

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 #: 644682

NOTICE OF DECISION

PARTY

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

Applicant: ██████████

PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the “Department”) sent ██████████ (“applicant”) a Transfer of Assets Final Decision Notice indicating that it would grant his Long Term Care Medicaid (“LTC”) benefits effective ██████████ 2014 with a transfer of assets penalty effective ██████████ 2014 through ██████████ 2015.

On ██████████ 2014, ██████████ (the “Appellant”), requested an administrative hearing to contest the Department’s decision regarding the applicant’s eligibility for LTC Medicaid benefits.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2014. OLCRAH rescheduled the hearing at the Appellant’s request.

On ██████████ 2015, 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:

██████████, Appellant and Conservator of Person and Estate
Victor Robles, Department's representative
Karen Brown, Hearing Officer

The record remained open until ██████████ 2015 for additional information from the Appellant.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly imposed a Transfer of Asset Penalty Period on the applicant's Medicaid benefits.

FINDINGS OF FACT

1. On ██████████ 2013, ██████████ ("applicant's brother") established the ██████████ Irrevocable Trust" ("trust") for the applicant's benefit. The applicant has no access to income and/or principal in the trust and cannot direct the trustee to make distributions of income to him. (Exhibit 5B: ██████████ Trust document)
2. The applicant's brother is the settlor and initial trustee of the trust. (Exhibit 5B)
3. The applicant has an extensive history of severe psychiatric diagnoses requiring 24-hour supervision and care and has a past history of multiple suicide attempts. (Appellant's hearing request form; Appellant Testimony)
4. On ██████████ 2013, the applicant quit-claimed into the trust his real property located at ██████████ (Exhibit 5A: quit claim deed)
5. On ██████████ 2014, the ██████████ Connecticut Probate Court appointed Attorney ██████████ as the applicant's Conservator of Person. (Exhibit A1: Probate Certificate)
6. On ██████████ 2014, Parkway Pavilion Health Care admitted the applicant. (Exhibit 3: W-1 LTC Application ██████████-14)
7. On ██████████ 2014, the Department received the applicant's first application for Long Term Care Medicaid, which was signed by the applicant's brother as authorized representative. (Exhibit 1: W-1 LTC Application ██████████-14)
8. On ██████████ 2014, the Department sent the applicant a W-1348, verifications requested form requesting a recent Hampden Bank account statement and any account statements prior to 2010. The requested information was due by ██████████ 2014. (Exhibit 2: W-1348 LTC document)

9. On [REDACTED] 2014, the [REDACTED] Connecticut Probate Court appointed Attorney [REDACTED] as the applicant's Conservator of Estate. (Exhibit A1)
10. On [REDACTED] 2014, the Department denied the application for failure to provide the requested information by the due date. (Hearing Summary)
11. On [REDACTED] 2014, the Department received the applicant's second application for LTC Medicaid. (Exhibit 3)
12. On [REDACTED] 2014, the Department sent the Appellant a W-1348, verifications we need form, requesting updated bank account statements for the applicant and his spouse and verification of how applicant maintained living expenses in the community given that he owns a home and had little to no financial activity. The requested information was due by [REDACTED] 2014. (Exhibit 4: W-1348 form)
13. On [REDACTED] 2014, Department Attorney Dan Butler reviewed the trust document and advised that the trust is a non-self-settled supplemental support trust and that trust assets are not available to the client for Medicaid eligibility. He also advised that the Department should count assets distributed directly to the client as income but it should not count assets distributed for the client's benefit but not directly to him as income. (Exhibit 6: Email from Dan Butler)
14. On [REDACTED] 2014, Attorney Butler advised that the Department should treat the home property quit-claimed by the applicant into the trust as a transfer of assets for less than fair market value. (Exhibit 6)
15. On [REDACTED] 2014, the Resources Unit determined that the fair market value of real property on [REDACTED] was \$117,000 in March 2013. (Exhibit 7: Email from Resources)
16. On [REDACTED] 2014, the Department notified the Appellant that initially it determined that the applicant transferred his home at [REDACTED] on [REDACTED] 2013 in order to qualify for assistance. (Exhibit 8: W-495A, Transfer of Assets Preliminary Decision Notice 6-13-14)
17. On [REDACTED] 2014, the Appellant requested consideration of the applicant's penalty under undue hardship. (Exhibit 9: Department's narrative notes)
18. The applicant was otherwise eligible for Medicaid effective [REDACTED] 2014. (Exhibit 10: W-495A, Transfer of Assets Final Decision Notice [REDACTED]-14)
19. On [REDACTED] 2014, the Appellant sent a certified letter to the applicant's brother informing him that the Department imposed a transfer of assets penalty based on the quit-claim and transfer of the applicant's property into the trust and requesting that he dissolve the trust and either return the property back to the

