

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

██████████ 2019
SIGNATURE CONFIRMATION

CLIENT ID #: ██████████
HEARING ID #: 146585

NOTICE OF DECISION

PARTY

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

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

PROCEDURAL BACKGROUND

On ██████████ 2019, the Department of Social Services (the "Department") sent ██████████ (the Appellant), a notice of its decision to impose a penalty against her application for Long Term Care Medicaid Waiver benefits because she transferred assets in order to become eligible for Medicaid.

On ██████████ 2019, ██████████, the Appellant's attorney, requested an administrative hearing to contest the Department's decision to impose a penalty.

On ██████████, 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████, 2019.

On ██████████, 2019, 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 spouse

██████████, Appellant's son
██████████ Appellant's attorney, ██████████
██████████
██████████
Saya Miyakoshi, Department's observer
Brenda Arrington, Department's representative
Marci Ostroski, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be determined is whether assets transferred by the Appellant result in a penalty period for Long Term Care Medicaid.

FINDINGS OF FACT

1. The Appellant's date of birth is ████████/47. She resides with her spouse and her son ██████████ (the "son"). (Ex. 1: W1 LTC Long term Care/Waiver Application, Appellant's spouse's testimony)
2. The Appellant's son has resided with her and her spouse his entire life. The son works full time outside of the home but is available by phone and can come to the home periodically through the day if needed. He paid rent to the Appellant for a period of time but as his parents' health declined they no longer asked for rent in a "quid pro quo" arrangement in exchange for his assistance around the home. (Appellant's son's testimony, Appellant's attorney's argument)
3. In ████████2015, the Appellant was diagnosed with mild dementia. She was assessed as having cognitive disorder, short term memory weaknesses and anxiety. (Ex. B: Letter from ██████████, ████████/19, Ex. C: Medical records, ██████████)
4. In ██████████ of 2015, the Appellant began receiving in home services three days per week from ██████████ for personal care and home care services. They assisted with light housekeeping, laundry, medication reminders, errands, and meal preparation. The Appellant and her spouse paid the cost of the ██████████ out of pocket. (Ex. D: ██████████ Care Plan, Appellant's Spouse's testimony)
5. In ██████████ 2015, the Appellant began going to a Day Center through ██████████ ██████████ twice weekly. She continued those services through 2018. The goals for ██████████ were to maintain the Appellant's level of independence, socialization, and mental stimulation. ██████████ provided recreational activities, supervision, and meals for the Appellant. The Appellant and her spouse paid the cost of the ██████████ program out of pocket. (Ex. F:

████████████████████ Participation/Discharge Plan, Appellant's spouse's testimony)

6. The Appellant's need gradually increased from the time she was diagnosed with dementia. The Appellant's spouse and son assisted her with personal care, medication reminders, cooking, cleaning, finances, companionship, entertainment, as well as cuing and supervision. (Appellant's spouse's testimony, Appellant's son's testimony)
7. In ██████████ 2017, the Appellant's dementia progressed to severe. The Appellant's doctor stated that at that time she no longer had the ability to make independent legal, medical and financial decisions. (Ex. B: Letter from ██████████, ██████████/19)
8. On ██████████ 2017, the Appellant met with her doctor, ██████████, he reported that "Aricept is keeping dementia symptoms under control" and that she is "oriented to person, place, and time". (Ex. 3: Community Options Interoffice Referral; Medial Records)
9. On ██████████ 2017, the Appellant met with her doctor, ██████████ he reported that "dementia is stable" and that she is "oriented to person, place, and time". (Ex. 3: Community Options Interoffice Referral; Medial Records)
10. On ██████████ 2018, the Appellant and her spouse both signed a Warranty Deed transferring their interest in real property located at ██████████, ██████████, CT to their son. (Ex. 3: Community Options Interoffice Referral; Warranty Deed)
11. On ██████████, 2018, the Appellant's records from ██████████ reflect that she had a change in condition, she became more paranoid and was easily upset by peers; staff assisted her by redirecting her behavior. ██████████ notified the Appellant's spouse and daughter about her behavior. (Ex. F: ██████████ Center Participation/Discharge Plan)
12. On ██████████ 2018, the Appellant met with her doctor, ██████████ he reported that "she has a normal mood and affect. Her behavior is normal. Judgement and thought content normal" and that she is "oriented to person, place, and time". (Ex. 3: Community Options Interoffice Referral; Medial Records)
13. On ██████████ 2018, the Appellant began receiving care for her dementia from the ██████████. At her appointment she was noted to have declined significantly since she was last seen in 2015 and in need of assistance with her ADLs. Her spouse expressed caregiver stress and her son was noted to be providing assistance and supervision. (Ex. 3: Community Options Interoffice Referral; Medial Records)

