His past medical history includes hypertension, diabetes mellitus and [REDACTED]. The hospital documented that the applicant is not on any medications. The hospital social history documents that the applicant is currently living in [REDACTED]. There is no alcohol or drug use (Appellant's Exhibit E: Partial Cumulative Patient Report for the [REDACTED]/10 hospital admission).
13. On [REDACTED] 2010, the applicant went to the [REDACTED] emergency room. Prescriptions were given to the hospital social worker who was going to take the applicant to the pharmacy to fill the prescriptions. The applicant was discharged home, [REDACTED]. He refuses to live in a rehabilitation facility. (Appellant's Exhibit F: Partial Patient Cumulative Report for the [REDACTED]/10 emergency room visit).
14. On [REDACTED] 2010, the applicant was admitted to [REDACTED]. The applicant is disoriented to time and appeared unkempt. He had dried urine and feces running down his leg and smelled of old urine and feces. The hospital staff determined that cognitive impairment was present which was noted to be a new problem. The applicant was non-compliant with appointments, medications and home care. The applicant was documented by a registered nurse as intermittently confused, paranoid, and having a lack of safety

awareness (Appellant's Exhibit G: Partial Patient Cumulative Report for [REDACTED]/10 hospital admission).

15. On [REDACTED] 2010, the applicant was documented by hospital staff to have impaired judgement, lack of safety awareness, and intermittent confusion (Exhibit G).
16. The applicant has a history of depression and schizophrenia (Exhibit G).
17. On [REDACTED] 2010, the applicant was documented by a licensed practical nurse, as having impaired judgement, lack of safety awareness, and intermittent confusion. The physical therapist noted that the psychiatry department cleared the patient as capable of making important decisions although it was difficult to engage the applicant in a matter of fact discussion regarding informed consent issues (Exhibit G).
18. On [REDACTED] 2010, the discharge summary noted that the applicant has a history of diabetes, peripheral vascular disease, hypertension, and [REDACTED] personality disorder. The applicant is [REDACTED] by his own choice with non-adherence to previous treatment. There is also a history of chronic kidney disease, stage 4 and right first distal phalanx osteomyelitis resection as well as left first metatarsophalangeal joint. The applicant lives in [REDACTED] and does not want to live in any other place. There is no history of alcohol or drugs (Exhibit G).
19. Sometime in [REDACTED] 2010, the applicant applied for Long Term Care Services with the Department. That application was reviewed by the Department on [REDACTED], 2010 (Exhibit 13a: Special Eligibility Determination Document signed on [REDACTED]/10 by the applicant).
20. On [REDACTED], 2010, the applicant was admitted to [REDACTED] (Appellant's Exhibit H: Partial Patient Cumulative Report for the [REDACTED]/10 hospital admission).
21. On [REDACTED] 2010, the applicant was documented by a registered nurse as being confused/forgetful at all times (Exhibit H).
22. On [REDACTED] 2010, the applicant was documented by a registered nurse as having impaired judgement, lack of safety awareness and intermittent confusion (Exhibit H).
23. On [REDACTED], 2010, the applicant was documented by a registered nurse as being confused/forgetful at all times (Exhibit H).
24. On [REDACTED] 2010, the applicant filed a case incident report with the [REDACTED] Police Department. He reported he withdrew \$65,000.00 from his bank account and hid it in the engine compartment of his [REDACTED] while it was parked at [REDACTED] House. He noticed that the money was missing sometime after [REDACTED], 2010. He did not report the matter to police earlier because he felt that no one could do anything about the theft (Exhibit 11: [REDACTED] Police Department Case Incident Report).

