

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

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

CL ID # ██████████
Request # 780402

NOTICE OF DECISION

PARTY

██████████
c/o ██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a notice that she had transferred \$97,290.00 to become eligible for Medicaid, and the Department was imposing a Transfer of Assets ("TOA") penalty period of ineligibility for Medicaid payment for Long Term Care ("LTC") services effective ██████████ 2016 through ██████████ 2016.

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

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

The administrative hearing was rescheduled at the Appellant's Power of Attorney's request. 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, the OLCRAH held an administrative hearing. The following individuals were present at the hearing:

██████████, Appellant's Daughter and POA
Doris Hare, Department's Representative
Sybil Hardy, Hearing Officer

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

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department was correct to impose a penalty period of 8 months for Medicaid for LTC services because the Appellant transferred \$97,290.00 in order to qualify for assistance.

FINDINGS OF FACT

1. On ██████████ 2013, the Appellant's daughter, ██████████, was appointed full POA to act on the behalf of the Appellant in all matters. (Exhibit 2: Durable Power of Attorney, ██████████ 13)
2. The Appellant was admitted to Backus Hospital (the "hospital"), Norwich, Connecticut, with a cracked rib and a wrist injury after falling at home. (POA's Testimony)
3. On ██████████ 2016, the Department received an application for LTC payments under the Medicaid program. (Exhibit 1: Long-term Care Application, ██████████ 16)
4. The Appellant is seeking eligibility for Medicaid for LTC services effective ██████████ 2016. (Exhibit 1)
5. On ██████████ 2016, the Appellant was admitted to Norwichtown Rehabilitation, Norwich, Connecticut (the "nursing facility") from the hospital for short-term rehabilitation. (POA's Testimony, Exhibit 1: Long-term Application, ██████████ 16)
6. The Appellant is a ██████████ years old (DOB ██████████) widow who has lived with her 65 year old daughter, at ██████████, for the past 25 years. (POA's Testimony, Exhibit 1, Exhibit 2)
7. Prior to the fall, the Appellant was able to get around with the assistance of a walker or another person. (POA's Testimony)
8. The Appellant returned home after her short term stay at the nursing facility. (POA's Testimony)

9. The Appellant was unable to stand on her own after she returned to her home and developed several medical problems. (POA's Testimony)
10. The Appellant's medical condition was deteriorating rapidly after her fall. (POA's Testimony)
11. The POA was no longer able to care for the Appellant in her home. (POA's Testimony)
12. The Appellant has the following medical conditions: Atrial Fibrillation, poor circulation, dementia. (Exhibit 3: Letter from [REDACTED], [REDACTED] 16)
13. The Appellant made following withdrawals from her Wells Fargo account during the look back period from [REDACTED] 2001 to [REDACTED] 2016:

Date	Transaction type	Amount
[REDACTED] 11	Withdrawal	\$12,290.00
[REDACTED] 12	Withdrawal	\$10,000.00
[REDACTED] 13	Withdrawal	\$ 2,000.00
[REDACTED] 13	Withdrawal	\$10,000.00
[REDACTED] 13	Withdrawal	\$25,000.00
[REDACTED] 13	Withdrawal	\$20,000.00
[REDACTED] 13	Withdrawal	\$ 3,000.00
[REDACTED] 13	Withdrawal	\$20,000.00
[REDACTED] 13	Withdrawal	\$11,233.05

(Exhibit 9: Returned W-1348Apx)

14. On [REDACTED] 2016, the Department sent the POA a Verification We Need ("W1348LTC") Form and an Explanation of Deposits and Withdrawals ("W-1348 Apx") Form requesting the following information: asset information, proof of face value and cash surrender value of life insurance policies, explanation of account transactions. (Exhibit 4: W-1348LTC/W-1348Apx, [REDACTED] 16)
15. The Department requested details for transactions beginning in 2011. (Exhibit 4)
16. On [REDACTED] 2016, the Department sent the POA another W-1348 form requesting the same information plus verification of shared ownership of a vehicle and receipts from New England Carpet and Tile for services received. (Exhibit 5: W-1348LTC, [REDACTED] 16)
17. On [REDACTED] 2016, the Department sent the POA another W-1348 form requesting the same information. (Exhibit 6: W-1348LTC, [REDACTED] 16)

