

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

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

██████████
██████████
Request # 162651

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2020, the Department of Social Services (the "Department") sent ██████████ (the "Applicant"), a notice that she had transferred \$135,060.00 to become eligible for Medicaid, and that the Department was imposing a penalty period of ineligibility for Medicaid for Long Term Care Services ("LTC") effective ██████████ 2020 through ██████████ 2021.

On ██████████ 2020, ██████████ (the "Appellant"), requested an administrative hearing to contest the Department's penalty determination.

On ██████████, 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") scheduled an administrative hearing for ██████████ 2020.

On ██████████ 2020, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held a telephonic administrative hearing. The following individuals participated in the hearing:

██████████, Appellant and Applicant's son
Jessica Gomez, Department's Representative
Carla Hardy, Hearing Officer

The Applicant did not participate in the hearing because she expired in ██████████ 2020.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly imposed a penalty period beginning on [REDACTED] 2020, and ending on [REDACTED] 2021, due to a \$135,060.00, transfer of asset penalty for the LTC program.

FINDINGS OF FACT

1. The Applicant was born on [REDACTED], 1929. (Appellant's Testimony)
2. The Applicant resided at [REDACTED] in [REDACTED] Connecticut. (Hearing Record)
3. The Applicant's income consisted of a monthly \$2,013.60 in Social Security benefit and \$845.00 Veteran's Administration pension. (Department's Testimony)
4. The Appellant is the son of the Applicant. (Hearing Record)
5. The [REDACTED] Tax Assessors describes the property as a six-bedroom home with one bathroom and 2,434 square feet of living space. (Exhibit 7: Case Notes)
6. On [REDACTED] 2018, the Applicant sold her home to [REDACTED] for \$30,000.00. (Exhibit 5: Residential Seller's Closing Statement; Exhibit 7; Appellant's Testimony)
7. In [REDACTED] 2018, the Applicant had a stroke. She was admitted to the hospital for approximately two weeks. The Applicant moved in with the Appellant after she was discharged from the hospital. Prior to the stroke, the Applicant used a walker and was able to dress herself. She was mentally fit and was able to handle her own finances. (Appellant's Testimony)
8. On [REDACTED] 2019, the Applicant was admitted to the [REDACTED] ("the nursing facility") located at [REDACTED] in [REDACTED] Connecticut. (Appellant's Testimony; Department's Testimony)
9. On [REDACTED], 2020, the Department received an on-line application for LTC on behalf of the Applicant. [REDACTED], of [REDACTED] is the Applicant's authorized representative ("AREP"). (Exhibit 1A: On-line Application, [REDACTED] 20)
10. [REDACTED] is the Applicant's Power of Attorney ("POA") and AREP. (Exhibit 1A; Exhibit 1B: W1-LTC application, [REDACTED]/20)

11. The Department requested that the Applicant complete the W-1 LTC paper application because the paper application is more comprehensive than the on-line application. (Department's Testimony)
12. On [REDACTED] 2020, the Department received a paper application ("W-1 LTC") for LTC on behalf of the Applicant. (Exhibit 1B: W-1 LTC Application; Hearing Summary)
13. On [REDACTED] 2020, the Department issued to the Applicant and her AREPs a request for bank statements; tax returns; spouse's death certificate; proof of pension; medical card; proof of health insurance premium; proof of vehicle ownership; and proof of any income or assets owned by the Applicant within the last five years. The requested information was due by [REDACTED] 2020. (Exhibit 2: Worker Generated Request for Proofs, [REDACTED] 20)
14. On [REDACTED] 2020, the Department issued to the Applicant and her AREPs a request for additional information. The requested information was due by [REDACTED] 2020. (Exhibit 3: Worker Generated Request for Proofs, [REDACTED]/20)
15. On [REDACTED] 2020, the Department issued to the Applicant and the AREPs a request for a copy of the Applicant's HUD1 and a copy of the appraisal of the Applicant's property at the time it was sold. (Exhibit 4: Notification from Department of Social Services ("W-3016", [REDACTED] 20)
16. Prior to [REDACTED] 2020, the Department made a referral to the Department's Resources Unit for a valuation for Applicant's home property. (Hearing Record)
17. On [REDACTED] 2020, the Department received the Applicant's Residential Seller's Closing Statement. The Applicant's home that was located at [REDACTED] in [REDACTED] was sold for \$30,000.00. The Applicant received \$27,597.92 in net proceeds. (Exhibit 5: Residential Seller's Closing Statement; Exhibit 7: Case Notes)
18. On [REDACTED] 2020, the Department's Resources Unit concluded that the Applicant's home property was sold for \$30,000.00. The Tax Assessor for the city of [REDACTED] Connecticut describes the property as a 2.25 story colonial home with six bedrooms and one bathroom. The home has 2,434 square feet of living space. The city of [REDACTED] appraised the home at \$165,060.00 in 2018. There were no foreclosure proceedings against the property and no outstanding encumbrances. Two other comparable properties that were sold within six months of the Applicant's property had an average sale price of \$211,000.00. One of the homes was a five-bedroom, two bath, multi-family with 2,519 square feet that sold for \$235,000.00 and appraised at \$150,360.00. The other home was a five-bedroom, 2 bath, multi-family with 2,392 square feet that sold on [REDACTED] 2017, for \$187,000.00. This home appraised at \$166,610.00. (Exhibit 6: Resources Investigation Report; Exhibit 7: Case Notes)

