STATE OF CONNECTICUT DEPARTMENT OF SOCIAL SERVICES OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVEHEARINGS 55 FARMINGTON AVENUE HARTFORD, CT06105-3725

, 2016
SIGNATURE CONFIRMATION

REQUEST #765063

CLIENT ID

NOTICE OF DECISION

PARTY

PROCEDURAL BACKGROUND

On, 2016, the Department of Social Services (the "Department") sent ("Appellant") a Transfer of Assets, Final Decision Notice stating that although the Appellant was eligible for certain Medicaid benefits, effective 2016, the Department had determined that the Appellant was not eligible for Medicaid payment for long-term care ("LTC") services during the period of 2016 through 2016.
On, 2016, the Appellant's representative () requested an administrative hearing on behalf of the Appellant to contest the effective date of eligibility for LTC Medicaid benefits as determined by the Department.
On 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling a hearing for 2016 @
OLCRAH granted the Appellant's Representative two continuances.
On, 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 to address the Appellant's effective date of eligibility for LTC Medicaid benefits as determined by the Department.

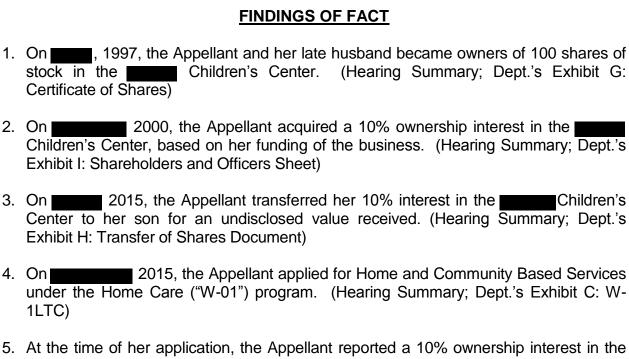
The following individuals were present at the hearing:

I, Appellant's Representative/Witness (By telephone)
, CPA, Witness for the Appellant
Witness for the Appellant
Tiffany Roman, Representative for the Department
Alyssa Kibbie, Representative for the Department
Hernold C. Linton, Hearing Officer

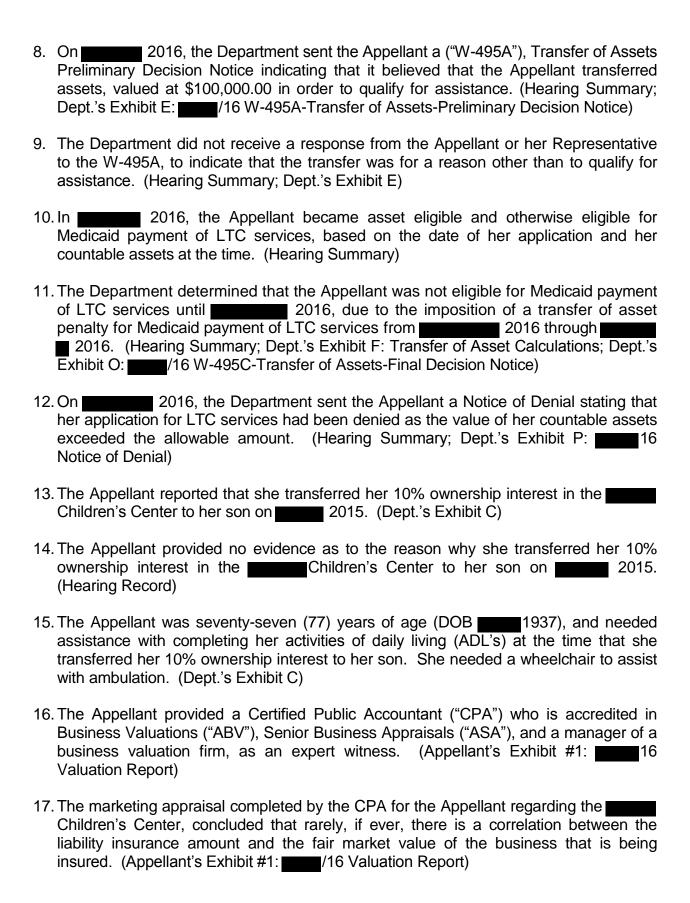
The hearing record was closed on 2016.

