

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]
Request #694035

NOTICE OF DECISION

PARTY

[REDACTED]
C/O Attorney [REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED], 2015, the Department of Social Services (the "Department") sent [REDACTED] (the "Appellant") a Transfer of Assets Final Decision Notice indicating that it would grant [REDACTED] (the "applicant") Long Term Care Medicaid ("LTC") benefits effective [REDACTED] 2014, with a transfer of assets penalty effective [REDACTED] 2014 through [REDACTED], 2014.

On [REDACTED], 2015, [REDACTED] counsel for the Appellant, requested an administrative hearing to contest the Department's decision regarding the applicant's eligibility for 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, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice rescheduling 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:

Attorney [REDACTED], Appellant's Representative
[REDACTED], Attorney in Fact, Power of Attorney ("POA"), sister
Maureen Harry, Department's Representative
Miklos Mencseli, Hearing Officer

The Appellant was not present.

STATEMENT OF THE ISSUE

The issue is whether the Department's decision to impose a Transfer of Assets ("TOA") penalty on the applicant's Medicaid benefits beginning [REDACTED] 2014 and ending [REDACTED], 2014 is correct.

FINDINGS OF FACT

1. The Appellant is a resident of The Regency House, she entered the facility on [REDACTED] 2014. (Exhibit 1: W-1LTC application)
2. On [REDACTED] 2014, [REDACTED] was appointed the Appellant's Power of Attorney ("POA") (Exhibit 10: General Power of Attorney document dated [REDACTED]-14)
3. The Appellant is [REDACTED] years old. (Exhibit A)
4. On [REDACTED], 2014, the Appellant applied for Medicaid for long term care assistance. The application was submitted by the Appellant's POA and Authorized Representative Attorney [REDACTED]. (Exhibit A)
5. The Appellant provided a copy of a Personal Service Agreement (PSA) signed and dated [REDACTED], 2014 by the Appellant's POA and signed by the POA as the agent. It states that as of [REDACTED] 2014 the Appellant (Principal) shall pay the POA (agent) for services of reviewing, managing and monitoring the Appellant's business, financial and personal affairs and to perform her activities of daily living. (Exhibit 2: PSA dated [REDACTED]-14)
6. The Appellant (Principal) will pay the POA (agent) a wage of \$30.00 per hour to provide the service. (Exhibit 2)
7. The PSA states that the Appellant (Principal) pay the POA (agent) an advance of \$3,750.00 which the agent will credit the wage earned by providing the service. (Exhibit 2)
8. The Appellant has checking account #XXX [REDACTED] with Wells Fargo bank. The balance of the account as of [REDACTED] 2014 was \$1,053.44. (Exhibit 4: Wells Fargo Bank statement for [REDACTED] 14 to [REDACTED]-14)

9. On [REDACTED], 2014, the Appellant issued check [REDACTED] for \$3,750.00 to the POA per the PSA for credit earned for services. (Exhibit 3: check [REDACTED])
10. On [REDACTED] 2014, the Appellant issued check [REDACTED] for \$6,355.10 to the POA for services she provided to the Appellant. (Exhibit 3: check [REDACTED])
11. The POA provided a ledger (time sheet) documenting the services she provided and the hours of services for the period of [REDACTED] through [REDACTED] 2014. (Exhibit 5: POA's time sheets)
12. The Appellant's Attorney used the Office of Policy and Management ("OPM") as guide in determining that \$30.00 an hour pay rate was a fair market value for the services being provided by the POA. (Exhibit 11: OPM printout for pay rates, Testimony)
13. The POA provided 269 hours of service @ \$30.00 an hour equals \$8,070.00 plus \$25.10 Wal-Mart expense. (Exhibit 5)
14. The POA provided an additional 67 hours of service @ \$30.00 an hour equals \$2,010.00. (Exhibit 5)
15. The checks [REDACTED] and [REDACTED] cover the POA's services for the period of [REDACTED] through [REDACTED] 2014 (\$10,105.10 - \$3,750.00 - \$6,355.10 equals zero). (Exhibit 5, Testimony)
16. The Department determined there is no indication the amount the POA received was equal to the value of the transfer amount and that other valuable consideration was met. (Summary, Testimony)
17. The Appellant was not asset eligible at time of application. (Summary)
18. The Department determined the payments were transfers made in order to be eligible for assistance. (Summary, Testimony)
19. On [REDACTED] 2015, the Department sent the Appellant's POA a W-495A Transfer of Assets Preliminary Decision Notice. The Department determined that the Appellant transferred \$3,750.00 on [REDACTED]-14 and \$6,355.10 on [REDACTED]-14. (Exhibit 6: W-495A dated [REDACTED]-15)
20. On [REDACTED] 2015, the Appellant's Attorney submitted a rebuttal to the Department's preliminary decision notice. He stated there is no limitation or restriction in the PSA that the Appellant would not be obligated to pay the POA for the service because the Appellant is a resided at The Regency House. (Exhibit 8: Attorney [REDACTED] rebuttal letter)