19. On [REDACTED] 2020, the Applicant's Power of Attorney ("POA") wrote a letter to the Department on behalf of the Applicant indicating the Applicant sold her home for \$30,000.00 because she had no other options. The [REDACTED], the Applicant's insurer gave the Applicant one year to update the home after completing a home inspection. The home needed a new roof. The electrical and plumbing required updating. The walkway also required repair. (Exhibit 8: Letter from the POA, [REDACTED]20)
20. On [REDACTED] 2020, the Applicant expired. (Appellant's Testimony)
21. On [REDACTED] 2020, the Department determined through its examination of the Applicant's documentation that the Appellant made \$135,060.00 in a property transfer 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 9: Notice of Possible Improper Transfer of Assets, [REDACTED]20)
22. On [REDACTED], 2020, and [REDACTED] 2020, the Department requested the Applicant's dividend statements from [REDACTED] and proof payments made to [REDACTED]. (Exhibit 10: Worker Generated Request for Proofs, [REDACTED]/20; Exhibit 11: Worker Generated Request for Proofs, [REDACTED]/20)
23. On [REDACTED] 2020, the Department notified the Applicant that \$135,060.00 was transferred to become eligible for Medicaid and that a penalty would be assessed from [REDACTED] 2020, through [REDACTED] 2021. (Exhibit 12: Response to Your Transfer of Assets Explanation, [REDACTED]/20)
24. 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 Applicant's Representative requested a hearing on [REDACTED] 2020. This decision is due no later than [REDACTED] 2020 and is therefore, timely. (Hearing Record)

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. Conn. Gen. Stat. § 17b-261a(d)(1) 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.
4. The Department correctly determined that the Applicant is an institutionalized individual of a long-term care facility who has applied for Medicaid coverage with the Department.
5. Subsection (a) of section 17b-261a of the Conn. Gen. Stat. 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.
6. “The department’s Uniform Policy Manual (“UPM”) 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)).
7. Uniform Policy Manual (“UPM”) Section 1500.01 provides that an applicant is the individual or individuals for whom assistance is requested.
8. 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.
9. 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.
10. 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.
11. The look-back date is [REDACTED] 2015.

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. 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 undue influence; foreseeable needs met; transfer to or by legal owner; or that a transferred asset would not affect eligibility if retained. UPM § 3029.15(A-D)
14. The Applicant's Representative did not establish with clear and convincing evidence that the Applicant transferred assets exclusively for a purpose other than qualifying for assistance.
15. 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.
16. 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.
17. The average monthly cost of LTCF services in Connecticut as of ██████████ 2020, the month of application is \$13,143.00.
18. The \$135,060.00 is subject to a transfer of asset penalty.
19. The Applicant is subject to a penalty of 10.27 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTC facility services ($\$135,060.00 / \$13,143.00 = 10.27$)
20. The Department incorrectly determined that the Applicant is subject to a penalty of 10.27 months, ending on ██████████ 2021.

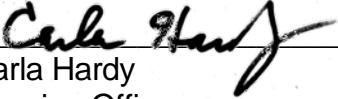
21. The Applicant is subject to a penalty of 10.27 months, ending on [REDACTED] 2021.

DISCUSSION

The Appellant testified that the Applicant sold her home for \$30,000.00 because she could not get more for it because it was in such poor condition. The Appellant did not provide any documentation to justify that the fair market value of the Applicant's home was \$30,000.00 and not \$165,060.00 as appraised by the [REDACTED] Assessor's in 2018.

DECISION

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



Carla Hardy
Hearing Officer

Pc: [REDACTED], Appellant
Yecenia Acosta, Tim Latifi, Jessica Gomez, Department of Social Services, Bridgeport
Office

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.