

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

██████████, 2018
SIGNATURE CONFIRMATION

CL ID # ██████████
Request # 121355

NOTICE OF DECISION

PARTY

██████████
██████████
████████████████████

PROCEDURAL BACKGROUND

On ██████████ 2018, the Department of Social Services (the "Department") sent ██████████ ██████████ (the "Appellant") a notice that she had transferred \$56,806.57 to become eligible for Medicaid, and the Department was imposing a penalty period of ineligibility for Medicaid payment of Long Term Care Services effective ██████████ 2018 through ██████████, 2018.

On ██████████, 2018, the Appellant requested an administrative hearing to contest the Department's penalty determination.

On ██████████ 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") scheduled an administrative hearing for ██████████, 2018.

On ██████████ 2018, 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
██████████ Appellant's Attorney, ██████████
██████████, Appellant's Social Worker, ██████████
Lori Sirois, Department's representative
Sayaka Miyakoshi, Department's representative
Scott Zuckerman, Hearing Officer

The hearing record remained open for additional evidence from the Appellant in the

form of a letter she sent to the Department rebutting the transfer penalty. In addition, she requested a statement from her physician be entered as evidence. The rebuttal letter was received; no letter was provided by her physician. On [REDACTED], 2018, the hearing record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly imposed a penalty period from [REDACTED] 2018 through [REDACTED], 2018 due to a \$56,807.57 transfer of asset penalty for Long-Term Care Medicaid.

FINDINGS OF FACT

1. On [REDACTED] 2013, the Appellant had a balance of \$56,103.23 in her Merrill Edge Money Market account # [REDACTED]. (Exhibit 2: Merrill Edge [REDACTED] statements)
2. Sometime in [REDACTED] 2014, the Appellant cashed in the Merrill Edge Money Market account for a total of \$56,806.57. (Appellant's testimony, Exhibit 2)
3. The Appellant stated that she used the proceeds from her Merrill Edge Account to purchase three cruises, trips to Georgia to visit family, purchased furniture, paid rent, medical bills and gave her grandniece \$20,000 for college tuition. (Appellant testimony and Exhibit A: Rebuttal letter from the Appellant, [REDACTED] 18)
4. The Appellant did not believe she would live as long as she did with all of her medical conditions and need intensive care. The Appellant had decided to live her life with the money in her Merrill Edge account. (Appellant's testimony, Ex. A: Appellant's letter, [REDACTED]/18)
5. The Appellant had suffered from two strokes. (Appellant's testimony)
6. The Department determined the Appellant's date of institutionalization ("DOI") as [REDACTED] 2015. (Department's testimony)
7. On [REDACTED], 2017, the Appellant's niece, who was her Power of Attorney ("POA") passed away. (Appellant's testimony, Ex. A)
8. The Appellant does not have proof or documentation of how she reduced the proceeds from the Merrill Edge account as the deceased POA had all of her information. (Appellant's testimony and Exhibit A: Rebuttal Letter from the Appellant, [REDACTED]/18)

9. The Department did not receive documentation that the Merrill Edge account withdrawal was deposited or withdrawn from any of the Appellant's accounts. (Department's testimony)
10. The Appellant's POA is not listed on the Merrill Edge account. (Department's testimony, Ex. 2)
11. On [REDACTED] 2018, the Department received from the Appellant, an application for Medicaid Home Care Waiver. (Hearing Summary and Exhibit 1: W-1LTC, Long Term Care/ Waiver Application, [REDACTED] 18)
12. The Appellant's is [REDACTED] years old (DOB [REDACTED]). (Exhibit 1: Long-Term Care Application, [REDACTED]/18)
13. The Appellant is a widow. (Exhibit 1)
14. The Appellant answered 'yes' to the question, "Have you (or your spouse) sold, traded, gifted or transferred ownership of any real property, motor vehicles, stocks, bonds, cash, or other assets in the past 5 years?" The Appellant stated she gave money to her niece for college expenses. (Exhibit 1: W-1LTC)
15. The Appellant receives \$1820.00 in Social Security benefits and a pension. (Ex. 1)
16. The Appellant received assistance with her application from CCCI and the Town of South Windsor. (Testimony and Ex. 10, Case narrative)
17. On [REDACTED], 2018, the Department sent the Appellant a W-1348LTC, Verification We Need form, requesting certain information to establish eligibility. Among the items requested was verification of what was done with the \$56,103.22 withdrew from her Merrill Lynch account [REDACTED]. (Exhibit 3: W-1348 LTC, [REDACTED]/18)
18. On [REDACTED] 2018, the Department sent the Appellant a W-1348LTC, Verification We Need form, requesting certain information to establish eligibility. Among the items requested was verification of what was done with the \$56,103.22 withdrew from her Merrill Edge account [REDACTED]. (Exhibit 3: W-1348 LTC, [REDACTED] 18)
19. On [REDACTED] 2018, the Department sent the Appellant a W-1348LTC, Verification We Need form, requesting certain information to establish eligibility. Among the items requested was verification of what was done with the \$56,103.22 withdrew from her Merrill Edge account [REDACTED]. (Exhibit 3: W-1348 LTC, [REDACTED] 18)
20. The Department was unable to trace a disbursement of the Merrill Edge funds into any bank accounts held by the Appellant. The Department determined the withdrawal of the funds as a transfer for the purpose of qualifying for Medicaid and

home care services as they were unable to verify fair market value was received. (Department's testimony)

