

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 No # ██████████
Request # 814884

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2017, the Department of Social Services - ("the Department") sent ██████████ (the "Appellant") a Final Decision Notice of Action ("NOA") imposing a penalty from ██████████ 2015 to ██████████, 2017 because they transferred \$97,488.96 in uncompensated amount sale of property to become eligible for Medicaid .

On ██████████, 2017, the Appellant, through her two sons and Power of Attorneys , ██████████ ██████████ and ██████████ ██████████ and attorneys with ██████████ ██████████ ██████████ requested an administrative hearing to contest the Department's penalty determination.

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

On ██████████ 2017, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

On ██████████, 2017, the Appellant and the Department requested a continuance to discuss differences in the comparable used in the market analysis and it was granted.

On ██████████ 2017, OLCRAH issued a Notice scheduling the administrative hearing for ██████████ 2017.

On [REDACTED] 2017, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing on [REDACTED] 2017:

[REDACTED] Appellant's son and Power of Attorney (POA)
[REDACTED] Appellant's son and Power of Attorney (POA)
[REDACTED] Attorney with Conway & Londregan representing [REDACTED]
[REDACTED], Attorney with Conway & Londregan representing [REDACTED]
Shayla Streater, Department's Representative
Jeff Sheldon, Department's Representative
Almelinda McLeod, Hearing Officer

[REDACTED] was not present .

The following individuals were present at the hearing on [REDACTED] 2017

[REDACTED] Attorney with [REDACTED] representing [REDACTED]
Shayla Streater, Department's Representative
Jeff Sheldon, Department's Representative
Almelinda McLeod, Hearing Officer

[REDACTED], [REDACTED] and [REDACTED], Attorney [REDACTED] were not present.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determine 1) the Appellant transferred \$97,488.96 when the property was sold for less than fair market value; and 2) the \$97,488.96 transfer is subject to a penalty period of ineligibility from [REDACTED] 2016 to [REDACTED] 2017 for Medicaid payment of long term care services.

FINDINGS OF FACT

1. The Appellant purchased a condo located at [REDACTED] [REDACTED] in 1979. The condo consisted of 6 rooms , 2 bedrooms, one and half bathrooms and a detached garage with 1557 square feet. The condo was the Appellant's primary residence where she lived on her own. (Hearing record, Exhibit 7, Record Search)

2. In [REDACTED] 2014, the Appellant was admitted into Apple Rehab for a short term stay when she fell and broke her hip. The Appellant stayed at Apple Rehab for several months. Medicare paid for the first 100 days and after that, the Appellant became private pay.
3. From Apple Rehab, the Appellant moved into Covenant Village for a few months and then moved into Saybrook [REDACTED]; an assisted living facility.
4. In [REDACTED] 2015, the Appellant fell and broke her other hip. The Appellant was admitted into the hospital from [REDACTED] 2015 to [REDACTED] 2015.
5. On [REDACTED] 2, 2015, the Appellant was admitted into Gladeview for a short term rehabilitation stay, however, due to her poor health, the Appellant was unable to return to the assisted living facility at Saybrook [REDACTED]. ([REDACTED] testimony)
6. The Appellant has two sons, [REDACTED] and [REDACTED]. The Appellant's sons are both Power of Attorney for the Appellant. (Appellant's sons testimony)
7. [REDACTED] resides in the state of Maryland. (Hearing record)
8. [REDACTED] resides in the state of Vermont (Hearing record)
9. The Appellant's sons took great care in the responsibilities of the Appellant's health care and maintaining her home at an expense of \$850.00 per month (utilities and condo association fees) while at the same time paying anywhere from \$5,000 to \$6,000 for her cost of care in the assisted living facility. (Hearing record)
10. The Appellant's sons paid for all her expenses from her personal funds. All of her funds went towards the cost of her care and the maintenance of the condo. The Appellant's sons made an honest assessment of the Appellant's monthly expenses and determined to sell the condo before all of the funds run out as they were currently dwindling fast. The intention in selling the condo was to continue with her cost of care. (Hearing record)
11. The Appellant's sons was referred to a local realtor, [REDACTED], from Coldwell Banker and contacted him requesting his services in selling the Appellant's home. [REDACTED] accepted to become their agent. (Hearing record)
12. The Appellant was unaware and was not involved in the selling of her condo. (Hearing record)

