

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 #: 156619

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2020, the Department of Social Services (the “Department”) issued a notice of action (“NOA”) to ██████████ (the “Appellant”) granting Medicaid for Long Term Care Facility residents, but imposing a penalty period due to an improper transfer of assets.

On ██████████ 2020, the Appellant, by her daughter and POA, ██████████ requested an administrative hearing to appeal the Department’s imposition of a penalty period.

On ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2020.

On ██████████ 2020, at the Appellant’s request, OLCRAH issued a notice rescheduling the hearing for ██████████ 2020. Due to the COVID-19 pandemic, the hearing was scheduled to be held telephonically.

On ██████████ 2020, 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. No party objected to the hearing being conducted telephonically.

The following individuals were present at the hearing:

██████████ Appellant's daughter and POA (her "Daughter")
██████████, Counsel for the Appellant
Felicia Andrews, Department's representative, Eligibility unit
Jeffrey Sheldon, Department's representative, Resources unit
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 a property sale for less than fair market value that was considered an improper transfer of assets during the lookback period.

FINDINGS OF FACT

1. The Appellant is a widowed █████ year old woman. (Ex. 1: Application form)
2. The Appellant is currently a resident of a Long Term Care Facility. (Ex. 1)
3. From ██████████ to ██████████, the Appellant resided at a home she owned, located at ██████████ (the "Home"). (Ex. 1)
4. In 2018, the Appellant had Alzheimer's disease that was advancing in severity. (Hearing Record)
5. In █████ 2018, the Appellant had to be hospitalized for reasons related to her Alzheimer's. After the hospital treated the Appellant's acute issues, doctors determined she could not return home and needed to be admitted to a facility that specialized in the care of Alzheimer's patients. (Ex. A: Appellant's brief, Testimony)
6. Following her hospitalization, the Appellant was admitted to a suitable facility. The Appellant self-paid for the facility, and had sufficient funds to pay through the partial month of █████ 2018. (Ex. A, Testimony)
7. Upon the Appellant's admission to the facility it became an immediate concern to determine how she would continue to pay for her ongoing cost of care after her bank funds ran out in about two-and-a-half months. (Daughter's testimony)
8. The only other asset the Appellant owned was her Home, which was in a poor state of repair. The Home had lead paint, missing cabinets, broken sink fixtures, water damage, and needed heating, plumbing and electrical work done. In addition, the home had a foul smell of animal urine that, despite efforts, could not be removed. (Ex. A, Daughter's testimony)

9. Neither the Appellant nor her Daughter was represented by counsel during the time immediately following the Appellant's admission to the facility. (Testimony)
10. The Appellant, after she used all her funds to pay the facility, had no money left to make needed repairs to the Home. The Home's condition, left unrepaired, substantially reduced the pool of buyers who might have been interested in purchasing it. (Daughter's testimony)
11. Forced with making an immediate decision on how to proceed, the Daughter decided to apply for a bridge loan. (Daughter's testimony)
12. The Daughter was successful in acquiring a bridge loan to address the Appellant's immediate need to pay for her continuing care. She commissioned an appraisal in order to secure the loan which valued the Home at \$260,000.00 as of [REDACTED] 2018. (Ex. 3: Appraisal, Hearing Record)
13. The Daughter informed the appraiser that the Appellant's Home had water rights, because she thought that was correct information. She later learned that the Home did not have water rights. (Daughter's testimony)
14. Sales prices of homes in the same area as the Appellant's are drastically different based on such factors as water rights. (Hearing Record)
15. The terms and conditions of the bridge loan required that the Appellant sell her Home within sixty days to repay the loan, otherwise the property would be foreclosed. (Testimony)
16. The Daughter placed the Home for sale immediately after acquiring the loan, but did not list it with a realtor. Instead, she placed a "For Sale by Owner" sign on the lawn. She wanted to avoid realtor fees if possible. (Daughter's testimony)
17. The Home received a few inquiries during the time it was advertised for sale, but no serious potential buyers. (Daughter's testimony)
18. On [REDACTED] 2018, the Home was sold to a nephew for \$165,000.00. The nephew's offer was the highest the Appellant received. (Ex. 2: Warranty Deed, Testimony)
19. The nephew did not buy the Home as an investment to rent out or resell at a profit. He made repairs necessary to acquire a VA mortgage, moved in, and is the occupant of the Home currently. (Testimony)
20. On [REDACTED] 2020, the Appellant applied for Medicaid. (Hearing Record)
21. Following the Appellant's application, a Department Resource Investigator who had extensive experience valuing real estate assessed the value of the

