STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVEHEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT06105-3725

2019
SIGNATURE CONFIRMATION

REQUEST #130760

CASE ID #
CLIENT ID

NOTICE OF DECISION

PARTY

PROCEDURAL BACKGROUND

On 2018, the Department of Social Services (the "Department") sent ("Appellant") a Notice of Action stating that the Appellant's application for medical assistance under the Medicaid HUSKY C/Home and Community Based Services program had been denied, because the Appellant gave assets to someone in order to qualify for benefits, and the Department imposed a penalty period for the improper transfer of assets.

On 2018, the Appellant's Representative requested an administrative hearing on behalf of the Appellant to contest the Department's denial of the Appellant's application for medical assistance under the Medicaid program.

On 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice of Administrative Hearing scheduling a hearing for 2018 @ 1:00 PM.

On 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 to address the Department's denial of the Appellant's application for medical assistance under the Medicaid HUSKY C/Home and Community Based Services program.

The following individuals were present at the hearing:

[redacted] Appellant
[redacted] Appellant's son/ Witness
[redacted] Appellant's son/ Witness
[redacted] Counsel for the Appellant
Jason Bezzini, Representative for the Department (By Telephone)
Jessica Gomez, Representative for the Department
Hernold C. Linton, Hearing Officer

The closing of the hearing record was initially extended to [redacted] 2018 for the Department to review the additional medical information provided at the hearing. On [redacted] 2018, the Department provided its second level of care review findings which were shared with the Appellant's representatives for review and response by [redacted] 2018. On [redacted] 2018, the Appellant's representatives provided its post-appeal memo which was shared with the Department for review and response by [redacted] 2018. On [redacted] 2018, the Department provided its rebuttal to the Appellant's post-appeal memo. No further response was received from the Appellant's Representatives, and the hearing was closed on [redacted] 2018.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly imposed a penalty period of [redacted] 2018 through [redacted] 2019 wherein Medicaid payments for long term care ("LTC") services would be denied to the Appellant, based on his improper transfer of assets valued at $163,419.87 in order to qualify for assistance.

FINDINGS OF FACT

1. On [redacted] 2018, the Department received the Appellant's application for medical assistance under the Medicaid HUSKY C/Home and Community Based Services program. (Hearing Summary; Dept.'s Exhibit A: Case Notes)

2. The Appellant reported that he transferred his car and home to his son, but retained life use of his home. (Hearing Summary; Dept.'s Exhibit A)

3. The Department determined the fair market value ("FMV") for the Appellant's home that he transferred to his son as $194,500.00, and the value of his life use as $31,080.13. (Hearing Summary)

4. The Appellant claimed that his son resides with him for the last eight years, and provided care that prevented the Appellant's institutionalization for more than two years. (Appellant's testimony; Dept.'s Exhibit A)

5. The Appellant provided his medical records and his son's driver's license verifying his son's residency for the last two years. (Dept.'s Exhibit A)

6. The Appellant provided an Affidavit from his son stating that he has been living with the Appellant for the last twelve years, the Appellant requires assistance with completing most of his activities of daily living ("ADL's") for more than the last three years, and that he provides the Appellant with homemaker and companion care on a daily basis for more than two years that prevented the Appellant's institutionalization. (Dept.'s Exhibit D: Affidavit Dated ██████ 2018)

7. The Appellant provided a pre-prepared statement signed by Dr. ██████ on ██████ 2018, stating that if not for the in-home care that the Appellant received from his son during the past two years, the Appellant would have probably required nursing care in facility long ago. (Dept.'s Exhibit E: Disability Determination Request and Response)

8. The Department received a Disability Determination Physician Statement completed by Dr. ██████ stating that the Appellant became his patient on ██████ █ 2017, ambulates with a wheelchair, and that the Appellant would be unable to work for twelve or more months. (Dept.'s Exhibit E: Disability Determination Physician Statement)

9. The Department received the Appellant's medical records dating back to ██████ █, 2016 from the Primed of Northeast Medical Group describing the Appellant as well appearing and in no acute distress. (Dept.'s Exhibit G: Medical Records)

10. On ██████ 2018, the Department's Medical and Clinical Consulting Team ("MCCT"), the unit responsible for determining level of care needs for Medicaid recipients, determined that after a review of the medical records provided by the Appellant's Representatives, there is no evidence to substantiate that the Appellant has been at the nursing facility level of care for at least two (2) years, and therefore, the transfer of his home to his son has to be evaluated for the imposition of a penalty. (Hearing Summary; Dept.'s Exhibit F: ██████/18 MCCT Determination)

11. The Department determined that the Appellant became otherwise eligible for Medicaid payment of LTC services on ██████ 2018, when a Plan of Care could be implemented, after all eligibility requirements were met. (Hearing Summary)

12. The Department determined the average monthly cost to a private patient for long-term care services in Connecticut as $12,851.00. (Hearing Summary)

