

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 #: 680346

NOTICE OF DECISION

PARTY

██████████
C/O ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department") sent a Notice of Action ("NOA") to ██████████ (the "Appellant") for ██████████ (the "Applicant") advising her that the Department did not agree with her claim that a transfer of asset penalty placed on her Medicaid for Long Term care benefits be waived due to undue hardship.

On ██████████ 2015, Counsel for the Applicant and the Appellant, requested an administrative hearing to contest the Department's decision not to waive the penalty it had imposed on the Applicant's Long Term Care Medicaid benefits due to undue hardship.

On ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("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:

██████████ the Appellant,
██████████, Counsel for the Appellant and the Applicant

Michael Briggs, Department's representative
Maureen Foley-Roy, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department was correct when it denied the Applicant's request to waive the Transfer of Assets ("TOA") penalty due to undue hardship.

FINDINGS OF FACT

1. In [REDACTED] of 2013, the Applicant suffered a stroke and was admitted to a long term care facility.
2. Since the stroke and because the Applicant is now [REDACTED] years old, she becomes more forgetful every day but previously, she did not have any issues with dementia. (Appellant's testimony)
3. On [REDACTED] 2014, the Department granted Medicaid for Long Term care for the Appellant imposing a transfer of assets penalty period, which began [REDACTED] 2014 to continue through [REDACTED] 2016. (Department's exhibit 11: Hearing Decision dated [REDACTED] 2015)
4. The penalty was assessed on a transfer of \$77,500.00 in gifts to her sons and an interest in her home valued at \$238,182.55 to her daughter and son in law. (Exhibit 11)
5. The Applicant's daughter and son in law continue to own and reside in the property that the Applicant transferred to them. (Record)
6. The Applicant is in need of nursing home care for medication management, assistance with all activities of daily living, bed sore prevention and staff experienced using a Hoyer lift. (Appellant's Exhibit 7: Letter from Applicant's physician)
7. From [REDACTED] 2014 through [REDACTED] 2014, an employee of the facility where the Applicant resides contacted seven other skilled nursing facilities, all of which stated that they would not be willing to admit the Applicant as a resident because of the Department's transfer of asset penalty. (Department's exhibit 8: Affidavit of Daberal Castillo)
8. On [REDACTED] 2014, the facility where the Applicant currently resides hand delivered a letter to her along with a bill for \$72,429.60 advising her of their intent to discharge her for non-payment. (Appellant's exhibit 8: Letter and bill from Long Ridge of Stamford Nursing and Rehabilitation Center)

9. On [REDACTED] 2014, OLCRAH held a hearing because the Applicant contested the Department's decision to impose a transfer of assets penalty. (Exhibit 11)
10. At the hearing held on [REDACTED] 2014, Counsel for the Applicant requested that the Department waive the transfer of asset penalty because the penalty caused undue hardship and that the nursing facility where the Applicant resided intended to discharge her. (Exhibit 11)
11. On [REDACTED] [REDACTED] 2015, OLCRAH issued a decision upholding the Department's decision to impose a transfer of assets penalty. (Exhibit 11)
12. The [REDACTED] 2015 decision ordered the Department to verify eligibility factors of the Applicant's claim of undue hardship and provide a response. (Exhibit 11)
13. On [REDACTED] 2015, the Department issued a response notifying the Applicant that they did not agree with her claim of undue hardship. (Exhibit 13: Notice of Response to Hardship Claim)
14. On [REDACTED] 2015, Counsel for the Applicant and Appellant filed an appeal of OLCRAH's decision of [REDACTED] 2015 in Superior Court. The appeal is pending and the decision has not been overturned nor stayed. (Appellant's Exhibit 1: Administrative Appeal Documents and Counsel'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. The commissioner may waive the imposition of a penalty period pursuant to this subsection if (A) the applicant suffers from dementia or other cognitive impairment and cannot explain the transfer or assignment of assets, (B) the applicant suffered from dementia or other cognitive impairment at the time the transfer or assignments of assets was made, (C) the applicant was exploited into making the transfer or assignment of assets due to dementia or cognitive impairment, or (D) the applicant's legal representative or the record owner of a jointly held asset made the transfer or assignment of assets without the authorization of the applicant. Conn. Gen. Stats. Section 17b-261o(c).

4. There is no evidence that the Applicant suffered from a cognitive impairment at the time of the transfers, or that the Applicant was exploited into making the transfers due a cognitive impairment or the Applicant's legal representative made the transfers without the Applicant's authorization.
5. UPM § 3029.25 A 1 and 2 provides for undue hardship and states that an institutionalized individual is not penalized based on a transfer of assets made by the individual or his or her spouse if denial or discontinuance of payment for services would create an undue hardship, which exists if the individual would be deprived of medical care such that his or her life would be endangered or food, clothing, shelter or other necessities of life.
6. UPM § 3029.25 B 1 and 2 provides for the conditions of undue hardship and states in relevant part that when an individual would be in danger of losing payment for long term care facilities solely because of the imposition of a penalty period, the Department does not impose such penalty under the following conditions: the long term care facility or medical institution has threatened the individual with eviction due to non-payment and the individual has exhausted all legal methods to prevent the eviction **and the transferor establishes that the transferee is no longer in possession of the transferred asset** and the transferee has no other assets of comparable value with which to pay the cost of care **and** there is no family member or other individual or organization able and willing to provide care to the individual. (Emphasis added)
7. The Department was correct when it determined that the Applicant did not qualify to have the transfer penalty waived for reason of undue hardship because the Applicant's daughter and son in law are still in possession of the transferred asset, interest in the home property valued at \$238,182.55.

DISCUSSION

Counsel for the Appellant was frank in admitting that she strongly disagrees with OLCRAH's ██████████ 2015 decision upholding the transfer of asset penalty. She has filed an appeal of that decision with Superior Court and is exploring all avenues, including a request to waive that penalty due to undue hardship to have that penalty overturned. Superior Court has not overturned or stayed the ██████████ ██████████ 2015 decision and the transfer penalty remains.

Per the regulations, the Applicant does not qualify to have the penalty waived for reasons of good cause, because the transferees still have the interest in the home that was transferred to them.

It should be noted that the Department contended that the facility's proposal to

discharge the Applicant was not “a real threat of eviction” because of regulations surrounding nursing home discharges, the legality of the notice of discharge and the length of time that has passed since the notice was issued. The Applicant owes the facility over \$72,000 and the facility notified the Applicant of their intention to discharge her for non-payment. Regulations do not require the Department to make a determination on the validity of a facility’s intent to discharge. The notification of the intention to discharge the Applicant is sufficient for consideration of a claim of undue hardship.

DECISION

The Applicant’s appeal is **DENIED**.

Maureen Foley-Roy

Maureen Foley-Roy
Hearing Officer

Pc: Alexis Kiss, Operations Manager, DSS Regional Office # 32, Stamford
[REDACTED], Counsel for the Appellant and Applicant
Michael Briggs, Hearing Liaison, DSS, Bridgeport

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.