

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 #: ██████████
HEARING ID #: 709365

CORRECTION

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████ (the "Appellant"), a notice that he had transferred \$120,396.00 to become eligible for Medicaid and the Department was imposing a penalty period of ineligibility for Medicaid payment of Long Term Care Services ("LTC") effective ██████████ through ██████████ ██████████ 2016.

On ██████████ 2015, the Appellant 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 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:

██████████ Appellant's Daughter, Conservator
██████████, Appellant's Grandson
Shannon Bennett, Department's Representative
Thomas Monahan, Hearing Officer

This hearing decision amends the previous decision issued on [REDACTED] 2015, with the corrected Transfer of Assets penalty dates.

STATEMENTS OF THE ISSUE

1. The first issue is whether the Appellant received fair market value for the sale of two properties.
2. The second issue is whether the Department correctly imposed a Transfer of Assets (TOA) penalty based on the sale prices of the Appellant's homes.

FINDINGS OF FACT

1. On [REDACTED] 2015, the Appellant applied for LTC Medicaid as a resident of the V.A. Hospital seeking placement in a convalescent home. (Exhibit 1: LTC Medicaid application, [REDACTED]/15)
2. On [REDACTED] 2015, the Appellant entered Bridgeport Manor (the "facility"). (Hearing record)
3. Prior to admission to the facility, the Appellant lived at the V.A. Hospital from [REDACTED] 2015 through [REDACTED] 2015. Prior to the V.A. hospital the Appellant lived with his daughter, who is his conservator, in the community. (Conservator's testimony)
4. The Appellant previously lived with his son in Florida since approximately 2010. The Appellant's son took care of the Appellant on and off since 1989 and began caring for him full-time in 2010. (Appellant's Exhibit A: Notarized letter, [REDACTED] 15)
5. The Appellant owned two properties in Florida. The addresses of the properties were [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Ex. 3: [REDACTED] Appraisal, Ex. 4: Resource Investigation)
6. In [REDACTED] of 2010 the Appellant Quit claimed his two properties for \$100.00 each to his son. (Ex. 3: [REDACTED] Appraisal Card, Ex's 4, 7: Resource referrals, Appellant's Exhibit A: Notarized letter, [REDACTED]/15)
7. On [REDACTED] 2014, the Appellant's son Quit claimed the [REDACTED] property to his daughter for \$100.00. (Ex. 3: Bay County Appraisal Card)
8. On [REDACTED] 2014, the [REDACTED] property was sold for \$89,100.00. (Ex. 4: Resource referral)
9. On [REDACTED] 2015, the Department determined that the Fair Market Value of the [REDACTED] at the time of the Quit claim was \$89,100.00. (Ex. 4 Resource

referral)

10. On [REDACTED] 2015, the Department determined the Fair Market Value of the [REDACTED] property to be \$31,296.00. (Ex. 3: [REDACTED] Appraisal card, Ex. 7: Resource referral)
11. The Appellant did not receive Fair Market Value for the sale of his two properties. (Ex. 4 and 7 Resource investigation results)
12. On [REDACTED] 2015, the Department notified the Appellant that there was an improper transfer of assets for \$120,396.00 (\$89,100 fair market value of [REDACTED] + \$31,296.00 fair market value of [REDACTED]) because he did not receive fair market value for his property sales. (Exhibit 7: W-495A, Transfer of Assets Preliminary Decision Notice [REDACTED]/15)
13. On [REDACTED] 2015, the Department notified the Appellant that a penalty of \$120,396.00 from [REDACTED] 2015 through [REDACTED] 2016 would be imposed on the payment of his long term care services. (Ex.10: W-495C, Transfer of Assets Final Decision Notice [REDACTED]/15)
14. On [REDACTED] 2015, the Department granted Medicaid effective [REDACTED] 2015 with eligibility for LTC costs for the Appellant effective [REDACTED] 2016. (Ex. 11: Approval Notice, [REDACTED]/15)

CONCLUSIONS OF LAW

1. The Department is the state agency that administers the Medicaid program pursuant to Title XIX of the Social Security Act. The Department may make such regulations as are necessary to administer the medical assistance program. Conn. Gen. Stat. § 17b-2; Conn. Gen. Stat. § 17b-262
2. The Department is the sole agency to determine eligibility for assistance and services under the programs it operates and administers. Conn. Gen. Stat. § 17b-261b(a)
3. Regulation provides that every program administered by the Department has a definite asset limit. Uniform Policy Manual ("UPM") § 4005.05
4. The Department uses the policy contained in this chapter to evaluate asset transfers, including the establishment of certain trusts and annuities, if the transfer occurred, or the trust was established, on or after February 8, 2006. UPM § 3029.03.

