

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

██████████ 2016
SIGNATURE CONFIRMATION

CL ID # ██████████
Request # 740598

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a notice that he had transferred \$195,000.00 to become eligible for Medicaid, and the Department was imposing a penalty period of ineligibility for Medicaid payment of long term care services effective ██████████ 2015 through ██████████ 2016.

On ██████████ 2015, the Appellant's Power of Attorney ("POA"), ██████████, requested an administrative hearing to contest the Department's penalty determination.

On ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") scheduled an administrative hearing for ██████████ 2016.

On ██████████ 2016, 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:

██████████, Appellant's Brother, and POA
Amy Kriedel, Department's Representative
Scott Zuckerman, Hearing Officer

The hearing record remained open for the submission of additional evidence. On ██████████
██████████ 2016, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department was correct to impose a penalty period of 15 months, due to a \$195,000.00 transfer of asset penalty.

FINDINGS OF FACT

1. The Appellant's date of birth is [REDACTED] 1949. (Appellant's POA testimony)
2. In 1998, the Appellant lost his leg from the knee down and some fingers due to Mersa. The Appellant has a prosthesis. The Appellant suffers from rheumatoid arthritis. (Appellant's POA testimony)
3. Effective [REDACTED] 2009, the Appellant was active on Medicaid in the community. (Exhibit 14: Assistance Status screenprint)
4. On [REDACTED] 2012, the Appellant quit claimed his home at [REDACTED], to his brother and POA, [REDACTED] for \$0.00. (Appellant's POA testimony, Exhibit 1: Remarks Screen print, [REDACTED] 2015)
5. At the time of the quitclaim, the Appellant was disabled. (Appellant's POA testimony)
6. At the time of the quitclaim, the Appellant resided with his mother. (Appellant's POA testimony)
7. The Appellant lived with his elderly mother in the home at [REDACTED], until her death in [REDACTED] 2013. (Appellant's POA testimony)
8. The Appellant's POA did not reside with the Appellant and his mother. (Appellant's POA testimony)
9. At the time of the quitclaim, the Appellant owed back real estate taxes and special services to the Town of [REDACTED] (Appellant's testimony, Exhibit 9: Tax Collectors Final Demand Letter, [REDACTED] 2014)
10. The POA made an agreement with the [REDACTED] Tax Collector that when he took control of the home, he would make payments towards the back taxes and special service assessments as he was in a better financial position to do so. This would allow the Appellant and his mother to remain in the home and not risk foreclosure. The POA would agree to sell the home after his mother passed and pay the balance owed for the taxes. (Appellant's testimony, Ex 9)

11. At the time of the quitclaim, the Town of [REDACTED] appraised the home with a value of \$302,844.00. (Ex. 1: Remarks screen, [REDACTED] 15)
12. On [REDACTED] 2014, the Tax Collector for the Town of [REDACTED] sent the Appellant's POA a final demand letter. The letter stated the Appellant's POA owed \$18,271.17 in overdue real estate taxes, special charges, and interest from [REDACTED] 2011 through [REDACTED] 2013. (Appellant's POA Testimony, Exhibit 9: Letter and Final Demand notice from the town of [REDACTED] [REDACTED] 14)
13. On [REDACTED] 2014, the Appellant's brother sold the home located at [REDACTED] [REDACTED] for \$195,000.00. The POA paid unpaid real estate taxes and attorney's fees and received a total of \$163,684.23 from the sale of the property. (Exhibit 9: HUD-1, Settlement Statement, [REDACTED] 14)
14. The home was sold in "as is" condition due to extensive renovations that needed to be completed. (Appellant's POA testimony)
15. On [REDACTED] 2014, the Appellant's POA opened a Wells Fargo account # [REDACTED] and deposited \$59,984.00. (Appellant's POA testimony, Exhibit C: Wells Fargo Advisors account Confirmation, [REDACTED] 14)
16. The Appellant's POA deposited the funds from the Wells Fargo account into [REDACTED] Savings account # [REDACTED]. The POA used funds in the savings account to supplement the Appellant's living expenses in the community. The Appellant's POA provided him with \$20.00 daily or \$600.00 per month, withdrawn from the [REDACTED] Bank account. This daily supplement was part of a financial plan per the wish of the Appellant's mother prior to her death. She requested the POA would oversee the Appellant's finance after the division of the assets from the sale of the home. (Appellant's POA testimony, Exhibit C: [REDACTED] Savings account statements [REDACTED] 2014 through [REDACTED] 2016)
17. The Appellant's POA's testimony is credible as the transfer of the Appellant's home to the POA was for the purpose of keeping the Appellant and his mother in the home while not risking foreclosure on the property. Furthermore, following the sale of the home the home, the POA opened the accounts for the Appellant to provide him with additional income to meet his expenses in the community.
18. In [REDACTED] 2015, the new owners sold the home for \$335,000.00. The real estate listing indicated the home was a complete remodel. (Appellant's POA's testimony, Exhibit 1: Department's Remarks screen, [REDACTED] 15)
19. In [REDACTED] 2015, the Appellant's Mersa returned and he entered Amberwoods of [REDACTED] Nursing Facility. (Appellant's POA testimony)

