

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 #: 767223

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the “Department”) sent ██████████ ██████████ (the “Appellant”) a Notice of Action (“NOA”) imposing a transfer of assets penalty for the period from ██████████ 2016, through ██████████ 2016.

On ██████████ 2016, ██████████, Power of Attorney (“POA”) for the Appellant, requested an administrative hearing to contest the Department’s decision to impose a penalty on the Applicant’s Long Term Care Medicaid benefits.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the 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, OLCRAH held an administrative hearing. The following individuals were present at the hearing:

██████████, POA and cousin of the Appellant
Attorney ██████████, Representative for the POA
Doris Hare, Eligibility Services Worker, Department’s Representative
Roberta Gould, Hearing Officer

At the request of the Appellant’s POA, the hearing record remained open for the submission of additional evidence. The hearing record closed on ██████████ 2016.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly determined an effective date of Medicaid based on a Transfer of Assets (“TOA”) penalty.

FINDINGS OF FACT

1. On [REDACTED] 2013, the Appellant gifted \$150,000.00 to [REDACTED] Solutions. (Exhibit 20: Copy of check dated [REDACTED] 2013 and Department’s testimony)
2. On [REDACTED] 2015, [REDACTED] Solutions issued a check to the Appellant in the amount of \$6,000.00. (Exhibit 21 and Hearing summary)
3. [REDACTED] Solutions is owned by [REDACTED], the spouse of the Appellant’s POA, [REDACTED]. (Exhibit 10: Department’s Resource Division email dated [REDACTED] 2016 and POA’s testimony)
4. In 2015, the Appellant applied for the Connecticut Home Care Program for Elders (“CHCPE”). (Hearing summary)
5. On [REDACTED] 2015, the Department sent the Appellant a W-495A Transfer of Assets Preliminary Decision Notice stating that the Department’s initial decision regarding his transfer of \$150,000.00 was that he made the transfer in order to be eligible for Medicaid assistance. (Exhibit 1: W-495A dated [REDACTED] 2015 and Hearing summary)
6. On [REDACTED] 2015, the Department denied the Appellant’s application for CHCPE for a failure to provide information needed to establish eligibility. (Hearing summary)
7. On [REDACTED] 2016, the Appellant was admitted to The Grimes Center long-Term Care facility. (Exhibit 2: W-1 long-term care application form and Hearing summary)
8. On [REDACTED] 2016, the Appellant applied for Long-Term Care Medicaid assistance. (Exhibit 2 and Hearing summary)
9. On [REDACTED] 2016, the Department sent the Appellant and his POA a W-1348 Verification We Need form requesting documentation of all accounts and transactions of \$5,000.00 or more, proof of the origin of all funds and liquidation of all assets. The information was due back by [REDACTED] 2016. (Exhibit 4: W-1348 Verification We Need form dated [REDACTED]/2016 and Hearing summary)
10. On [REDACTED] 2016, the POA contacted the Department to discuss the Appellant’s application for assistance. The Department sent a new W-1348 Verification We Need form to the Appellant and his POA requesting documentation of all accounts

and transactions of \$5,000.00 or more, proof of the origin of all funds and liquidation of assets. The information was due back by [REDACTED] 2016. (Exhibit 5: W-1348 Verification We Need form dated [REDACTED] 2016 and Hearing summary)

