

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 # 780519

NOTICE OF DECISION

PARTY

██████████
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██████████
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██████████

PROCEDURAL BACKGROUND

On ██████████, 2016, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a notice that he had transferred \$40,000.00 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's Power of Attorney ("POA 1") and ██████████ Power of Attorney ("POA 2"), 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, 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 POA 1 and Son
██████████, Appellant's POA 2 and Daughter
██████████, Appellant's Witness, Regency House
Christine Morin, Department's Representative
John Dileonardo, Department's Representative

Sybil Hardy, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department correctly imposed a penalty period of three months, due to a \$40,000.00 transfer of asset penalty for Long-Term Care Medicaid.

FINDINGS OF FACT

1. During 2010, the Appellant had her first stroke. (POA 1's Testimony)
2. The Appellant's is [REDACTED] years old (DOB [REDACTED]). (Exhibit 1: Long-Term Care Application, [REDACTED]/16)
3. The Appellant is a widow. (Exhibit 1)
4. The Appellant does not own any property. (POA's Testimony)
5. The Appellant has been admitted into nursing facilities for rehabilitation services several times over the past several years. (POA 1 and POA 2's Testimony)
6. Prior to being admitted into the nursing facility, the POA's helped their mother with the following activities: grocery shopping, doctor appointments, hair appointments and organize her medication box. (POA 1's Testimony)
7. On [REDACTED], 2015, [REDACTED] and [REDACTED] were appointed joint Power of Attorney. (Exhibit 3: Durable Power of Attorney, [REDACTED]/16)
8. During autumn 2015, the Appellant's primary care provider determined that the Appellant required 24 hours care. (POA 1's Testimony)
9. On [REDACTED], 2016, the Appellant was admitted from the community to [REDACTED] [REDACTED] (the "nursing facility"). (Exhibit 1)
10. On [REDACTED], 2016, the Department received from the Appellant's POA 2, a long-term care Medicaid application for the Appellant. (Exhibit 1, Exhibit 10: Eligibility Management System ["EMS"] Narrative Screen)
11. The Appellant receives a gross monthly amount from the Social Security Administration of \$1,296.00. (Exhibit 1)
12. The Department pays for the Appellant's monthly Medicare premium amount. (Hearing Record)

13. The sixty month look back period for the Appellant is [REDACTED], 2011. (Hearing Record)

14. The Appellant gifted the following amounts to her family from her bank account:

Date	Amount	Recipient
[REDACTED]	\$25,500.00	[REDACTED]
[REDACTED]	\$12,000.00	[REDACTED]
[REDACTED]	\$14,000.00	[REDACTED]
[REDACTED]	\$14,000.00	[REDACTED]
Total	\$65,500.00	

(Exhibit 2: Account Worksheet for Transfers and Funds Returned, Exhibit 10)

15. The Appellant's POA 1 returned the following amounts to the Appellant and deposited these payments into her Wells Fargo bank account:

Date	Amount	Depositor
[REDACTED]	\$5,000.00	[REDACTED]
[REDACTED]	\$5,500.00	[REDACTED]
[REDACTED]	\$5,000.00	[REDACTED]
[REDACTED]	\$5,000.00	[REDACTED]
[REDACTED]	\$5,000.00	[REDACTED]
Total	\$25,500.00	

(Exhibit 2, Exhibit 10)

16. The Appellant's POA's did not live with the Appellant at the time of the transfer or for two years or more. (Hearing Record)

17. The Appellant's POA's helped pay her pay expenses because they did not want to deplete the funds in her account because she needed the money. (Exhibit 5: Nursing Home Response With Attachments, Exhibit 6: [REDACTED] and [REDACTED] [REDACTED] Rebuttal)

18. The Appellant gifted her children \$65,000.00 from her bank account because she knew her children had hardships and needed financial help. (Exhibit 6)

19. The Appellant did not possess a legally enforceable agreement with her son and daughter to compensate them for care received. (POA 1's and POA 2's Testimony)

20. The Appellant prepaid the nursing facility through [REDACTED] 2016. (Exhibit 10)

21. On [REDACTED] 2016, the Department issued the Appellant 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 \$40,000. (Exhibit 4: W-495A Notice, [REDACTED] 16, Exhibit 3: W-495A, [REDACTED] 15)
22. On [REDACTED], 2016, the Appellant’s POA rebutted the Department’s proposal to implement a penalty due to an improper asset transfer claiming that the Appellant did not transfer the asset in order for his mother to qualify for Medicaid. (Exhibit 6)
23. On [REDACTED], 2016, the Department sent the Appellant a Transfer of Assets, Notice of Response to Rebuttal/Hardship Claim (“W-495B”), stating they did not agree with the POA’s claim of undue hardship and would setup a penalty period that would last 3.287 months. (Exhibit 4: W-495B, [REDACTED]/16)
24. On [REDACTED], 2016, the Department issued a Transfer of Assets, Final Decision Notice (“W-495C”), indicating that the Department decided that the transfer of \$40,000 was made for the purpose of qualifying for Medicaid, and set up a period of ineligibility beginning [REDACTED], 2015 and ending on [REDACTED] 2016, during which time the Department would not pay for his long-term care services. (Exhibit 8: W-495C, [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. 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. Subsection (a) of section 17b-261(a) of the Connecticut General Statutes provides that any disposition of property made on behalf of an applicant for recipient by a 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.
4. Uniform Policy Manual (“UPM”) Section 1500.01 provides that an applicant is “the individual or individuals for whom assistance is requested.”
5. UPM § 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 February 8, 2006.

