

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

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

REQUEST #741240

CLIENT ID # ██████████

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2014, the Appellant's representative (██████████) requested an administrative hearing on behalf of the Appellant (██████████) to contest the Department's imposition of a penalty period on the Appellant's LTC Medicaid benefits.

A hearing was held on ██████████, 2014 in accordance with Connecticut General Statutes § 17b-60, § 17b-61 and § 4-176e to § 4-184. On ██████████, 2015, this Hearing Officer rendered a decision (Request #640443) denying the Appellant's appeal of the Department's imposition of a penalty period on the Appellant's LTC Medicaid benefits. On ██████████ 2015, the Appellant's representative appealed the decision to the Superior Court for the Judicial District of New Britain at New Britain.

On ██████████, 2015, the Superior Court for the Judicial District of New Britain remanded the ██████████ 2015 hearing decision for further proceedings. The court ordered that the Hearing Officer should allow the Appellant's representative to present additional evidence that was not previously received by the Hearing Officer.

The undersigned conducted a desk review under the authority of Section 17b-60, § 17b-61 and § 4-176e to § 4-184 of the Connecticut General Statutes.

The evidence submitted for the ██████████, 2014 hearing and made part of the ██████████ 2015 hearing decision is incorporated by reference as part of this decision.

The following individuals were present at the [REDACTED], 2014 hearing:

[REDACTED], Appellant's Representative
[REDACTED], Witness for the Appellant
[REDACTED], Witness for the Appellant
Attorney [REDACTED], Counsel for the Appellant
Victor Robles, Department's Representative
Hernold C. Linton, Hearing Officer

The hearing record remained open to allow the Department and the Appellant's representative to review the additional information received. The hearing record closed on [REDACTED] 2015.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly imposed a Transfer of Assets penalty, based on the Appellant's transfer of the two properties located at [REDACTED] and [REDACTED]

FINDINGS OF FACT

1. On [REDACTED], 2012, the Appellant signed two quitclaim deeds transferring properties located at [REDACTED] and [REDACTED] to her son, while retaining life use of [REDACTED] valued at \$27,176.75 at the time. (Hearing Summary; Dept.'s Exhibit #10: Quit Claim Deed)
2. The Appellant quitclaimed the properties to her son in order to keep them in the family, to be passed down from generation to generation, and for estate planning purposes. (Testimony of the Appellant's Representative)
3. At the time the Appellant transferred the properties to her son, she was eighty-two (82) years of age (DOB [REDACTED]/12), and legally blind. (Testimony of the Appellant's Representative)
4. At the time the Appellant transferred the properties to her son, she was unable to complete her activities of daily living (ADL's), and was being cared for by her son and daughter-in-law. (Dept.'s Exhibit #9: Statement dated [REDACTED]/14; Testimony of the Appellant's Representative)
5. The Appellant continued to receive rental income for [REDACTED] through [REDACTED] 2014. (Hearing Summary; Dept.'s Exhibit #14: [REDACTED]/13 Statement from Tenant)
6. On [REDACTED], 2013, the Appellant applied for Medicaid benefits. (Hearing Summary)

7. On [REDACTED] 2013, the Appellant was admitted to [REDACTED] Health Care Center for long-term care. (Testimony of the Appellant's Representative)
8. At the time of the [REDACTED] 2013 application, it was determined that the Appellant had excess assets and the Appellant withdrew the application. (Hearing Summary; Dept.'s Exhibit #11: Case Narrative)
9. On [REDACTED] 2013, the fair market value for the property located at [REDACTED] was valued at \$115,000.00. The general condition, the functional adequacy, appeal, and general marketability of the property were taken into consideration in determining its value. (Appellant's Exhibit #14: Comparative Market Analysis)
10. The Appellant's evidence regarding the condition of the property located at [REDACTED] [REDACTED] was based on a Septic Inspection completed in [REDACTED] 2013, a Home Inspection Report completed in [REDACTED] 2013, and contractor quotes for repairs from [REDACTED] to [REDACTED] 2013. (Appellant's Exhibit #11; Appellant's Exhibit # 12)
11. On [REDACTED], 2104, the Appellant's representative sold the property located at [REDACTED] [REDACTED] for \$80,000.00 to his daughter claiming it needed repairs totaling \$29,104.00, which would reduce the fair market value of the property. (Appellant's Exhibit # 12: HUD-1 Settlement Contract; Appellant's Exhibit # 11: Rebuttal with Contractor Quotes)
12. The Appellant's representative paid \$34,805.00 in back taxes on the Appellant's behalf. (Appellant's Exhibit #12: pg. 5)
13. On [REDACTED], 2014, the Appellant received \$35,652.39 from the net proceeds of the sale of the property located at [REDACTED] [REDACTED] [REDACTED]. The settlement reflects reimbursements to her son (representative) for taxes paid on behalf of the Appellant for \$37,305.00. (Appellant's Exhibit # 12: HUD-1 Settlement Contract)
14. The Appellant overpaid her son for the back taxes by \$2,500.00. (See Facts # 12-13)
15. The Appellant received a total of \$70,457.39 from the sale of the property located at [REDACTED] (\$35,652.39 + \$34,805.00 (paid to her son)). (Facts # 13-14)
16. The value of the Appellant's life use at the time of the sale of the property located at [REDACTED] was valued at \$16,811.10. (Dept.'s Exhibit #11: Case Narrative)
17. The Appellant's net proceeds from the sale of the property located at [REDACTED] were \$53,646.29 (\$70,457.39, proceeds plus property taxes reimbursement - \$16,811.10, life use). (See Facts # 15-16)
18. On [REDACTED] 2012, the fair market value for the property located at [REDACTED]