25. A caseworker escorted the applicant to the police department (Exhibit 11).
26. The caseworker told the [REDACTED] police officer who was taking the report that she was trying to get the applicant into a nursing home and would require a report about the missing money (Exhibit 11).
27. On [REDACTED] 2010, the applicant was admitted to [REDACTED]. He was noted as having mental health issues, [REDACTED] (Appellant's Exhibit J: Partial Patent Cumulative Report for the [REDACTED]/10 hospital admission).
28. On [REDACTED], 2011, the Department initiated a real property investment referral for the Department's Resources Unit. The applicant had withdrawn \$76,000.00 from his Bank of America account between the dates of [REDACTED], 2010 and [REDACTED] 2010 (Exhibit 10: Resources Referral, [REDACTED]/11, Exhibit 12: Bank of America statement, [REDACTED]/10 [REDACTED]/10).
29. The [REDACTED] 2010 application for LTSS was denied (Hearing record).
30. On [REDACTED] 2014, [REDACTED] was appointed Conservator of the Estate and Person of [REDACTED] the applicant. (Appellant's Exhibit R: Response to the W-495A and Decree/Appointment of Conservator document).
31. Clear and convincing evidence was presented to the court showing that the applicant has mental, emotional or physical condition that results in the applicant being unable to receive and evaluate information or make or communicate decisions, perform the functions inherent in managing his affairs and is unable to meet essential requirements for personal needs (Exhibit R).
32. Clear and convincing evidence was presented to the court showing that the applicant's property management and personal needs are not being met adequately by an agency or individual, as follows; Dementia, Diabetes, Congestive heart failure, ear and face cancer, chronic kidney disease and untreated inguinal hernia (Exhibit R).
33. On [REDACTED] 2014, the Department received the applicant's second application for Long Term Care Services (Hearing summary).
34. On [REDACTED], 2014, the Department issued a Transfer of Assets Preliminary Decision Notice ("W495A") stating the applicant made a transfer of \$76,000.00 in order to qualify for assistance (Department's Exhibit 1: Transfer of Assets Preliminary Decision Notice).
35. On [REDACTED] 2014, the Appellant's Representative at the time, [REDACTED] responded to the W-495A. Attorney [REDACTED] confirmed that the applicant withdrew \$76,000.00 from his account. He reported that the applicant suffers from delusions and has paranoid ideations which may be the reason that he withdrew the money (Exhibit R).

36. On [REDACTED] 2014, the Department issued a Transfer of Assets Final Decision Notice ("W-495C") stating it had decided to institute a transfer of assets penalty period starting on [REDACTED] 2014 and ending on [REDACTED] 2015 due to the transfer of \$76,000.00 on [REDACTED] 2010. (Department's Exhibit 2: Transfer of Assets Final Decision Notice, [REDACTED] 15).
37. The Department based the Transfer of Asset Penalty based on a resources department referral from the applicant's [REDACTED] 2010 application (Hearing record).
38. On [REDACTED], 2014, the applicant expired (Appellant's Exhibit A: Decree Granting Administration or Probate of Will, [REDACTED]/14).
39. On [REDACTED] 2014, [REDACTED] was granted Administration or Probate of Will of the estate of the applicant (Exhibit A).
40. [REDACTED] is a registered nurse who spent 20 years in inpatient psychiatry ([REDACTED] testimony).
41. [REDACTED] has worked with hundreds of homeless and was the applicant's case manager in 2010 ([REDACTED] testimony).
42. The Appellant was paranoid and was not compliant with his medications. He was not receiving treatment for [REDACTED] because he did not believe that he needed it ([REDACTED] testimony).
43. The applicant was not competent at the time of the [REDACTED] 2010 application ([REDACTED] testimony).
44. [REDACTED] testimony is creditable.

CONCLUSIONS OF LAW

1. 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.
2. 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.
3. Uniform Policy Manual ("UPM") Section 1500.01 provides the following definition:

An applicant is the individual or individuals for whom assistance is requested.

4. UPM § 4005.05 states that every program administered by the Department has a definite asset limit.
5. UPM Section 4005.10 A.2.a defines the asset limit as \$1,600 for a needs group of one.
6. There is no evidence to dispute the Department's determination that the applicant was asset eligible effective [REDACTED], 2014; therefore, the Department has correctly determined the applicant's assets did not exceed \$1,600.00 effective [REDACTED] 2014.
7. UPM Section 3029.03 provides that 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.
8. 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.

