

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

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

Case Id # ██████████
Client Id # ██████████
Request # ██████████

NOTICE OF DECISION

PARTY

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

On ██████████ 2017, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a notice that she had transferred \$299,000.00 to become eligible for Medicaid, and that the Department was imposing a penalty period of ineligibility for Medicaid for Home Care benefits effective ██████████ 2017 through ██████████ 2019.

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, the Appellant's attorney requested a reschedule of the administrative hearing.

On ██████████ 2017, the OLCRAH rescheduled the 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:

[REDACTED], Appellant's son and Power of Attorney, ("POA")
 [REDACTED], Realtor with [REDACTED]
 [REDACTED], Real Estate Appraiser
 [REDACTED], Appellant's Attorney
 Matthew Lenczewski, Department's Representative via telephone
 Glenn Guerrero, Department's Representative, Observer
 Carla Hardy, Hearing Officer

The Appellant was not present at the hearing.

The hearing record remained open for the submission of additional evidence. On [REDACTED] 2017, 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] 2019, due to a \$299,000.00 transfer of asset penalty for State Funded Home Care Services.

FINDINGS OF FACT

1. The Appellant is [REDACTED] years old (DOB [REDACTED]). (Exhibit 2: Case Notes)
2. The Appellant is the sole owner of the two home properties located at [REDACTED] [REDACTED] (Appellant's Exhibit B: [REDACTED] Appraisal Report, [REDACTED] 13; Exhibit J: Uniform Residential Appraisal, [REDACTED] 5)
3. [REDACTED] is the Appellant's son and Power of Attorney ("POA"). (Hearing Record)
4. On [REDACTED] 2013, [REDACTED] appraised the Appellant's properties located at [REDACTED] [REDACTED]. The two properties were assessed as a multifamily home with a value combined appraised value of \$275,000.00. (Appellant's Exhibit B: [REDACTED] Appraisal Report)
5. The appraisal provided by [REDACTED] listing the properties located at [REDACTED] [REDACTED] as a multifamily property instead of two separate single family homes is not based on the current and historical configuration of the properties. (Exhibit 10: Resource's Unit Addendum, [REDACTED] 7)
6. [REDACTED] is a Certified Residential Real Estate Appraiser. (Appellant's Exhibit D: State of CT Lookup Detail)

7. In 2013, the [REDACTED] appraised [REDACTED] at \$320,989.00 and [REDACTED] at \$262,139.00. (Exhibit 10: Resource's Unit Addendum, [REDACTED] 17)
8. On [REDACTED] 2014, [REDACTED] appraised the value of [REDACTED] at \$230,000.00. (Exhibit 2: Case Notes)
9. On [REDACTED] 2014, the Appellant sold her property located at [REDACTED] to her POA for \$160,000.00. The Appellant gifted her POA \$32,000.00 in equity. (Exhibit 3: Settlement Statement)
10. [REDACTED] does not have a well, or driveway within its property line. (Hearing Record)
11. On [REDACTED] 2015, [REDACTED] issued the appraisal for [REDACTED] which was conducted by [REDACTED]. The property was appraised at \$260,000.00. (Appellant's Exhibit J: [REDACTED] Appraisal Report)
12. [REDACTED] is a Certified Residential Real Estate Appraiser. (Appellant's Exhibit L: Supplemental Addendum)
13. [REDACTED] is the POA's lender for the mortgages that he obtained for purchasing [REDACTED] (Exhibit J, Hearing Record)
14. On [REDACTED] 2015, the Appellant sold her property located at [REDACTED] to her POA for \$153,000.00. (Exhibit 4: Settlement Statement)

The Application

15. On [REDACTED] 2016, the Appellant applied for State Funded CT Home Care. The Department made a referral to the Resources Unit to determine if the Appellant received fair market value ("FMV") of the two homes that she sold located at [REDACTED] (Hearing Summary)
16. The State Funded CT Home Care program was granted, but in error. (Hearing Record)
17. On [REDACTED] 2016, the Department's Resources Unit made assessments on the FMV of [REDACTED]. They determined that the Appellant did not receive fair market value on the sale of the two properties. (Hearing Summary, Exhibit 5: Resources Referrals)
18. The property located at [REDACTED] is a three bedroom single family home with 1680 square feet. This home has two bathrooms and sits on .95 acres. The