21. On [REDACTED], 2015, the Department sent the Appellant's POA a W-495B Transfer of Assets Notice of Response to Rebuttal/Hardship Claim notice. The Department did not agree with the Appellant's Attorneys rebuttal regarding the transfers. The Department stated that a penalty period would begin on [REDACTED] 2014 and will end [REDACTED] 2014. The *Department calculated the 25 day penalty by dividing the transfer penalty amount of \$10,105.10 by \$11,851.00, the average monthly cost of nursing home care In Connecticut.* (Exhibit 6: W-495B dated [REDACTED]-14, Testimony)
22. On [REDACTED] 2014, the Department sent the Appellant a W-495C Transfer of Assets Final Decision Notice. The notice confirmed the Department's action as stated on the W-495B notice. (Exhibit 6: W-495C dated [REDACTED]-14)
23. There is no limitation or restriction in the Department's policy that a POA cannot be compensated for the services provided. (Testimony)
24. The two payments made by the Appellant (principal) to the POA (agent) are not gifts. The Appellant received fair market value for the services provided. (Exhibit 8, Testimony)
25. The Appellant's representatives concede that \$2,010.00 of the \$10,105.10 paid is a gift. That amount was an estimate for future services. (Exhibit 5, 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. 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.
7. The Department correctly looked back 60 months prior to the Appellant's application in order to determine whether any improper asset transfers occurred.
8. The Department correctly determined that check [REDACTED] for \$3,750.00 and check [REDACTED] for \$6,355.00 are within the look back period and subject for review.
9. 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.
10. UPM § 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.
11. UPM § 3029.10(F) provides for transferor intended to transfer at fair market value. An institutionalized individual or his or her spouse may transfer an asset without penalty if the individual demonstrates with clear and convincing evidence that he or she intended to dispose of the asset at fair market value.
12. UPM § 3029.10(G) provides for transfer made for other valuable consideration. An institutionalized individual or his or her spouse may transfer an asset without penalty if it is demonstrated with clear and convincing evidence that he or she intended to dispose of the asset in return for other valuable consideration. The value of the other valuable consideration must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty.

13. UPM §3025.15 provides for Transfer Not for the Purpose of Qualifying

A. Fair Market Value Received

If fair market value is received, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.

B. Assets Within Limits

If the total of the uncompensated fair market value of a transferred asset plus all other countable assets does not exceed program limits, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility. In the case of multiple transfers involving one asset, this includes the total uncompensated value of all transfers.

C. Transfer for Another Purpose

If there is convincing evidence that the transfer is exclusively for another purpose, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.

14. UPM § 3029.30(B)(1) provides that each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset. In determining the dollar value of services rendered directly by the transferee, the Department uses the following amounts; (a) for all services of the type normally rendered by a homemaker or home health aid, the current state minimum hourly wage for such services; (b) for all other types of services, the actual cost.

15. The Department incorrectly determined the Appellant's POA (agent) cannot be compensated as the General Power of Attorney form clearly gives her the authority to do so.

16. The Department incorrectly determined the Appellant did not receive fair market value for the services provided for the payments of \$3,750.00 and \$6,355.00.

17. The Department is correct to determine the \$2,010.00 is a gift.

18. Based on the transfer of \$2,010.00, the Appellant is subject to a Transfer of Asset penalty.

19. Section 17b-261o(c) of the Connecticut General Statutes provides that the commissioner shall impose a penalty period pursuant to subsection (a) of section 17b-261 or subsection (a) of section 17b-261a if the transfer or assignment of assets was made by the Applicant's legal representative or joint owner of the asset.

20. UPM § 3029.05 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.
21. UPM § 3029.05 (E)(2) provides that the penalty period begins as of the later of the following dates: 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.
22. The Department correctly determined October 1, 2014 as the date the Appellant would be otherwise eligible for Medicaid.
23. The Appellant is subject to a penalty period beginning [REDACTED] 2014, the date that the Appellant was otherwise eligible for Medicaid payment of long-term care services.
24. UPM § 3029.05 (F) provides in part that 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. 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. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.
25. The length of the penalty period is determined by dividing the uncompensated value of the transferred asset by the average monthly cost of care to a private patient for long-term care services in Connecticut.

DISCUSSION

The Appellant's Attorney's argument is that there was a verbal agreement prior to the signing of the PSA. That the time expended and expenses sheet was completed continuously as the services were provided. The PSA was not signed by the Appellant. It is signed by the POA for the Appellant and signed by her as the agent. The POA as attorney in fact under the general power of attorney form can be compensated for her services. The POA provided clear and convincing evidence that she provided the services and was paid fair market value for the

services. The penalty amount determined by the Department is reduced from \$10,105.10 to \$2,010.00. The POA and her representatives conceded this was a gift.

DECISION

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

ORDER

1. The Department shall calculate a penalty period based on the transfer of assets of \$2,010.00 effective for [REDACTED] 2014.
2. The Department shall send the Appellant's representatives a revised W-495C transfer of assets final decision notice.
3. Compliance shall be shown by submission of verification of the Department's compliance with this decision and is due by [REDACTED], 2015.



Miklos Mencseli
Hearing Officer

C: Brian Sexton, Operations Manager, DSS R.O. #20 New Haven

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.