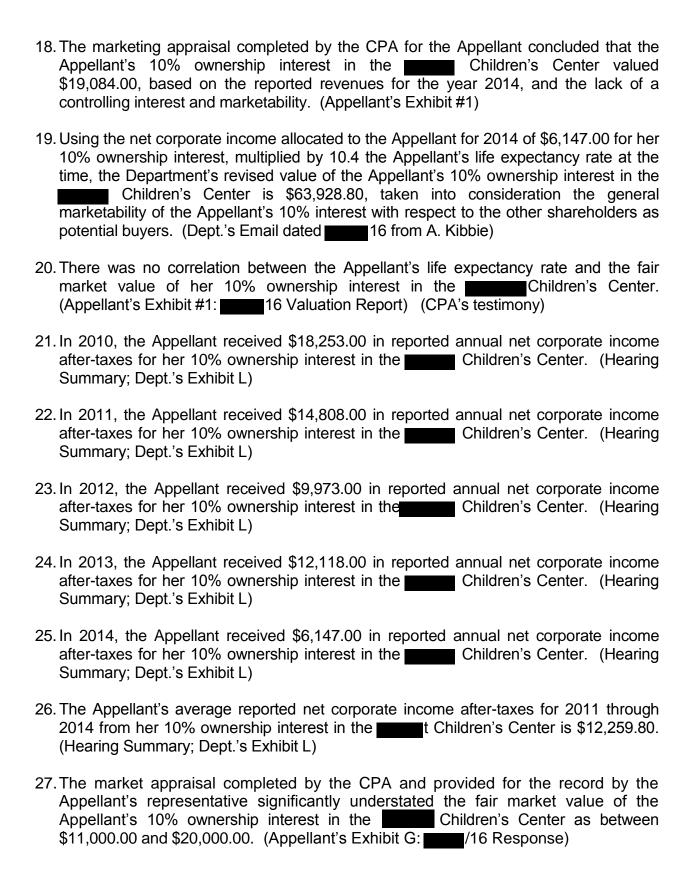
STATEMENT OF THE ISSUE

The issue to be decided is whether the Appellant's effective date of eligibility for LTC Medicaid benefits as determined by the Department is correct due to the imposition of a Transfer of Assets penalty, based on the Appellant's gifting of assets valued at \$100,000.00 to her son.



- Children's Center. (Hearing Summary; Dept.'s Exhibit C)
- 6. In the Tax Year of 2014, the business generated \$3,197,003.00 in gross income and \$61,472.00 in net income payable to its shareholders. (Hearing Summary; Dept.'s Exhibit L: 2014 Tax Return)
- 7. The Department determined that the Appellant's 10% ownership interest in the Children's Center valued \$100,000.00, based on the valuation of the liability insurance amount of \$1,000,000.00. (Hearing Summary; Dept.'s Exhibit K: Certificate of Liability Insurance; Dept.'s Exhibit M: ——/16 Memorandum)





- 28. Because of the fluctuation in the Appellant's after-tax corporate income for 2010 through 2014, the average after-tax corporate income of \$12,259.80 for the period is used to calculate the fair market value of the Appellant's 10% ownership interest in the Children's Center. (\$18,253.00 for 2010; plus \$14,808.00 for 2011, \$9,973.00 for 2012, \$12,118.00 for 2013, and \$6,147.00 for 2014; equals \$61,299.00; divided by 5 years; equals \$12,259.80, average after-tax corporate income) (See Facts # 21 through 26)
- 29. The income approach is generally used when determining the value of an ownership interest in a closely held business. To find the fair market value, the after-tax corporate income is then divided by the Capitalization Rate, which is a percentage used to convert after-tax corporate income into a value to determine the fair market value of an ownership interest in a closely held business and to account for the lack of control and marketability. (Appellant's Exhibit F: Calculation of Value)
- 30. The Capitalization Rate for the Children's Center was calculated at 15.8% for 2014. (Appellant's Exhibit F: Calculation of Value)
- 31. The Appellant's average reported net corporate income after-taxes for 2011 through 2014 of \$12,259.80, divided by 15.8%, the Capitalization Rate for 2014, is \$77,593.67. (See Facts # 20 through 30)
- 32. Using the income approach, the fair market value of the Appellant's 10% ownership interest in the Children's Center is \$77,593.77. (See Facts # 20 through 31)
- 33. The Appellant's Representative withdrew the Appellant's undue hardship claim that had been contemplated. (Stipulated Agreement)

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 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. "Fair Market Value" is defined in Section 0500 (Glossary and Terms) of the UPM as the amount at which an asset can be sold on the open market in the geographic area involved at the time of the sale or the amount actually obtained as a result of bona fide efforts to gain the highest possible price.
- 10. 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. Since the Appellant failed to provide clear and convincing evidence, the Department correctly determined that the Appellant transferred her 10% ownership interest in the Children's Center to her son on 2015 in order to qualify for assistance.
- 12. The Department incorrectly determined the fair market value of the Appellant's 10% ownership interest in the Children's Center as \$100,000.00, based on the amount of its liability insurance coverage, and \$63,928.80, based on the her annual income for 2014 multiplied by her actuarial life expectancy.

- 13. Federal Law provides that in the case of a transfer of an asset made on or after 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, 42 United States Code ("U.S.C.") § 1396p(c)(1)(D)(ii).
- 14. 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)
- 15. Because the Appellant became asset eligible for Medicaid payment of LTC services effective 2016, the Department's determination of 2016, the start date of the period of ineligibility for Medicaid payment of LTC services for the Appellant is correct.
- 16. The Department's imposition of a penalty period for Medicaid payment of LTC services for the Appellant is correct.
- 17. The length of the Appellant's penalty period is determined by dividing \$77,593.67 by \$12,170.00, the average cost of LTC, which equals 6.37 months.
- 18. The Department's determination of ______, 2016 as the end date for the penalty period 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 Appellant's 10% ownership interest in the Children's Center was initially overstated by Department as \$100,000.00. The Appellant's average net corporate income is divided by the Capitalization Rate, which is percentage rate used in closely held business to reflect a lack of control and marketability, in calculating the fair market value of an ownership interest. The average net corporate income is also used due to the fluctuation of the net corporate income from year to year. Based on the evidence provided to rebut the Department's assigned value, the undersigned finds the Department's assigned value (\$100,000.00) for the Appellant's ownership interest in question to be unreasonable, as the Department did not take into consideration acceptable market principles in determining the fair market value of the asset.

Additionally, the undersigned reduced the uncompensated value of the transfer to reflect the fair market value the asset transferred by the Appellant, 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 effective ______, 2016 based on the transfer of asset penalty for \$77,593.67.
- 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: Cheryl Parsons, Social Service Operations Manager, DSS, R.O. #40, Norwich

Fair Hearing Liaisons, DSS, R.O. # 40, Norwich

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 <u>specific</u> grounds for the request: for example, indicate <u>what</u> error of fact or law, <u>what</u> new evidence, or <u>what</u> 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.