

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 #: 665163

NOTICE OF DECISION

PARTY

██████████
c/o ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Final Decision Notice imposing a transfer of assets penalty for the period from ██████████ 2009 through ██████████ 2010.

On ██████████ 2015, ██████████, Power of Attorney for the Appellant (the “POA”), requested an administrative hearing to contest the Department’s decision to impose a penalty on the Applicant’s Long Term Care Medicaid benefits.

On ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2015.

On ██████████ 2015, the Appellant’s POA requested to reschedule the hearing.

On ██████████ 2015, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2015.

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:

■■■■■■■■■■, POA for the Appellant
Allen Mallory, Eligibility Services Worker, Department's representative
Melinda Soisson, Social Services Investigator, Department's representative
Roberta Gould, Hearing Officer

The hearing record remained open for the submission of additional evidence. On ■■■■■■■■■■
■■■■ 2015, the record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department's decision to impose a Transfer of Assets ("TOA") penalty beginning ■■■■■■■■■■ 2009 and ending on ■■■■■■■■■■ 2010, was correct.

FINDINGS OF FACT

1. On ■■■■■■■■■■ 1991, the Appellant was granted life use of property located at ■■■■■■■■■■ ■■■■■■■■■■ (hereafter "the property") by the owners, ■■■■■■■■■■ ■■■■■■■■■■, and ■■■■■■■■■■. (Ex. 9: Quit Claim deed dated ■■■■■■■■■■)
2. On ■■■■■■■■■■ 2002, the Appellant appointed ■■■■■■■■■■ to act as her Power of Attorney. (Ex. 8: General Durable Power of Attorney)
3. On ■■■■■■■■■■ 2008, the Appellant entered Candlewood Valley Health and Rehabilitation long-term care facility. (Hearing record)
4. The Appellant was granted long-term care Medicaid assistance effective ■■■■■■■■■■ 2009. (Exhibit 12: EMS assistance status screen)
5. On ■■■■■■■■■■ 2009, ■■■■■■■■■■, and ■■■■■■■■■■ ■■■■■■■■■■ by her attorney in fact ■■■■■■■■■■, conveyed their interests in the property to ■■■■■■■■■■ and ■■■■■■■■■■ for the sum of \$335,000.00. (Ex. 4: 1099-S proceeds from real estate transactions)
6. The Appellant did not reside at ■■■■■■■■■■ when it was sold on ■■■■■■■■■■ 2009. (Exhibit 4 and Hearing summary)
7. On ■■■■■■■■■■ 2009, the Appellant was 84 years old. (Ex. 3: Letter from ■■■■■■■■■■, CPA)
8. On ■■■■■■■■■■ 2014, the Department completed a review of the Appellant's Medicaid assistance and made a referral to its Resource Division regarding the use of life-use proceeds from the sale of the property at ■■■■■■■■■■ (Hearing summary)
9. On ■■■■■■■■■■ 2014, the Department determined that the fair market value for the

property based on the appraised value for that property was \$335,000.00 and the value of the Appellant's life use was \$62,934.78. (Ex. 5: Life Use calculation worksheet and Hearing summary)

10. There were no encumbrances on the property located at [REDACTED] [REDACTED] (Hearing record)
11. On [REDACTED] 2014, [REDACTED] 2014, and [REDACTED] 2014, the Department sent the Appellant W-1348 Verification We Need forms requesting documentation of the use of proceeds from her life use of property at [REDACTED] (Exhibit 2: W-1348's and Hearing summary)
12. The Appellant did not receive any proceeds from the sale of the property. (Exhibit 4)
13. On [REDACTED] 2014, [REDACTED], CPA submitted a review of the sale of property located at [REDACTED] and specifically discussed the calculation of the Appellant's life use. (Ex. 3 and Hearing summary)
14. On [REDACTED] 2014, the Department issued a W-495A Transfer of Assets Preliminary Decision Notice indicating that a total of \$62,934.78 was transferred by the Appellant as the uncompensated amount of life use, as a result of the [REDACTED] 2009, property transaction. (Ex. 1: W-495A dated [REDACTED]/2014 and Hearing summary)
15. On [REDACTED] 2015, the Department issued a W-495C Transfer of Assets Final Decision Notice indicating that the Appellant transferred \$62,934.78 on [REDACTED] 2009, and would not be eligible for Medicaid for long-term care for the period from [REDACTED] 2009, through [REDACTED] 2010. (Ex. 1: W-495C dated [REDACTED]/15 and Hearing summary)

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 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") § 4030.35 provides for 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 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.
4. The Appellant's life use became accessible on [REDACTED] 2009, when the property was sold by the joint tenants as named on the Warranty Deed.
5. UPM § 4030.30 provides the Procedure For Computing a Life Use Estate:
1. Obtain the appraised value of the property (current market value).
 2. Deduct encumbrances from the appraised value of the 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.
6. UPM § 0500 provides that an encumbrance is a legal claim against an asset which

a person must pay off in order to convert the asset to cash.

7. The Department was correct to use the appraisal amount of \$335,000.00.
8. The Department was correct to deduct a total of \$0 encumbrances from the cost of selling the home.
9. The Department was correct to use the life tenant's percentage interest of 100% based on the Quit Claim Deed that granted 100% life use of the property.
10. The Department was correct to determine that the Appellant was an 84 year old female when she sold her life use.
11. The Department correctly used the "U.S. Life Table for total Population" chart in determining the life use value.
12. The Department correctly calculated the value of the Appellant's Life Use to be \$62,934.78 ($\$335,000.00 \times 1.00$ percentage of interest of life tenant = $\$335,000.00 \times 0.05 = \$16,750.00 \times 3.7573$ actuarial figure of life use of 84 year old female = \$62,934.78)
13. Section 17b-261a(a) of the Connecticut General Statutes provides that 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.
14. Uniform Policy Manual ("UPM") § 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.
15. UPM § 3029.05(B) provides that the policy contained in the chapter on transfers of assets pertains to institutionalized individuals and to their spouses.
16. UPM § 3029.05(D)(1) 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.
17. 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.

18. The Appellant did not provide clear and convincing evidence that they tried to dispose of the life use for fair market value.
19. The Appellant did not receive compensation at the time of the sale of the property for her life use.
20. UPM § 3029.05(C) provides that the look-back date for transfers of assets is a date that is sixty 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.
21. UPM § 3029.05(F) 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 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.
22. 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 of care to a private patient for LTCF services on 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...
23. 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.

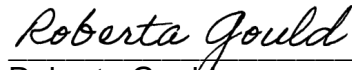
24. The Department correctly imposed a transfer of assets penalty for the period from [REDACTED] 2009 through [REDACTED] 2010.

DISCUSSION

After reviewing the evidence and testimony presented at this hearing, I find that the Department acted correctly to impose a transfer of assets penalty. The Appellant did not receive the life use compensation she was entitled to receive when the property sold on [REDACTED] 2009. 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 or prior deeds relinquishing the Appellant's 100 percent life use she obtained on [REDACTED] 1991, until the selling of the property on [REDACTED] 2009. The Appellant's POA submitted documentation of expenses paid for the maintenance and upkeep of the property, but did not provide any evidence of encumbrances that must be paid off in order to convert the asset to cash. The Department correctly calculated the Appellant's life use of the property to be \$62,934.78 based upon her age and the appraised value of the property.

DECISION

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



Roberta Gould
Hearing Officer

PC: Carol Sue Shannon, Social Services Operations Manager, DSS Danbury

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.