

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 # 657540

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 that she transferred \$47,155.00 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 original 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, the OLCRAH held an administrative hearing. The following individuals were present at the hearing:

██████████ Appellant's Power of Attorney ("POA") and son
██████████ Appellant's Attorney
Michael Stebe, Department's Representative
Sybil Hardy, Hearing Officer

STATEMENT OF THE ISSUE

The issues are whether the Department correctly imposed a Transfer of Assets ("TOA") penalty based on the Applicant's \$47,155.00 cash transfers.

FINDINGS OF FACT

1. On ██████████ 2014, The Appellant submitted a Long Term Care Services Application to the Department for Home Care Services for Adults ("W01") program. (Exhibit I: Notice of Action, ██████████/14, Exhibit J: Eligibility Services Management ["EMS"] Narrative Screen)
2. The Appellant is 72 years old (DOB ██████████/42) (Exhibit A: Long-term Care/Waiver Application, ██████████/14)
3. The Appellant resides in the community at ██████████, with one of her sons. (Exhibit B: Long-term Care/Waiver Application ["W-1LTC"], ██████████/14)
4. The Appellant receives \$1,004.00 monthly from Social Security and deposited directly into her Rockville Bank checking account. (Exhibit A)
5. On ██████████ 2012, the Appellant received \$97,505.14 as part of a claim settlement. (Exhibit M: Letter from American Legal Services, LLC., ██████████/14)
6. At the time the Appellant received the settlement claim, she was 69 years old and in fair health. (Appellant's POA's testimony)
7. The Appellant no longer has the money received for her settlement. (Exhibit A, Exhibit B, Exhibit N: Monthly Asset Worksheet)
8. The Appellant has several checking and savings account at United Bank (formerly Rockville Bank) that she holds jointly with her children. (Exhibit B, Exhibit C: We Need Verification From You ["W-1348LTC"], ██████████/14, Exhibit D: Verification We Need, ["W-1348LTC"] ██████████/14, Exhibit E: W-1348LTC, ██████████/14, Exhibit F: W-1348LTC, ██████████/14)
9. Effective ██████████ 2014 the Appellant's assets are below the Medicaid asset limit of \$1,600.00. (Hearing Record, Exhibit N)

10. For the period from [REDACTED] 2011 through [REDACTED] 2013 the Appellant had a history of short term admissions into a skilled nursing facility. (Exhibit L: ASCEND Admission/Discharge Statement, [REDACTED]/14)
11. For the period from [REDACTED] 2013 through [REDACTED] 2014, the Appellant resided at Fox Hill Center, Vernon; a skilled nursing facility. (Exhibit A, Exhibit L)
12. On [REDACTED] 2014, the Appellant was discharged from the skilled nursing facility into the community to live with one of her sons. (POA's testimony, Exhibit L)
13. The Appellant was frequently left home alone without any care or support while living with her son. (POA's testimony)
14. On [REDACTED] 2014, the Appellant was hospitalized at St. Francis Hospital because she had a stroke. (POA's testimony, Exhibit 1: Letter from St. Francis Hospital, [REDACTED]/14)
15. The Appellant requires 24 hour medical care and assistance with all activities of daily living ("ADL's") (Exhibit K: Affidavit of [REDACTED] [REDACTED]/14)
16. The following skilled nursing facilities have declined to accept the Appellant due to no long-term payor source: Paradigm Healthcare Center, Crestfield Rehabilitation Center and Fenwood Manor, Fox Hill Nursing and Rehab Center, Touchpoints, Vernon Manor Health Care Center, Westside Care Center. (Exhibit 1: Letter from St. Francis Hospital, [REDACTED]/14)
17. The Appellant remains hospitalized at St. Francis Hospital because there are no safe options for discharge to the community and the Appellant has been denied entrance into several skilled nursing facilities. (Exhibit 1, Exhibit 2: Letter from St. Francis Hospital, [REDACTED]/2015)
18. On [REDACTED] 2014, the Department sent the Appellant a Transfer of Assets Final Decision Notice explaining that she has a transfer of asset penalty because she transferred \$47,155.00 to become eligible for Medicaid. (Exhibit H: Transfer of Assets Final Decision Notice, [REDACTED]/14)
19. On [REDACTED] 2014, the Department sent the Appellant a Notice of Denial for the Home Care Waiver for Adults/Long-term care because a transfer of assets penalty was imposed for the period of [REDACTED] 2014 through [REDACTED] 2015. (Exhibit I)
20. The Appellant children routinely borrowed money or took money from her throughout their lives and did not have the ability to pay the Appellant back because they struggled financially. (Exhibit K)
21. The Appellant owes Fox Hill Center \$1,200.00 for her stay in their nursing facility from [REDACTED] 2013 through [REDACTED]/201. (POA's testimony)

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. UPM § 4005.05 states that every program administered by the Department has a definite asset limit.
4. UPM Section 4005.10.A.2.a defines the asset limit as \$1,600 for a needs group of one.
5. The Department correctly determined that the Appellants assets are below the Medicaid asset limit at the time of application in ██████████ 2014.
6. 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.
7. 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.
8. 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).
 9. 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.
 10. 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.
 11. The Department incorrectly imposed a transfer of asset penalty for the period from [REDACTED] 2014 through [REDACTED] 2015.

DISCUSSION

The Department incorrectly imposed a transfer of assets penalty against the Appellant because there was clear and convincing evidence and testimony provided to support that the bank transfers to her children were made for reasons other than qualifying for assistance.

At the time the Appellant received the settlement of \$97,505.14 she was only 69 years old and not reasonably expected to enter a skilled needs facility for long term care within five years. The Appellant went into a skilled nursing facility a year after she received the money from her settlement.

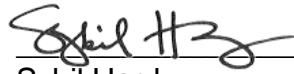
The Appellant had several accounts that she shared with at least one of her children. The children had access to all of the Appellant's bank accounts and clearly all decisions have not been made in her best interests, but not done with the intention of qualifying for Medicaid benefits.

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 continue 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.



Sybil Hardy
Hearing Officer

Pc: John Hesterberg, Operations Manager, DSS R.O. # 11, Manchester

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.