

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

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

CL ID # ██████████
Request # 777468

NOTICE OF DECISION

PARTY

██████████
C/O ██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a notice that she had transferred \$32,000.00 to become eligible for Medicaid, and the Department was imposing a penalty period of ineligibility for Medicaid payment of long term care services effective ██████████ 2016 through ██████████ 2016.

On ██████████ 2016, the Appellant requested an administrative hearing to contest the Department's penalty determination.

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

On ██████████ 2016, the Appellant requested a continuance which was granted.

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

On ██████████ 2016, the Appellant requested a continuance which was granted.

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

On ██████████ 2016, the Appellant requested a continuance which was granted.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative

Hearings (“OLCRAH”) scheduled an administrative hearing for [REDACTED] 2016.

On [REDACTED] 2016, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The following individuals were present at the hearing:

[REDACTED], Appellant’s son, Power of Attorney (“POA”) Attorney [REDACTED], for the Appellant
 Michael Briggs, Department’s Representative
 Tierra McClain, Department’s Representative
 Thomas Monahan, Hearing Officer

The hearing record remained open for the submission of additional evidence. On [REDACTED] 2016, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether or not the Department was correct to impose a penalty period from [REDACTED] 2016 through [REDACTED] 2016, due to a \$32,000.00 transfer of assets.

FINDINGS OF FACT

1. On [REDACTED] 2016, the Appellant entered Lord Chamberlin Nursing Home (the “facility”). (Exhibit 1: Application form)
2. On [REDACTED] 2016 the Department received a Medicaid Long Term Care Application from the Appellant. (Hearing record)
3. The Appellant is [REDACTED] years old [D.O.B. [REDACTED]]. (Ex. 1: Application form)
4. In 2001, the Appellant’s son bought a condominium for the Appellant in a safer area than her previous residence so that the Appellant could continue to live independently. (Testimony, Appellant’s Brief)
5. The Appellant’s medical conditions include Chronic Heart Failure, Hypertension, Hyperlipidemia, and Coronary Artery Disease. (Appellant’s Brief Ex. B: Medical records)
6. In [REDACTED] of 2012 the Appellant fell and broke two ribs. She had a short stay at the facility before returning home in early 2013. (Appellant’s brief, Department’s Ex. 2: Ascend admission)

7. In [REDACTED] of 2013 the Appellant suffered a mild heart attack. (Appellant's Brief Ex. B: Medical records)
8. In 2013, the Appellant's son began assisting the Appellant with her medication setups and also with cleaning her condominium. (Testimony)
9. In 2013, the Appellant stopped driving. At that time the Appellant's son began providing transportation, shopping and housekeeping services. (Testimony)
10. In [REDACTED] of 2015, the Appellant was forgetful in taking her prescriptions, and her judgment was impaired. It was determined that she was no longer able to live in her condominium. (Appellant's brief)
11. On [REDACTED] 2014, the Appellant transferred \$10,000.00 to her son. (Ex. 4: Letter to Department from Appellant's son, [REDACTED] 16)
12. On [REDACTED] 2015, the Appellant transferred \$12,000.00 to her son. (Ex. 5: Copy of check)
13. On [REDACTED] 2015, the Appellant transferred \$5,000.00 to her granddaughter towards the purchase of a dog grooming business. (Ex. 5: Copy of check, Appellant's brief, Ex. C: Business verification)
14. On [REDACTED] 2015, the Appellant transferred \$5,000.00 to her grandson towards the cost of college. (Ex. 5: Copy of check, Appellant's brief, Ex. D: College verification)
15. The Appellant is otherwise eligible for LTC Medicaid payment effective [REDACTED] 2016. (Ex. 8: Case narrative)
16. The Appellant is seeking LTC Medicaid eligibility effective [REDACTED] 2016. (Hearing record)
17. On [REDACTED] 2016 the Department issued a Transfer of Assets Preliminary Decision Notice, indicating the transfers made from [REDACTED] 2014 through [REDACTED] 2015 in the amount of \$32,000.00 were made in order to qualify for Medicaid. (Ex. 6: Transfer packet, W-495, [REDACTED] 16)
18. On [REDACTED] 2016, the Department issued a Transfer of Assets Final Decision Notice indicating that the Appellant was not eligible for payment of LTC services from [REDACTED] 2016 through [REDACTED] 2016 because of the \$32,000.00 transfer of assets made to qualify for LTC services. (Ex. 6: Transfer packet, W-495, [REDACTED] 16)
19. The Department did not receive a response from the Appellant regarding the

transfer of asset decision notices. (Hearing record)