21. On [REDACTED] 2018, the Department issued a W-045A, Notice of Improper Transfer of Assets. The notice stated that the Appellant had transferred assets in the amount of \$56,806.57 on [REDACTED] 2014 and has not provided proof that the transfer was not made in order to become eligible for home care services. The notice allowed the Appellant to explain the transfer and provide proof that she received fair market value and did not transfer the asset in order to become eligible for assistance. The Department allowed the Appellant fifteen (15) days to provide an explanation of why she disagrees with the penalty period and provide the proofs. (Exhibit 8: Notice of Improper Transfer of Assets, [REDACTED]/18)
22. On [REDACTED] 2018, the Appellant sent a rebuttal letter to the Department's scanning center. The Appellant stated how she spent the money but could provide proof of how she spent the \$56,806.57 from her Merrill Edge account. (Exhibit A: Letter from the Appellant, [REDACTED]/18)
23. On [REDACTED], 2018, the Department issued a W-1348LTC, requesting certain information to establish eligibility. The Department did not request any proofs on how the \$56,806.57 Merrill Edge account was liquidated. (Exhibit 6: W-1348LTC, [REDACTED]/18)
24. On [REDACTED], 2018, the Department issued a W-1348LTC, requesting certain information to establish eligibility. The Department did not request proofs on how the \$56,806.57 in the Merrill Edge account was liquidated. (Ex. 7: W-1348LTC, [REDACTED]/18)
25. The Appellant was asked to send all information directly to the Department's representative at the regional office. (Department's testimony)
26. The Department was unaware of the rebuttal letter sent to the Department's scanning center. (Department's testimony)
27. On [REDACTED] 2018, the Department issued a Notice of Action indicating the Appellant gave assets to someone in order to get benefits and that they are imposing a penalty period for improper transfer of assets beginning [REDACTED] 2018 and ending on [REDACTED], 2018. (Exhibit 9: Notice dated [REDACTED] 18)

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. Uniform Policy Manual “UPM” § 1015.05(C) provides that the Department must tell the assistance unit what the unit has to do to establish eligibility when the department does not have sufficient information to make an eligibility determination.

The Department failed to inform the Appellant of what she needed to do to establish eligibility for assistance. It did not make specific requests for information for the money given for college, three cruises, and documentation from the estate of the deceased POA, shelter expenses, medical expenses and rent not covered by her income.

4. State statute 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. Conn. Gen. Stat. § 17b-261(a).
5. 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.

The Department failed to give the Appellant the opportunity to provide clear and convincing evidence that the proceeds from the Merrill Edge account were not for the purpose of qualifying for Medicaid, as the Department did not review the rebuttal letter.

The Department incorrectly imposed a transfer of asset penalty because it did not review the Appellant's rebuttal and give her an opportunity to provide supporting documentation.

DISCUSSION

The Department incorrectly imposed a transfer of asset penalty against the Appellant due to not providing any evidence of where the withdrawal of \$56,806.57 from the Appellant's Merrill Edge account was deposited and how it was spent. The Appellant testified that she gifted \$20,000 to her niece, took three cruises, paid medical bills and took trips to Georgia to visit family. The Department testified that there was no evidence of a deposit into any of her accounts during the look back period, nor any receipts or other documents to verify how the funds were reduced. The Department could not determine if the Appellant received fair market value of the Merrill Edge account.


The Appellant provided a rebuttal letter as requested in [REDACTED] where she discussed that she spent the money by giving the \$20,000 to her niece for college, taking three cruises, taking trips to Georgia to visit family, paying for medical expenses, and paying for her rent. The Appellant's power of attorney, her niece, passed away in [REDACTED] 2017. The Appellant stated she paid all of her bills. The Department did not review the letter that was scanned into their system; therefore it did not give the Appellant an opportunity to provide proofs of how the money was spent.

DECISION

The Appellant's appeal **GRANTED**.

ORDER

1. The Department will reopen the Appellant's application and send the Appellant a W-1348LTC requesting specific proofs related to the claims stated on the Appellant's rebuttal of how she spent the proceeds of the Merrill Edge account.
2. Compliance with this order is due to the undersigned by [REDACTED] 2018.


Scott Zuckerman
Hearing Officer

C: Tricia Morelli, Social Service Operations Manager, DSS, Manchester Office
Lori Sirois, Fair Hearing Liaison, DSS, Hartford Office
Sayaka Miyakoshi, Fair Hearing Liaison, DSS, Manchester 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 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.