

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

██████████ 2017
Signature Confirmation

CLIENT ID # ██████████
HEARING ID #00796569

NOTICE OF DECISION

PARTY

██████████
C/O ██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent the Appellant's Representative ██████████ (the "Representative"), a notice that she had transferred \$403,866.00 to become eligible for Medicaid and the Department was imposing a penalty period of ineligibility for Medicaid payment of Long Term Care Assistance ("LTSS) effective ██████████ 2015 through ██████████ 2018.

On ██████████, 2016, the Appellant's Representative requested an administrative hearing to contest the Department's decision to impose a penalty.

On ██████████, 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing by telephone on ██████████ 30, 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 telephone hearing:

██████████, Appellant's Spouse, Representative
Ellen Croll-Wissner, Department's Representative
Shelley Starr, Hearing Officer

The Appellant, ██████████ ██████████ did not attend the Telephone hearing due to his institutionalization.

The hearing record remained open for the submission of additional evidence from the Department and the Appellant's Representative until [REDACTED], 2016. No additional evidence was submitted from the Appellant's Representative. On [REDACTED] 2016, the hearing record closed.

STATEMENTS OF THE ISSUE

1. The first issue is whether the Appellant received fair market value for the transfer of his property.
2. The second issue is whether the Department correctly imposed a Transfer of Assets (TOA) penalty based on the sale price of the Appellant's home.

FINDINGS OF FACT

1. Since [REDACTED] 2013, the Appellant has been a recipient of Medicaid through the Long Term Care Assistance ("LTSS") program. (Exhibit 11: Case Narrative pages 1- 7)
2. The Appellant is age 76 [DOB [REDACTED]/40], married and has a primary medical diagnosis of Parkinson's disease. (Representative's Testimony; Hearing Record)
3. The Appellant resides at Talmadge Park Health Care Center of [REDACTED], Connecticut and has been a resident of a long term care facility approximately four years. (Representative's Testimony)
4. The Appellant and his spouse, [REDACTED], jointly owned property located at [REDACTED]. The Appellant and his spouse were joint tenants with rights of survivorship of the property until a Quit Claim of the property. (Exhibit 13: Resources Referral dated [REDACTED] 2016; Exhibit 5: Quit Claim Deed Signed by [REDACTED] and [REDACTED] dated [REDACTED] 2015)
5. On [REDACTED] 2015, the Appellant's spouse [REDACTED], the (" [REDACTED] the ("purchaser") and [REDACTED] the ("Guarantor") entered into an Occupancy Agreement which memorialized terms of the sale of property known as [REDACTED] [REDACTED] (Exhibit 6: Occupancy Agreement dated [REDACTED] 2015)
6. The sale of the Appellant's property was facilitated by [REDACTED], a neighbor, who knew of the Appellant's institutionalization and his spouse's need to relocate due to her failing health. (Representative's Testimony; Exhibit 4: W-1348 Verification We Need Form with provided comments; Exhibit 6: Occupancy Agreement)

7. The Occupancy Agreement, executed on [REDACTED] 2015, outlines the agreement and provides:
 - Whereas, the Seller has agreed to sell the Property to the Buyer and the Buyer has agreed to buy said Property from the Seller for the sum of \$1.00 and other valuable considerations; and
 - Whereas, the Seller, Buyer and Guarantor have previously entered into verbal Agreements wherein the Seller agreed to transfer all ownership in the Property to Buyer; and
 - Whereas, the Buyer is aware of all of the liens currently placed on title to the Property and has agreed to satisfy said liens including IRS tax liens and a mortgage foreclosure action entitled [REDACTED] bearing at return date of [REDACTED], 2015; and
 - Whereas, the Guarantor has agreed to facilitate and to fund the settlement of said liens for the mutual benefit of Seller and Buyer; and
 - Whereas, the Seller intends to vacate the Property upon her admission into a senior housing facility to which she has already applied. (Exhibit 6: Occupancy Agreement dated [REDACTED] 2015)
8. The Occupancy Agreement, provides that:
 1. Seller will deliver a quitclaim deed to the Property located at [REDACTED] [REDACTED] to the Buyer which deed shall transfer title to the property from Seller to Buyer.
 2. In consideration for the transfer of the Property the Buyer shall resolve all liens against the Property currently recorded in the [REDACTED] Land Records and shall assume payment of the existing mortgage until such time as it is refinanced in Buyer's name.
 3. Seller shall remain in the Property rent free until such time as she is permitted to move into senior housing facility.
 4. Buyer shall be liable for all costs and expenses associated with the Property including repairs and maintenance of the home or surrounding grounds.
 5. Seller agrees to waive any and all claims she may have against Buyer or Guarantor for injuries sustained on said Property while residing therein.
 6. The Seller represents to the Buyer that she knows of no other claims against the Property not previously recorded in the [REDACTED] Land Records as of the date of this agreement.(Exhibit 6: Occupancy Agreement entered [REDACTED] 2015)
9. On [REDACTED] 2015, the Appellant and his spouse quit claimed the property located at [REDACTED] to [REDACTED] for one dollar. (Exhibit 5: Corrected Quit Claim Deed [REDACTED] signed by [REDACTED] and [REDACTED] Exhibit 2: Case Narrative)
10. [REDACTED] is not a relative of the Appellant or his spouse and the transfer of the property was facilitated by [REDACTED] father in law, who is the Appellant's neighbor. (Representative's Testimony)