Appellant's Home at time of sale based on comparable sales. He valued the Home at \$280,000.00. (Ex. 5: Resources Assessment)

22. After learning that the Home had previously been appraised, the Resource Investigator, after examining the appraisal, agreed to lower the Department's valuation to the \$260,000.00 appraised value. (Mr. Sheldon's testimony, Hearing Record)
23. On [REDACTED] 2020, the Department notified the Appellant of its preliminary decision that she had transferred assets in order to be eligible for assistance by selling property for \$95,000.00 below its fair market value. The notice offered the opportunity for the Appellant to present a rebuttal. (Ex. 6: W-495A Transfer of Assets Preliminary Decision Notice)
24. On [REDACTED] 2020, a rebuttal was received. The rebuttal re-made arguments submitted previously by the Appellant regarding the Home's condition and the circumstances surrounding the sale. (Hearing Record, Ex. 7: Rebuttal)
25. On [REDACTED] 2020, the Department notified the Appellant that it did not agree with her rebuttal, and that if she became eligible for Medicaid the Department would impose a penalty lasting seven months and six days, during which period her long term care medical services would not be paid for. (Ex. 8: W-495B Transfer of Assets Notice of Response to Rebuttal/Hardship Claim)
26. On [REDACTED] 2020, the Department notified the Appellant of its final decision that she transferred \$95,000.00 to become eligible for Medicaid. Although she was eligible for Medicaid beginning [REDACTED] 2020, the Department would impose a penalty period from [REDACTED] 2020 to [REDACTED] 2020 during which time long term care services would not be paid. (Ex. 9: W-495C Transfer of Assets Final Decision Notice)
27. On [REDACTED] 2020, the Department issued an NOA to the Appellant granting Medicaid effective [REDACTED] 2020, but with the imposition of a penalty period from [REDACTED] 2020 to [REDACTED] 2020. (Ex. 10: NOA)
28. The Appellant commissioned a real estate broker to perform a Comparative Market Analysis ("CMA") of the Home that was completed on [REDACTED] 2020. The analysis was a broker price opinion, not an appraisal, and did not follow professional appraisal standards. (Appellant's Brief)
29. One of the comparable sales used in the CMA was the home right next door from the Appellant's. A series of photographs document that the home was immaculately kept, inside and out. The property appears far more desirable than the Appellant's, yet it sold for \$285,000.00, only \$25,000.00 more than what the Department considered the Appellant's Home to be worth. (Appellant's Brief)

30. The CMA found the Appellant's Home at time of sale to have a value between \$162,000.00 and \$180,000.00. (Appellant'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. 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 filed her Medicaid application on [REDACTED] 2020. The look-back date for the Appellant's application is [REDACTED] 2015.**
7. **The sale of the Appellant's home, on [REDACTED] 2018, occurred during the look-back period.**
8. "The transfers described in 3029.10 do not render an individual ineligible for Medicaid payment of long term services...." UPM § 3029.10
9. "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)

10. **The Appellant did not provide clear and convincing evidence that the \$165,000.00 sales price of the Home represented its fair market value. New evidence is not of sufficient weight to displace the valuation determined by a licensed professional appraiser. When the Appellant sold her Home, its sales price was less than its fair market value.**

11. 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.

12. "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.

