

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

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

Client ID # ██████████
Request #774573

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

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

On ██████████ 2016, the Appellant's Power of Attorney ("POA") requested an administrative hearing to contest the Department's decision to impose a penalty on the 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, the Appellant's POA requested to reschedule the hearing.

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, 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:

██████████ Appellant, Applicant's Son, Power of Attorney ("POA")
Jennifer Bucci, Department's Representative
Sinseara Mercado, Department Representative, via telephone

Maren Walsh, Department's Representative, via telephone
Shelley Starr, Hearing Officer

The Applicant, [REDACTED] was not present, due to his passing on [REDACTED] 2016.

The hearing record was held open for the submission of additional evidence by the Department. On [REDACTED] 2016, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department was correct in its determination of the effective date of the Applicant's Long Term Care Medicaid benefits based on a Transfer of Assets ("TOA") penalty.

FINDINGS OF FACT

1. In [REDACTED], the Applicant suffered a stroke and had a reaction to his medication for shingles that required hospitalization and short term rehabilitation. (Appellant's Testimony; Exhibit 2: Ascend printout)
2. In [REDACTED] 2014, the Applicant was [REDACTED] [DOB [REDACTED]] and was a widower. (Exhibit 1: LTC application; Hearing Record)
3. On [REDACTED] 2014, the Applicant transferred from the hospital to Sharon Health Care Center, [REDACTED] Connecticut for an anticipated short term rehabilitation admission. (Appellant's Testimony; Exhibit 2: Ascend printout)
4. On [REDACTED] 2014, the Applicant's POA wrote check [REDACTED] payable to [REDACTED] for \$5,000.00 from the Applicant's Bank of Millbrook checking account ending in [REDACTED]. (Exhibit 3: Bank of Millbrook bank statement account [REDACTED]; [REDACTED] check image)
5. On [REDACTED] 2014, the Applicant's POA wrote check [REDACTED] payable to himself, [REDACTED], from the Applicant's Bank of Millbrook checking account ending in [REDACTED]. (Exhibit 3: Bank of Millbrook statement account [REDACTED]; check image [REDACTED])
6. The Applicant did not respond to his short term rehabilitation and it was determined that he would need to stay at the facility as a long term placement. (Appellant's Testimony)
7. On [REDACTED] [REDACTED] 2016, the Department received a W-1LTC application completed by the Applicant's POA, requesting assistance for care in a facility. (Exhibit 1: W-1 LTC application dated [REDACTED] 2016)

8. On [REDACTED] 2016, the Department issued the Applicant's POA, a W-495A, Transfer of Assets, Preliminary Decision Notice stating that the Applicant transferred \$10,000.00 on [REDACTED] 2014 to [REDACTED] and [REDACTED] to become eligible for Medicaid. (Exhibit 4: W-495A Transfer of Assets, Preliminary Decision Notice, dated [REDACTED] 2016)
9. On [REDACTED] 2016, the POA responded to the W-495A stating that "the two checks for \$5,000.00 each, one to my brother and one to me, in [REDACTED] 2014, was money my father wanted us to put towards the cost of flying our families out to [REDACTED] California to attend my son [REDACTED] wedding in [REDACTED] [REDACTED] as he is in the US [REDACTED] and currently stationed at [REDACTED]." "In [REDACTED] 2014, my father was still on Medicare and undergoing rehabilitation at Sharon Health Care Center to determine if he could return home in [REDACTED]." (Hearing Summary; Exhibit 5: Letter from POA, dated [REDACTED] 2016)
10. On [REDACTED] 2016, the Applicant was approved for the Long Term Care Medicaid assistance program. (Exhibit 16: Notice of Action dated [REDACTED] 2016; Exhibit 13: Notice of Approval for Long Term Care Medicaid; Hearing Record)
11. On [REDACTED] 2016, the Department issued a W-495C, Transfer of Assets Final Decision Notice stating that the Applicant had transferred \$10,000.00 to become eligible for Medicaid and was subject to a transfer of assets penalty for Medicaid long term care services for the period of [REDACTED] 2016 through [REDACTED] 2016. (Exhibit 4: W-495C dated [REDACTED] 2016; Hearing Summary)

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. Section 17b-80(a) of the Connecticut General Statute states that the Department shall grant aid only if the applicant is eligible for that aid.
4. Uniform Policy Manual ("UPM") § 3029.05 provides the transfer of assets basic provisions.

A. General Statement

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.