11. On [REDACTED] 2016, the Department reviewed the Appellant's submitted L99 review document and discovered that the community spouse had a change of address. The Department mailed a W-1348 requesting verification of the new address, income, assets and expenses including her mortgage payment and homeowners insurance. (Exhibit 11: Case Narrative)
12. On [REDACTED], 2016, the Department sent the Appellant a W-1348 Verification We Need form requesting verification if the [REDACTED] home is currently being rented and to show any expenses related to renting it. In addition the Department advised that the Appellant's spouse, [REDACTED] had moved out of the jointly owned home and they are requesting a copy of the Quit Claim Deed, a copy of the Hud1 if the property was sold and a current sales agreement if the property is listed for sale. The information was due by [REDACTED] 2016. (Exhibit 4: W-1348 Verification We Need form dated [REDACTED], 2016)
13. The Department received a response to the issued W-1348 Verification We Need form. The Appellant's Representative returned the W-1348 document with a hand written comment, "This property was going to be foreclosed on and a third party took over payments so that they buy the house. [REDACTED] was relocated to a ground floor apartment due to failing health." "A full title search is being done to show all liens necessary to transfer title. Currently no sales agreement until title search is complete." Exhibit 4: Returned W-1348 dated [REDACTED], 2016)
14. On [REDACTED] 2016, the Department determined that the property known as [REDACTED] [REDACTED] is a 2,348.00 square foot 9 room Colonial with a fair market value based on comparable sales at the time of the transfer as \$403,866.00. (Exhibit 2: Case Narrative)
15. The Appellant and his spouse did not receive Fair Market Value for the sale of their [REDACTED] property. (Exhibit 2: Case Narrative; Hearing Summary)
16. On [REDACTED] 2016, the Department sent the Appellant's Representative a W-495A Transfer of Assets Preliminary Decision Notice, notifying that a preliminary decision to impose a transfer of assets penalty was proposed and to give the Representative an opportunity to respond to the notice by [REDACTED] 2016. (Exhibit 3: W-495A, Transfer of Assets Preliminary Decision Notice dated [REDACTED], 2016)
17. On [REDACTED] 2016 the Department sent the Appellant a W-1348 Verification We Need form requesting verification if the mortgage for [REDACTED] was legally assumed by [REDACTED]. In addition, the Department advised that the mortgage statement should show how much [REDACTED] owes (principal) on the new mortgage. The information was due by [REDACTED]. (Exhibit 12: W-1348 dated [REDACTED], 2016)

18. The Appellant did not respond to the W-495A Transfer of Assets Preliminary Decision Notice by the [REDACTED] 2016 due date or respond to the [REDACTED], 2016 W-1348 request for information by the [REDACTED] 2016 due date. (Hearing Summary; Department's Testimony; Exhibit 2: Case Narrative)
19. On [REDACTED] 2016, the Department sent the Appellant's Representative a W-495C Transfer of Assets Final Decision Notice notifying her that it considered her quit claim of the property at [REDACTED] to be an improper transfer and that it would impose a penalty of \$403,866.00 (fair market value of the property) from [REDACTED] 2015 through [REDACTED] 2018 on the payment of her spouse's long term care services. (Exhibit 3: W-495C, Transfer of Assets Final Decision Notice dated [REDACTED] 2016)
20. The Fair Market Value determined as \$403,866.00 does not account for any liens or encumbrances that were placed on the property prior to the quit claim and in accordance with the occupancy agreement. (Hearing Record; Exhibit 2: Case Narrative; Exhibit 6: Occupancy Agreement; [REDACTED] 2015)
21. There is no evidence in the record, that the Appellant's Buyer and Guarantor of the property has fully executed the terms of the Occupancy Agreement that was entered into on [REDACTED], 2015 to memorialize the sale of the [REDACTED] transfer. (Exhibit 6: Occupancy Agreement; Hearing Record)
22. There is no evidence in the record that the Appellant's Buyer has legally assumed the existing mortgage or that any of the liens or encumbrances that were placed on the property prior to the sale of the property have been satisfied in accordance with the terms of the [REDACTED] 2015 agreement. (Hearing Record; Exhibit 6: Occupancy Agreement dated [REDACTED], 2015)
23. The hearing record was held open until [REDACTED] 2016, to allow the Appellant's Representative (spouse) the opportunity to provide verification that the buyer has assumed the mortgage and has satisfied the lien and mortgage foreclosure action. No documentation was provided by the Appellant. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-2; 17b-262 of the Connecticut General Statutes provides 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 they are necessary to administer the medical assistance program.
2. Section 17b-261b(a) of the Connecticut General Statutes provides that the Department is the sole agency to determine eligibility for assistance and services under the programs it operates and administers.