was valued at \$120,000.00. (Appellant's Exhibit #5: Quantitative Analysis Appraisal Report)

19. The Appellant's evidence regarding the condition of the property located at [REDACTED] was based on a Septic Inspection completed in [REDACTED] 2013, a Home Inspection Report completed in [REDACTED] 2014, and contractor quotes for repairs completed in 2014. (Appellant's Exhibit #2; Appellant's Exhibit # 7: Septic Inspection Report; Appellant's Exhibit # 8: Home Inspection Report)
20. On [REDACTED] 2014, the Appellant's representative sold the property located at [REDACTED] for \$65,000.00 to his spouse claiming it needed repairs totaling \$50,174.00, which would reduce the fair market value of the property. (Appellant's Exhibit #10: HUD 1 Settlement Statement; Appellant's Exhibit # 2: Rebuttal with Contractor Quotes)
21. As of [REDACTED] 2012, the Appellant was no longer obligated to pay the taxes on [REDACTED] because the Appellant had transferred the property to her son. (See Fact # 1)
22. The Appellant received \$46,494.72 from the net proceeds of the sale of the property located at [REDACTED] (Dept.'s Exhibit #12)
23. The Appellant received a total of \$15,150.00 in monthly rental income through [REDACTED] 2014 from the sale of the property located at [REDACTED] (Dept.'s Exhibit #17: Calculations)
24. On [REDACTED] 2014, the Department received the Appellant's reapplication for Medicaid benefits. (Hearing Summary)
25. On [REDACTED] 2014, the Department sent the Appellant's Representative a W-495A, Transfer of Assets Preliminary Decision Notice indicating that it believed that the Appellant transferred real properties located at [REDACTED] and [REDACTED], CT., in order to qualify for assistance. (Hearing Summary; Dept.'s Exhibit #16: [REDACTED]/14 W-495A-Transfer of Assets-Preliminary Decision Notice)
26. On [REDACTED], 2014, the Department sent the Appellant's Representative a revised W-495A, Transfer of Assets Preliminary Decision Notice indicating that it believed that the Appellant transferred real properties located at [REDACTED] and [REDACTED], CT., valued at \$176,795.24 for less than the fair market value in order to qualify for assistance. (Hearing Summary; Dept.'s Exhibit #16: [REDACTED]/14 W-495A-Transfer of Assets-Preliminary Decision Notice)
27. On [REDACTED] 2014, the Department sent the Appellant's Representative a revised W-495A, Transfer of Assets Preliminary Decision Notice indicating that it believed that the Appellant transferred real properties located at [REDACTED] and [REDACTED], CT., valued at \$161,642.24 for less than the fair market value in order to qualify for

assistance. (Hearing Summary; Dept.'s Exhibit #17: █████/14 W-495C-Transfer of Assets-Final Decision Notice)

28. The Department determined that the Appellant was not eligible for Medicaid payment of LTC services until █████ 2015, due to the imposition of a transfer of asset penalty for Medicaid payment of LTC services from █████ 2014 through █████ 2015. (Hearing Summary; Dept.'s Exhibit #17)
29. Effective █████ 2014, the Appellant became otherwise eligible for Medicaid payment of LTC services, based on the date of her application and her countable assets at the time. (Hearing Summary)
30. The Department determined that combined fair market value of the two properties transferred by the Appellant was \$269,308.00 (\$126,333.00 for █████ plus \$142,975.00, for █████ based on a comparative market analysis of similar properties recently sold in the area. (Hearing Summary)
31. The Department determined the uncompensated value of the assets transferred by the Appellant as \$161,645.24. (Hearing Summary)
32. The combined fair market value of the two properties transferred by the Appellant is \$235,000.00 (\$120,000.00 for █████ plus \$115,000.00 for █████ (See Facts # 9 & 18)
33. A principal real estate broker determined the combined fair market value of the two properties transferred by the Appellant of \$235,000.00 after a personal inspection of the subject properties and taking into consideration the general condition of the property, functional adequacy, and other factors that impacted the assigned fair market value. (Appellant's Exhibit #5: █████/12 Appraisal; Appellant's Exhibit #14: █████/13 Letter from Century 21)
34. The Appellant received \$115,291.01 (\$53,646.29, net proceeds less life use for █████ \$46,494.72 net proceeds for █████ and \$15,150.00 in rental income) for the two properties in question. (See Facts # 17 & 22-23)
35. The uncompensated value of the assets transferred by the Appellant is \$119,708.99 (\$235,000- \$115,291.01). (See Facts # 33-34)

