

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE
HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

[REDACTED]
SIGNATURE CONFIRMATION

CASE # [REDACTED]
CLIENT# [REDACTED]
REQUEST# [REDACTED]

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED], the Department of Social Services (the "Department") sent [REDACTED] (the "Applicant"), a Final Decision Notice that she had transferred \$115,000.00 in assets to become eligible for Medicaid and that the Department was imposing a penalty period of Medicaid ineligibility effective [REDACTED], through [REDACTED].

On [REDACTED], the Applicant's Authorized Representative ("AREP") requested an administrative hearing to contest the Department's penalty determination.

On [REDACTED], the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for [REDACTED]
[REDACTED]

On [REDACTED], the Applicant's AREP requested to reschedule the administrative hearing.

On [REDACTED], OLCRAH issued a notice rescheduling the administrative hearing for [REDACTED].

The Department failed to appear at the [REDACTED] administrative hearing.

On [REDACTED] OLCRAH issued a notice rescheduling the administrative hearing for [REDACTED]

On [REDACTED], 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:

[REDACTED], the Appellant and Applicant's Authorized Representative
[REDACTED], Applicant's Authorized Representative
Altricia Gethers, Department's Representative
Jessica Gulianello, Hearing Officer Observer
Sara Hart, Hearing Officer

The Applicant, [REDACTED], is deceased.

STATEMENT OF THE ISSUE

The issue to be decided 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 Applicant was born on [REDACTED] and passed away on [REDACTED].
(*Hearing Record*)
2. The Applicant was sole the owner of a single-family home located at [REDACTED], [REDACTED]. The 1092 square foot property contains 3 bedrooms, 1 bathroom and 6 total rooms. The home was the Applicant's primary residence. (*Exhibit 1: ALTA Settlement Statement, Exhibit 2: Property Information Page, Hearing Record, Appellant's Testimony*)
3. The Applicant was diagnosed with dementia and was receiving full time home care services. The severity of the Applicant's dementia increased during the summer of [REDACTED] to the point that home care services were no longer adequate. (*Appellant's Testimony*)

4. On [REDACTED], the Applicant's home was listed for sale through a licensed realtor. The asking price was \$190,000.00. The price of the home was determined by the realtor and based on comparable recent sales of homes in the area with similar square footage. Each of the comparable homes had 3 bedrooms and 1 bathroom. (*Appellant's Testimony, Exhibit 5: Coldwell Banker Realty Letter dated [REDACTED]*)
5. The Applicant's home is in an industrial zone and is non-conforming to current zoning regulations. The home had not been updated in many years and contained original wood siding, windows, flooring, and countertops. (*Appellant's Testimony*)
6. On [REDACTED], the Applicant moved to [REDACTED]. (*Appellant's Testimony*)
7. On [REDACTED], the Applicant sold her home property for \$190,000.00. The home was sold through a cash transaction that did not require a licensed appraisal of the property. The home's buyers were not related to the Applicant. (*Exhibit 1, Appellant's Testimony*)
8. The Applicant used the proceeds of the sale of her home to pay for the cost of her care at [REDACTED]. (*Appellant's Testimony*)
9. On [REDACTED], the Applicant applied for Medicaid. (*Hearing Summary*)
10. On [REDACTED], the Applicant was admitted to [REDACTED]. (*Appellant's Testimony, Exhibit 10: Emailed Admission Form*)
11. Following the Applicant's submission of her Medicaid application, a Department Resource Investigator assessed the value of the Applicant's home at \$305,000.00 and determined that the Applicant did not receive Fair Market Value for the sale of her home. (*Department's Testimony, Exhibit 2: Property Information Page*)
12. The Department determined the value of the Applicant's home by comparing the property to three other properties as noted below:

Property	Square Feet	Bedrooms	Bathrooms	Total Rooms	Sale Date	Amount
1	1584	3	1	7	[REDACTED]	\$270,000.00
2	2152	2	2	9	[REDACTED]	\$370,000.00
3	1608	4	2	7	[REDACTED]	\$275,000.00

(*Exhibit 2*)

13. The smallest of the properties utilized in the Department's comparison is 492 square feet larger than the Applicant's property. There is no evidence in the hearing record regarding the zoning of the comparable properties. (*Hearing Record*)

