

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

September 6, 2018
SIGNATURE CONFIRMATION

████████████████████
HEARING ID #:119083

NOTICE OF DECISION

PARTY

████████████████████
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PROCEDURAL BACKGROUND

████████████████████, 2018, the Department of Social Services (the "Department") sent ██████████ (the "Appellant"), and his Power of Attorney ("POA") a Notice of Action ("NOA") imposing a transfer of assets penalty on his Medicaid for Long Term Care benefits for the period from ██████████ 2017 through ██████████, 2019.

████████████████████, 2018, ██████████, the Appellant's POA requested an administrative hearing to contest the Department's decision to impose a penalty.

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

████████████████████, 2018, Attorney ██████████, the POA's Attorney requested a reschedule.

████████████████████, 2018, OLCRAH issued a notice rescheduling the hearing for ██████████ 26, 2018.

████████████████████, 2018, Attorney ██████████ requested a reschedule due to need more time to gather more documents.

On ██████████ 15, 2018, OLCRAH issued a notice rescheduling the hearing for ██████████ 19, 2018.

██████████, 2018, the Department's representative failed to appear.

██████████, 2018, OLCRAH issued a notice rescheduling the hearing for ██████████
2018.

██████████, 2018, 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:

██████████, Appellant's son and POA
██████████, POA's spouse
██████████, Touchpoints at Farmington, Nursing Home Facility
██████████, Esq., Appellant's POA's attorney
Darlene Rogers, Department's representative, via telephone
Veronica King, Hearing Officer

The Appellant was not present.

The hearing record remained open until ██████████, 2018 for the submission of additional evidence. Additional exhibits were received from both parties and on ██████████ 2018, 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 Appellant's Medicaid for Long Term Care benefits beginning in ██████████ 2017 and ending on ██████████ 2019 for total transfers of \$319,596.43 was correct.

FINDINGS OF FACT

1. ██████████ 2017, the Appellant was admitted to Touchpoints at Farmington (the "Facility"), a nursing home care facility. (Hearing Record)
2. On ██████████ 28, 2017, the Department received an application for Medicaid Long Term Care services from the Appellant. (Hearing Record)
3. ██████████ is the Appellant's son and POA. (Hearing Record)
4. The Appellant was represented by Czepiga, Daly Pope & Perri law office through the application process. (Hearing Record)
5. In reviewing the application the Department noticed significant spending from ██████████ 2012 to ██████████ 2017. (Department's Exhibit 9: Wells Fargo account XXX9933 bank statements and Hearing Record)

6. The analysis of the Appellant's assets indicated that from 2012 through 2016, the Appellant gifted his children \$524,166.43. (Department's Exhibit 3: Analysis of gift to children)
7. The Appellant resided with his son [REDACTED] and his wife [REDACTED] from [REDACTED] 2012 up to his admission to the Facility. (Department Exhibit 8: Affidavit [REDACTED] 7)
8. The Appellant's initial attorney provided a letter from Dr. [REDACTED], MD, the Appellant's physician since 2012. The letter stated in part that the Appellant's son and his wife were his primary care givers and the Appellant has needed institutionalized long-term care since a least [REDACTED] of 2015. (Department's Exhibit 6: Dr. [REDACTED] letter, [REDACTED] /17)
9. The Department reviewed the documents with the Appellant's initial attorney and determined that \$200,000.00 of the Appellant's spending was for [REDACTED] for 19 months of care. (Hearing Record)
10. [REDACTED], 2018, the Department issued a Preliminary Decision Notice ("W495A") stating that the Department was setting up a penalty on his application for Medicaid Long Term Care services because he had transferred \$319,596.43 to become eligible for Medicaid. (Department's Exhibit 1: W495A, [REDACTED] 18)
11. [REDACTED], 2018, the Appellant's initial attorney sent an email to the Department stating they were in agreement with the \$319,596.43 amount and that the Department could issue the final notice. (Department's Exhibit 4: Czepiga Daly Pope & Perri's email, [REDACTED] /18)
12. [REDACTED], 2018, the Department issued a Final Decision Notice ("W495C") stating that although the Appellant was eligible for Medicaid effective [REDACTED] 2017, the Department was setting up a penalty starting on [REDACTED] /17 and ending on [REDACTED] 9. The notice stated that the penalty was imposed because the Appellant had transferred \$319,596.43 to become eligible for Medicaid and during the penalty period, Medicaid will not pay for any long-term care services. (Department's Exhibit 2: W495C, [REDACTED] /18)
13. [REDACTED], 2018, the Department issued a Notice of Action. The notice stated that Medicaid will not pay for room and board at a nursing home during the penalty period of [REDACTED] 7 to [REDACTED] /19. (Department's Exhibit 10: NOA, [REDACTED] /18)
14. After the Appellant's POA received the NOA; he decided that he was not in agreement with the amount of the transfer. The POA retained attorney [REDACTED] [REDACTED] from Knott & Knott, LLC law office to represent him. (POA's Testimony)