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.

E. Start of the Penalty Period

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.

F. Length of the Penalty Period

1. 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.
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.
 - 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...
4. Once the Department imposes a penalty period, the penalty runs without interruption, regardless of any changes to the individual's institutional status.

G. Medicaid Eligibility During the Penalty Period

1. 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.
9. The Department correctly determined that the applicant withdrew \$76,000.00 from

his Bank of America account.

10. UPM § 3029.10 (F) provides that an institutionalized individual, or his or her spouse, may transfer an asset without penalty if the individual proves clear and convincing evidence that he or she intended to dispose of the asset at fair market value.
11. 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).
12. The applicant's withdrawal of \$76,000.00 from his bank account was made for reasons other than to qualify for medical assistance based on his history of dementia and inability to make sound decisions.
13. UPM § 3029.15 provides the policy for undue influence in regards to transfers made for reasons other than qualifying for assistance.

An institutionalized individual or the individual's spouse is considered to have transferred an asset exclusively for a purpose other than qualifying for assistance under circumstances which include, but are not limited to, the following:

A. Undue Influence

1. If the transferor is competent at the time the Department is dealing with the transfer, the individual must provide detailed information about the circumstances to the Department's satisfaction.
 2. If the transferor has become incompetent since the transfer and is incompetent at the time the Department is dealing with the transfer, the transferor's conservator must provide the information.
 3. The Department may pursue a legal action against the transferee if the Department determines that undue influence caused the transfer to occur.
14. Based on the evidence presented, the applicant withdrew \$76,000.00 from his bank account acting under the undue influence of his incompetency.
 15. The Department incorrectly imposed a transfer of asset penalty for the period of [REDACTED] 2014 through [REDACTED] 2015.

DISCUSSION

The evidence presented clearly shows that the applicant received less than fair market

value for his \$76,000.00 withdrawal from his Bank of America account. Based on the applicant's long term history with confusion, [REDACTED] a and dementia, it is clear that the withdrawal was for purposes other than qualifying for LTSS Medicaid benefits. [REDACTED] [REDACTED] notated on several occasions that the applicant did not want to go to a rehabilitation facility and preferred to live in his [REDACTED] or a homeless shelter. The Appellant did not want LTSS Medicaid assistance. [REDACTED] questioned the applicant about the whereabouts of the \$76,000.00 to which the applicant replied that it was stolen. The applicant's conservator searched the appellant's personal property and contacted several local banks in search of the funds, but to no avail.

The Appellant made a statement to the [REDACTED] Police Department acknowledging that he withdrew the funds from his account at the suggestion of a [REDACTED] House caseworker named Tenant in order to qualify for benefits. The applicant hid the money in the engine compartment of his [REDACTED]. He realized the money was missing, sometime in August 2010. The applicant's long standing history with confusion, impaired judgement, and schizophrenia lend credence to the fact that he did not transfer the funds exclusively for a purpose other than for the intention of qualifying for Medicaid benefits.

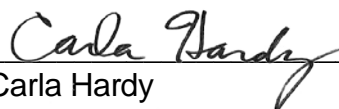
The Department incorrectly imposed a transfer of assets penalty against the Appellant because there is clear and convincing evidence and testimony provided to support the fact that the applicant was mentally impaired at the time of the transfer.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department is ordered to re-open the Appellant's application, remove the TOA penalty imposed from [REDACTED] 2014 through [REDACTED], 2015 and to process the Appellant's application to determine her eligibility for Medicaid.
2. Proof of compliance with this order is due to the undersigned no later than [REDACTED] 2015.



Carla Hardy
Hearing Officer

Pc: Bonnie Shizume, Program Manager, DSS R.O. # 20, New Haven
Laynette Serrano, Eligibility Services Worker

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.

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.