

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

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

CLIENT ID #: ██████████
HEARING ID #: 764490

NOTICE OF DECISION

PARTY

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████████████████████

PROCEDURAL BACKGROUND

The Department of Social Services (the "Department") sent ██████████. (the "Appellant") a Notice of Action ("NOA") imposing a transfer of assets penalty for the period of ██████████ 2015 through ██████████ 2015.

On ██████████ 2015, the Appellant requested an administrative hearing to contest the Department's decision to impose a transfer of assets penalty.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for ██████████ 2016.

The Appellant requested that the ██████████ 2016 hearing be rescheduled. This request was granted.

On ██████████ 2016, OLCRAH issued a notice rescheduling the Appellant's hearing to ██████████ 2016.

The Appellant requested that the ██████████ 2016 hearing be rescheduled. This request was granted.

On ██████████ 2016, OLCRAH issued a notice rescheduling the Appellant's hearing to ██████████ 2016.

On [REDACTED] 2016, 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
Attorney [REDACTED], Appellant's Witness – participation by telephone
Enkelejda Trifoni, Department's Representative
Pamela J. Gonzalez, Hearing Officer

On [REDACTED] 2016, the hearing record was reopened to allow for the submission of certain information. On [REDACTED] 2016, the hearing record closed.

STATEMENT OF THE ISSUE

The first issue is whether the Appellant transferred assets in the amount of \$31,130.44 during the look-back period for less than fair market value and is consequently subject to a penalty.

The second issue is whether the Appellant's outstanding nursing home bill can be used to offset the amount of applied income owing to the facility each month.

FINDINGS OF FACT

1. The Appellant's date of birth is [REDACTED]; she is [REDACTED] years of age. (Saint Mary's Hospital Discharge Summary/W-10 – Appellant's exhibit B)
2. In [REDACTED] 2014, the Appellant was in good health, had some physical limitations but was capable of all activities of daily living. She required transportation assistance. (Appellant's Witness' testimony)
3. On [REDACTED] 2014, the Appellant withdrew \$5,000.00 from her Webster checking account and wrote a check to Attorney [REDACTED] for legal fees incurred by another family member. (Letter from Attorney [REDACTED] dated [REDACTED] 2016 – Department's exhibit 1)
4. There is no evidence on the record that the Appellant received fair market value for the \$5,000.00 that she transferred on [REDACTED] 2014. (Hearing record)
5. In [REDACTED] 2014, the Appellant fell; she was hospitalized for a short period and then returned home. (Appellant's Witness' testimony)

6. On [REDACTED] 2014, the Appellant entered a long-term care facility. (Eligibility Management System INST screen print – Department’s exhibit 4, Appellant’s exhibit B)
7. On [REDACTED] 2015, the Appellant surrendered a Pacific Life annuity and received \$35,630.44. (Department’s witness’ testimony, Department’s exhibit 1)
8. Out of the proceeds received from the surrendered Pacific Life Annuity, the Appellant paid her attorney \$5,000.00 for her own end of life planning legal fees, \$4,500.00 for legal fees for her disabled daughter [REDACTED], with whom she lived, and \$26,130.44 for legal fees for her granddaughter. (Department’s exhibit 1, Hearing record)
9. On [REDACTED] 2015, the Appellant applied for long-term care Medicaid. (Eligibility Management System STAT screen print – Department’s exhibit 4, Hearing record)
10. The Department considered the transfer of \$5,000.00 during the look-back period that the Appellant exchanged for legal fees for another family member to be improper and subject to penalty. (Hearing record)
11. The Department considered the transfer of \$26,130.44 during the look-back period that the Appellant exchanged for legal fees for her granddaughter to be improper and subject to penalty. (Hearing record)
12. The Department considered the transfer of \$5,000.00 during the look-back period, that the Appellant exchanged for legal representation for end of life planning and the transfer of \$4,500.00 during the look-back period that she exchanged for legal fees incurred by her disabled daughter with whom she lived to be proper and not subject to penalty. (Hearing record)
13. On [REDACTED] 2016, the Department issued a Form W-495 Preliminary Decision regarding the transfer of assets in the amount of \$31,130.44 (\$5,000.00 + \$26,130.44). The notice stated that the Department’s initial decision was that this transfer was made for purposes of qualifying for assistance and allows the Appellant an opportunity to respond if she disagrees with this determination. (Form W-495A – Department’s exhibit 3)
14. The Appellant did not challenge the Department’s initial determination that the transfer of \$31,130.44 was improper and subject to penalty. (Appellant’s Witness’ testimony, Hearing record)
15. The Department determined that the Appellant was asset eligible effective [REDACTED] 2015. (Eligibility Management System NARR screen print – Department’s exhibit 5)

16. The Department imposed a penalty during which time it will not pay for long-term care or home care services. The penalty period begins [REDACTED] 2015 and ends [REDACTED] 2015. (Department's exhibit 5, Hearing record)
17. The Department granted long-term care Medicaid effective [REDACTED] 2015. (Department's exhibits 4, 5, Hearing record)
18. At this hearing, the Appellant's Witness agreed that he would provide a copy of the retainer and financial agreement statement that the Appellant claims to have signed in [REDACTED] or [REDACTED] 2014 regarding her granddaughter's legal expenses. (Appellant's Witness' testimony)
19. The Appellant's Witness did not provide a copy of the retainer or financial agreement statement or any additional written information for consideration and entry into the hearing record. (Hearing record)
20. There is no evidence on the record that the Appellant received fair market value for the \$26,130.44 she transferred while she was resident of a long-term care facility. (Hearing record)
21. The facility submitted the back bill from [REDACTED] 2014 – [REDACTED] 2015 to be used as a diversion in the calculation of applied income owing to the facility each month. (Department's exhibit 5)
22. The Department rejected the back bill for use as a diversion to offset the amount of the Appellant's monthly applied income owing to the facility. (Department's exhibit 5)

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.