B. Individuals Affected

1. The policy contained in this chapter pertains to institutionalized individuals and to their spouses.
2. An individual is considered institutionalized if he or she is receiving:
 - a. LTCF services; or
 - b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; or
 - c. home and community-based services under a Medicaid waiver (cross references: 2540.64 and 2540.92).
5. UPM § 3029.05 (C) (1)(2) provides that the look-back date for transfers of assets is a date that is 60 months before the first date on which both the following conditions exist: the individual is institutionalized and the individual is either applying for or receiving Medicaid.

The Department correctly determined that the transfers on [REDACTED] 2014, occurred within the 60 month look back period.

6. UPM § 3029.05 D (1) (2) provides 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. In the case of an asset that the individual holds in common with another person or persons in joint tenancy, tenancy in common or similar arrangement, the Department considers the asset (or affected portion of such asset) to have been transferred by the individual when the individual or any other person takes an action to reduce or eliminate the individual's ownership or control of the asset.

The Department correctly determined that the \$10,000.00 gifted on [REDACTED] 2014, is within the look back period and subject for review.

7. 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.

8. 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.
9. UPM § 3029.10(F) provides for transferor intended to transfer at fair market value. An institutionalized individual or his or her spouse may transfer an asset without penalty if the individual demonstrates with clear and convincing evidence that he or she intended to dispose of the asset at fair market value.
10. UPM § 3025.15 provides for Transfer Not for the Purpose of Qualifying and provides:

A. Fair Market Value Received

If fair market value is received, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.

B. Assets Within Limits

If the total of the uncompensated fair market value of a transferred asset plus all other countable assets does not exceed program limits, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility. In the case of multiple transfers involving one asset, this includes the total uncompensated value of all transfers.

C. Transfer for Another Purpose

If there is convincing evidence that the transfer is exclusively for another purpose, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.

UPM § 3029.15 (B) provides 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 Department correctly determined the Applicant did not receive fair market value for the \$10,000.00 he gifted to his sons because the money was for their travel expenses.

The Applicant did not provide clear and convincing evidence that the

\$10,000.00 gifted to his two sons was not for the purposes of qualifying for Medicaid.

The Applicant did not meet his foreseeable needs at the time of the transfer, based on his admission to a nursing facility and his declining health.

The Department was correct to impose a transfer of asset penalty against the Applicant due to his uncompensated transfer of assets of \$10,000.00.

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.

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.

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) 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 by the average monthly cost to a private patient for long-term care services in Connecticut. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application. Uncompensated value of multiple transfers are added together and the transfers are treated as a single transfer.

The average monthly cost for LTCF services in █████ 2016, the applicant's month of application is \$12,170.00.

The Department's imposition of a 31 day penalty period for ineligibility of Medicaid Long Term Care Medicaid Services is incorrect. The correct penalty period equals 25 days ($\$10,000.00 / \$12,170.00$ (average monthly cost of care) = $.82 \times .31$ (# days in March) = 0.25 days.)

12. UPM § 3029.05 (E)(2) provides 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 cause by a transfer of assets.

The Department determined the Applicant is otherwise eligible beginning [REDACTED] 2016.

The Department's determination of [REDACTED] 2016, as the start date of the penalty period is correct.

The Department's determination of [REDACTED] 2016, as the end date of the period of ineligibility is incorrect. The correct end date of the period of ineligibility is [REDACTED] 2016, (25 days).

DISCUSSION

Based on the evidence and testimony presented, the Department's action to impose a Medicaid penalty of long term coverage is upheld; however, the end date of the penalty period is not correct. I found that the penalty period to be 25 days [REDACTED] 2016 through [REDACTED] 2016).

The Appellant testified that the Applicant wanted his family to attend his grandson's wedding and gifted \$5,000.00 each to his two sons for their travel expenses. At the time of the transfer, the Applicant was [REDACTED], suffering from deteriorating health due to having a stroke and a reaction to his medication which caused hospitalization and rehabilitation. While at the time of the transfer, the Applicant's cost of care was covered by Medicare, the Applicant did not meet his foreseeable needs based on his health and financial situation. In addition, the Appellant did not provide clear and convincing evidence that the intent of the cash transfers were for purposes other than qualifying for Medicaid.

DECISION

The Appellant's appeal is DENIED in respect to the imposition of a penalty and GRANTED in respect to the length of the penalty.

ORDER

1. The Department is to adjust the penalty period to 25 days, effective [REDACTED] 2016 ending [REDACTED] 2016.
2. Compliance with this order should be forwarded to the undersigned no later than fifteen days of the date of this decision.


Shelley Starr
Hearing Officer

cc: Annette Lombardi, Operations Manager, DSS, Torrington Regional Office

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.