20. The Appellant is seeking Medicaid eligibility effective [REDACTED] 2015. (Appellant's POA testimony, Department's Testimony)
21. On [REDACTED] 2015, the Department discovered that the Appellant quitclaimed the property located at [REDACTED] to his brother. (Exhibit 2: Case narrative, [REDACTED] 15)
22. On [REDACTED] 2015, the Department determined the value of the property at the time of the quitclaim was \$300,000.00. (Ex. 1: Remarks screen, [REDACTED] 15, Exhibit 2: Case narrative, [REDACTED] 15)
23. On [REDACTED] 2015, the Department issued the Appellant's representative a W-495A, Transfer of Assets, Preliminary Decision Notice, proposing to apply a penalty resulting from the alleged improper transfer of assets in the amount of \$300,000. (Exhibit 2: Case narrative, [REDACTED] 15, Exhibit 3: W-495A, [REDACTED] 15)
24. On [REDACTED] 2015, the Appellant was discharged from Amberwoods to his apartment. (Appellant's POA testimony, Department testimony)
25. On [REDACTED] 2015, the Appellant's POA rebutted the Department's proposal to implement a penalty due to an improper asset transfer claiming that he did not transfer the asset in order for his brother to qualify for Medicaid. (Exhibit 8: Letter from the Appellant's brother [POA])
26. On [REDACTED] 2015, the Department determined the Fair Market Value of the home at [REDACTED] as \$195,000.00 at the time of the quitclaim in [REDACTED] 2012, based on information provided from the POA regarding the condition of the home. (Ex. 1)
27. On [REDACTED] 2015, the Department sent the Appellant a W-495B, Transfer of Assets, Notice of Response to Rebuttal/Hardship Claim, stating it reduced the \$300,000.00 penalty to \$195,000.00. (Exhibit 4: W-495B, [REDACTED] 16)
28. On [REDACTED] 2015, the Department sent the Appellant a W-1348LTC60, We Need Verification From You, requesting the documentation regarding the amount the Appellant's POA spent on his mother's behalf while she was residing in the home, how much was paid, and the time frame. (Exhibit 7: W-1348LTC60, [REDACTED] 15)
29. The Appellant's POA did not provide documentation in response to the W-495B (Exhibit 2: Case narrative, [REDACTED] 15)
30. On [REDACTED] 2015, the Appellant was readmitted to Amberwoods from the community. (Ex. 2: Case narrative [REDACTED] 15)