13. On ██████ 2018, the Department sent the Appellant a Transfer of Assets Final Decision Notice ("W-495C") stating that it had decided that the Appellant transferred his home valued at $163,419.87, after subtracting the value of his life use, to become eligible for assistance, and that the Appellant was not eligible for Medicaid payment of LTC services until ██████ 2019, due to the

imposition of a transfer of assets penalty for Medicaid payment of LTC services from 2018 through 2019. (Hearing Summary; Dept.'s Exhibit B: 18 W-495C-Transfer of Assets-Final Decision Notice)

14. On 2018, the Department sent the Appellant a Notice of Action stating that his application had been denied due to the imposition of a penalty period for the improper transfer of assets. (Hearing Summary; Dept.'s Exhibit A)

15. The Appellant is years of age , with a history of Arthritis, Anxiety, Basal Cell Carcinoma, Congestive Heart Failure, Depression, Diabetes, Hypertension, and Stroke. (Dept.'s Exhibit G)

16. On 2016, Dr. described the Appellant as oriented to person, place, and time, and his Cardiovascular and Musculoskeletal Vitals as within normal range. (Dept.'s Exhibit G)

17. On 2016, Dr. described the Appellant as well appearing and in no acute distress. (Dept.'s Exhibit G)

18. On 2016, Dr. described the Appellant as well appearing and in no acute distress. (Dept.'s Exhibit G)

19. On 2016, Dr. described the Appellant as having no new complaints, feeling good overall, no pain or discomfort, well appearing, and in no acute distress. (Dept.'s Exhibit G)

20. The Appellant's Hypertension, Diabetes, and Congestive Heart Failure are well controlled on current medications. The Appellant shows no evidence of cognitive dysfunction. (Dept.'s Exhibit G)

21. On 2017, Dr. described the Appellant as well developed, well nourished, and in no distress. (Dept.'s Exhibit G)

22. On 2017, during his hospital and nursing facility discharge follow up visit for Acute Renal Failure, Dr. described the Appellant as well developed, well nourished, and in no distress. (Dept.'s Exhibit G)

23. On 2017, for his annual physical exam, Dr. described the Appellant as well developed, well nourished, and in no distress. (Dept.'s Exhibit G)

24. On 2017, during his hospital discharge follow up visit for his Unitary Track Infection, Dr. described the Appellant as well developed, well nourished, and in no distress. (Dept.'s Exhibit G)

25. On 2018, the Appellant quit claimed his house to his son for the

consideration of love and affection, but retained life use in the said property. (Dept.'s Exhibit C: Quit Claim Deed)

26. On [redacted] 2018, during his pre-op exam for left cataract extraction, Dr. [redacted] described the Appellant as well developed, well nourished, and in no distress. (Dept.'s Exhibit G)

27. The representatives provided additional medical information regarding the Appellant's level of care needs for further evaluation to determine if his son provided care for at least two years that prevented the Appellant's institutionalization. (Dept.'s Exhibit G)

28. The additional medical information was submitted to the MCCT unit for a further evaluation, and the MCCT unit determined that the Appellant's level of care needs could not clinically be established further than [redacted] 2017; there is no proof that the Appellant's son provided care that prevented the Appellant's institutionalization for at least two years; the letter provided by Dr. [redacted] was not written by the physician but by the Appellant's attorney and signed by the doctor; the letter states that the Appellant's son provided care for two years when another medical entry states that the Appellant was first seen by Dr. [redacted] on [redacted] 2017; and that the Appellant's transfer of his home to his son did not meet the other valuable consideration or caregiver criteria. (Appellant's Exhibits; Dept.'s Exhibit I: Medical Review Decision)

29. The Department determined that the documentation supplied did not substantiate that the Appellant's functional needs in the two years prior to the date of his application for medical assistance under the Medicaid HUSKY C/Home and Community Based Services program were not at the nursing home level of care. (See Facts # 15 to 28; Dept.'s Exhibit H: [redacted]/18 Rebuttal)

30. The Department determined that the clinical documentation supplied could not establish the Appellant's level of care needs date going further than [redacted] 2017, and therefore, there is no evidence that the Appellant's son provided care that prevented the Appellant's institutionalization for at least two years and that the transfer of his home to his son does meet the other valuable consideration or caregiver criteria and should be subject to the imposition of a penalty. (Dept.'s Exhibit H)

31. The closing of the hearing record was extended to [redacted] 2018 for the Department to review additional medical information provided at the hearing. On [redacted] 2018, the Department provided its second level of care review findings which were shared with the Appellant's representatives for review and response by [redacted] 2018. On [redacted] 2018, the Appellant's representatives provided its post-appeal memo which was shared with the Department for review and response by [redacted] 2018. On [redacted] 2018, the Department provided its rebuttal to the Appellant's post-appeal memo. No

further response was received from the Appellant's Representatives, and the hearing was closed on ████████ 2018. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the date of the hearing request or by ████████ 2019.

