

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

[REDACTED] 2015
SIGNATURE CONFIRMATION

CLIENT ID #: [REDACTED]
HEARING ID #: 666258

NOTICE OF DECISION

PARTY

Attorney [REDACTED]
Re: [REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2015, the Department of Social Services (the "Department") sent Attorney [REDACTED] (the "Appellant") a Notice of Action ("NOA") for his client, [REDACTED] (the "Applicant") imposing a transfer of assets penalty for the period from [REDACTED] 2014 through [REDACTED] 2015.

On [REDACTED] 2015, the Appellant requested an administrative hearing to contest the Department's decision to impose a penalty on the Applicant's Long Term Care Medicaid benefits.

On [REDACTED] 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [REDACTED] 2015.

On [REDACTED] 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:

[REDACTED], Appellant for [REDACTED], the Applicant
Enkelejda Trifoni, Department's representative
Pamela Corbin-Riddick, DSS, Observer
Maureen Foley-Roy, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department's decision to impose a Transfer of Assets ("TOA") penalty beginning [REDACTED] 2014 and ending on [REDACTED] 2015 for a transfer of \$156,591.79 made on [REDACTED] 2014 was correct.

FINDINGS OF FACT

1. In [REDACTED] of 2013, the Applicant was admitted to a skilled nursing facility. (Department representative's testimony)
2. On [REDACTED] 2014, the Applicant, as "Grantor", entered into an irrevocable trust agreement with her nephew and power of attorney, ("POA") [REDACTED] [REDACTED], named as "Trustee". (Exhibit 3: Irrevocable Trust Agreement)
3. The trust did not allow the Applicant access to her funds and in fact, stated that the Trustee should not distribute any part of the principal or income from the trust to discharge of satisfy of the Applicant's legal obligations. The trustee was named sole beneficiary of the trust. (Exhibit 3)
4. On [REDACTED] 2014, the Applicant's POA transferred \$156,591.79 from the Applicant's Wells Fargo account to the irrevocable trust. (Exhibit 2: Wells Fargo statement)
5. On [REDACTED] 2014, the trust purchased an annuity which allowed for an income stream for the Applicant and named her nephew, the POA, as the beneficiary. (Exhibit 4: Nationwide Annuity)
6. On [REDACTED] 2014, the Department received an application for Medicaid for long term care assistance for the Appellant. That application was subsequently denied for failing to provide information. (Exhibit 8: Case narrative)
7. On [REDACTED] 2014, the Department's principal attorney reviewed the trust and determined that since the trustee could not distribute trust principal for the Applicant's benefit, the assets transferred into the trust were transfers for less than fair market value. (Exhibit 1: Email dated [REDACTED] 2014)
8. On [REDACTED] 2014, the Department received an application for Medicaid for Long term care assistance for the Appellant. (Department's summary)
9. On [REDACTED] 2014, the Applicant passed away. (Department's summary)

10. On [REDACTED] 2014, the Department issued the W-495A form; transfer of assets preliminary decision notice stating that its position that the Applicant had transferred \$156,591.79 on [REDACTED] 2014 for the purpose of becoming eligible for Medicaid assistance. The form also stated that it was being issued to give the Appellant a chance to rebut the Department's determination that the transfer had been made to qualify for Medicaid assistance and set a deadline for such rebuttal as [REDACTED] 2014. (Exhibit 5: W495 A)
11. On [REDACTED] 2014, the Appellant sent a letter to the Department regarding remaining outstanding information and included a copy of the W495 A indicating that he had received and read it. (Exhibit 6: Letter from Appellant)
12. The Department did not receive any further response to the W495A. (Department representative's testimony)
13. On [REDACTED] 2015, the Department contacted the nursing home by telephone and was told that Medicaid Coverage for Long Term care was needed for an effective date of [REDACTED] 2014. (Exhibit 8)
14. On [REDACTED] 2015, the Department issued a notice advising that they were granting Medicaid for long term care and imposing a penalty beginning [REDACTED] 2014 and ending on [REDACTED] 2015 because the Appellant had transferred \$156,519.79 on [REDACTED] 2014 for the purpose of becoming eligible for Medicaid for Long term care assistance. (Exhibit 5: W495C: Transfer of Assets Final Decision Notice)
15. In [REDACTED] of 2015, in preparation for the hearing, the Department spoke with the facility and was advised that Medicaid for Long Term Care coverage was actually needed for the dates of [REDACTED] 2014 through [REDACTED] 2014 and [REDACTED] 2014 through [REDACTED] 2014. No changes were made to the Appellant's transfer penalty dates as a result of this information. (Department representative'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 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 § 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.
4. UPM § 3029.05 B provides that the policy contained in the chapter on transfers of assets pertains to institutionalized individuals and to their spouses.
5. 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.
6. 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. UPM § 3029.05(C).
7. 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).
8. 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).
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 3029.15 B provides that 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: the Department considers a transferor to have met his or her foreseeable needs if, at the time of the

transfer, he or she retained enough income and other assets to cover basic living expenses and medical costs as they could reasonably have been expected to exist based on the transferor's health and financial situation at the time of the transfer.

11. Because the Applicant was institutionalized at the time she transferred her funds to an irrevocable trust, and because she applied for assistance within one month of transferring the funds, the Department was correct when it determined that she did not retain enough income and assets to cover basic living expenses and medical costs that could be reasonably anticipated due to her circumstances.
12. There was no evidence presented that the transfer of the Appellant's funds to the trust was made for any other purpose than to qualify for assistance.
13. The Department correctly imposed a transfer of assets penalty for the period from [REDACTED] 2014 through [REDACTED] 2015 when granting Medicaid for Long term care for the Appellant.

DISCUSSION

The Appellant argued that the \$156,591.79 was transferred to purchase a qualified annuity to provide an income stream for the Applicant, stating that it was in her best interest rather than using the money to continue to pay for her care. However, since the income provided would be less than what the Appellant required to meet her needs, and the plan was to apply for Medicaid to pay for her care, it is difficult to understand how the money was **not** transferred in order to qualify for assistance. But the issue of whether the annuity was qualified and therefore exempt is irrelevant as the Applicant's funds were transferred to a trust. She no longer had access to or control of her funds and was applying for Medicaid for Long Term Care to meet her basic and medical needs. All of the evidence indicates that the funds were transferred with the intent of accessing Medicaid to pay for the Applicant's nursing home care, rather than using her own resources. The Department was correct, according to the regulations, in imposing a transfer of asset penalty when granting Medicaid for Long term care.

DECISION

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

Maureen Foley-Roy

Maureen Foley-Roy
Hearing Officer

PC: Phil Ober, Peter Bucknall, Operations Managers, DSS Regional Office # 52,
New Britain
Enkelejda Trifoni, DSS Regional Office #60, Waterbury

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.