

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINTON AVENUE
HARTFORD, CT 06105-3730

██████████, 2022
Signature Confirmation

Case ID # ██████████
Client ID # ██████████
Request # 196094

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████, 2022, the Department of Social Services (the “Department”) sent ██████████ (the “Appellant”) a Notice of Action (“NOA”) imposing a transfer of assets penalty under the Connecticut Home Care Program for the Elderly (“CHCPE”) state funded services for the period from ██████████, 2022, through ██████████, 2023.

On ██████████ 2022, the Appellant’s authorized representative (“AREP”) requested an administrative hearing to contest the Department’s decision to impose a penalty on her homecare services.

On ██████████ 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2022.

On ██████████ 2022, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing by phone. The following individuals were present at the hearing:

██████████ the Appellant
██████████ the Appellant’s daughter and AREP
Jessica Conrod, Department’s representative
Scott Zuckerman, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department was correct in its determination of the effective date of the Applicant's state funded home care services through the CHCPE based on a Transfer of Assets ("TOA") penalty.

FINDINGS OF FACT

1. The Appellant owned half interest in a home with and brother, [REDACTED], located at [REDACTED] and vacant land known as [REDACTED] [REDACTED] (the "property"). (AREP testimony, Exhibit 5: Case notes)
2. On [REDACTED] 2021, the Appellant sold her half of the interest in the property to her brother for \$70,000.00. (AREP testimony, Exhibit 9: Closing Statement dated [REDACTED] 2021, and Exhibit 5: Case notes)
3. On [REDACTED] 2021, the Appellant gave her daughter, [REDACTED], \$60,000 of the proceeds from her sale of the property to her brother. The \$60,000.00 was a lease option payment on behalf of [REDACTED] flett. The Appellant received \$10,000 at closing (\$70,000.00 - \$60,000 = \$10,000.00). (AREP testimony, Exhibit: 5 and Exhibit: 9)
4. Sometime in [REDACTED] of [REDACTED], the Appellant fell in her apartment. The Appellant fractured her hip. The Appellant developed pneumonia, sepsis and had a urinary tract infection. (AREP testimony)
5. In [REDACTED] 2022, the Appellant moved in with her daughter [REDACTED]. (AREP testimony)
6. On [REDACTED], 2022, the Appellant applied for state funded home care. (Hearing Summary, and Exhibit 1: W-1LTC)
7. On [REDACTED], 2022, the Department's investigations unit determined based on other similar properties in the area of [REDACTED] that the value at the time of the [REDACTED], 2021, closing, was approximately \$420,000.00 and the Appellant did not receive fair market value at the time of the transfer. (Exhibit 5: Case notes)
8. On [REDACTED], 2022, the Department received the Appellant's Appraisal on the property. The Appraiser valued the property and the parcel of land as \$310,00.00. (Exhibit 2: [REDACTED])
9. The Appellant has not resided at the property since 2015. (Arep testimony)

10. The Appellant's daughter, [REDACTED], has lived at the property since 2017. (AREP testimony)
11. Prior to the AREP receiving Durable Power of Attorney, the Appellant's daughter [REDACTED] was her POA. (AREP testimony and Exhibit 5)
12. On [REDACTED] 2022, the Department sent the Appellant a W-0495A, Notice of Possible Improper Transfer of Assets. The notice stated that based on the information received by the Department, if you become eligible for Medicaid, we plan to impose a penalty period because you improperly transferred the following asset on the following day: Real Property, [REDACTED], 2021, with an Improper Transfer Amount of \$150,000.00. The Appellant's AREP was given the opportunity to dispute the decision. (Exhibit 6: W-0495A, [REDACTED], 2022)
13. The Appellant's daughter, [REDACTED], was the POA when the transfer took place. (AREP's testimony)
14. The Department determined the Appellant's date of institutionalization as [REDACTED] [REDACTED] 2022. (Department's testimony)
15. On [REDACTED], 2022, the Department sent the Appellant a Notice of Action denying the Appellant's State funded Home Care program for the elderly for the reason, "you gave away assets without getting full value in return in order to get benefits." The Department further imposed a penalty period for the improper transfer of assets. The penalty period begins [REDACTED], 2022 and ends [REDACTED] 2023. (Exhibit 7: Notice of Action, [REDACTED], 2022)
16. On [REDACTED] 2022, the Appellant request an administrative hearing. (Hearing Record)
17. On [REDACTED], 2022, the Department reviewed the penalty amount and determined it should be \$145,000 improper transfer amount (\$310,00.00 appraised value – \$155,000.00 ½ interest - \$10,000 proceeds = \$145,000.00). (Department's testimony and Exhibit 5: Case note dated: [REDACTED], 2022).
18. On [REDACTED] 2022, the Department sent the Appellant a Notice of Action. The notice stated the Department denied the CHCPE because "you gave away assets without getting full value in return in order to get benefits." and imposed an improper transfer of asset penalty beginning [REDACTED], 2022, and ending [REDACTED] [REDACTED], 2023. (Exhibit 8: Notice of Action, [REDACTED], 2022)
19. 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], 2022. Therefore, this decision is due not later than [REDACTED] 2022, and is therefore timely. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-342 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Connecticut home-care program for the elderly state wide in order to prevent the institutionalization of elderly persons (1) who are recipients of medical assistance, (2) who are eligible for such assistance, (3) who would be eligible for medical assistance if residing in a nursing facility, or (4) who meet the criteria for the state-funded portion of the program under subsection (i) of this section.
2. Section 17b-80(a) of the Connecticut General Statute states that the Department shall grant aid only if the applicant is eligible for that aid.
3. "The Department's uniform policy manual is the equivalent of a 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 Maintenance*, 214 Conn. 601, 573 A.2d (1990)).
4. "For an individual, assets may not exceed 150% of the minimum Community Spouse Protected Amount (cross ref. 4022.05) Uniform Policy Manual ("UPM") § 8040.35 (B)(1)
5. "All aspects of the policy used in the Medicaid program concerning transfers of assets apply to the Connecticut Home Care Program for Elders clients except for those individuals identified in C, above. UPM § 8040.35 (D)
6. Uniform Policy Manual ("UPM") § 3029.05 provides the transfer of assets basic provisions.