Department determined that the FMV of this home was \$305,000.00 (Exhibit 5, Exhibit 10)

19. The property located at [REDACTED] is a four bedroom single family home with 1452 square feet. This home has 1.5 bathrooms and sits on .10 acres. The Department determined the FMV of this home was \$275,000.00 at the time of sale in 2014. (Exhibit 5)
20. The Department's FMV determination was based on sales from eight comparable properties and one current listing from [REDACTED] 7. (Exhibit 10)
21. The Department determined the average sales price of the comparable properties equaled \$182.00 per square foot. (Exhibit 10)
22. The property size of the comparable properties ranged from .31 to 1.26 acres. The size of the property was not considered in the Department's FMV determination. (Exhibit 10)
23. Six of the comparable properties have either a one car attached or detached garage or a two car detached garage. Two of those properties also have barns. (Exhibit 10)
24. Two of the comparable properties have barns but no garage. (Exhibit 10)
25. The Department did not consider the acreage or the outbuildings of the comparable properties when it determined the FMV of the properties located [REDACTED] [REDACTED] (Exhibit 10)
26. The lot on [REDACTED] is approximately 41,000 square feet with a driveway and contains a private well and septic system. The lot for [REDACTED] is 4,300 square feet. [REDACTED] a realtor with [REDACTED] commented, "Both lots appear to be legal non-conforming. There is uncertainty regarding the ability to improve, expand or construct an addition onto either of these properties. This will likely have an impact on marketability and value. Your current status as owner of both properties enables your use of the driveway and well belonging to [REDACTED] [REDACTED] (Appellant's Exhibit A: Assessment by [REDACTED], [REDACTED] 7)
27. The assessment provided by [REDACTED] provides physical descriptions of [REDACTED] [REDACTED] It does not provide an estimated value or a suggested listing price. (Exhibit 10 and Exhibit A)
28. On [REDACTED] 2017, the Appellant applied for Medicaid Home Care benefits with the Department. (Hearing Record)

29. On [REDACTED], 2017, the Department made a referral to the Resources Unit to determine if the Appellant received fair market value for the properties located at [REDACTED] (Exhibit 2)
30. The Appellant became asset and income eligible for Medicaid in [REDACTED] 2017. (Exhibit 2)
31. The Department determined the TOA penalty totaled \$299,000.00 [$\$305,000.00$ Department's FMV - $\$153,000.00$ Contract price of [REDACTED] = $\$152,000.00$] + [$\$275,000.00$ Department's FMV - $\$160,000.00$ Contract price of [REDACTED] = $\$115,000.00$] + [$\$32,000.00$ Gifted equity]. (Exhibit 2)
32. On [REDACTED], 2017, the Department received a confirmation email from the Department's Resources Unit that they had not changed their position regarding whether the Appellant received fair market value for the properties located at [REDACTED] (Exhibit 2)
33. The Department determined through its examination of the Appellant's documentation that the Appellant made \$299,000.00 in property transfers in order to be eligible for assistance and issued a notice proposing to apply a penalty resulting from the alleged improper transfer of assets. (Exhibit 6: Transfer of Assets Preliminary Decision Notice ("W-495A"))
34. On [REDACTED] 2017, the Department received a phone call from the Applicant's attorney requesting the penalty period be imposed in order to determine the penalty end date. (Exhibit 2)
35. On [REDACTED] 2017, the Department issued the Final Decision Notice ("W-495C"), indicating that the Department decided that the transfer of \$299,000.00 was made for the purpose of qualifying for Medicaid, and set up a period of ineligibility beginning [REDACTED] 2017 and ending on [REDACTED] 2019, during which time the Department would not pay for her long-term care services. (Exhibit 7: W-495C)
36. On [REDACTED] 2017, the Department notified the Appellant that the State-funded CT Home Care Program was terminating on September 30, 2017. (Exhibit 9: NOA, [REDACTED]/17)
37. The Appellant's attorney claimed the TOA penalty would inflict undue hardship on the Appellant. (Appellant's Exhibit M: Attorney's Brief)

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 3000.01 provides that fair market value is the amount at which an asset can be sold on the open market in the geographic area involved at the time of the sale or the amount actually obtained as a result of bona fide efforts to gain the highest possible price.
8. 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.
9. The look-back date is [REDACTED] 2012.
10. UPM § 3029.05(D) provides that any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, 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, recipient, or spouse.

