

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

CL ID # ██████████
Request # 828834

NOTICE OF DECISION

PARTY

██████████
C/O ██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2017, the Department of Social Services (the "Department") sent ██████████ ██████████, (the "Appellant") a notice that he had transferred \$20,000.00 to become eligible for Long Term Care ("LTC") Medicaid, and the Department was imposing a penalty period of ineligibility for Medicaid payment of long term care services effective ██████████ 2016 through ██████████, 2017.

On ██████████ 2017, the Appellant 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:

██████████ for the Appellant
██████████ Appellant's Daughter and Power of Attorney
Barbara Brunner, Department's Representative
Shakeina Murray, Department's Representative
Michelle Massicotte, Department's Representative
Thomas Monahan, Hearing Officer

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

STATEMENT OF THE ISSUE

The issue is whether the Department correctly imposed a penalty period beginning on [REDACTED] 2016 and ending on [REDACTED], 2016, due to a \$20,000.00 transfer of asset penalty for Long-Term Care Medicaid.

FINDINGS OF FACT

1. The Appellant applied for LTC Medicaid [REDACTED] 2015, with a grant date effective [REDACTED], 2015. (Exhibit 14: Attorney Rebuttal letter with [REDACTED]/15 hearing decision, Ex. 16: Spousal assessment)
2. Effective [REDACTED] 2015, the Appellant's community spouse received a Community Spouse Allowance of \$2,319.12 per month. (Exhibit 14: Attorney Rebuttal letter with [REDACTED]/15 hearing decision)
3. The total allowable assets at the time of the Appellant's initial LTC application was \$1,600.00 for the Appellant and \$23,448.00 for the community spouse based on a date of institutionalization of [REDACTED] 2014. (Ex. 16: Community Spouse Protected Amount Worksheet)
4. The Appellant is a resident of Carolton Convalescent Home (the "facility"). (Ex. 2: Renewal of Eligibility form, [REDACTED]/16)
5. The Appellant's date of birth is [REDACTED] 1932. (Ex. 2: Renewal of Eligibility form, [REDACTED]/16)
6. The Appellant's spouse entered the same facility as the appellant on [REDACTED] 2016. (Hearing record, Ex. 1: Case narrative)
7. The Department received the Appellants renewal of eligibility form for LTC Medicaid on [REDACTED] 2016 for the Appellant's renewal period of [REDACTED] 2016 through [REDACTED], 2017. (Hearing record, Ex. 1: Case narrative)
8. On the renewal form received [REDACTED] 2016, the Appellant reported that on [REDACTED] 2016 he received an inheritance of \$43,000.00. (Hearing record, Ex. 2: Renewal of Eligibility form)
9. On [REDACTED], and again on [REDACTED] 2016, the Department requested verification of the Appellant's inheritance and how he spent the money. (Ex. 1: Case narrative)
10. On [REDACTED] 2017, the Department received verification that the Appellant received

an inheritance of \$41,172.02 in [REDACTED] of 2016. (Ex. 1: Case narrative)

11. The Appellant deposited \$14,000.00 of the inheritance in an account solely owned by the Appellant's spouse on [REDACTED], 2016. (Ex. 1: Case narrative, Ex. 11: Peoples Bank statement for spouse, acct # ending in [REDACTED])
12. The Appellant submitted credit card statements to verify that a portion of the inheritance was spent on paying bills. The credit card statements submitted by the Appellant were for accounts in the Appellant and his spouse' name or accounts only in the spouse's name. (Ex. 14: Credit card statements)
13. On [REDACTED] 2016, the Appellant paid his two daughters from his joint checking account \$500.00 each for home care for the Appellant's spouse. On [REDACTED] 2016, the Appellant paid his two daughters from his joint checking account \$1,000.00 each for home care for the Appellant's spouse. (Ex's 5 and 6: Checks to each daughter)
14. On [REDACTED], 2017, the Department sent the Appellant a Transfer of Assets Preliminary Decision Notice stating that the Appellant transferred \$14,000.00 to his spouse and \$6,000.00 in credit card and homecare expenses in order to be eligible for LTC Medicaid assistance. (Ex. 13: Preliminary Transfer notice)
15. The Appellant's attorney rebutted the Department's proposed transfer of asset penalty. He cited that credit card payments exceeded \$3,000.00 and were not transfers made to qualify for assistance. He stated that the home care payments were part of a previous hearing decision and home care agreement allowing payments to the Appellant's two daughters for care for the community spouse. He stated that the \$14,000.00 transferred to the community spouse is exempt and was used for estate planning purposes. (Ex. 14: Attorney's rebuttal, credit card statements, home caregiver agreement, [REDACTED]/15 hearing decision)
16. On [REDACTED] 2017, the Department issued a Transfer of Assets Final Decision Notice. The notice stated that the appellant was ineligible for LTC services from [REDACTED] 2016 through [REDACTED], 2016 because he transferred \$20,000.00 of his inheritance to qualify for assistance. (Ex. 15: Final transfer decision notice)
17. As of the renewal date of [REDACTED] 2016, the Appellant was within the asset limit and otherwise eligible for LTC Medicaid services. (Hearing record)
18. The Appellant is currently active on LTC Medicaid. (Hearing record)