13. The Appellant's sons relied on the professional knowledge and expertise of the realtor in the area to determine the asking price for the unit. They were advised, given the condition of the condo, the initial asking price would be \$229,000 and listed it for that price. (Hearing record)
14. Counsel for the Appellant submitted photographs to show the condition of the condo. First photograph was of the kitchen indicating the kitchen was original when it was built in 1979, the second photograph was of the 2nd floor bathroom also indicating the bathroom was original and the third photograph showed the stairwell reflecting no hand rails and the rug was recently replaced because it was in poor condition. Though the Appellant had not updated her condo she did keep it clean. (Exhibit A- photographs and Appellant's testimony)
15. After a period of two months, the realtor suggested reducing the price because there was no activity. The Appellant's son accepted and the sale price of the condo went from \$229,000 to \$219,000, a reduction of \$10,000. (Hearing record and Exhibit D- Affidavit of ██████████)
16. In ██████████ 2015, one offer came in at \$185,000. The Appellant's sons negotiated the price up to \$202,500. (Hearing record)
17. On ██████████, 2015, the Appellant's condo sold for \$202,500. (Exhibit 6, HUD-1, settlement statement)
18. The buyers of the condo were unknown to the Appellant and her sons. (Hearing record)
19. The proceeds from the sale of the condo and all the funds went towards the Appellant's care. The Appellant's sons felt the Appellant had sufficient funds to be in the assisted facility and the short term care in Gladeview for her reasonable life expectancy. (Hearing record)
20. Stacy from Gladeview testified that the Appellant had been private pay since her admission in ██████████ 2015. (Stacy LaCasse testimony)
21. On ██████████ 2015 ██████████ made a payment for the Gladeview in the amount of \$12,832.00. (Stacy LaCasse testimony and Hearing record)
22. On ██████████ 2016 the Appellant applied for Medicaid Title 19. (Hearing summary)
23. On ██████████, 2016, the Department issued a W-1348- Verification We Need form requesting to complete page 11, the transfer of assets page. (Hearing summary)

24. On [REDACTED] 2016, a referral was issued to resources requesting the FMV of the sale of the Appellant's property. (Hearing summary)
25. On [REDACTED] 2016, the Department conducted an investigation which consisted of comparables of like units within the same complex, with the same 1557 sq. ft. and same number of bedrooms (2) and bathrooms (1 and ½). The condo was one of few units in the complex with a garage with a FMV of \$20,000. The comparable listed at [REDACTED] sold for \$385,000. The comparable listed at [REDACTED] sold for \$357,500. Based on this *initial report*, the Department determined the FMV of [REDACTED] to be \$350,000. (Exhibit 7, Records Search, Exhibit 11- Remarks screen and Hearing record)
26. On [REDACTED], 2016, because the Coldwell Banker indicated the unit needed updating, the Department made an adjustment of \$50,000 reducing the FMV to \$300,000. Since, the Condo sold for \$202,500, the property was sold under FMV by \$97,488.96. (Exhibit 11, Remarks screen and Hearing record)
27. On [REDACTED], 2016, the Department issued a 2nd W-1348 requesting a certified appraisal for the sale of the property. (Hearing summary)
28. On [REDACTED] 2016, the Department issued a W-495A Transfer of Assets Preliminary Decision Notice indicating that the initial decision was that an improper transfer of assets had occurred. (Exhibit 3, W-495A)
29. On [REDACTED], 2016, a copy of a certified appraisal was submitted as a rebuttal to the W-495A. (Exhibit 8, certified appraisal)
30. On [REDACTED] 2017, the Department reviewed the certified appraisal but did not accept it because the document was completed without an interior inspection and found the comparables used in the report were not equal to the Appellant's unit. (Hearing record)
31. On [REDACTED] 2017, the Department issued a W-495C Transfer of Assets (final Notice form) issuing a penalty of \$97,488.96 effective [REDACTED] 2016 and ending in [REDACTED], 2017, during which time the Department would not pay for her long term care services. (Exhibit 4, W-495C)
32. The certified appraisal was completed as a retrospective inspection. The condo had already sold in [REDACTED] 2015. The Department's request for a certified appraisal of the property was in [REDACTED] 2016. When the condo sold, the buyers quickly renovated the interior of the condo, therefore, an interior inspection at the time of request would have been irrelevant. (Hearing record)

33. The Appellant's sons found that after the Appellant's sold for \$202,500, three more units were sold. One sold for \$260,000 in [REDACTED] the second unit sold for \$234,000 in [REDACTED] and the third sold for \$285 towards the end of [REDACTED]. (Hearing record)
34. On [REDACTED], 2017, Counsel for the Appellant conducted their own analysis as to the different values of the properties listed within same complex and provided a list to compare. (Exhibit B- Letter to the Department dated [REDACTED] 2017 - Exhibit C- [REDACTED] comparable)
35. Counsel for the Appellants found that comparisons varied in assessment values due to proximity of Long Island sound. The properties closer to the water were assessed at a higher value than the properties that were not. The subject property was closer to the entrance of the Condo complex, across the street from the tennis court, community hall, and next to Econo Lodge; therefore the unit was not as desirable and assessed at a lower price. (Exhibit B and Exhibit C, Hearing record)
36. The Department does not use assessment values when determining FMV but in this case has agreed to look at the assessment values because of the variance in the values. (Department testimony)
37. The Department acknowledges the varied assessment values of the condos for the purpose of this hearing, however states that other condo's smaller than the subject condo and not in close proximity of long island sound sold for \$285,000. In fact, none of the condo's in this complex sold for less than \$285,000. The Department determined that the Appellant's condo sold for under FMV. (Department testimony)
38. The Department acknowledged that the Appellant's son did not sell the condo in order to qualify for Title XIX Medicaid. (Hearing record)

CONCLUSIONS OF LAW

1. Section 17b-2 and § 17b-260 of the Connecticut General Statutes, authorizes the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Section § 17b- 261 b (a) of the CGS provides that the Department " shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department."

