

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

June 28, 2018
SIGNATURE CONFIRMATION

CLIENT ID #: [REDACTED]
HEARING ID #: 116683

NOTICE OF DECISION

PARTY

Attorney [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED], the Department of Social Services (the "Department") sent [REDACTED] (the "Applicant") a Notice of Action ("NOA") imposing a transfer of assets penalty on her Medicaid for Long Term Care benefits for the period from [REDACTED].

On [REDACTED], the Applicant's Conservator, [REDACTED] (the "Appellant") through his attorney, [REDACTED] requested an administrative hearing to contest the Department's decision to impose a penalty on the Applicant's Long Term Care Medicaid benefits.

On [REDACTED] Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [REDACTED] 2018.

On [REDACTED], the Appellant's Counsel requested a continuance of the hearing, which OLCRAH granted.

On [REDACTED], OLCRAH issued a notice rescheduling the administrative hearing for [REDACTED].

On [REDACTED], 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 hearing:

[REDACTED], the Appellant, brother and conservator for the Applicant,
[REDACTED],
[REDACTED], wife of Conservator
[REDACTED] Counsel for [REDACTED], Conservator,
[REDACTED], Legal Officer for [REDACTED]
Care, facility where [REDACTED] resides,
Glenda Gonzalez, DSS, New Haven, Department's representative
Saya Miyakoshi, Fair Hearing Liaison, DSS Manchester Regional Office
Maureen Foley-Roy, Hearing Officer

The hearing record remained open for the submission of additional evidence. On [REDACTED], the record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department's decision to impose a Transfer of Assets ("TOA") penalty on the Applicant's Medicaid for Long Term Care benefits beginning in [REDACTED] of 2017 and ending on [REDACTED] 2, 2018 for total transfers of \$75,943.97 made in 2016 and 2017 was correct.

FINDINGS OF FACT

1. In [REDACTED], the Applicant was incarcerated at [REDACTED] Institute. She was subsequently admitted to [REDACTED] Hospital. (Appellant's testimony)
2. On [REDACTED], the Appellant, who lives in [REDACTED] Connecticut, was named conservator of person and estate for his sister, the Applicant. (Exhibit 2: Court of Probate Certificate of Conservatorship)
3. At the time of her incarceration and hospitalization, the Applicant owned a home in [REDACTED] Connecticut, which was on the verge of foreclosure. (Appellant's testimony)
4. The Appellant cleaned the Applicant's home and prepared it for sale using his own funds. (Appellant's testimony and Exhibit 4: listing of expenses)
5. On [REDACTED], the Applicant's house was sold. (Exhibit 4)

6. The Appellant attended his sister's court dates. On occasion, the case would be continued and the Appellant would have to travel to court on multiple dates. (Appellant's testimony)
7. The Appellant visited his sister and attended meetings regarding her prognosis and care at the [REDACTED] Hospital. These visits were lengthier than normal hospital visits due to the level of security at the hospital. (Appellant's testimony)
8. On [REDACTED], the Appellant reimbursed himself in the amount of \$17,768.47 for the expenses he had paid in preparing and selling the Applicant's home. (Exhibit 8, p.2: Check #119)
9. On [REDACTED], the Appellant paid himself \$21,175 for the time he had put in as conservator from his appointment through [REDACTED]. (Exhibit 8,p.3: Check #118)
10. The Applicant was released from [REDACTED] Hospital to [REDACTED]'s [REDACTED], a halfway house supervised by medical staff. [REDACTED] was found not to be an appropriate placement for the Applicant. (Appellant's testimony)
11. On [REDACTED], Ascend, the Department's consultant, reviewed the Applicant's case and determined that she met the criteria for a long term level of care placement. (Exhibit 7: Ascend Data)
12. On [REDACTED], the Applicant was admitted to [REDACTED], a skilled nursing facility. (Exhibit 7)
13. On [REDACTED], the Appellant applied for Medicaid for Long Term Care for the Applicant. (Hearing Summary)
14. In reviewing the application and noting large sums paid to the Appellant from the Applicant's funds, the Department requested a copy of a caregiver contract. (Department representative's testimony)
15. On [REDACTED], the Appellant paid himself \$13,600 in Conservator fees for [REDACTED] 2016 through [REDACTED] 2016, \$13,100 for Conservator fees for [REDACTED] 2017 through [REDACTED], 2017. In addition the Appellant prepaid himself \$1200 in conservator fees for the remainder of 2017 and \$9,100 in conservator fees for 2018. (Exhibit 8: Account History printout and Exhibit 4,pgs 8 and 14)
16. On [REDACTED], in response to the Department's request, the Appellant and his attorney created a caregiver contract which was essentially the duties the Appellant had been performing and been

compensated for as conservator. (Exhibit 1: Caregiver contract and Appellant's testimony)