3. Section 17b-80(a) of the Connecticut General Status provides the Department shall grant aid only if the applicant is eligible for that aid.
4. UPM § 3029.03 provides the transfer of assets policy for transfers that occurred on or after February 8, 2006.
5. UPM § 3029.05 (C) provides 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.
6. UPM § 4000.01 defines equity value as the fair market value of an asset minus encumbrances.
7. UPM § 4001.01 defines fair market value as the amount at which an asset can be sold on the open market in the geographic area involved at the time of the sale as a result of reasonable, bona fide efforts to gain the highest possible price in an arm's length transaction.
8. UPM 3029.05(C) & UPM § 3029.05 (A) provides 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 spouse dispose of assets for less than fair market value on or after the look back date. This period is called the penalty period, or period of ineligibility.
9. UPM § 3029.05 (F) provides 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. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer.
10. 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.
11. 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.

12. UPM § 3029.10 (F) provides that an institutionalized individual, or his or her spouse, may transfer an asset without penalty if the individual provides clear and convincing evidence that he or she intended to dispose of the asset at fair market value.
13. 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.
14. The Appellant's Representative did not establish with clear and convincing evidence the reason that she quit claimed the property known as [REDACTED] [REDACTED] for \$1.00 to [REDACTED]. The Appellant's foreseeable needs at the time of the transfer is not met as he was institutionalized at a long term care facility as a Medicaid recipient.
15. The Appellant's Representative did not establish with clear and convincing evidence that she intended to dispose of the property for fair market value.
16. Since the Appellant failed to provide clear and convincing evidence, the Department correctly determined that the Appellant's Representative did not receive fair market value for the property that she transferred to [REDACTED] for \$1.00 on [REDACTED], 2015.
17. The Department incorrectly determined the amount of uncompensated assets transferred as \$403,866.00. The correct transfer of assets is \$403,865.00. (\$403,866.00 FMV - \$1.00 (Sales Price) = \$403,865.00.
18. 42United States Code ("U.S.C.") § 1396p(c)(1)(D)(ii) 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.
19. UPM 3029.05 (E)(2) provides that 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.

20. Because the Appellant and his Representative transferred their property on [REDACTED], 2015, the Department's determination of [REDACTED] 2015, as the start date of the period of ineligibility for Medicaid payment of LTC services for the Appellant is incorrect. The correct start date is [REDACTED], 2015.
21. UPM 3029.05 (F)(2) 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.
22. UPM § P-3029.30 provides for calculating and imposing the penalty period.
23. The average monthly cost of care to a private patient for LTCF services in Connecticut effective September 1, 2015 is \$ 12,170.00.
24. The Department correctly determined the penalty period is 33.19 months ($\$403,865.00 / \$12,170.00 = 33$ months 5 days.)

DISCUSSION

Based on the testimony and evidence presented, I did not find that the Appellant's Representative provided credible evidence to establish that the property that she transferred for \$1.00 and in accordance with an occupancy agreement, was transferred for fair market value. The Representative testified that at the time of the transfer, the property was under foreclosure and she would not have received a profit. It remains unclear how she determined the value of the property, as she testified that she did not have the property evaluated and no evidence was presented to dispute the Department's determination of the fair market value of the property. The hearing took place fourteen (14) months after the quit claim of the property and no evidence has been provided demonstrating that the terms of the sale of the property outlined in the occupancy agreement have been satisfied.

The Appellant and his Representative did not receive fair market value for the sale of their property. The Department determined the fair market value of the property as \$403,866.00, however the \$1.00 compensation was not deducted. While it is a minor oversight, for accuracy, the correct penalty amount is \$403,865.00. The Department was incorrect to impose a penalty based a [REDACTED] 2015 beginning date. The actual quit claim occurred on [REDACTED] 2015. In accordance with regulations, the Department should modify the penalty start date to reflect [REDACTED] 2015, with an end date of [REDACTED], 2018.

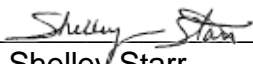
The Appellant testified that she anticipates the buyer to obtain the mortgage and pay off the liens and encumbrances in accordance with the occupancy agreement in the near future. If this occurs, she should report these payoffs to the Department.

DECISION

The Appellant's appeal is **DENIED**.

ORDER

1. The Department shall correct the penalty period in accordance with this decision with a start date of [REDACTED] 2015 and an end date of [REDACTED] 2018.
2. Compliance with this order is due to the undersigned no later than fifteen days from the date of this decision.



Shelley Starr
Hearing Officer

cc: Lisa Wells, Operations Manager, New Haven Regional Office
Cheryl Stuart, Program Manager, New Haven Regional Office
Brian Sexton, Operations Manager, Bridgeport 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 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 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.