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. 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. The Department shall grant aid only if the applicant is eligible for that aid. Conn. Gen. Stat. § 17b-80(a)
4. 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. Uniform Policy Manual ("UPM") § 3029.03.
5. 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. UPM § 3029.05(C)
6. 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 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. UPM § 3029.05(A).
7. 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).
8. Regulation 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. UPM § 3029.10(E)

9. Regulation provides that an institutionalized individual, or his 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. UPM § 3029.10(F)
10. Regulation provides in that an institutionalized individual is considered to have transferred an asset exclusively for a purpose other than qualifying for assistance under circumstances which included, but are not limited to, undue influence. 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. UPM § 3029.15
11. 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. UPM § 3029.15(B)
12. A community spouse disregard is the amount of the institutionalized spouse's available non-excluded assets which is excluded in determining the institutionalized spouse's eligibility for Medicaid. UPM § 1500.01
13. A community spouse protected amount is the amount of the total available non-excluded assets owned by both MCCA spouses which is protected for the community spouse and is not counted in determining the institutionalized spouse's eligibility for Medicaid. UPM § 1500.01
14. The Community Spouse Disregard (CSD) is subtracted from an institutionalized spouse's (IS') counted assets in determining the IS' eligibility for Medicaid.

The CSD is used to allow the IS to transfer a specific amount of his or her counted assets to the community spouse (CS) when such assets are needed to raise the CS' assets to the Community Spouse Protected Amount (cross reference: 1500.01).

Except as provided in section 4022.05 A. 7, the CSD is used for the initial eligibility determination for each continuous period of institutionalization for an assistance unit consisting of a MCCA spouse.

UPM § 4022.05(A)(1-3)

15. After the amount of the CSD is subtracted as part of the initial eligibility determination, no more assets may be subtracted from the institutionalized spouse's assets as a CSD for the remainder of that continuous period of institutionalization. UPM § 4022.05(A)(6)

16. The Appellant did not establish with clear and convincing evidence that he transferred \$19,000.00 for a purpose other than qualifying for assistance, such as undue influence, his foreseeable needs were met, transfer to or by legal owner, or that the transferred asset would not affect his eligibility if retained.
17. The two \$500.00 home care checks issued to the Appellant's daughters were not a transfer of assets. They were issued prior to the Appellant receiving his inheritance.
18. The Department correctly determined a transfer of asset penalty against the Appellant effective [REDACTED] 2016. The correct amount of the transfer of assets is \$19,000.00.
19. Federal Law 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. 42 U.S.C. § 1396p(c)(1)(D)(ii).
20. 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. UPM § 3029.05(E)(2).
21. Regulation 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. UPM 3029.05(F)
22. The Departments determination of [REDACTED] 2016, as the start date of the penalty period is correct as the transfer was discovered at the [REDACTED] 2016 renewal and assets were within \$1,600.00 limit in that month.
23. The Department's imposition of a 49 day penalty period for ineligibility of Medicaid Long Term Care Medicaid Services is incorrect. The correct penalty period equals 46 days [1.53 months] (\$19,000.00 transfer / \$12,388.00 average cost of care). UPM § 3029.05(F).

DISCUSSION

After reviewing the evidence and testimony presented, the Department's action to impose a Medicaid penalty of long term care services is upheld. The Appellant transferred \$19,000.00 and did not provide clear and convincing evidence that the transfers were for reasons other than qualifying for assistance.

The Appellant's attorney stated that the money was transferred to pay bills and given to the Appellant's spouse to for estate planning purposes. He requested that the assets given to the spouse be used to increase her assets to the minimum community spouse protected amount. Regulation states that after the initial determination, no more assets may be added to the CSD during a period of continuous institutionalization. The Appellant has been continuously institutionalized since 2015 and is not eligible for any increase to his spouse's CSD. The Appellant's spouse has also been institutionalized since [REDACTED] 2016 which also makes her ineligible for a change in her CSD.


The length of the penalty has been reduced to reflect a \$19,000.00 transfer of assets.

DECISION

The Appellant's appeal is DENIED in respect to the imposition of a penalty and GRANTED in respect to the length of the penalty.

ORDER

1. The Department is ordered to adjust the penalty period to 1.53 months, or 46 days.
2. Compliance with this order should be forwarded to the undersigned no later than fifteen days of the date of this decision.


Thomas Monahan
Hearing Officer

C: Fred Presnick, Operations Manager, Bridgeport Regional Office
Yesenia Acosta, Operations Manager, Bridgeport Regional Office
Barbara Brunner, 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 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 Avenue, Hartford, 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.