A. General Statement

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.

B. 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

- b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; or
 - c. home and community-based services under a Medicaid waiver (cross references: 2540.64 and 2540.92).
5. “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: the individual is institutionalized and the individual is either applying for or receiving Medicaid. UPM § 3029.05 (C) (1)(2)

The Department correctly determined that the transfer in █████ 2022 occurred within the 60 month look back period.

6. UPM § 3029.05 D (1) (2) provides the Department considers transfers of assets made within the time limits described in 3029.05 C, on behalf of an institutionalized individual or his or her spouse by a guardian, conservator, person having power of attorney or other person or entity so authorized by law, to have been made by the individual or spouse. In the case of an asset that the individual holds in common with another person or persons in joint tenancy, tenancy in common or similar arrangement, the Department considers the asset (or affected portion of such asset) to have been transferred by the individual when the individual or any other person takes an action to reduce or eliminate the individual's ownership or control of the asset.

The Department correctly determined that the uncompensated value of the property and the \$60,000 gifted in █████ 2022 are within the look back period and subject for review.

7. State Statute 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 for medical assistance was not a basis for the transfer or assignment.

Conn. Gen. Stat. § 17b-261(c)

8. “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)
9. “An institutionalized individual or his or her spouse may transfer an asset

without penalty if the individual demonstrates with clear and convincing evidence that he or she intended to dispose of the asset at fair market value.” UPM § 3029.10(F)

10. “A transfer of an asset is considered to be for the purpose of establishing or maintaining eligibility if all of the following circumstances apply: (A) Fair market value is not received, and (B) There is no convincing evidence that the transfer is for another purpose; and (C) The transferor does not retain sufficient funds for foreseeable needs.” UPM 3025.10

11. UPM §3025.15 provides for Transfer Not for the Purpose of Qualifying
 - A. Fair Market Value Received

If fair market value is received, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.
 - B. Assets Within Limits

If the total of the uncompensated fair market value of a transferred asset plus all other countable assets does not exceed program limits, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility. In the case of multiple transfers involving one asset, this includes the total uncompensated value of all transfers.
 - C. Transfer for Another Purpose

If there is convincing evidence that the transfer is exclusively for another purpose, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.

The Department correctly determined the Appellant did not receive fair market value for the [REDACTED] property because she sold her half interest for \$70,000 when the property appraised for \$310,000.00 and her half interest was \$155,000.

The Department correctly determined the Appellant, or her conservator did not provide documentation to support that the Appellant’s gift of \$60,000 from the proceeds of the sale of the property, was made for a purpose other than qualifying for Medicaid.

The Appellant or her conservator did not provide clear and convincing evidence that the transfer of \$145,000 (\$310,000 appraised property value - \$155,000 ½ interest = \$155,000.00 - \$10,000 proceeds to Appellant = \$145,000.00 transfer) was made for a purpose other than qualifying for Medicaid.

Based on the transfer of \$145,000.00, the Appellant is subject to a Transfer of Asset penalty.

12. State statute provides as follows:

“The commissioner shall impose a penalty period pursuant to subsection (a) of Section 17b-261 or subsection (a) of section 17b-261a if the transfer or assignment of assets was made by the Applicant’s legal representative or joint owner of the asset.

Conn. Gen. Stat. § 17b-261o(c)

13. UPM § 3029.05 provides that 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.
14. 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.

The Department correctly determined [REDACTED] 2022, as the date the Appellant would be otherwise eligible for home care services.

The Appellant is subject to a penalty period beginning [REDACTED] 2022, the date that the Appellant was otherwise eligible for payment of services through the Home Care Waiver program.

15. 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.

The length of the penalty period is determined by dividing the uncompensated value of the transferred asset by the average monthly

cost of care for a private patient for long-term care services in Connecticut, or $\$145,000.00 / \$13,863.00 = 10.46$ months.

The Department correctly determined that the penalty period is from [REDACTED], 2022, through [REDACTED] 2023.

DECISION

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

Scott Zuckerman
Scott Zuckerman
Hearing Officer

CC: Community Options Unit – Central 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.