20. On [REDACTED] 2016, the Department granted Medicaid effective [REDACTED] 2016, with a penalty for long term care services from [REDACTED] 2016 through [REDACTED] 2016. (Ex. 7: Notice of Approval, [REDACTED] 16)

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 February 8, 2006. Uniform Policy Manual ("UPM") § 3029.03.
5. 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. UPM § 3029.05(C)
6. 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).
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. Regulation 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. UPM § 3029.10(E)
9. The Appellant transferred \$10,000 to her granddaughter and grandson ([REDACTED] 2015, \$5,000.00; [REDACTED] 2015, \$5,000.00) for reasons other than to qualify for assistance. This is not considered an improper transfer.
10. 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. UPM § 3029.15(B)
11. The Appellant did not retain other assets needed to meet her foreseeable needs at the time of the transfers to her son.
12. A legally enforceable agreement is a binding and credible arrangement, either oral or written, wherein two or more parties agree to an arrangement in consideration of the receipt of money, property, or services and in which all parties can be reasonably expected to fulfill their parts of the agreement. UPM § 3000.01
13. Regulation provides that compensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement. UPM § 3029.30(A)(2)
14. There is not clear and convincing evidence of a legally enforceable agreement between the Appellant and her son.
15. Regulation provides that transfers made in return for other valuable consideration must be in the form of services or payment for services which meet the following conditions: the services rendered are of the type provided by a homemaker or a home health aide; and the services are essential to avoid institutionalization of the transferor for a period of at least two years; and the services are either: provided by the transferee while sharing the home of the transferor; or paid for by the transferee. UPM § 3029.20(B)
16. The Appellant's transfer does not meet other valuable consideration criteria as the Appellant did not live with her son.

17. The Appellant did not establish with clear and convincing evidence that she transferred \$22,000 to her son for a purpose other than qualifying for assistance, such as undue influence, his foreseeable needs were met, transfer to or by legal owner, or that the transferred asset would not affect her eligibility if retained.
18. The Department was incorrect to impose a transfer of asset penalty against the Appellant due to uncompensated transfer of assets of \$32,000.00 to her family.
19. The correct uncompensated value of transferred assets equals \$22,000.
20. Federal Law provides that in the case of a transfer of an asset made on or after February 8, 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 U.S.C. § 1396p(c)(1)(D)(ii).
21. 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).
22. 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. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application. UPM § 3029.05(F)
23. The Department's determination of [REDACTED] 2016 as the start date of the period of ineligibility for Medicaid payment for long term care services is correct.
24. The Department's determination of [REDACTED] as the end date of for the period of ineligibility for Medicaid payment of long term care services is not correct. UPM § 3029.05(E)
25. The penalty period equals 1.81 months. (\$22,000.00 / average cost of care of \$12,170)

26. The correct Medicaid penalty period is [REDACTED] 2016 through [REDACTED] 2016.

DISCUSSION

After reviewing the evidence and testimony presented, the Department's action to impose a Medicaid period of long term care coverage is upheld. However, the amount of the transfer and the end date of the penalty period are not correct. I found that the uncompensated value of the transfer to be \$22,000.00 not the \$32,000.00 that the Department presented.

The Appellant sent a check for \$5,000.00 to her granddaughter to help her purchase a business. The Appellant sent a check for \$5,000.00 to help her grandson pay for school. These checks are not transfers for the purpose of qualifying for Medicaid. The Appellant's son's testimony and evidence was credible that these payments to the Appellant's grandchildren were not made for the purpose of qualifying for assistance.

The Appellant's transfers of \$22,000.00 to her son are transfers for the purpose of qualifying for assistance. There is no evidence of a legally enforceable agreement and the Appellant's foreseeable needs were not met.

DECISION

The Appellant's appeal is GRANTED in part and DENIED in part.

ORDER

1. The Department is ordered to adjust the uncompensated value of the transfers to \$22,000.00.
2. The Department is ordered to adjust the penalty period to 1.81 months.
3. Compliance with this order should be forwarded to the undersigned no later than 15 days from the date of this decision.

Thomas Monahan
Thomas Monahan
Hearing Officer

C: Sharma Poonam, Operations Manager, Bridgeport Regional Office
Fred Presnick, Operations Manager, Bridgeport Regional Office
Yecenia Acosta, Program Manager, Bridgeport Regional Office
Michael Briggs, Hearing Liaison

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 Legal Counsel, Regulations, and Administrative Hearings, 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 06105-3725. 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 his 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.