14. On [REDACTED], 2018, the Appellant met with her doctor, [REDACTED] he reported, "Positive for behavioral problems, confusion and decreased concentration". (Ex. 3: Community Options Interoffice Referral; Medical Records)
15. On [REDACTED], 2018, the Appellant's medical records reflect that she was having continence issues and was receiving assistance with showering from her home health aide. (Ex. 3: Community Options Interoffice Referral; Medical documents)
16. Starting in [REDACTED] 2019 to the present, the Appellant received services from the [REDACTED] adult day care. She received Category 2 waiver services and they assisted her with her ADLs. (Appellant's Spouse's testimony)
17. On [REDACTED], 2019, the Appellant's medical records reflect that she does not have mobility limitations. (Ex. 3: Community Options Interoffice Referral; Medical documents)
18. On [REDACTED] 2019, the Appellant applied for Long Term Care Waiver benefits under Medicaid. (Department's Summary, Ex. 1: W1E Long Term Care/Waiver Application)
19. As part of the application process, the Department reviewed assets that were transferred by the Appellant during the 60 month look back period, to determine whether the Appellant received fair market value for the transferred assets. (Record)
20. The Appellant's application reflected on [REDACTED] 2018, the Appellant and her spouse transferred their home property located at [REDACTED] CT. (Ex. 1: W1LTC: Long Term Care/Waiver Application)
21. On [REDACTED] 2019, the Appellant's attorney provided home transfer documents and two years of medical records requesting evaluation of other valuable consideration for the care her son provided to her which he argued prevented her need for institutionalization. (Appellant's Pre Hearing Memorandum, Hearing Summary, Ex. 3: Community Options Interoffice Referral)
22. On [REDACTED], 2019, the Department determined the value of the home property was \$149,650.00. (Ex. 4: Copy of Medical Review Response)
23. The Department evaluates functional eligibility for the Long Term Care Medicaid Waiver program based on an applicant's level of care needs. The category 3 Connecticut Home Care Program for Elders which the Appellant applied for requires that the Appellant be in need of long term nursing home care. (Ex. A: Department of Social Services Connecticut Home Care Program for Elders chart)

24. The Department defines nursing facility level of care as requiring supervision or cueing for 3 or more activities of daily living (“ADLs”) and a needs factor, or hands on assistance with 3 or more ADLs, or hands on assistance with 2 or more ADLs and a needs factor, or a cognitive impairment which requires daily supervision to prevent harm. (Ex. A: Department of Social Services Connecticut Home Care Program for Elders chart)
25. The Department defines ADLs as bathing, dressing, toileting, eating/feeding, and transferring. The Department defines needs factors as behavioral need; requiring daily supervision to prevent harm, and medication supports; requiring assistance for administration of physician ordered daily medications includes supports beyond setups. (Ex. A: Department of Social Services Connecticut Home Care Program for Elders chart)
26. On [REDACTED] 2019, the Department determined that the Appellant’s medical reports reflected that she met nursing facility level of care on [REDACTED], 2018 and while her son did reside with her for a period of at least two years he did not provide two years of care that prevented her institutionalization. The Department determined that the home property transferred to the Appellant’s son did not qualify for other valuable consideration and was considered an improper transfer of assets. The Department additionally found that the Appellant’s spouse was her primary caregiver. (Ex. 4: Division of Health Services, medical review response)
27. On [REDACTED] 2019, the Department mailed the Appellant and her attorney a Preliminary Decision Notice, advising that the value of the home property determined to be \$149,650.00 transferred to her son would be subject to a transfer of asset penalty. (Ex. 7: W-495A Transfer of Assets Preliminary Decision Notice)
28. On [REDACTED] 2019, counsel for the Appellant provided to the Department a residential appraisal report reflecting a value of the home property of \$115,000.00. The attorney also requested reconsideration of the preliminary determination of penalty. (Ex. 5: Rebuttal Response Statement, [REDACTED]/19)
29. On [REDACTED] 2019, the Department reviewed the Appellant’s residential appraisal report and recalculated the penalty amount to \$115,000.00. (Ex. 5: Rebuttal Response Statement, email [REDACTED]/19)
30. On [REDACTED] 2019, the Department mailed the Appellant a Final Decision Notice advising her that the value of her assets she transferred which is subject to penalty is \$115,000.00. The notice further stated that she is eligible to receive certain Medicaid benefits starting [REDACTED]/19 and the penalty period will be set up from [REDACTED]/19 to [REDACTED]/20; once the penalty period ends Medicaid will pay for her long term care services. (Ex. 8: W-495C Transfer of Assets Final Decision Notice)