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. The Department shall grant aid only if the applicant is eligible for that aid. [Conn. Gen. Stat. § 17b-80(a)]

4. 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 was established, on or after February 8, 2006. [Uniform Policy Manual ("UPM") § 3029.03]

5. 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 UPM 3029.05(C). This period is called the penalty period, or period of ineligibility. [UPM § 3029.05(A)]

6. 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)]

7. 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(E)]

8. 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 § 3029.10(F)]

9. “Fair Market Value” is defined in Section 0500 (Glossary and Terms) of the UPM as 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.

10. An individual or his or her spouse may transfer his or her home without penalty to his or her:

    a. spouse; or
    b. child under age 21; or
    c. child of any age if the child is considered to be blind or disabled under criteria for SSI eligibility; or
    d. sibling, if the sibling:
        (1) has an equity interest in the home; and
        (2) was residing there for a period of at least one year before the date the individual is institutionalized; or
    e. son or daughter, other than one described in 3029.10 A. 1. b and 3029.10 A. 1 c, who:
        (1) was residing in the home for a period of at least two years immediately before the date the individual is institutionalized; and
        (2) provided care to the individual which avoided the need of institutionalizing him or her during those two years. [UPM § 3029.10(A)]

    For purposes of this chapter, the word "home" refers to:

    a. the real property used as principal residence by an institutionalized individual immediately prior to his or her institutionalization; or
    b. the real property used as principal residence by the spouse of the institutionalized individual; or
    c. the real property used as principal residence by an individual receiving home and community-based services under a Medicaid waiver. [UPM § 3029.10(A)(2)]

11. The medical evidence provided from Dr. [redacted] and Dr. [redacted] established the Appellant’s level of care needs for nursing care services as effective [redacted] 2017, and the medical reports did not support the claims asserted in the affidavits provided for the record by the Appellant’s son. While the son resided with the Appellant for more than two years prior to the Appellant applying for Medicaid, the clinical documentation provided did not establish the Appellant’s functional needs as meeting nursing home level of care criteria before [redacted] 2017, which is less than two years from the date of his application.

12. The Appellant and his representatives did not establish with clear and convincing

evidence that his transfer of assets valued at $163,419.87 on [redacted] 2018 to his son was for a purpose other than to qualify for assistance as the medical reports did not attest to the Appellant's need of institutionalization and his avoidance of institutionalization for at least years based on services provided by his son. [UPM § 3029.10(E)]

13. Federal Law provides that in the case of a transfer of an asset made on or after February 8, 2006, the date specified in this subparagraph [the start date of the penalty period] is the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care described in subparagraph (C) based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur during any other period of ineligibility under this subsection, 42 United States Code ("U.S.C.") § 1396p(c)(1)(D)(ii).

14. The fair market value of property at the time of the transfer is $194,500.00, based on the sale of comparable properties in the area, and the fair market value of the Appellant's life use at the time of the transfer is $31,080.13.

15. The Department correctly determined the uncompensated value of the property transferred by the Appellant to his son as $163,419.87 ($194,500.00, FMV; minus $31,080.13, value of life use).

16. The penalty period begins as of 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. [UPM § 3029.05(E)(2)]

17. Because the Appellant became otherwise eligible for Medicaid payment of LTC services effective [redacted] [redacted] 2018, the Department's determination of [redacted] 2018 as the start date of the period of ineligibility for Medicaid payment of LTC services for the Appellant is correct.

18. 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. [UPM § 3029.05(F)]

19. The length of the Appellant's penalty period is determined by dividing $163,419.87 by $12,851.00, the average cost of LTC services, which equals 12.71 months or from [redacted] 2018 through [redacted], 2019.

20. The Department's determination of [redacted] 2019 as the end date for the period of ineligibility for Medicaid payment of LTC services for the Appellant is correct. [UPM § 3029.05(E)]

DISCUSSION

The Appellant and his representatives failed to provide clear and convincing evidence to establish that the transfer of home to his son was for reasons other than to qualify for assistance. The Appellant's medical records established his level of care needs for LTC services as of [redacted] 2017. While the Appellant may have received some assistance from his son, the assistance that he received, based on the Appellant's medical records, did not prevent his institutionalization for at least two years from the date of his application. Consequently, the Department had to consider the uncompensated value of the property an improper transfer of assets. Therefore, the Department was correct in imposing a penalty period for Medicaid payment of LTC services for the Appellant.

DECISION

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

Hernold C. Linton
Hearing Officer

Pc: **Fred Presnick**, Social Service Operations Manager, DSS, R.O. #30, Bridgeport

Yecenia Acosta, Social Service Operations Manager, DSS, R.O. #30, Bridgeport

Tim Latifi, Social Service Program Manager, DSS, R.O. #30, Bridgeport

Fair Hearing Liaisons, DSS, R.O. #30, Bridgeport

Attorney [redacted]

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.