

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

██████████ 2020
SIGNATURE CONFIRMATION

CLIENT ID #: ██████████
HEARING ID #: 148162

NOTICE OF DECISION

PARTY

██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2019, the Department of Social Services (the "Department") notified ██████████ (the "Appellant") that she was eligible for Medicaid, but that the Department was imposing a penalty period during which time Medicaid would not pay for any long-term care services, because it determined that she improperly disposed of assets during the look-back period.

On ██████████, 2019, the Appellant, by her son and POA, ██████████ (her "Son"), requested an administrative hearing to appeal the Department's imposition of a penalty period.

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

The Appellant's Son was not available on the originally scheduled date and on ██████████, 2019, at the Son's request, OLCRAH rescheduled the 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:

[REDACTED], Appellant's Son and POA
[REDACTED], Esq., Counsel for the Appellant
Robin Carlson, Department's representative, via telephone
John DiLeonardo, Department's representative, via telephone
Christopher Filek, Regional Office Hearing Liaison, not participating
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Department was correct when it imposed a Medicaid penalty period of ineligibility due to an improper transfer of assets.

FINDINGS OF FACT

1. The Appellant is an [REDACTED] year-old woman that currently resides in a nursing facility. (Hearing Record)
2. In 2011, the Appellant was living in New Jersey. At the time she was becoming less capable of caring for herself. She was unstable on her feet and at risk of falls. She was no longer able to drive a car safely and was involved in several fender bender accidents. (Son's Testimony)
3. Around [REDACTED] 2012, the Appellant's Son moved her to elderly housing in Connecticut that was only about three miles from his place of work. (Son's testimony)
4. After the Appellant moved to Connecticut her Son took her driver's license away, because she could no longer safely drive. (Son's Testimony)
5. The Appellant was substantially able to independently perform her activities of daily living ("ADLs") while living at the elderly housing complex. She ambulated on her own using a walker. She was able to dress herself, toilet herself, etc. (Son's testimony, Hearing Record)
6. After the Appellant moved to Connecticut in 2012, her Son stopped in to check on her five days a week. He helped with cleaning and vacuuming her apartment. He assisted with her medications. He wrote out checks to pay her bills. Since she could no longer drive, he took her grocery shopping multiple times a week, took her to doctor's appointments, and drove her other places. (Son's Testimony)
7. The Appellant's expenses were very low while living in her apartment. Her rent was only \$56.00 per month. Her monthly Social Security check was normally enough to cover her monthly bills including rent, utilities, groceries and

incidental expenses. Her checking account balance remained stable over the years. She did not typically need to draw down on her savings to pay her bills. (Ex. O: Rent Charges Letter, Testimony)

8. On [REDACTED], 2015, the Appellant gave \$2,000.00 to her Son. On [REDACTED], 2015, the Appellant gave \$7,309.38 to her Son. (Hearing Record)
9. The Appellant originated the idea of giving money to her Son and insisted on it. She intended the money primarily as a reward for the assistance he provided her in the past, and that she believed he would continue to provide in the future. (Son's testimony)
10. As of [REDACTED], 2015, after she made the transfers to her Son, the Appellant still had \$23,624.08 remaining in her account. (Ex. P: [REDACTED] Account Snapshot-1)
11. Between [REDACTED], 2015, and [REDACTED], 2019, the Appellant's situation remained stable and substantially the same. Her eyesight worsened somewhat and her dementia worsened somewhat but she remained able to live in the community with some contributory assistance from her Son. At no time during this period did she contemplate entering a nursing facility. No additional asset transfers were made during this time. (Son's Testimony, Hearing Record)
12. On [REDACTED], 2019, the Appellant suffered a catastrophic accident. She was at her elderly housing complex and, while trying to position onto a stair lift, she slipped and fell down fourteen steps. She suffered a hematoma on her hip, a badly sprained ankle, a fractured jaw and a brain bleed. (Son's Testimony)
13. Following her accident the Appellant was in the Intensive Care Unit for a week, followed by 5-6 weeks of rehabilitation. (Son's Testimony)
14. Following her recovery and rehabilitation the Appellant was no longer able to care for herself. She became completely incontinent and had other deficits she did not have before the accident. She had to enter a nursing home for long term stay. (Son's Testimony)
15. On [REDACTED], 2019, the Appellant applied for Medicaid. (Hearing Record)
16. Around the time she applied for Medicaid (as of [REDACTED], 2019), the Appellant still had \$20,337.95 remaining in the account she made the transfers to her Son from. (Ex. Q: [REDACTED] Account Snapshot-2)
17. The Department noted during the application process that the Appellant transferred \$9,039.38 to her Son in 2015, which was within the 60-month look-back period. (Hearing Record)

