

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

██████████, 2017
SIGNATURE CONFIRMATION

CL ID # ██████████
Request # 809820

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2017, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a notice that she had transferred \$33,808.00 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 ██████████ 2017, ██████████, the Appellant’s son and Power of Attorney (“POA”) requested an administrative hearing to contest the Department’s penalty determination.

On ██████████ 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) scheduled an administrative 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, the OLCRAH held an administrative hearing. The following individuals were present at the hearing:

██████████, Appellant’s POA and Son
██████████, Appellant’s Witness
Janice Scricca, Department’s Representative
Swati Sehgal, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department correctly imposed a penalty period of three months, due to a \$30,808.00 transfer of asset penalty for Long-Term Care Medicaid.

FINDINGS OF FACT

1. The Appellant's is 86 years old (DOB [REDACTED]/31). (Exhibit 1: Long-Term Care Application, [REDACTED]/16)
2. The Appellant is a widow. (Exhibit 1)
3. On [REDACTED] 2012, [REDACTED] was appointed Power of Attorney. (Exhibit 4: Durable Power of Attorney)
4. The Appellant does not own any property. (POA's Testimony)
5. On [REDACTED], 2014, the Appellant started residing at River Ridge ("Assisted Living"). (POA's Testimony)
6. The Appellant was suffering from dementia, and required 24 hours care which was not available at Assisted Living. (POA's Testimony)
7. On [REDACTED] 2016, the Appellant was admitted to the Cherry Brook Health Care (the "nursing facility"). (Exhibit 1 and Department's Summary)
8. On [REDACTED], 2016, the Department received from the Appellant's POA, a long-term care Medicaid application for the Appellant. (Exhibit 1, Department's Summary)
9. The Appellant receives a gross monthly amount from the Social Security Administration of \$1,369.90 and \$594.12 a month in pension. (Exhibit 1)
10. The Department pays for the Appellant's monthly Medicare premium amount. (Hearing Record)
11. The sixty month look back period for the Appellant is [REDACTED], 2011. (Hearing Record)
12. 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)
13. The Appellant transferred total of \$33,808.00 between [REDACTED]/2015 and [REDACTED]/2016. She transferred money from her personal account to her son's personal account, made

payments to her son's mortgage company and her grandson's college tuition. (POA's Testimony, Department's Summary and Exhibit 3: Preliminary Decision Notice with Transaction sheet)

14. 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 \$33,808.00. (Exhibit 3)
15. The Appellant's POA did not rebut the Department's proposal to implement a penalty due to an improper asset transfer. (Department's Summary)
16. On [REDACTED], 2017, the Department issued a Transfer of Assets, Final Decision Notice ("W-495C"), indicating that the Department decided that the transfer of \$33,808.00 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 long-term care services. (Exhibit 8: W-495C, [REDACTED]/17)

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 [REDACTED] 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) 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.
8. The Department correctly determined that the look-back period date for the Appellant is [REDACTED], 2011.
9. UPM § 3029.05(D) provides that 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.
10. Conn. Gen. Stat. § 17b-261(a) 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 § 3029.15 provides that 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.

13. 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.
14. 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.
15. The average monthly cost of LTCF services in Connecticut as of [REDACTED] 2016, the month of the Appellant's application was \$12,388.00.
16. The Appellant is subject to a penalty period of 2.73 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTCF services ($\$33,808.00$ (total transfer amount) / $\$12,388.00$ (average cost of LTCF services)=2.73)
17. The Department correctly determined the Appellant is subject to a penalty period of 2.73 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 son's. The Appellant's son testified that the Appellant gave him the money because she knew he had financial difficulties and she wanted to help him.

POA argued that the amount given as wedding gift to the Appellant's granddaughter and payment to her grandson's college tuition should not be part of calculation for transfer of asset; but there is no evidence that the wedding gift to the Appellant's granddaughter was part of the calculation of transfer of asset.

POA testified that the Appellant had a history of medical issues that required her to reside in assisted living prior to her institutionalization. The Appellant further stated that the transfers were made from the Appellant's account to him to assist him to pay his mortgage and to pay his son's college tuition when he was going through financial hardship. Based on the State policy it is considered an improper transfer of asset because the Appellant failed to meet her foreseeable needs by not retaining income and assets to cover her basic living expenses and medical costs as they could have reasonably been expected to exist based on the Appellant's health and financial situation at the time of the transfer. Therefore the Department's action to assign a penalty is upheld.

DECISION

The Appellant's appeal **DENIED**.

Swati Sehgal

Swati Sehgal
Hearing Officer

cc: Musa Mohamud, SSOM, Hartford
Judy Williams, SSOM, Hartford
Tricia Morelli, SSPM, Hartford
Janice Scricca, Fair 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 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.