6. UPM 3029.05(A) provides there is a period established, subject to the conditions described in chapter 3029, 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.
7. UPM § 3029.05(C) 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.
8. UPM § 3029.05(D) 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)
9. The Department correctly determined that the look-back period date for the Appellant is [REDACTED] 2011.
10. 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)
11. UPM § 3029.10(E) 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.
12. UPM § 3029.15 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 the following:

A. Undue Influence

1. If the transferor is competent at the time the Department is dealing with the transfer, the individual must provide detailed information about the circumstances to the Department's satisfaction.
2. If the transferor has become incompetent since the transfer and is incompetent at the time the Department is dealing with the transfer, the transferor's conservator must provide the information.

3. The Department may pursue a legal action against the transferee if the Department determines that undue influence caused the transfer to occur.

B. Forseeable Needs Met

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.

C. Transfer to or by Legal Owner

The Department considers a transfer to have been made to return the asset to its legal owner if:

1. The individual proves with clear and convincing evidence that the transferee had entrusted the asset to him or her with the intent of retaining beneficial interest; or
2. The individual who receives the asset or who actually makes the transfer:
 - a. Holds the asset jointly with the assistance unit at the time of the transfer; and
 - b. Is a legal owner of the asset (Cross Reference 4010)

D. Transferred Asset Would Not Affect Eligibility if Retained

The Department considers a transfer to be made for purposes other than to qualify when:

1. The institutionalized individual would have been eligible if the transferor had retained the asset; and
2. The transferred asset was not the institutionalized individual's or the spouse's home; and
3. The transferred asset was not the proceeds of a home equity loan, reverse mortgage or similar instrument that reduces the institutionalized individual's or the spouse's equity in his or her home.

13. UPM 3029.20(B) provides that transfers made in return for other valuable consideration and provides other valuable consideration must be in the form of services or payment for services which meet all of the following conditions:
 - A. The services rendered are of the type provided by a homemaker or a home health aide; and
 - B. The services are essential to avoid institutionalization of the transferor for a period of at least two years; and
 - C. The services are either
 1. Provided by the transferee while sharing the home of the transferor ; or
 2. Paid for by the transferee
14. The Department correctly determined that the transfer was not made in accordance with other valuable consideration because the Appellant's POA's did not live with the Appellant for a period of at least two years and there was no evidence provided that the POA's provided services which prevented institutionalization for a period of at least two years.
15. UPM § 3029.30 provides that compensation in exchange for a transferred asset is counted in determining whether fair market value was received.
16. UPM § 3029.30(A)(2) provides that compensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement.
17. The Department correctly determined that the Appellant did not possess a legally enforceable agreement with her son and daughter to compensate them for care received.
18. The Department correctly determined that the Appellant did not establish clear and convincing evidence that the transfer of \$40,000.00 was not for the purpose of qualifying for Medicaid.
19. 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.
20. UPM § 3029.05(F) provides in part that the length of the penalty period consists of the number of whole and/or partial months resulting from the computation described in 3029.05(F)(2). 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.

21. The average monthly cost of LTCF services in Connecticut as of [REDACTED] 2016, the month of the Appellant's application was \$12,170.00.
22. The Appellant is subject to a penalty period of 3.287 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTCF services (\$40,000.00, total transfer amount / \$12,170.00, average cost of LTCF services).
23. The Department correctly imposed a transfer of asset penalty against the Appellant due to the quit claim of the property from the Appellant to his brother.
24. The Department correctly determined the Appellant is subject to a penalty period of 3.287 after dividing the uncompensated value of the transferred asset by the average monthly cost of LTCF services.

DISCUSSION

The Department correctly imposed a transfer of asset penalty against the Appellant due to money transfers from her bank account to her children. The POA's provided testimony that they paid the Appellant's bills from their own accounts because their mother needed the money in her account. These deposits took place prior to the look-back period and the transfer of \$65,000.00 from the Appellant's account to her children. The Appellant gifted the money in her account to her children at a later date within the look back period.

Both POA's have full access to their mother's accounts and could have paid her expenses directly from her own bank account, but chose to help pay some of their mother's expenses because she needed the money. They also testified that their mother gave them the money because she knew they had financial difficulties and wanted to help them.

The POA's also provided testimony that they helped their mother with household chores and transportation to various appointments. The children did not reside with the Appellant for at least two years and did not provide verification that the activities they performed for their mother kept her from being institutionalized.

The Appellant had a history of significant medical issues that required multiple hospitalizations and institutionalizations since 2010 and her foreseeable needs were significant. Her rent in the community was \$1,100.00 and she needed to pay for her home health care services while in the community.

The Appellant did not provide clear and convincing evidence that the transfers were made

for a purpose other than qualifying for assistance, therefore the Department's action to assign a penalty is upheld.

DECISION

The Appellant's appeal **DENIED**.

Sybil Hardy
Sybil Hardy
Hearing Officer

Pc: Brian Sexton, Operations Manager, DSS, New Britain Regional Office
[REDACTED] Regency House Health and Rehabilitation Center, Wallingford, CT
Christine Morin, DSS, Fair Hearings Liaison
John Deleonardo, DSS, Fair Hearings Liaison
[REDACTED], POA, [REDACTED]
[REDACTED], POA, [REDACTED]

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.