applicant or liquidate the trust assets so that the applicant may remain in the facility. The applicant's brother signed for the certified letter. (Appellant's Exhibit A1: Letter to the applicant's brother; Appellant's Exhibit A2: signed certified mail card from the US Postal Service)

20. As of the hearing date, the applicant's brother has not responded to the Appellant. (Appellant's testimony)
21. On [REDACTED] 2014, the Department notified the Appellant that the applicant transferred his real property at [REDACTED] in order for him to become eligible for Medicaid and the Department would impose a penalty period from [REDACTED] 2014 through [REDACTED] 2015. (Exhibit 10)
22. On [REDACTED] 2014, the applicant received a 30 day Notice of Intent to Transfer or Discharge effective [REDACTED] 2014 to [REDACTED] [REDACTED] (Appellant Exhibit A3: 30 Day Notice of Intent to Transfer or Discharge, [REDACTED] 14)
23. As of the date of the hearing, the applicant resided at the facility. (Appellant's Testimony)
24. The Appellant's testimony is credible. (Facts #3, 19; Record)

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 Section 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 asset did not exceed \$1600.00 effective [REDACTED] 2014.
7. UPM Section 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.
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.
9. UPM Section 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).
10. UPM Section 3029.05.A provides 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 3029.05 C. This period is called the penalty period, or period of ineligibility.
11. The Department correctly determined that the applicant's home was quit-claimed to his brother for less than fair market value.
12. 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.
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. The applicant's quit-claim of his home property to his brother was made for reasons other than to qualify for medical assistance based on his history of severe mental illness and his inability to make sound decisions.
15. UPM Section 3029.15.A 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:

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.
16. Based on the evidence presented, the applicant quit-claimed his home property acting under the undue influence of his brother.
 17. The Department must not impose a transfer of assets penalty on the applicant's LTC Medicaid eligibility.

DISCUSSION

The evidence presented clearly shows that the applicant's quit-claim of his home was for less than fair market value; however, it is clear that the quit-claim was done for purposes other than qualifying for LTC Medicaid benefits based on the applicant's severe psychiatric history and mental state, ultimately resulting in his being conserved by the Probate Court with a conservator other than his brother who was alleged to be his caretaker. The brother initiated the applicant's first Medicaid application and the Department requested information about the applicant's bank statements and the applicant's brother did not send any information nor did he respond to subsequent requests. Once the Appellant was appointed conservator of person and estate, she filed a new application and complied with the Department's requests for information, even reaching out to the brother to resolve the issue of the trust and the home property, and the brother signed for the letter but did not respond. It is reasonable to conclude that the applicant may have been unduly influenced regarding quit-claiming his home and it

was not done by him to qualify for Medicaid.

DECISION

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

ORDER

1. The Department must grant the applicant's date of LTC Medicaid eligibility effective [REDACTED] 2014, the date he became eligible and not impose a transfer of assets penalty.
2. Compliance, in the form of a written document must be sent to the undersigned no later than [REDACTED] 2015.



Karen Brown
Hearing Officer

Cc: John Hesterberg, Operations Manager, Manchester RO
Javier Rivera, Fair Hearing Liaison, Manchester RO

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.

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.