

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 # ██████████

NOTICE OF DECISION

PARTY

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██████████
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PROCEDURAL BACKGROUND

On ██████████ 2017, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a notice that she 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 ██████████ 2017 through ██████████, 2017.

On ██████████, 2017, ██████████, the Appellant’s Daughter and Power of Attorney (“POA”) 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, the Power of Attorney requested to reschedule the hearing.

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

On ██████████ 2018, the Power of Attorney requested to reschedule the hearing.

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

On [REDACTED] 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:

[REDACTED], Appellant's Daughter and POA
 Michael Briggs, Department's Representative
 Megan Finlayson, Observer, DSS
 Barbara Whetstone, Observer, DSS
 Shelley Starr, Hearing Officer

The Appellant, [REDACTED], was not present at the hearing due to health reasons.

The hearing record remained open for the submission of additional evidence from the Department. On [REDACTED] 2018, the hearing record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly imposed a penalty period beginning on [REDACTED] 2017 and ending on [REDACTED], 2017, due to a \$20,000.00 transfer of asset penalty for Long-Term Care Medicaid.

FINDINGS OF FACT

1. The Appellant is [REDACTED] years old ([REDACTED]) and a widow. (Exhibit 1: W-1LTC Application received [REDACTED] 2017)
2. On [REDACTED], 2015, [REDACTED], the Appellant's Daughter, was appointed as Power of Attorney. (Exhibit 14: Durable Power of Attorney dated March 15, 2015)

[REDACTED] On March 9, 2017, the Appellant was admitted to [REDACTED] [REDACTED] from [REDACTED] for an anticipated short term stay after suffering a fall at home. (POA's Testimony; Hearing Summary; Exhibit 16: [REDACTED])

4. The Appellant has a primary medical diagnosis of dementia and was admitted three times for short term rehabilitative care prior to her [REDACTED] 2017, admission to [REDACTED] [REDACTED]. (POA's Testimony)
5. On [REDACTED], 2017, the Appellant obtained a \$20,000.00 bank check payable to her Granddaughter, [REDACTED], as a wedding gift for her [REDACTED] 2017, wedding. (Exhibit 8: [REDACTED] for \$20,000.00 payable to [REDACTED]; POA's Testimony; Hearing Record)

6. Of the Appellant's seven grandchildren, two other grandchildren are married. As wedding gifts, the Appellant gave one grandchild a \$2,500.00 wedding gift and the other a \$3,000.00 wedding gift. (POA's Testimony)

- On [REDACTED] 2017, the Appellant had monthly gross Social Security income of \$1,441.00 and assets totaling approximately \$40,000.00. (POA's Testimony; Department's Testimony; Exhibit 7: [REDACTED])

8. On [REDACTED] 2017, the Appellant became a long term care resident of [REDACTED]. (Exhibit 16: Letters from [REDACTED] dated [REDACTED] 2017 and [REDACTED] 2017;

9. On [REDACTED], 2017, the Department received from the Appellant's POA, a long-term care Medicaid application for the Appellant. (Exhibit 1: W-1LTC received [REDACTED], 2017; Hearing Summary)

10. The sixty month look back period based on the Appellant's [REDACTED] 2017, long-term care Medicaid application begins [REDACTED] 2012. (Department's Testimony; Exhibit 1: LTC application received [REDACTED] 2017; Hearing Record) (Hearing Record)

11. The Department determined that within the look back period, the Appellant gifted \$20,000.00 to [REDACTED] on [REDACTED] 2017. (Exhibit 7: [REDACTED] [REDACTED] 2017 through [REDACTED] 2017; Exhibit 8: [REDACTED] \$20,000.00 bank check payable to [REDACTED] dated [REDACTED] 2017)

12. The Appellant did not retain assets to meet her foreseeable needs. (Hearing Record)

13. The Appellant was asset eligible for Long Term Care Medicaid effective [REDACTED] 2017. (Hearing Summary; Hearing Record)

14. On [REDACTED] 2017, the Department issued the Appellant a W-495A Notice of Possible Improper Transfer of Assets, proposing to apply a penalty resulting from the alleged improper transfer of assets on [REDACTED] 2017, in the amount of \$20,000.00. (Exhibit 9: W-495A Notice of Possible Improper Transfer of Assets dated [REDACTED] 2017; Hearing Summary)

15. The Appellant's POA responded to the W-495A proposal to implement a penalty with a rebuttal. She provided [REDACTED] letters dated [REDACTED] 2017 and [REDACTED], 2017, indicating the date when the Appellant became a long term care resident at the facility without the anticipation of the Appellant returning home. (Department's Testimony; Appellant's Testimony; Hearing Record)

