

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

REQUEST # 802914

CLIENT ID# ██████████

NOTICE OF DECISION

PARTY

██
██
██

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a notice informing her it was imposing a transfer of asset ("TOA") penalty on her Medicaid for Long Term Care (LTC) benefits for the period from ██████████ 2016 through ██████████ 2017.

On ██████████ 2016, the Appellant's son and authorized representative, ██████████ through his counsel, ██████████, requested an administrative hearing on behalf of the Appellant, to contest the Department's decision to impose a TOA penalty, effective ██████████ 2016, instead of date the Appellant applied for the Home and Community Based Services ("HCBS") Program, which was on ██████████ 2016.

On ██████████, 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice of Administrative Hearing scheduling a hearing for ██████████ 2017.

On ██████████ 2017, the Appellant requested a continuance of the hearing, which OLCRAH granted.

On ██████████ 2017, OLCRAH issued a Notice of Administrative Hearing rescheduling the hearing for ██████████ 2017.

On ██████████ 2017, 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 to address the Department's determination of the effective date of the

Appellant's TOA penalty.

The following individuals were present at the hearing:

██████████, Counsel for the Appellant

██████████, Co-counsel for the Appellant

Melissa Juliano, Representative for the Department, R. O. #10, Hartford, via telephone conference call

Michael Ober, DSS Eligibility Staff, R.O. #40, Norwich

Maureen Foley-Roy, Hearing Officer

The hearing record remained open for the submission of additional evidence. The hearing record closed on ██████████ 2017.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly imposed the TOA penalty on the Appellant's LTC Medicaid Program, effective ██████████ 2016.

FINDINGS OF FACT

1. Prior to ██████████ 2016, the Appellant was living in an assisted living facility and privately paying for home care assistance. (Appellant's testimony)
2. In ██████████ of 2016, the Appellant transferred \$163,437.26 to her son for the purpose of qualifying for Medicaid. (Exhibit F: Long-term Care/Waiver Application, Exhibit C: Transfer of Assets Final Decision Notice)
3. On ██████████ 2016, the Appellant applied for the HCBS Program from the Department. (Exhibit F)
4. At the time of her application in ██████████ of 2016, the Appellant's income consisted of a benefit of \$2,292.60 per month from Social Security and \$1,424.37 monthly retirement benefit. (Exhibit F)
5. On ██████████ 2016, the Department sent a W1348-Verification We Need form requesting outstanding information and documents required to determine eligibility. The form also advised the Appellant that her monthly income of \$3716.27 exceeded the income limit of \$2199 established for the HCBS program and that in order to be eligible the Appellant must establish a pooled trust. (Exhibit A-1: Verification We Need form, Request number 1)
6. On ██████████, 2016, the Department sent a W1348-Verification We Need form advising the Appellant that if she were to be granted or found otherwise eligible, she would need to provide a copy of the spending plan for the pooled trust and a cancelled check showing that she had funded the pooled trust. (Exhibit A-4: Request number 4)

7. On [REDACTED], 2016, the Department sent a W1348-Verification We Need form requesting a copy of the spending plan from Plan of CT for the pooled trust and proof that she had funded the account. (Exhibit A-7: Request number 7)
8. On [REDACTED] 2016, the Department sent a W1348-Verification We Need form requesting a copy of the pooled trust showing the Appellant had funded the account. The form stated that the Appellant was over income at the time and that the income limit was \$2199.00. (Exhibit A-8: Request number 8)
9. The Appellant never funded the pooled trust. (Appellant's Counsel's testimony and Exhibit D: Email of [REDACTED] 2016)
10. In [REDACTED] of 2016, the Appellant was admitted to a skilled nursing facility for long term care services. The facility advised the Department that they needed coverage to begin [REDACTED] 2016. (Exhibit E: Case Narrative)
11. On [REDACTED], 2016, the Department denied the Appellant's application for the HCBS Program because the Appellant's monthly gross income exceeded the income limit for the program. (Exhibit I: Notice of Denial)
12. On [REDACTED] 2016, the Department sent the Appellant a W495A-Transfer of Assets Preliminary Decision notice advising that the Appellant had transferred \$163,437.26 in order to be eligible for assistance. (Exhibit B: Preliminary Decision Notice)
13. On [REDACTED] 2016, the Department sent the Appellant a W495C-Transfer of Assets Final Decision Notice advising that because the Appellant had transferred \$163,437.26 in order to be eligible for Medicaid the Department was imposing a TOA penalty beginning on [REDACTED] 2016 and ending on [REDACTED] 2017. (Exhibit C)
14. The Appellant is not disputing the amount of the TOA penalty. (Hearing Request and Appellant's Counsel's Testimony)
15. On [REDACTED] 2016, the Department sent the Appellant a notice regarding her [REDACTED] [REDACTED] 2016 application for the HCBS Program. The notice stated that no one was eligible. The notice also included a note from "your worker," which stated that the Appellant was otherwise eligible for the homecare waiver but there was a period of ineligibility due to a TOA penalty. The penalty period was from [REDACTED] 16-[REDACTED]/17. (Exhibit J: Notice of [REDACTED] 2016)
16. The Department sent the notice regarding the Appellant's eligible for the homecare program in error. The Appellant was otherwise eligible for Medicaid for LTC services with a period of ineligibility due to a TOA penalty. The Appellant was only eligible for ancillary Medicaid services; the transfer penalty was imposed on the room and board charges at the facility. (Exhibit L: Email of [REDACTED] 2017)
17. On [REDACTED] 2016, a Department Director wrote to the Centers for Medicare & Medicaid Services ("CMS") for clarification on the Department's interpretation regarding the start date of a penalty period. (Appellant's Exhibit 4: [REDACTED] 2016 letter from