14. On [REDACTED] the Department issued the Applicant a form W495A, Transfer of Assets Preliminary Decision Notice, advising the Applicant that the Department had determined that a transfer of \$115,000.00 appeared to have been made in order to be eligible for assistance. The Department provided the Applicant with the opportunity to present new information to prove that she received fair market value for the transferred property; or that she kept enough money to meet her needs at the time of the transfer; or that she transferred the assets exclusively for a reason other than becoming eligible for assistance. The notice gave the Applicant until [REDACTED] to contact the Department to refute that the transfers were improper and to provide information to prove that the transfers were not made in order to qualify for assistance. (*Exhibit 3: W495A*)
15. On [REDACTED] the Applicant's POA submitted a letter from [REDACTED] of Coldwell Banker Realty noting the three comparable properties that were used to determine the sale price of the Applicant's home property. (*Exhibit 5*)
16. On [REDACTED], the Department issued a W495B Transfer of Assets Notice Response to Rebuttal/Hardship Claim and a W495C Transfer of Assets Final Decision Notice to the Applicant stating they disagreed with the POA's rebuttal claim and advising of a period of Medicaid ineligibility of 7.5 months beginning [REDACTED] through [REDACTED] because the Applicant had obtained \$115,000.00 less than Fair Market Value for the sale of her home. (*Exhibit 8: W495B, Exhibit 9: W495C*)
17. 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] therefore, this decision is due no later than [REDACTED]

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes provides that the Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. "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)).
3. UPM § 3029.03 provides 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.

4. UPM § 3029.05(A) states 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 3029.05 C. This period is called the penalty period, or period of ineligibility.

UPM § 3029.05(B) provides in relevant part for individuals affected:

1. The policy contained in this chapter pertains to institutionalized individuals and to their spouses.
2. An individual is considered institutionalized if he or she is receiving:
 - a. LTCF services; or

UPM § 3029.05(C) provides for the look-back date for transfers. The look-back date for transfers of assets is a date that is 60 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

The Applicant is an institutionalized individual who applied for benefits on [REDACTED]. Assets that the Applicant transferred after [REDACTED] impact her eligibility for Medicaid.

5. 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 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 the basis for the transfer or assignment.

UPM § 3029.05(A) provides 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 3029.05 C.

UPM § 0500 Glossary of Terms defines "Fair Market Value" ("FMV") 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.

UPM § 3029.10(F) provides for transferor intended to transfer at fair market value. 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.

The Appellant correctly provided clear and convincing evidence that the Applicant intended to sell her home property at fair market value. The Department incorrectly determined that the Applicant did not receive fair market value for her home and incorrectly determined that the Applicant transferred assets to become eligible for Medicaid.

6. UPM § 3029.10 provides for transfers not resulting in a penalty. The transfers described in 3029.10 do not render an individual ineligible for Medicaid payment of long-term care services.

UPM § 3029.10(E) provides for transfers made exclusively for reasons other than qualifying. 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 § 3029.15 provides for transfers made exclusively for reasons other than qualifying. 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, the following:

B. Foreseeable Needs Met

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.

The Department incorrectly imposed a penalty period because it incorrectly determined that the Appellant sold her home at less than fair market value to qualify for assistance. The sale of the Applicant's home was made exclusively for a purpose other than qualifying for assistance. The Applicant's home sale proceeds were utilized to meet her foreseeable needs and paid for the cost of her care prior to her application for assistance.

DISCUSSION

An asset transferred exclusively for a purpose other than qualifying for assistance does not incur a penalty. The Department failed to consider the Appellant's letter from the Applicant's realtor noting comparable properties utilized to determine the home's selling price. The Appellant credibly testified to the home's condition and issues with zoning regulations as additional considerations in determining the listing price of the property. The Department offered no testimony explaining their position on the FMV of the home and utilized properties that do not appear to be reasonable comparisons in their determination of the home's FMV.

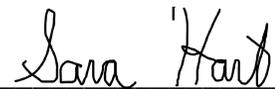
The Applicant's sale of her home for \$190,000.00 was not done for the purpose of qualifying for assistance. The Appellant credibly testified that the decision was made to sell the home in order to move the Applicant into a more suitable setting and pay for the cost of her care. The home was listed for sale on [REDACTED] and the Applicant moved into an assisted living facility on [REDACTED], giving further credibility to the Appellant's testimony that that home was sold at the price determined by the realtor to provide a payment source for the Applicant's immediate needs and was not an improper transfer done to qualify for assistance.

DECISION

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

ORDER

1. The Department must remove the penalty imposed against the Applicant.
2. Verification of compliance with this order is due to the undersigned no later than [REDACTED]



Sara Hart
Hearing Officer

CC: Altricia Gethers, Department Representative, Bridgeport Regional Office
Yecenia Acosta, Operations Manager, Bridgeport Regional Office
Tim Latifi, Operations Manager, Bridgeport Regional Office
Robert Stewart, Operations Manager, Bridgeport Regional 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.

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, 165 Capitol Avenue, 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.