31. On [REDACTED] 2015, the Department issued a W-495C Transfer of Assets, Final Decision Notice, indicating that the Department decided that the transfer of \$195,000 was made for the purpose of qualifying for Medicaid, and set up a period of ineligibility beginning [REDACTED] 2015 and ending on [REDACTED] 2016, during which time the Department would not pay for his long-term care services. (Exhibit 5: W-495C, [REDACTED] 15)
32. On [REDACTED] 2015, the Appellant's POA requested an administrative hearing. The hearing was scheduled for [REDACTED] 2016. (Hearing Record)
33. On [REDACTED] 2015, the Department, after reviewing the HUD-1 from [REDACTED] 2015, issued another W-495C, Transfer of Assets, Final Decision Notice, further reduced the penalty amount to \$163,684.23. The Department stated the transfer was for the purpose of qualifying for Medicaid, and set up a period of ineligibility beginning [REDACTED] 2015 and ending on August 13, 2016. (Exhibit 6: W-495C, [REDACTED] 15)
34. On [REDACTED] 2015, the Department reviewed the POA's credit card statements from [REDACTED] 2011 and [REDACTED] 2014 and determined the Appellant's POA paid a total of \$21,303.20 for the funeral of his father in 2011 and his mother in 2013. (Exhibit 12: Chase credit card statements)
35. On [REDACTED] 2015, the Department reviewed a payment Summary from the Nursing Facility and determined the Appellant's POA made payments of \$24,270.56 from [REDACTED] 2015 through [REDACTED] 2015. (Exhibit B: Payment Reconciliation Summary from [REDACTED] Rehab Center, [REDACTED] 15)
36. On [REDACTED] 2015, the Department reduced the penalty to \$118,110.47, with a new penalty end date of [REDACTED] 2016. (Department's testimony and Email dated [REDACTED] 15)
37. On [REDACTED], 2015, the Department sent the Appellant a W-495C, Transfer of Assets Final Decision Notice, stating the Department decided that the transfer of \$118,104.47 was made for the purpose of qualifying for Medicaid, and set up a period of ineligibility beginning [REDACTED] 2015 and ending on [REDACTED] 2016, during which time the Department would not pay for his long-term care services. (Exhibit 17: W-495C, [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. Connecticut General Statutes (“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. The Department shall grant aid only if the applicant is eligible for that aid. Conn. Gen. Stat. § 17b-80(a)
4. Uniform Policy Manual (“UPM”) Section 3029.03 provides that 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 or annuity was established, on or after February 8, 2006.
5. Any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, person authorized to make such disposition pursuant to a power of attorney, or other person so authorized by law shall be attributed to such applicant, recipient, or spouse. Conn. Gen. Stat. §17b-261(a); UPM § 3029.05(D)
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. 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)
8. 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
9. An institutionalized individual or the individual's spouse is considered to have transferred assets exclusively for a purpose other than qualifying for assistance under circumstances, which include, but not limited to undue influence; foreseeable needs met; transfer to or by legal owner; or that a transferred asset would not affect eligibility if retained. UPM § 3029.15A-D

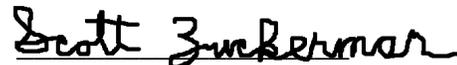
10. The Appellant's POA established clear and convincing evidence that the Appellant's transfer of the home on [REDACTED] to the POA was not made for the purpose of qualifying for Medicaid. The transfer of the property to the POA was used to allow the Appellant to remain in the home while not risking foreclosure due to back taxes. The funds after the sale of the home were to provide the Appellant with supplemental income to meet his needs in the community.
11. The Department incorrectly imposed a transfer of asset penalty against the Appellant due to the quit claim of the property from the Appellant to his brother.
12. The Department's determination of the penalty period beginning [REDACTED] 2015 for 9.97 months for Medicaid payment of long term care services on the Applicant's case is incorrect.

DECISION

The Appellant's appeal **GRANTED**.

ORDER

1. The Department will remove the Transfer of Asset penalty effective [REDACTED] 2015.
2. Compliance with this order is due to the undersigned by [REDACTED] 2016


Scott Zuckerman
Hearing Officer

Pc: Phil Ober, Operations Manager, DSS, New Britain Regional Office
Peter Bucknall, Operations Manager, DSS, New Britain Regional Office
Amy Kreidel, DSS, Fair Hearings Liaison

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 06105-3725.

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 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.