18. The POA claims that some of the money withdrawn from the Appellant's bank account was used for her gambling problem. (POA's Testimony)
19. On [REDACTED] 2016, the Department sent the POA another W-1348 form requesting the Wells Fargo bank account information and explanation of transactions within the look back period and proof of gambling debts from the casino. (Exhibit 8: W-1348LTC, [REDACTED] 16)
20. During [REDACTED] 2016, the POA submitted a letter to the Department explaining that she went to Foxwoods Casino Guest Services for a transaction history. (Exhibit 7: Letter from [REDACTED], [REDACTED] 2016)
21. On [REDACTED] 2016, the Department sent another W-1348LTC form and a W-1348Apx form to the POA requesting the following information: Proof of premium with Colonial Penn insurance, proof of deposit of \$86,059.77 made on [REDACTED] 2011. (Exhibit 10, W-1348LTC and W-1348Apx, [REDACTED] 16)
22. The POA returned that W-1348Apx form with notations for the following transactions from the Appellant's Wells Fargo bank accounts:

Date	Transaction type	Amount	Source of Deposit/ Reason for withdrawal or expense
[REDACTED] 11	Deposit	\$85,059.77	North Carolina Bank to Connecticut bank
[REDACTED] 12	Withdrawal	\$10,000.00	I don't know
[REDACTED] 13	Withdrawal	\$ 2,000.00	Holidays
[REDACTED] 13	Withdrawal	\$10,000.00	Foxwoods
[REDACTED] 13	Withdrawal	\$25,000.00	My personal loan with my mother
[REDACTED] 13	Withdrawal	\$20,000.00	Foxwoods
[REDACTED] 13	Withdrawal	\$ 3,000.00	Holidays
[REDACTED] 13	Withdrawal	\$20,000.00	I don't know
[REDACTED] 13	Withdrawal	\$11,233.05	Checking Account

(Exhibit 9: Returned 1348Apx, Exhibit 11: Note from [REDACTED] with checks)

23. The Appellant routinely gave money to her daughter, [REDACTED], prior to the look back period; however, why the Appellant gave money to her daughter, [REDACTED] during the look back period was not substantiated. (Hearing Record)
24. The POA did not provide any explanation for the \$10,000 withdrawn on [REDACTED] 12 and the \$20,000 withdrawn on [REDACTED] 13. (Fact # 22)

25. The POA did not provide proof that the Appellant had a gambling problem and the \$10,000 withdrawal on [REDACTED] 13 and \$20,000 withdrawal on [REDACTED] 13 were used for gambling. (Exhibit 12: Returned W-1348LTC form; Hearing Record)
26. The POA did not provide proof that the \$25,000 withdrawal on [REDACTED] 13 was a personal loan to her. (Exhibit 12: Returned W-1348LTC form; Hearing Record)
27. On [REDACTED] 2016, the Department sent the POA another W-1348LTC form requesting bank statements for [REDACTED] 2016 and [REDACTED] 2016. (Exhibit 13: W1348LTC, [REDACTED] 16)
28. The Department did not count the \$2000 and \$3000 withdrawals the POA stated were for the holidays as part of the TOA penalty. (Fact # 28)
29. On [REDACTED] 2016 the Department sent the POA a Transfer of Assets, Preliminary Decision Notice ("W-495A") proposing to apply a penalty resulting from the alleged improper transfer of assets in the amount of \$97,290.00. (Exhibit 14: Transfer of Assets Preliminary Decision Notice ("W-495A"), [REDACTED] 16)
30. The POA did not submit a rebuttal to the Department's proposal to impose a penalty due to an improper transfer. (POA's Testimony)
31. The Department determined that the Appellant transferred the following money she withdrew from her Wells Fargo account in order to establish eligibility for Medicaid:

Date	Transaction type	Amount
[REDACTED] 11	Withdrawal	\$12,290.00
[REDACTED] 12	Withdrawal	\$10,000.00
[REDACTED] 13	Withdrawal	\$10,000.00
[REDACTED] 13	Withdrawal	\$25,000.00
[REDACTED] 13	Withdrawal	\$20,000.00
[REDACTED] 13	Withdrawal	\$20,000.00
Total		\$97,290.00

(Exhibit 17: Transfer of Assets Final Decision ("W-495C") Notice, [REDACTED] 16)

32. On [REDACTED] 2016, the Department issued a Transfer of Assets, Final Decision Notice ("W-495C"), indicating that the Department decided that the transfer of \$97,290.00 was made for the purpose of qualifying for Medicaid, and set up a period of ineligibility beginning [REDACTED] 2016 and ending on [REDACTED] 2016, during which time the Department would not pay for her LTC services. (Exhibit 17)
33. Effective [REDACTED] 2016, the Appellant's assets were within the asset limit for the Medicaid program. (Hearing Record)

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. Connecticut General Statutes ("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. Uniform Policy Manual ("UPM") Section 3029.03 provides that 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 or annuity was established, on or after [REDACTED] 2006.
5. Any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, person authorized to make such disposition pursuant to a power of attorney, or other person so authorized by law shall be attributed to such applicant, recipient, or spouse. Conn. Gen. Stat. §17b-261(a); UPM § 3029.05(D)
6. 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)
7. The Department correctly determined that the look back period date for the Appellant is [REDACTED] 2011.
8. 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)
9. 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

10. An institutionalized individual or the individual's spouse is considered to have transferred assets exclusively for a purpose other than qualifying for assistance under circumstances, which include, but not limited to undue influence; foreseeable needs met; transfer to or by legal owner; or that a transferred asset would not affect eligibility if retained. UPM § 3029.15A-D
11. The Appellant's POA failed to provide clear and convincing evidence that the Appellant's withdrawals of cash from her Wells Fargo bank account were not made for the purpose of qualifying for Medicaid.
12. The Department correctly imposed a TOA penalty period for Medicaid for LTC services due to the TOA in the amount of \$97,290.00 withdrawn from the Appellant's Well Fargo bank account.
13. 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 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 for LTC services effective [REDACTED] 2016, the Department's determination of [REDACTED] 2016 as the start date of the period of ineligibility for Medicaid payment LTC services for the Appellant is correct.
16. The length of the Appellant's penalty period is determined by dividing \$97,290.00 by \$12,170.00, the average cost of LTC, which equals 7.994 months.
17. The Department's determination of [REDACTED] 2016 as the end date for the penalty period for Medicaid payment for LTC services for the Appellant is incorrect.

18. The end date of the Appellant's penalty period is [REDACTED] 2016.

DISCUSSION

The Department correctly determined that the Appellant is subject to a penalty period of eight months for Medicaid payment of long-term care service. The POA gave testimony that her mother had a gambling problem and wrote checks to her daughter, [REDACTED], who was not part of the household and did not provide care or services for her mother. These payments were made over a long period of time and prior to the look back period. What was done with the cash withdrawals within the look back period was not substantiated. The Department's decision to impose a TOA penalty is upheld; however, the Department's calculation of the penalty period was incorrect.

DECISION

The Appellant's appeal **DENIED with regards to the imposition of a Transfer of Asset penalty.**

The Appellant's appeal is **GRANT with regard to the end date of the penalty period. The correct end date is [REDACTED] 2016.**

ORDER

1. The Department shall go back and correct the penalty period calculation and continue to process the case.
2. Compliance of this order is due back to the undersigned no later than [REDACTED] 2016.


Sybil Hardy
Hearing Officer

Pc: Cheryl Parsons, Operations Manager, DSS R.O. # 40, Norwich
Doris Hare, Fair Hearings Liaison, 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 06105-3725.

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.