16. On [REDACTED] 2017, the Department issued a W-495B Notice of Response to Rebuttal and W-495C Final Decision Notice, indicating that the Department determined that the transfer of \$20,000.00 on [REDACTED] 2017 was made for the purpose of qualifying for Medicaid, and set up a period of ineligibility beginning [REDACTED], 2017 and ending on [REDACTED] 2017, during which time the Department would not pay for her long-term care services. (Exhibit 10: W-495B dated [REDACTED] 02017; Exhibit 11: W-495C, dated [REDACTED] 2017; Hearing Summary)

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. Connecticut General Statutes ("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. Subsection (a) of section 17b-261(a) of the Connecticut General Statutes provides that any disposition of property made on behalf of an applicant for 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.
4. Uniform Policy Manual ("UPM") Section 1500.01 provides that an applicant is "the individual or individuals for whom assistance is requested."
5. UPM § 3029.03 provides that 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 or annuity was established, on or after February 8, 2006.
6. UPM 3029.05(A) provides 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.
7. UPM § 3029.05(C) provides 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.

The Department correctly determined that the look-back period date for the Appellant begins [REDACTED] 2012.

8. Conn. Gen. Stat. § 17b-261(a) 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.
9. 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 Appellant's Representative did not establish with clear and convincing evidence that the \$20,000.00 transfer was not made for a purpose other than qualifying for assistance.

10. UPM § 3029.15 provides 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.
11. UPM § 3029.15(B) provides that 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.

The Appellant did not retain income and assets to cover her basic living expenses and medical costs because at the time of the transfer, she was institutionalized after suffering a fall demonstrating a decline in her health and she applied for Medicaid just over a month after gifting half of her assets to her Granddaughter.

12. UPM § 3029.05(E)(2) provides that the penalty period begins as of the later of the following dates: 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.

The Department correctly determined that the penalty period begins [REDACTED] 2017, the date the Appellant is otherwise eligible for Medicaid payment.

13. UPM § 3029.05(F) provides in part that the length of the penalty period consists of the number of whole and/or partial months resulting from the computation described in 3029.05(F)(2). 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. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.
14. The average monthly cost of LTCF services in Connecticut as of [REDACTED] 2017, the month of the Appellant's application was \$12,388.00.
15. The Appellant is subject to a penalty period of 1.6 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTCF services (\$20,000.00 (total transfer amount) / \$12,388.00 (average cost of LTCF services)=1.61)

The Department correctly determined the Appellant is subject to a penalty period of 1.6 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTCF services.

DISCUSSION

Based on the testimony and evidence presented, the Department's action to impose a Medicaid penalty of long term care services is upheld. The Appellant transferred \$20,000.00 and did not provide clear and convincing evidence that the transfer was for reasons other than qualifying for assistance.

The Appellant's Representative's main argument at the hearing was that her mother ("the Appellant") wanted to give her granddaughter a \$20,000.00 wedding gift because she was a special granddaughter whom in 2013, moved into the home of the Appellant to assist her for a less than two year duration . While it is reasonable that the Appellant wanted to provide her granddaughter with a wedding gift as she had done in the past for two other grandchildren, I did not find her stated reason clear and convincing. The Appellant's past practice demonstrates that she while she gave monetary wedding gifts to her grandchildren; she gave gifts of much less value of \$2,500.00 and \$3,000.00. While the Representative stated that the \$20,000.00 wedding gift was given for reasons including caring for the Appellant, no evidence was provided to explore any claim of compensation or valuable consideration for services.

The Appellant was admitted to [REDACTED] on [REDACTED] 2017, at the age of [REDACTED] after suffering a fall at home. The Representative testified that the onset of her Mother's primary medical diagnosis of dementia was in 2009. She had been institutionalized three times for short term stays prior to her [REDACTED] 2017 admission. At the time of the [REDACTED] 2017 transfer, the Appellant had been institutionalized almost a month with a discharge date to be determined. It is reasonable that due to the Appellant's age, diagnosis, medical history and declining health that a long term admission could be reasonable in her foreseeable future.

The letters from [REDACTED] confirm that the Appellant became a long term resident on [REDACTED] 2017. At the time of the transfer, the Appellant did not retain income or assets to cover her basic living expenses and medical costs based on her health and financial situation. While the Representative testified that she was not aware that her mother would become long term on [REDACTED] 2017, the date of the \$20,000.00 transfer, she became aware on [REDACTED] 2017. The wedding gift for her Granddaughter's [REDACTED] 2017, wedding was still presented, which was half of the value of her total assets. The Appellant found it necessary to apply for Medicaid the following month of May.

The Department was correct to impose a transfer of assets penalty for \$20,000.00 and establishing a penalty period from [REDACTED] 2017 through [REDACTED], 2017.

DECISION

The Appellant's appeal is **DENIED**.


Shelley Starr
Hearing Officer

cc: Fred Presnick, , Bridgeport Regional Office
Yesenia Acosta, Bridgeport Regional Office
Tim Latifi, Bridgeport Regional Office
Michael Briggs, Bridgeport 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 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.