13. UPM § 3029.15 provides that "An institutionalized individual or the individual's spouse is considered to have transferred an asset exclusively for a purpose other than qualifying for assistance under circumstances *which include, but are not limited to...*" those described in UPM § 3029.15 (A) to (E).. (emphasis added)

14. **Not all circumstances under which a transfer may be considered not for the purpose of qualifying for assistance are provided for in UPM § 3029.15. The policy explicitly states that other circumstances besides those listed may result in no penalty being assessed.**

15. **The Appellant provided clear and convincing evidence that she sold her Home for less than its fair market value exclusively for a purpose other than qualifying for assistance. She was out of money and seeking quick liquidation of her only remaining asset. She was not contemplating applying for Medicaid at the time but, rather, seeking to continue to self-pay for her care for as long as her money would last. The terms of the bridge loan she acquired forced her into making a quick sale of the Home, within sixty days. There is no evidence that the Appellant's intent was to transfer wealth. The Home was in extremely poor condition; the \$165,000.00 sales price, even though it was far less than the appraised value, was not outside**

of the range of what a reasonable person might have considered the Home's value to be at the time and under the circumstances.

16. The Department was incorrect when it imposed a penalty period against the Appellant for an improper transfer of assets. The transfer was not made for the purpose of qualifying for assistance.

DISCUSSION

The Appellant introduced evidence that the appraisal did not accurately reflect the Home's value. The Home was in significant disrepair, with lead paint, missing cabinets, broken windows and broken sink fixtures. It needed structural repairs, heat, plumbing and electrical work, and had a pervasive stench of animal urine. A comparable home next door, documented to be in immaculate condition, sold for only \$25,000.00 more than the Appellant's Home was appraised at. It is possible the appraiser relied on incorrect information supplied unknowingly by the Daughter that the Home had water rights that it did not. In stark contrast to the appraisal, a comparative market analysis performed by a realtor in ■■■ 2020 found the Home's value at time of sale to be between \$162,000.00 and \$180,000.00.

While the Appellant's evidence introduced doubt regarding the accuracy of the appraised value, it was not sufficient to overturn it. That the appraisal was based on incorrect information or was otherwise faulty was not proven. The appraisal was the only valuation that relied on an actual inspection of the home, and it was certified to conform to professional standards. It would not have been valid to assess the conflicting evidence and settle on some compromise value in the middle. Since no evidence proved that some other figure better represented the actual fair market value of the Home, the appraised value was upheld.

But while the evidence was not enough to conclude that the \$165,000.00 sales price represented the actual market value of the Home, it was enough to conclude that \$165,000.00 was within the range of what a reasonable person might have considered to be an acceptable sales price for a property in such disrepair, especially when a quick sale was imperative. Even though the realtor's market analysis did not follow professional appraisal standards, it was performed with some rigor and included extensive photographic documentation. According to the realtor's analysis, \$165,000.00 was within the range of the Home's actual market value.

If an asset is transferred exclusively for a purpose other than qualifying for assistance it does not incur a penalty. The Appellant sold her Home for less than its market value, but not as a means to transfer wealth and speed her impoverishment so that she could qualify for Medicaid. If that was her purpose, taking out a bridge loan would have made no sense. The evidence is clear and

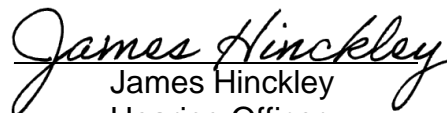
convincing that the only thing the Appellant considered at the time of the loan and sale was the need to rapidly acquire funds to pay for her care. The bridge loan placed pressure on the Appellant to sell the Home within sixty days, at whatever price it could fetch, or else face foreclosure. With no better offers on the table it was not unreasonable for her to sell the Home for \$165,000.00 by the time she was facing the deadline. The acquisition of the bridge loan may have been ill-advised, but the Department does not impose penalties for poor decisions. The Appellant knowingly sold the Home for less than she might have, but the sale for less than fair market value was made exclusively for a purpose other than qualifying for assistance, thus not subject to a penalty.

DECISION

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

ORDER

1. The Department must remove the penalty imposed against the Appellant.
2. The Department must send proof directly to the undersigned fair hearing officer, by no later than [REDACTED] 2020, that the Appellant's penalty has been removed. Such proof sent to the hearing officer shall constitute compliance with this decision.


James Hinckley
Hearing Officer

cc: Rachel Anderson
Cheryl Stuart
Lisa Wells
Felicia Andrews
[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.