11. 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.
12. 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.
13. UPM § 3029.10(F) provides that 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.
14. UPM § 3029.15 provides that an institutionalized individual or the individual's spouse is considered to have transferred assets exclusively for a purpose other than qualifying for assistance under circumstances, which include, but not limited to the following:

A. Undue Influence

1. If the transferor is competent at the time the Department is dealing with the transfer, the individual must provide detailed information about the circumstances to the Department's satisfaction.
2. 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.
3. The Department may pursue a legal action against the transferee if the Department determines that undue influence caused the transfer to occur.

B. Foreseeable Needs Met

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.

15. The Appellant's foreseeable needs were not met. She applied for homecare benefits 16 months after selling her home for less than FMV.
16. UPM § 3029.25(A) provides 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.
17. UPM § 3029.25(B) 1 and 2 provides for the conditions of undue hardship and states in relevant part that when an individual would be in danger of losing payment for long term care facilities solely because of the imposition of a penalty period, the Department does not impose such penalty under the following conditions: 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 and 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 there is no family member or other individual or organization able and willing to provide care to the individual.
18. The Appellant has not provided evidence that undue hardship conditions have been met.
19. The Appellant did not provide clear and convincing evidence that the properties located at [REDACTED] were properly appraised at a combined \$275,000.00.
20. The [REDACTED] appraisals for [REDACTED] were conducted by a Certified Residential Real Estate Appraiser. Those appraisals most accurately reflect the FMV at the time of sale for each property.
21. The FMV of [REDACTED] is determined to be \$260,000.00 based on the [REDACTED] appraisal.
22. The FMV of [REDACTED] is determined to be \$230,000.00 based on the [REDACTED] appraisal.
23. UPM § 3029.05(E) provides that the penalty period begins as of the later of the following dates: (1) the first day of the month during which assets are transferred for less than fair market value; or (2) 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.

24. 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.
25. The average monthly cost of LTCF services in Connecticut as of [REDACTED] 2017, the month of the Appellant's application was \$12,388.00.
26. The TOA penalty is \$209,000.00 [\$260,000.00 [REDACTED] appraisal of [REDACTED] - \$153,000.00 Sale Price] + [\$230,000.00 [REDACTED] appraisal of [REDACTED] - \$160,000.00 Sale Price] + [\$32,000.00 Gifted Equity] is subject to a transfer of asset penalty.
27. The Appellant is subject to a penalty period of 16.87 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTCF services (\$209,000.00 (total transfer amount) / \$12,388.00 (average cost of LTCF services)=16.87)
28. The Department incorrectly determined the Appellant is subject to a penalty of 24.16 months and ending on [REDACTED] 2019.

DISCUSSION

There were three appraisals and FMV determinations documented during this hearing. All had their own merits. The Department's assessment used comparable properties in their fair market valuation that only considered the square footage of each home and did not consider the acreage or outbuildings. In addition, they used a current listing from [REDACTED] 2017 which was not available at the time of sale of either [REDACTED] [REDACTED]. Nor was that listing available when the Department made its FMV determination of the home properties in [REDACTED] 2016. The [REDACTED] appraisal valued the two addresses as a multifamily when the evidence presented shows they are two single family homes. The appraisals that most accurately reflect the FMV of [REDACTED] [REDACTED] are the [REDACTED] appraisals. The [REDACTED] appraisals were conducted days before each property was sold and by a certified real estate appraiser. The FMV of [REDACTED] [REDACTED] is \$260,000.00 and [REDACTED] [REDACTED] is \$230,000.00.

DECISION

The Appellant's appeal is **DENIED** in part and **GRANTED** in part.

ORDER

1. The Department shall reduce the transfer of asset penalty to \$209,000.00 and the penalty period to 16.87 months.
2. Compliance with this order shall be submitted to the undersigned no later than [REDACTED] 7, 2018.

Carla Hardy

Carla Hardy
Hearing Officer

Pc: [REDACTED], POA
[REDACTED], Counsel for the Appellant
Musa Mohamud, DSS, Greater Hartford
Judy Williams, DSS, Greater Hartford
Matthew Lenczewski, DSS, Greater Hartford
Michele Rosko, DSS, Greater Hartford

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.