31. 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 request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED], 2019. This decision, therefore, was due no later than [REDACTED], 2019, and is therefore timely. (Hearing Record)

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.
2. 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.”
3. 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)
4. Subsection (a) of section § 17b-261(a) of the Connecticut General Statutes provides that any disposition of property made on behalf of an applicant or 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.
5. “The Department’s uniform policy manual is the equivalent of state regulation and, as such, carries the force of law.” *Bucchere V. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990)).
6. Uniform Policy Manual (“UPM”) §1500.01 provides An applicant is “the individual or individuals for whom assistance is requested.”
7. The Appellant is the applicant in this matter.
8. 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.”

9. UPM § 3029.03 provides: 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 February 8, 2006.
10. 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.
11. UPM § 3029.05(C) provides: 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.
12. The look-back date for the Appellant is ██████████ 2014.
13. UPM § 3029.20(B) addresses transfers made in return for other valuable consideration and provides other valuable consideration must be in the form of services or payment for services which meet all of the following conditions:
 1. the services rendered are of the type provided by a homemaker or a home health aide; and
 2. the services are essential to avoid institutionalization of the transferor for a period of at least two years; and
 3. the services are either:
 - a. provided by the transferee while sharing the home of the transferor; or
 - b. paid for by the transferee.
14. The Department correctly determined that the transfer was not made in accordance with other valuable consideration because there was no evidence in the medical records that the son provided services which prevented institutionalization for a period of at least two years.
15. The Appellant did not establish with clear and convincing evidence that she transferred the home valued at \$115,000.00 for a purpose other than qualifying for assistance.

16. The Department was correct to find that the Appellant transferred \$115,000.00 for the purpose of qualifying for Long Term Care Medicaid.
17. Section § 17b-261a(d)(1) of the Connecticut General Statutes provides For purposes of this subsection, an “institutionalized individual” means an individual who has applied for or is receiving (A) services from a long-term care facility, (B) services from a medical institution that are equivalent to those services provided in a long-term care facility, or (C) home and community-based services under a Medicaid waiver.
18. UPM § 3029.05(F) provides: 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.
19. 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.
20. 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.
21. The average monthly cost of LTCF services in Connecticut as of █████ 2019, the month of the Appellant’s application was \$12,851.00.
22. The Appellant is subject to a penalty period of 8.95 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTCF services (\$115,000.00 divided by \$12,851.00).

DISCUSSION

The Appellant transferred her home to her son in 2018, one year before applying for long term care Medicaid. The Appellant's attorney argued that the transfer was allowable under the UPM provision for other valuable consideration. The Appellant's spouse and the Appellant's son both testified credibly on the needs of the Appellant. It is clear that she has a dementia diagnosis and her health condition has declined. The evidence and testimony do support that she meets institutional level of care at this time. The hearing record reflects that she is able to remain in her home because of the care and support from her spouse, her son and the home health aides and day program which she pays for.


The Appellant was found to have met institutional level of care in [REDACTED] 2018 when the medical records reflect that her dementia progressed to a point where she needed assistance and supervision and cuing with her ADLs and needs factors. She applied for assistance ten months later on [REDACTED] 2019. The Appellant's spouse's and son's testimony regarding the care they provided to her was unclear as to when the Appellant's ADL and supervision needs increased and did not disprove the preponderance of evidence provided in the medical records of the [REDACTED] 2018 date of institutionalization.

The Appellant's attorney also provided for the hearing record, the medical records of the Appellant's spouse from 2015 through 2017. He argued that the spouse was unable to care for the Appellant and it was their son that was providing care. While it is credible that the son was assisting both his parents around his work schedule during that time frame, the Appellant did not have institutional level of care until 2018. His care did not prevent her from being institutionalized for a period of at least two years; her medical condition did. Additionally, the Appellant was receiving homemaker services three times a week from [REDACTED] and a day program two times a week from [REDACTED] that she, not her son, was paying for.

While it is not disputed that her son was attentive to her needs, the Appellant did not receive other valuable consideration for the transfer of her home. There is no clear and convincing evidence that the transfer of the home was made for a purpose other than qualifying for assistance, therefore, the Department's action to assign a penalty is upheld.

DECISION

The Appellant's appeal is **DENIED**



Marci Ostroski
Hearing Officer

cc: Musa Mohamud, Operations Manager, Hartford
Judy Williams, Operations Manager, Hartford
Jessica Carroll, Operations Manager, Hartford
Jay Bartolomei, Eligibility Services Supervisor
Brenda Arrington, Eligibility Services Specialist, 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.