3. Section 42 of the Connecticut Federal Regulations (“CFR”) § 431.10 (b) (3) provides that the ‘single State agency is responsible for determining eligibility for all individuals applying for or receiving benefits “in the Medicaid program.
4. Section § 17b-261 (a) of the CGS provides in part that any disposition of property made on behalf of an applicant or 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.
5. Uniform Policy Manual (UPM”) § 1500.01 provides that an applicant is the individual or individuals for whom assistance is requested.
6. The Appellant is the applicant in this matter. Disposition of property by the Appellant’s power of attorney are attributed to the Appellant.
7. UPM 3029.05 (D) provides the Department considers transfers of assets made within the time limits described in 3029.05 C, on behalf of an institutionalized individual or his or her spouse by a guardian, conservator, person having power of attorney or other person or entity so authorized by law, to have been made by the individual or spouse.
8. UPM 3029.05 (C) provides that the look-back date for transfers of assets is a date that is 60 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
9. The look back date for the Appellant is ■■■■ 2011.
10. Section § 17b-261a (a) of the CGS 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 for transferor intended to transfer at fair market value. An institutionalized individual or his or her spouse may transfer an asset without penalty if the individual demonstrates with clear

- and convincing evidence that he or she intended to dispose of the asset at fair market value.
13. "Fair Market Value" ("FMV") is defined in Section 0500 (Glossary and Terms) of the UPM 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 or the amount actually obtained as a result of bona fide efforts to gain the highest possible price.
14. UPM §3025.15 provides for Transfer Not for the Purpose of Qualifying
- A. Fair Market Value Received
If fair market value is received, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.
- B. Assets Within Limits
If the total of the uncompensated fair market value of a transferred asset plus all other countable assets does not exceed program limits, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility. In the case of multiple transfers involving one asset, this includes the total uncompensated value of all transfers.
- C. Transfer for Another Purpose
If there is convincing evidence that the transfer is exclusively for another purpose, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.
15. UPM 3029.15 B. provides an institutionalized individual or the individual's spouse is considered to have transferred an asset exclusively for a purpose other than qualifying for assistance under certain circumstances which include, but is not limited to B. Foreseeable 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.
16. The Department correctly determined that the Appellant did not transfer her assets in order to become eligible for Title XIX.

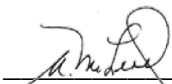
17. The Appellant provided clear and convincing evidence that substantiates the values within the same condominium complex all varied in values depending on the proximity of the water views of Long Island Sound even within the same specifications of the units. In this case 1557 square feet, 2 bedrooms and 1 and ½ bathrooms, which may or may not consist of a garage.
18. The Appellants provided clear and convincing evidence that in [REDACTED] 2015, the condo unit's initial suggested asking price of \$229,000 was subject to the realtors expertise and judgement given the location of the unit plus the updating required for the unit.
19. The Appellant provided clear and convincing evidence that in [REDACTED] 2015, when the condo unit did not sell, the suggested asking price was reduced to \$219,000 in order to promote traffic.
20. The Appellant provided clear and convincing evidence that in [REDACTED] 2015, an offer of \$185,000 was made and that the Appellant's son negotiated the price up to \$202,500 and that on [REDACTED] [REDACTED] 2015, the condo unit sold at \$202,500.
21. The Appellants provided clear and convincing testimony that all of the Appellants funds plus all of the proceeds from the sale of the condo went towards the Appellant's cost of care while simultaneously paying for maintenance and expenses of the Appellant's home while in short term rehabilitation, hospitalization, assisted living facility and eventual skilled nursing facility. All of the Appellant's foreseeable needs were met.
22. The Department incorrectly determined that the Appellant did not get FMV from the sale of her condo.
23. The Department incorrectly imposed a transfer of asset penalty against the Appellant due to the sale of the condo listed as [REDACTED] [REDACTED].
24. The Department's determination of the penalty period beginning [REDACTED] 2015 and ending in [REDACTED], 2017 for Medicaid Payment of long term services on the Applicant's case is incorrect.

DECISION

The Appellant's appeal is granted.

ORDER

1. The Department will remove the Transfer of Asset penalty effective [REDACTED] 2015.
2. Compliance with this order is due to the undersigned by [REDACTED], 2017.



Almelinda McLeod
Hearing Officer

CC: Lisa Wells, SSOM, New Haven Regional Office
Brian Sexton, SSOM, New Haven Regional Office
Cheryl Stuart, SSPM, New Haven Regional Office
Shayla Streater, Eligibility Service Worker, New Haven 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.

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 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.