18. The Department reviewed whether the Appellant's Son lived with her and provided care that allowed her to avoid institutionalization for two years or longer. It reviewed whether the transferred assets were compensation for past services provided by the Son pursuant to a Care Contract. It reviewed whether there was evidence the Appellant received compensation in the form of fair market value for the transferred assets at the time of the transfers or afterward. (Hearing Record)
19. The Son never lived with the Appellant. The Appellant did not require substantial assistance with ADLs at the time she made the transfers, or require nursing home care. The Appellant never had a Care Agreement with her Son. The Son never kept any logs or records purporting to represent the actual value of any services he provided to the Appellant. (Hearing Record)
20. After reviewing the evidence the Department concluded that the Appellant transferred \$9,039.38 for the purpose of qualifying for assistance. (Hearing Record)
21. On [REDACTED], 2019, the department notified the Appellant of its preliminary decision that she transferred \$9,039.38 in order to be eligible for assistance. (Ex. I: W-495A Transfer of Assets Preliminary Decision Notice)
22. On [REDACTED] 2019, the Appellant, through her counsel, sent the Department rebuttal arguments against the Department's preliminary decision. (Ex. J: Letter from Counsel)
23. On [REDACTED] 2019, the Department notified the Appellant that it did not agree with her rebuttal. (Ex. K: W-495B Transfer of Assets Notice of Response to Rebuttal/Hardship Claim)
24. On [REDACTED], 2019, the Department notified the Appellant of its final decision that the Appellant made \$9,039.38 in transfers in order to become eligible for Medicaid, and informed her that it would set up a penalty period from [REDACTED], 2019 to [REDACTED] 2019 during which time Medicaid would not pay for any long-term care services. (Ex. M: W-495C Transfer of Assets Final Decision Notice)
25. On [REDACTED], 2019, the Department issued a NOA to the Appellant approving Medicaid effective [REDACTED] 2019. (Ex. L: [REDACTED] 2019 NOA)

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's Uniform Policy Manual ("UPM") "is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 177 (1994) (citing Conn. Gen. Stat. 17-3f(c) [now 17b-10]; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712(1990)).
3. 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. UPM § 3029.03
4. 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. UPM § 3029.05(A)
5. 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. UPM § 3029.05(C)
6. **The Appellant's Medicaid application was filed on [REDACTED], 2019. The look-back date for the Appellant's application is [REDACTED], 2014.**
7. **The transfers the Appellant made to her son in 2015 were during the look-back period.**
8. Conn. Gen. Stat. § 17b-261a(a) provides as follows:

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 was not a basis for the transfer or assignment.
9. "The transfers described in 3029.10 do not render an individual ineligible for Medicaid payment of long term services...." UPM § 3029.10
10. "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.

- 11. There is clear and convincing evidence that the Appellant was not contemplating filing an application for Medicaid at the time she transferred \$9,039.38 to her Son. The Appellant’s health did not require nursing home care in 2015, and she had no reason to believe she would require nursing home care in the foreseeable future. The transfers did not serve to impoverish the Appellant. When she did eventually require nursing home care, it was four years later and due to a catastrophic and unforeseen accident. If the Appellant had no contemplation of applying for Medicaid at the time she made the transfers, then the transfers had to have been made exclusively for reasons *other than* qualifying for assistance.**
- 12. The Appellant’s transfers of assets in 2015 do not result in a penalty because the Appellant’s eligibility or potential eligibility was not a basis for the transfers.**
13. UPM § 3029.15 paragraphs (A) to (E) describes circumstances when a transfer does not result in a penalty because it is considered to have been made exclusively for a reason other than qualifying for assistance. The circumstances which exclude a transfer from incurring a penalty include, *but are not limited to*, the circumstances described in paragraphs (A) to (E). (emphasis added) UPM § 3029.15
14. “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.” UPM § 3029.15(B)
- 15. There is clear and convincing evidence that the Appellant retained assets sufficient to meet her foreseeable needs at the time she made the transfers. The Appellant’s monthly bills were low. Her income, by itself, was typically enough to cover her expenses. After she made the asset transfers in 2015 she had \$23,624.08 remaining in her account. In 2019, after living at home for four more years, her account balance had only depleted to \$20,337.95. Based on the Appellant’s health and financial situation at the time of the transfers, she retained assets sufficient to cover her living expenses and medical costs for the foreseeable future.**
- 16. Notwithstanding that UPM § 3029.15 does not require that one of the specific circumstances in paragraphs (A) to (E) be met for a**

determination to be made that a transfer was made exclusively for a reason other than qualifying for assistance, the Appellant did meet the specific requirements in §3929.15(B).

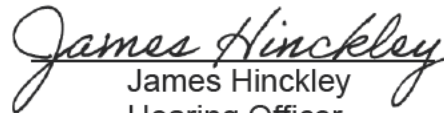
17. The Department was incorrect when it imposed a transfer of asset penalty period of ineligibility against the Appellant.

DECISION

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

ORDER

1. The Department must remove the penalty it imposed against the Appellant.
2. The Department must send proof directly to the undersigned fair hearing officer that the penalty against the Appellant has been removed. Proof is due by no later than [REDACTED], 2020, and the Department will be considered to have complied with the decision when the proof is received.


James Hinckley
Hearing Officer

cc: Brian Sexton

[REDACTED]
Robin Carlson
John DiLeonardo

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.