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.

Subsection (a) of section 17b-261a 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 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.”

The Department uses the policy contained in Chapter 3029 of the Uniform Policy Manual to evaluate asset transfers if the transfer occurred on or after February 8, 2006. UPM § 3029.03.

There is a period established, subject to the conditions described in chapter, 3029 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).

The look-back date for transfers of assets is the 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.

The Appellant transferred assets valued at \$31,130.44 during the look-back period.

2. UPM Section 3029.10.E provides that an otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC services if the individual provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.

The Appellant did not provide clear and convincing evidence that the transfer of \$31,130.44 was exclusively for purposes other than to qualify for assistance because she failed to provide evidence of a retainer and a statement of financial assistance with respect to her claim that she agreed to take financial responsibility for her granddaughter’s legal fees in the summer of 2014.

In addition, the Appellant was age [REDACTED] and a long-term care resident at the time of the transfer, facing significant monthly expenses of her own.

3. UPM § 3029.10.F. 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 the or she intended to dispose of the asset at fair market value.

The Appellant, despite her representative’s indication that copies of the retainer and statement of financial agreement would be provided for review and entry in to the hearing record, did not provide said

documentation.

The Appellant did not provide clear and convincing evidence that she intended to dispose of \$31,130.44 at fair market value.

4. UPM § 3029.30 provides that compensation in exchange for a transferred asset is counted in determining whether fair market value was received.

UPM § 3029.30 A. 2. provides that compensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement.

The Appellant claims to have previously received compensation for the transfer of \$31,130.44 when family members received legal services.

The hearing record does not contain evidence of legally enforceable agreements relative to the Appellant's transfers for \$5,000.00 in [REDACTED] 2014 and \$26,130.44 in early 2015.

Compensation for the transfer of \$31,130.44 was not received in accordance with legally enforceable agreements.

5. UPM § 3029.15.B. provides that 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.

The Appellant made the \$31,130.44 transfer when in a facility. She applied for Medicaid four months after making the transfer. She seeks Medicaid eligibility effective the first of the three retroactive months, [REDACTED] 2105, the month following the month that Medicare would have paid for her care. She did not meet her foreseeable needs as they could have reasonably been expected to exist.

6. 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.

The Appellant is subject to a period of ineligibility resulting from her improper transfer of \$31,130.44.

7. 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.

UPM § 3029.05 F.1. provides 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.

UPM § 3029.05 F.2. 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 services in Connecticut.

UPM § 3029.05 F.2.a. states, for applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.

The average monthly cost of LTCF services in Connecticut as of the month of the Appellant's application was \$11,851.00.

The Appellant is subject to a penalty period of 2.62 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTCF services (\$31,130.44, divided by \$11,851.00).

8. UPM § 5035.20.B.6.a. provides that the following monthly deductions are allowed from the income of assistance units in LTCFs: expenses for services provided by a licensed medical provider in the six month period immediately preceding the first month of eligibility providing the following conditions are met: the expenses were not for LTCF services, services provided by a medical institution equivalent to those provided in a long term care facility, or home and community-based services, when any of these services were incurred during a penalty period resulting from an improper transfer of assets.

The Appellant's is not entitled to a monthly deduction from her income to meet expenses incurred for LTCF services during the penalty period of [REDACTED] 2015 – [REDACTED] 2015, that results from improper asset transfers.

The Appellant is entitled to receive a deduction from her income to meet expenses incurred for LTCF services during the period of [REDACTED] 2014 – [REDACTED] 2015.

DISCUSSION

Based upon the testimony and the evidence presented and in light of pertinent regulations, I find that the Appellant improperly transfer assets of \$31,130.44 during the look-back period. She did not meet her foreseeable needs as they could have expected to exist at her age of ninety when she transferred \$31,130.44 while a resident of a long-term care facility. She did not provide clear and convincing evidence that she received fair market value for the \$31,130.44 that she transferred. She did not provide clear and convincing evidence that the transfer was made exclusively for a purpose other than to qualify for medical assistance.

DECISION

The Appellant's appeal to remove the penalty period imposed due to asset transfers in the amount of \$31,130.44 is **Denied**.

The Appellant's appeal to offset the amount of her monthly applied income to the nursing home with outstanding nursing home bills incurred during the penalty period is **Denied in part and Granted in part**.

ORDER

The Department shall afford the Appellant a monthly deduction from her income when computing the amount of applied income owing to the facility for LTCF services incurred during the period of [REDACTED] 2014 – [REDACTED] 2015.

Compliance shall be shown by submission of verification that the Department has recalculated the Appellant's applied income affording her deductions allowed by regulations and is due to OLCRAH by [REDACTED] 2016.

Pamela J. Gonzalez
Pamela J. Gonzalez
Hearing Officer

Copy: Peter Bucknall, SSOM, DSS R.O. #60, Waterbury
Attorney [REDACTED], [REDACTED]

[REDACTED]
Enkelejda Trifoni, Eligibility Services Specialist, 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 06105-3725.

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.