15. [REDACTED], 2018, the Appellant's POA requested a hearing. (Hearing Record)
16. [REDACTED], 2018, the POA's attorney subpoenaed the bank to obtain the Appellant's credit card's statements. (Counsel's Testimony)
17. [REDACTED], 2018, the POA's attorney requested the hearing date to be postponed to obtain documents. (Hearing Record)
18. [REDACTED] 2018, the POA's attorney sent an email to the Department. He attached the Appellant's five years of credit cards statements, a spreadsheet of explanation of the credit cards purchases, verification of nursing home payments and a Notice of Intent to Discharge dated [REDACTED] 2018, from the nursing home. (Appellant's Exhibit A: Attorney's Santoro email, [REDACTED]/18, Exhibit B: Notice to Intent to Discharge, [REDACTED]/18, Exhibit C: Nursing Home payments, Exhibit D: Credit Cards spreadsheet, and Exhibit E: Credit Cards statements)
19. The POA's attorney is contesting the amount of the penalty because the Appellant's POA did not have all the information and could not obtain all the information before. He stated that the amount of the penalty was calculated based on withdrawal payments to pay off credit card debts. This was done without knowing whether the expenditures on those credit cards were transfers or legitimate expenses. (Counsel's Testimony and Hearing Record)
20. The POA's attorney requested that the remainder of the TOA penalty to be remove under undue hardship guiding principle. (Appellant's Exhibit A, Exhibit B and Hearing Record)
21. The POA's attorney sent emails to the Department inquiring if the Department reviewed the new documents. (Department's Exhibit 13: emails between Attorney Santoro and the Department)
22. The POA's attorney sent emails to the Department inquiring about the undue hardship request. (Department's Exhibit 13)
23. The Department did not analyze the credit cards statements provided by the POA's attorney. (Department's representative Testimony)
24. The Department did not review the facility's notice of intent to discharge the Appellant. The Department did not consider or respond the undue hardship claim. (Department's representative's Testimony and Department's Exhibit 13)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes provides that the Department will administer Title XIX of the Social Security Act ("Medicaid") in the State of Connecticut.

Section 17b-261b(a) of the Connecticut General Statutes provides that the Department "shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department."

Federal law provides that the "single State agency is responsible for determining eligibility for all individuals applying for or receiving benefits" in the Medicaid program. 42 C.F.R. 431.10(b)(3)

Uniform Policy Manual ("UPM") § 3029.03 states that the Department uses the policy contained in Chapter 3029 of the Uniform Policy Manual to evaluate asset transfers if the transfer occurred on or after [REDACTED] 2006.

UPM § 3029.05 (A) provides that 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.

UPM § 3029.05 (C) states that the look-back date for transfers of assets is the 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.

The look-back date for the Appellant is [REDACTED] 2012.

2. Subsection (a) of section 17b-261a of the Connecticut General Statutes 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 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."

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.

UPM § 3029.10 (F) provides for transfers not resulting in a penalty; an institutionalized individual, or his or her 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 § 1505.40 (A) provides for processing application and states in part that prior to making an eligibility determination the Department conducts a thorough investigation of all circumstances relating to eligibility and the amount of benefits.

UPM § 1540.10 (D) provides for unit and agency responsibilities and states that the Department considers all evidence submitted by the assistance unit or received from other sources.

The Department incorrectly did not analyze the Appellant's credit cards statements.

The Department incorrectly did not review or consider all evidence submitted by the Appellant's POA's attorney.

The Department incorrectly did not conduct a thorough investigation of all circumstances relating to eligibility.

3. UPM § 3029.25 provides for Undue Hardship claims and states in general that an institutionalized individual is not penalized based on a transfer of assets made by the individual or his or her spouse if denial or discontinuance of payment for services would create an undue hardship, which exists if the individual would be deprived of: 1. medical care such that his or her life would be endangered; or 2. food, clothing, shelter or other necessities of life.

UPM § 3019.25 (B) states that when an individual would be in danger of losing payment for LTCF or equivalent services described at 3029.05 B solely because of the imposition of a penalty period, the Department does not impose such penalty under the following conditions:

1. a. The long-term care facility or medical institution has threatened the individual with eviction due to non-payment and the individual has exhausted all legal methods to prevent the eviction; or
- b. The medical provider has threatened to terminate home and community-based services being provided under a Medicaid waiver; and
2. The transferor establishes that the transferee is no longer in possession of the transferred asset and the transferee has no other assets of comparable value with which to pay the cost of care; and

3. There is no family member or other individual or organization able and willing to provide care to the individual.

The Department incorrectly did not pursue if undue hardship exists for the Appellant.

DISCUSSION

The Department's determination that the Appellant transferred \$319,596.43 in assets in order to qualify for Medicaid was based in part, assuming that the withdrawal from the Appellant's bank account used to pay off credit cards debts were improper transfers. This was done without knowing whether the expenditures made on those credit cards were improper transfers or legitimate expenses. The Appellant's POA's Counsel provided the Department with the credit cards statements and a spreadsheet of the credit cards purchases with an explanation of the expenditures. The Department did not review or take into consideration the new evidence. It is understandable that the Department needs more time to review the new evidence as the POA's counsel testified that the Appellant's POA did not have all the information at time of application and had to subpoena the bank to obtain such documents. However, once the Department was presented with new evidence regarding the amount of transfer, a review should have been completed and the results presented to the appellant.

In terms of the undue hardship claim, Counsel for the Appellant argued that because the Appellant received a notice of intent to discharge due to nonpayment from the Facility, the TOA remainder penalty should be waived. There are other factors to determine when undue hardship exists. The Department did not review the undue hardship claim.

DECISION

The Appellant's appeal is **REMANDED**

ORDER

1. The Department shall analyze the credit card statements and the spreadsheet of credit card purchases to determine the amount of the TOA penalty.
2. The Department shall issue a new W495A Preliminary Decision Notice.
3. The Department shall review the claim of undue hardship.
4. Compliance of this order is due back to the undersigned by [REDACTED] 2018.

Veronica King
Hearing Officer

cc: Musa Mohamud, Social Services Operations Manager, DO#10 Hartford
Judy Williams, Social Services Operations Manager, DO#10 Hartford
Jessica Carroll, Social Services Operations Manager, DO#10 Hartford
Darlene Rogers, Eligibility Services Worker, DSS DO#60 Waterbury
[REDACTED], Esq., Appellant's POA's attorney

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.