

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 # 681672

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████ (the "Appellant"), through his Power of Attorney ("Appellant's POA"), ██████████, a notice that he had transferred \$10,024.52 to become eligible for Medicaid and the Department was imposing a Transfer of Asset ("TOA") penalty period of ineligibility for Medicaid payment of Long Term care Services ("LTC") for the period from ██████████ 2014 to ██████████ 2014.

On ██████████ 2015, the Appellant's POA requested an administrative hearing to contest the Department's penalty determination.

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

The Appellant's POA requested that OLCRAH reschedule the hearing.

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

On [REDACTED] 2015, 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:

[REDACTED], the Appellant
[REDACTED] Appellant's sister-in-law, POA
[REDACTED] Appellant's brother, POA
Robert Gugliotti, Department's Representative
Amy Kreidel, Department's Representative
Sybil Hardy, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department correctly imposed a TOA penalty based for \$10,024.52 for the period from [REDACTED] 2014 to [REDACTED] 2014.

FINDINGS OF FACT

1. The Appellant's DOB is [REDACTED] 1950. (Testimony)
2. The Appellant has a diagnosis of Dementia, COPD, and Emphysema. (Testimony; Appellant's Exhibit 3: Ascend documents)
3. On [REDACTED] 2013, the Appellant's sister-in-law bought the Appellant a bedroom set and a mattress for \$254.17 and \$244.58, respectively. (Appellant's Exhibit 1: Bob's Furniture Receipt, [REDACTED]-13)
4. In [REDACTED] 2013, the Appellant moved into his brother and sister-in-law's home. (Testimony)
5. When the Appellant moved into his brother and sister-in-law's home, he required constant supervision due to his diagnosis of Dementia. (Exhibit E: Rebuttal letter from POA, [REDACTED]-15)
6. On [REDACTED] 2015, the Appellant appointed his brother and sister-in-law as his POAs. (Exhibit C: POA short form)
7. The Appellant's POA paid filing fees to the court for the Appellant in the amount \$150.00. (Appellant's Exhibit 1, check dated [REDACTED]14)
8. The Appellant's POA paid copy fees to the court for the Appellant in the amount \$55.00. (Appellant's Exhibit 1, check dated [REDACTED]-14)

9. The Appellant's POA paid attorney fees for the Appellant in the amount \$600.00. (Appellant's Exhibit 1, check dated [REDACTED]-14)
10. The Appellant's POA paid marshal fees for the Appellant in the amount \$40.20. (Appellant's Exhibit 1, check dated [REDACTED]-14)
11. The Appellant's POA charged the Appellant \$750.00 per month for room and board over a 10-month period. (Appellant's Exhibit 1)
12. The Appellant's POA purchased cigarettes for the Appellant for \$680.67 over a 10-month period. (Appellant's Exhibit 1)
13. The Appellant's POA spent \$50.00 per month in miscellaneous expenses for the Appellant over a 10-month period. (Appellant's Exhibit 1)
14. Over the 10-month period, the Appellant's POA paid out \$10,024.62 for the Appellant's living expenses and court related fees. (Facts # 3 & 7-13)
15. On [REDACTED] 2014, the Appellant entered [REDACTED] View Manor, a nursing facility. (Appellant's Exhibit 3: Ascend Client Details printout)
16. On [REDACTED] [REDACTED] 2014, the Appellant applied for Long Term Care medical assistance. (Hearing Summary)
17. On [REDACTED] 2015, the Department sent the Appellant a Transfer of Assets Final Decision Notice explaining that she has a transfer of asset penalty because she transferred \$10,024.52 to become eligible for Medicaid. (Exhibit D: Transfer of Assets Final Decision Notice, [REDACTED]-15)

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. 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).

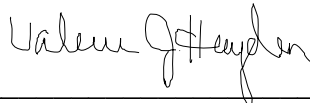
4. Uniform Policy Manual (“UPM”) Section 3029.10(E) provides that an otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC services if the individual, or his or her spouse, provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.
5. The Appellant’s POA provided clear and convincing evidence that she spent the \$10,024.52 for purposes other than for the Appellant to qualify for assistance. The purchases were for the Appellant’s living expenses and court related fees.
6. The Department incorrectly imposed a transfer of asset penalty on the Appellant’s LTC assistance for the period from [REDACTED] 2014 to [REDACTED] 2014.

DECISION

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

ORDER

1. The Department is ordered to remove the TOA penalty imposed from [REDACTED] 2014 to [REDACTED] 2014.
2. Proof of compliance with this order is due to the undersigned no later than [REDACTED] 2015.



Valerie J. Hayden for Sybil Hardy
Hearing Officer

Pc: Judy Williams and Karen Main, Managers, DSS R.O. # 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.