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. The Department shall grant aid only if the applicant is eligible for that aid. Conn. Gen. Stat. § 17b-80(a)
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. Uniform Policy Manual (“UPM”) § 3029.03
5. 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)
6. 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)
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 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)
10. Since the septic report from 2013, the home inspection reports from 2014, and the contractor quotes from late 2013 and from 2014, were not based on the properties

values at the time the properties were quitclaimed in 2012, the Appellant has failed to provide clear and convincing evidence that any necessary repairs should have been considered in the fair market values provided by the 2012 and 2013 appraisals.

11. Since the Appellant failed to provide clear and convincing evidence, the Department correctly determined that the Appellant did not receive fair market value for the two properties that she transferred to her son on [REDACTED], 2012.
12. The Department incorrectly determined the combined fair market value of the two properties as \$296,308.00 as the Department's did not inspect the property and the Appellant provided an appraisal and market analysis done in 2012 and 2013, which included an inspection of the properties and took into consideration the general condition of the properties.
13. After making allowances for the general conditions of the property, the combined fair market value of the two properties transferred by the Appellant is \$235,000.00.
14. The Appellant received \$115,291.01 in returned assets from the sale of the two properties.
15. The uncompensated value of the assets transferred by the Appellant is \$119,708.99 (\$235,000.00, combined market value; minus \$115,291.01, compensation)
16. The Department incorrectly determined that the uncompensated value of the assets transferred by the Appellant as \$161,645.24 when she transferred properties to her son on [REDACTED], 2012.
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. 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], 2014, the Department's determination of [REDACTED] 2014 as the start date of the period of ineligibility for Medicaid payment of LTC services for the Appellant is correct.
20. The Department's imposition of a penalty period for Medicaid payment of LTC services for the Appellant is correct.
21. The length of the Appellant's penalty period is determined by dividing \$119,708.99 by \$11,851.00, the average cost of LTC, which equals 10.10 months.
22. The Appellant is ineligible for Medicaid payment of LTC services for the period of [REDACTED] 2014 through [REDACTED] 2015 due to the imposition of the transfer of asset penalty of 10.10 months.
23. The Department's determination of [REDACTED] 2015 as the end date for the penalty period for Medicaid payment of LTC services for the Appellant is incorrect.
24. The Department's determination of [REDACTED] 2015 as the end date for the period of ineligibility for Medicaid payment of LTC services for the Appellant is incorrect.

DISCUSSION

The Appellant's representatives provided credible evidence to establish the fair market value for the properties based on the condition of the properties. Based on the evidence to rebut the Department's assigned value, the undersigned finds the Department's combined assigned value (\$269,308.00) for the properties in question to be unreasonable, as the Department did not take into consideration the general condition of the properties.

The Appellant's representatives testified that the properties in question were in need of repairs and provided estimates of the costs of the repairs to be taken into consideration against the fair market value assigned to the properties. The Appellant's representatives failed to provide clear and convincing evidence to establish the cost of repairs should have been considered in the appraisals and market analysis they provided as evidence of the properties' fair market value.

Additionally, the undersigned reduced the uncompensated value of the transfer by the property taxes paid by the Appellant's representative/son, which further reduced the penalty period.

The Department was correct in imposing a penalty period. However, the Department's length of the penalty is incorrect based on the uncompensated value used by the Department.

DECISION

The Appellant's appeal is **DENIED** in part, and **GRANTED** in part.

ORDER

1. The Department will establish a penalty period from [REDACTED] 2014 to [REDACTED] 2015, based on the transfer of asset penalty for \$119,708.99.
2. No later than fourteen (14) days from the date of this hearing decision, the Department will provide the undersigned with verification of the Department's compliance with this order.

Hernold C. Linton

Hernold C. Linton
Hearing Officer

Pc: **Musa Mohamud**, Social Service Operations Manager,
DSS, R.O. #10, Hartford

Elizabeth Thomas, Social Service Operations Manager,
DSS, R.O. # 10, Hartford

Patricia Ostroski, Social Service Program Manager,
DSS, R.O. # 10, Hartford

Tricia Morelli, Social Service Program Manager.
DSS, R.O. # 10, Hartford

Fair Hearing Liaisons, DSS, R.O. # 10, Hartford

Attorney [REDACTED]
[REDACTED]

Patrick B. Kwanashie, Assistant Attorney General,
55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120

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.