11. On [REDACTED] 2016, the POA phoned the Department to request an office appointment to discuss the case and drop off documents pertinent to the Appellant's application for assistance. (Hearing summary)
12. On [REDACTED] 2016, the Appellant's POA visited the Department's regional office and provided copies of checks the Appellant wrote to the POA, indicating that these checks were for repayment of services the Appellant received from her. (Exhibit 7: Checks submitted by POA and Hearing summary)
13. There is no written caregiver agreement in place between the Appellant and his POA. (POA's testimony)
14. There is no evidence in the record to reflect that the funds transferred from the Appellant to his POA were used for the Appellant's care. (Hearing record)
15. On [REDACTED] 2016, the Department sent the Appellant a W-495B Transfer of Assets Notice of Response to Rebuttal/Hardship Claim form stating that the Department proposed to set up a penalty period during which they would not pay for long-term care medical services due to the transfers totaling \$144,000.00. (Exhibit 11: W-495B form dated [REDACTED] 2016 and Hearing summary)
16. On [REDACTED] 2016, the Department sent the Appellant a W-495C Transfer of Assets Final Decision Notice stating that due to the transfers totaling \$144,000.00 the Appellant was subject to a penalty period that would go from [REDACTED] 2016, through [REDACTED] 2016. (Exhibit 12: W-495C form dated [REDACTED] 2016 and Hearing summary)
17. On [REDACTED] [REDACTED] 2016, the Department granted Medicaid for Long-Term Care assistance effective [REDACTED] 2016. A penalty of \$144,000.00 was applied for the period of [REDACTED] 2016, through [REDACTED] 2016, due to transfers of income from the Appellant to his POA. (Exhibit 17: EMS Assistance Status screen, Exhibit 22: Notice of approval for long-term care Medicaid and Hearing summary)
18. The Appellant will become eligible for Long-Term Care Medicaid effective [REDACTED] 2016. (Exhibit 19: Remarks screen and Hearing summary)

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.
2. Section 17b-260 of the Connecticut General Statutes authorizes the Commissioner 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.

3. 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.
4. UPM § 3029.05(B) provides that the policy contained in the chapter on transfers of assets pertains to institutionalized individuals and to their spouses.
5. UPM § 3029.05(D)(1) provides that the Department considers transfers of assets made within the time limits described in 3029.05 C, on behalf of an institutionalized individual or his or her spouse by a guardian, conservator, person having power of attorney or other person or entity so authorized by law, to have been made by the individual or spouse.
6. UPM § 3029.05(C) provides that 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.
7. The Department correctly looked back 60 months prior to the Appellant's application in order to determine whether any improper asset transfers occurred.
8. Section 17b-261a(a) 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 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.
9. UPM § 3029.10(E) provides that 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.
10. The Department correctly determined that the transfers made were given as gifts to the Appellant's POA because there is no clear and convincing evidence to support otherwise.
11. Section 17b-261o(c) of the Connecticut General Statutes provides that the

commissioner shall impose a penalty period pursuant to subsection (a) of section 17b-261 or subsection (a) of section 17b-261a if the transfer or assignment of assets was made by the Applicant's legal representative or joint owner of the asset.

12. The Appellant is subject to a penalty due to improperly transferring assets during the look-back period.
13. UPM § 3029.05 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.
14. The Department correctly determined that the Appellant is subject to a penalty period beginning [REDACTED] 2016, the date that the Appellant was otherwise eligible for Medicaid payment of long-term care services.
15. UPM § 3029.05(F) 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 long-term care services in Connecticut. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. A single penalty period is then calculated, and begins on the date applicable to the earliest transfer.
16. The Department incorrectly determined that the Appellant improperly transferred assets of \$144,000.00 (\$150,000.00 - \$6,000.00) during the Medicaid eligibility look-back period.
17. The Department correctly determined that the length of the penalty period for improperly transferring assets is 11.84 months, from [REDACTED] 2016, through [REDACTED] 2016. The penalty period is determined by dividing the uncompensated value of the transferred asset by the average monthly cost of care to a private patient for long-term care services in Connecticut, or \$144,000.00 ÷ \$12,170.00.

DISCUSSION

After reviewing the evidence and testimony presented at the hearing, the Department's action to impose a Medicaid period of ineligibility for long-term care coverage is upheld. I find that the gifts to the Appellant's POA totaling \$144,000.00 are subject to a Medicaid penalty as set out in regulations. I find that the POA did not provide clear and convincing evidence that he transferred the assets for any other purpose than to qualify for Medicaid.

DECISION

The Applicant's appeal is **DENIED**

Roberta Gould

Roberta Gould
Hearing Officer

Pc: Brian Sexton, Social Services Operations Manager, DSS New Haven
Lisa Wells, Social Services Operations Manager, DSS New Haven
Cheryl Stuart, Social Services Program Manager, DSS New Haven
Doris Hare, Eligibility Services Worker, DSS 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 06105-3725.

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.