

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3730

██████████ 2016  
Signature Confirmation

Client ID # ██████████  
Request #765348

NOTICE OF DECISION

PARTY

██████████  
C/O ██████████, Esq.  
██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") granting Long Term Care Medicaid benefits effective ██████████ 2016.

On ██████████ 2016, the Appellant requested an administrative hearing to contest the effective date of the Long Term Care Medicaid benefits as determined by the Department.

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

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

On ██████████ 2016, in accordance with sections 17b-60, 17-61 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 ██████████, Esq., Appellant's Conservator  
Glenda Gonzalez, Department's Representative  
Lisa Gourdiere, Department's Representative  
Miklos Mencseli, Hearing Officer

The Appellant was not present.

The hearing record was held open for the Department to review submission of additional evidence that was presented at the hearing. On [REDACTED] 2016, the hearing officer closed the record.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether or not the Department was correct in its determination of the effective date of the Applicant's Long Term Care Medicaid benefits due to a Transfer of Assets Penalty.

### **FINDINGS OF FACT**

1. On [REDACTED] 2016, the Department received a re-application for Medicaid Long Term Care assistance for the Appellant. (Summary)
2. The Appellant is a resident of the Willows facility.
3. The Department initially granted the Appellant Medicaid effective for [REDACTED] 2016. (Summary)
4. The Department after review of additional documents granted the Appellant retro Medicaid benefits for [REDACTED] 2016. (Summary)
5. The Appellant owned home property at [REDACTED] (Record)
6. The Appellant had a Comparative Market Analysis ("CMA") done for the property. The pricing recommendation was to list the property at \$189,900.00. (Exhibit 2: Comparative Market Analysis dated [REDACTED] 15)
7. On [REDACTED] 2016, the Appellant sold the property at [REDACTED] for \$197,506.37. (Exhibit 1: Closing Disclosure document)
8. On [REDACTED] 2016, the Department's regional worker made a referral to the resources unit to make a property appraisal to determine the property's fair market value. (Summary)
9. The resources unit based on its fair market value analysis determined that the fair market value of the property is \$250,000.00. The Department compared recent a number of comparable sales in the area. The resources unit placed the fair market value of the Appellant's property at \$250,000.00. (Summary, Exhibit 6: Departmental email dated [REDACTED] 16)

10. On [REDACTED] 2016, the Department sent the Appellant a W-495A Transfer of Assets Preliminary Decision Notice. The Department determined that the Appellant sold property for \$52,500.00 less than FMV (Fair Market Value) on [REDACTED] 2016. (Exhibit 7A: W-495A dated [REDACTED] 16)
11. On [REDACTED] 2016, The Appellant's Conservator contacted the Department requesting the Department provide proof of how they determined the FMV for the property at [REDACTED]. (Exhibit 8: email dated [REDACTED] 16 from Attorney [REDACTED])
12. On [REDACTED] 2016, the Department responded. The Department determined that the properties used to complete the CMA are not close enough in comparison to the subject property. (Exhibit 9: emailed dated [REDACTED] 16 to Attorney [REDACTED])
13. On [REDACTED] 2016, the Department sent the Appellant a W-495C Transfer of Assets Final Decision Notice. The notice confirmed the Department's action as stated on the W-495A notice. (Exhibit 7B: W-495C dated [REDACTED] 16)
14. The Department stated that a penalty period would begin on [REDACTED] 2016 and will end [REDACTED] 2016. (Summary)
15. At the hearing the Appellant's Conservator provided an appraisal done on the property at [REDACTED] on [REDACTED] 2016. (Appellant Exhibit 1C: appraisal dated [REDACTED] 16)
16. The property was appraised at a value of \$198,000.00. (Appellant Exhibit 1C)
17. The Appellant's Conservator also provided interior photos of [REDACTED]. The photos showed the structure needed updating and repairs. (Appellant Exhibit 2: interior photos of [REDACTED])
18. On [REDACTED] 2016, after reviewing the submitted documentation the Department agrees with the certified appraised amount of \$198,000.00. The Department is withdrawing its original amount of \$250,000.00. (Exhibit 13: emailed dated [REDACTED] 16 from the Department)
19. On [REDACTED] 2016, the Department via email advised the Appellant's Conservator that the transfer penalty of \$52,500.00 has been removed. (Exhibit 14: emailed dated [REDACTED]-16 from the Department)

## **CONCLUSIONS OF LAW**

1. Sections 17b-260 to 17b-264 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Title XIX Medical Assistance program to provide medical assistance to eligible persons in Connecticut.
2. Section 17b-2 of the Connecticut General Statute authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
3. Uniform Policy Manual (“UPM”) § 4030.20 (D) provides for treatment of Specific Types of assets. Home Property
  2. If the individual enters a long-term care facility and none of the persons listed above is lawfully residing in the individual's home, the home's status as an excluded asset depends upon the expectation of the individual to return to the home.
    - b. If the individual cannot reasonably be expected to return to the home, the home is considered non-home property, and is subject to the policies and procedures described in this chapter.
4. UPM procedures section P-4030.40 provides for treatment of non-home property.
  1. If an assistance unit owns non-home property, inform the unit of the Department's policy concerning non-home property, including the security mortgage and lien requirements.
  2. Refer the case to the Resources Unit, which:
    - computes the unit's equity in the home; and
    - makes sure the unit is making a good-faith effort to sell; and
    - obtains a security mortgage, or places a lien, if required.
5. The Department was correct to make a referral to the Resources unit to determine the property's equity and fair market value.
6. UPM procedures section P-4099.05 provides for verification of asset limits.
  1. Verification regarding the status of the assistance unit's assets as excluded, inaccessible, counted, or deemed is discussed in the previous pages of this chapter.
  2. The following sources may be used to verify the assistance unit's or deemor's equity in counted assets:

- NADA "blue" book of trade-in values for automobiles;
  - real estate conveyance records;
  - marketing appraisals;
  - bank records;
  - passbooks;
  - records of stock transactions;
  - property appraisals performed by the Department;**
  - tax assessment records;
  - tracers sent by the Department and answered by appropriate agency personnel (e.g. W-36 completed by bank official; W-279 completed by insurance company official).
7. The Department correctly conducted an appraisal of the property at [REDACTED].
  8. The Department determined the fair market value of the property is \$250,000.00.
  9. The Department upon review of documentation submitted at the hearing has withdrawn its original FMV amount of \$250,000.00 and agrees with the appraisal amount of \$198,000.00
  10. The Department has removed the Appellant's transfer of assets penalty of \$52,500.00.
  11. The hearing issue for which a hearing was conducted no longer exists, therefore; there is no issue on which to rule.

### **DISCUSSION**

After the hearing was held on [REDACTED] 2016, the Department removed the transfer of assets penalty. As the issue of the hearing was whether or not the Department was correct to impose a transfer of assets penalty of \$52,500.00, the

Department has rescinded its penalty proposal; the issue of the hearing no longer exists

**DECISION**

The Appellant's appeal is **DENIED**.

  
Miklos Mencseli  
Hearing Officer

C: Brian Sexton, Operations Manager, DSS R.O. #20 New Haven

### **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.

### **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.