17. On [REDACTED], the Appellant paid [REDACTED] facility \$48,545.86 for the Applicant's care. (Exhibit 8)
18. In [REDACTED], the Applicant became asset eligible for Medicaid for long term care. (Department representative's testimony)
19. On [REDACTED], the probate court judge approved the caregiver contract. (Exhibit 1)
20. On [REDACTED], the probate court judge approved the Applicant's financial statement, as submitted by the Appellant, and also approved conservator fees extending until 2021. (Exhibit 4: pages 13 and 15)
21. On [REDACTED] the Department issued both a W495A (Transfer of Assets Preliminary Decision Notice) and W495C (Transfer of Assets Final Decision Notice) stating that although the Applicant was eligible for Medicaid effective [REDACTED] 2017, the Department was setting up a penalty. The notices stated that the penalty was imposed because the Applicant had transferred \$38,943.97 on [REDACTED] 2016 and \$37,000 on [REDACTED] 2017 to become eligible for Medicaid. (Exhibit 3: W495A and W495C)
22. On [REDACTED], the Department issued a notice of approval for Long Term Care Medicaid. The notice stated that the Applicant was eligible for Medicaid as of [REDACTED] and would begin paying nursing home costs as of [REDACTED] 2018. (Exhibit 6: Notice of Approval for Long Term Care)
23. The Department will begin paying nursing home costs effective [REDACTED] 2018. (Exhibit 11: Email from Department's representative)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Section 17b-260 of the Connecticut General Statutes authorizes the Commissioner of Social Services to take advantage of the medical assistance programs provided in Title XIX, entitled "Grants to States for Medical Assistance Programs", contained in the Social Security Amendments of 1965.

3. UPM § 3029.05 A provides that 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 3029.05 C. This period is called the penalty period, or period of ineligibility.
4. UPM § 3029.05 B provides that the policy contained in the chapter on transfers of assets pertains to institutionalized individuals and to their spouses.
5. UPM § 3029.05 D 1 provides that 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.
6. 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).
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. UPM Section 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.
9. The Appellant presented clear and convincing evidence that the \$21,175.00 paid to himself on ██████ 2016 was payment due for conservator fees that had been incurred from ██████ 2015 through ██████ 2016 and not for the purpose of qualifying the Applicant for assistance.
10. The Appellant presented clear and convincing evidence that the \$17,768.97 paid to himself on ██████ 2016 was reimbursement due for expenses incurred by the Appellant in preparing the Applicant's home for sale and not for the purpose of qualifying the Applicant for assistance.
11. The Appellant presented clear and convincing evidence that the \$13,100 paid

to himself on [REDACTED], 2017 was payment due for conservator fees that had been incurred from [REDACTED] through [REDACTED], 2017 and not for the purpose of qualifying the Applicant for assistance.

12. The evidence presented indicates that on [REDACTED], 2017, the \$1200 that the Appellant prepaid to himself in conservator fees for [REDACTED] 2017 through [REDACTED], 2017 and \$9100 in prepaid conservator fees for 2018 were made for the purpose of reducing the Applicant's assets to qualify for the Applicant for Medicaid.
13. The Department was incorrect when it determined that the Appellant transferred \$75,943.97 in order to qualify for Medicaid. The Appellant transferred \$10,300 on [REDACTED] 2017 for the purpose of qualifying for Medicaid.
14. UPM § 3029.05 E provides that the penalty period begins as of the later of the following dates: the first day of the month during which assets are transferred for less than fair market value, if this month is not part of any other period of ineligibility caused by a transfer of assets; or 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.
15. The penalty period begins [REDACTED] 2017, when the Applicant became eligible for Medicaid.
16. UPM § 3029.05(F) 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. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer.
17. The length of the penalty period is .81 months. ($\$10,300/\$12,604$ [average monthly cost of care]).
18. The penalty period ends on [REDACTED], 2017 and the Applicant is eligible for Medicaid for Long Term Care effective [REDACTED], 2017.

DISCUSSION

In this case, there were misunderstandings on all sides, which caused confusion regarding the Appellant's circumstances. The Appellant had been appointed Conservator for his sister and was entitled to receive payment for his duties. When eligibility staff saw such payments, they questioned the presence of a caregiver contract. As the Appellant was indeed taking care of his sister by virtue of his position of conservator, he and his attorney drew up a caregiver contract. But although the Appellant was being referred to as both Conservator and caregiver, he was performing the duties and being paid as Conservator. Due to his sister's illness, the situation regarded a great deal of time and work on the part of the Appellant. In addition, there was a considerable geographic distance involved. It also required the Appellant to expend significant amounts of time with bureaucracies, such as the court system and various other government agencies. For example, seeing his sister and her medical professionals at the [REDACTED] hospital required more time than would be spent at a community hospital. The costs incurred seemed excessive. But the Appellant was credible in that the situation warranted the costs and they were approved by the probate judge.

The Appellant clearly prepaid conservator fees in order to spenddown his sister's resources to the point where she would qualify for Medicaid. The Applicant's living situation had stabilized once she moved into the nursing facility and once she became eligible for Medicaid there would have been a change in the Appellant's duties as a conservator. The Appellant's future duties as Conservator and how long he would have to perform them could not be determined. It is concluded that the \$10,300 that the Appellant prepaid himself in conservator fees on [REDACTED], 2017 was for the purpose of qualifying the Applicant for Medicaid and is subject to a transfer of asset penalty.

DECISION

The Appellant's is granted in part and denied in part.

ORDER

1. The Department shall reduce the transfer of asset penalty to \$10,300 and the penalty period to .81 months, making the Applicant eligible for Medicaid Long Term care services on [REDACTED], 2017.
2. Compliance with this order shall be submitted to the undersigned no later than [REDACTED] 2018.

Maureen Foley-Roy

Maureen Foley-Roy
Hearing Officer

CC : Tricia Morelli, DSS Operations Manager, DSS, Manchester
Glenda Gonzalez, Eligibility Services, DSS, New Haven

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.

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.