5. 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)
6. 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 UPM 3029.05(C). This period is called the penalty period, or period of ineligibility. UPM § 3029.05(A).
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. Regulation 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. UPM § 3029.10(E)
10. Regulation 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. UPM § 3029.10(F)
11. The Department considers a transferor to have met his or her foreseeable needs if, at the time of the transfer, he or she retained other income and assets to cover basic living expenses and medical costs as they could have reasonably been expected to exist based on the transferor's health and financial situation at the time of the transfer. UPM § 3029.15(B)
12. Regulation provides that an individual or spouse may transfer his or her home to his or son or daughter who was residing in the home for a period of at least two years immediately before the date the individual is institutionalized: and provided care to

the individual which avoided the need of institutionalizing him or her during those two years. UPM 3029.10(A)(e)

13. The Appellant did not reside with his son for two years immediately before institutionalization at Bridgeport Manor.
14. The Appellant did not establish with clear and convincing evidence that he transferred \$120,396.00 for a purpose other than qualifying for assistance, such as undue influence, his foreseeable needs were met, transfer to or by legal owner, or that the transferred asset would not affect her eligibility if retained.
15. The Appellant did not establish with clear and convincing evidence that he intended to dispose of his two properties at fair market value.
16. The Department correctly imposed a transfer of asset penalty against the Appellant effective [REDACTED] 2015, due to uncompensated transfer of assets of \$120,396.00.
17. Federal Law provides that in the case of a transfer of an asset made on or after February 8, 2006, the date specified in this subparagraph [the start date of the penalty period] is the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care described in subparagraph (C) based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur during any other period of ineligibility under this subsection, 42United States Code ("U.S.C.") § 1396p(c)(1)(D)(ii).
18. Regulation provides that the penalty period begins as of 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. UPM § 3029.05(E)(2)
19. Because the Appellant became eligible for Medicaid payment of LTC services effective [REDACTED] 2015, the Department's determination of [REDACTED] 2015 as the start date of the period of ineligibility for Medicaid payment of LTC services for the Appellant is correct.
20. Regulation 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 to a private patient for LTCF in Connecticut. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application. UPM 3029.05(F)(2)

21. The average monthly cost of care to a private patient on the application date of [REDACTED] 2015 was \$11,851.00.
22. The Department's determination as [REDACTED] 2016, as the end date of the period of ineligibility is incorrect. The correct end date of the penalty period is [REDACTED] 2016 [\$120,396.00 penalty / \$11,851.00 avg. cost of care = 10.16 months].

DISCUSSION

Regulations provide that an individual may transfer a home without a penalty if he resides with the transferee the two years immediately prior to the institutionalization. The Appellant moved to Connecticut and lived with his daughter immediately before the institutionalization.

The Appellant did not receive fair market value for the sale of his two properties. No evidence was presented to dispute the Department's determination of the fair market value of the properties. The Department used the incorrect figure for the average monthly cost of care in the penalty determination. The correct average monthly cost of care at the time of the application was \$11,850.00. The correct penalty end date is [REDACTED] 2016.

DECISION

The Appellant's appeal is DENIED.

ORDER

1. The Department is ordered correct the penalty period to [REDACTED] 2015 through [REDACTED] 2016.
2. The Department is ordered to grant the Appellant Long- Term Care Medical Assistance effective [REDACTED] 2016.
3. Compliance with this order is due to the undersigned no later than fifteen days from the date of this decision.

Thomas Monahan

Thomas Monahan
Hearing Officer

C: Poonam Sharma, Operations Manager, Bridgeport Regional Office
Fred Presnick, Operations Manager, Bridgeport Regional Office
Yecenia Acosta, Program Manager, Bridgeport Regional Office
Cheryl Stuart, Program Manager, Bridgeport Regional Office
Shannon Bennett, Hearing Liaison, Bridgeport Regional Office

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 Legal Counsel, Regulations, and Administrative Hearings, 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 CT 06105-3725. 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 his 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.