Marc Shok)

18. As of [REDACTED] 2017, the Department had not received a response from CMS regarding its request for clarification. (Exhibit M: Email of [REDACTED] 2017)

CONCLUSIONS OF LAW

1. Connecticut General Statutes § 17b-2 and 17b-262 provide that 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.
2. State statute provides that 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. Uniform Policy Manual (“UPM”) § 2540.92 C1 provides that for the income and asset criteria for Individuals Receiving HCBS Program (W01) and states in part that the Department determines income eligibility under this coverage group by comparing the individual's gross income to the Special Categorically Needy Income Limit (CNIL), set at 300% of the maximum SSI amount for one person. To qualify as categorically needy, the individual's gross income must be less than the special CNIL.
4. The Department was correct that the Appellant's income exceeds the allowable limit for the Individuals Receiving HCBS Program and the Appellant is ineligible for this Program.
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 was established, on or after February 8, 2006.
6. The Appellant did not dispute that she transferred asset valued at \$163,437.26 in order to be eligible for Medicaid and her Medicaid is subject to a TOA penalty.
7. 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.
8. Because the Appellant was not eligible for the HCBS Program and the Appellant needed LTC Medicaid in the facility effective [REDACTED], 2016, the Department correctly determined that the Appellant became otherwise eligible for Medicaid payment of LTC services, effective [REDACTED] 2016.

9. Because the Appellant became otherwise eligible for Medicaid payment of LTC services effective [REDACTED] 2016, the Department's determination of [REDACTED] 2016 as the start date of the period of ineligibility for Medicaid payment of LTC services for the Appellant is correct.
10. 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 described in 3029.05 C by the average monthly cost to a private patient for LTCF services in Connecticut.
11. UPM § 3029.05(F)(2)a provides that for applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.
12. The average monthly cost of LTC services effective [REDACTED] 2016 is \$12,170.00.
13. UPM § 3029.05(F)(3) provides that uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. A single penalty period is then calculated, and begins on the date applicable to the earliest transfer.
14. The length of the Appellant's penalty period is determined by dividing \$163,437.26 by \$12,170, the average cost of LTCF, which equals 13.42 months.
15. The Department's determination of [REDACTED] 2017 as the end date for the period of ineligibility for Medicaid payment of LTC services for the Appellant is correct.

DISCUSSION

The Appellant's Counsel argued that the Appellant was financially eligible because her assets were under Medicaid's \$1600 asset limit. In order to be "financially eligible" for Medicaid, both the Appellant's income and assets would have to be within the Medicaid income and the asset limits. The Appellant's income exceeded Medicaid's income limit while she was in the community. The Department advised the Appellant to set up a pooled trust for the excess income in order to become income eligible, as noted several times by the Department via the 1348 Verification We Need forms. The pooled trust was never funded; therefore, the Appellant never income eligible, or financially eligible for the HCBS Program.

The denial of the HCBS Program became a moot point when the Appellant ultimately entered a skilled nursing facility and applied for the LTC Medicaid Program. The Department conferred with the facility and the facility requested a pick up date of [REDACTED] [REDACTED] 2016 for LTC services. Since this is the first date in which the Appellant required LTC services, this is the date that the Appellant would be "otherwise eligible" for the LTC Medicaid Program, per the policy. Since the Appellant was over the income limit for the HCBS Program; there was no eligibility for Medicaid from [REDACTED] 2016 through [REDACTED] [REDACTED] 2016, so the Department could not impose a TOA penalty during this period. The Appellant's Counsel's argument and Director Shok's letter to the CMS are not relevant in this case.

It is noted that at the hearing, the Appellant's Counsel presented evidence that some of the transferred funds have since been returned to the Appellant to help pay for her care. In light of the returned funds, the Appellant's Counsel is requesting that the amount of the TOA be recalculated. This request is outside the scope of this hearing and has not been addressed in this decision.

DECISION

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

Maureen Foley-Roy
Maureen Foley-Roy
Hearing Officer

PC: Cheryl Parsons, Operations Manager, DSS, Norwich
Melissa Juliano, DSS Eligibility, Hartford

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.