

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS AND ADMINISTRATIVE HEARINGS
25 SIGOURNEY STREET
HARTFORD, CT 06106

██████████ 2014
SIGNATURE CONFIRMATION

CLIENT ID #: ██████████
HEARING ID #: 554481

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") imposing a transfer of assets penalty for the period from ██████████ 2013 through ██████████ 2016.

On ██████████ ■ 2013, ██████████ ■ ██████████, Attorney for the Appellant, (the "Appellant's Attorney") requested an administrative hearing to contest the Department's decision to impose a penalty on the Appellant's Long Term Care Medicaid benefits.

On ██████████ ■ 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2013.

At the request of the Appellant's Attorney, the administrative hearing was rescheduled and on ██████████ 2013 the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2014.

On ██████████ 2014, 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:

██████████, Appellant's Conservator (the "Conservator")
██████████, Appellant's Attorney
Michael Briggs, Department's Representative
Douglas Farrell, Department's Representative (observer)
Mark R Leonard, Department's Representative (Resources)
Shelly Starr, Hearing Officer (observer)
Sybil Hardy, Hearing Officer

The hearing record remained open for the submission of additional evidence. On ██████████ 2013, the record closed.

STATEMENT OF THE ISSUE

The issue is whether the Department's decision to impose a Transfer of Assets ("TOA") penalty beginning ██████████ 2013 and ending on ██████████ 2016 for a transfer of \$400,300.00 was correct.

FINDINGS OF FACT

1. On ██████████, 1994, the Appellant and her son, the Conservator (the "Conservator",) purchased a home with joint tenancy at ██████████ (the "property"). The property was a three family house that was converted to a single family dwelling. (Conservator's testimony; Exhibit 20: Town of ██████████ Property records)
2. The Appellant (DOB ████████/26) resided in the property with the Conservator (DOB ████████/42) and disabled grandchild. (Conservator's testimony)
3. The town of ██████████ lists the property as a single family dwelling located at ██████████. (Exhibit 20)
4. The Town of ██████████ taxes the property as a single family dwelling. (Conservator's testimony)
5. All household utilities are in the Conservator's name. (Conservator's testimony, Exhibit 18: Application for Permission to Transfer Conserved's Real Property to Son/Conservator, ████████/13)
6. The Conservator paid all the expenses associated with the property, including but not limited to, the mortgage, the taxes, the homeowner's insurance, the utilities, the upkeep on the property and capital improvements. (Conservator's testimony)
7. The Conservator removed his name from the property and put it back on the property the same day. (Exhibit 20)

8. On [REDACTED] 2001, the Conservator removed his name from the property and then put his name back on the property the same day. He remained a resident and there was no money transfer. (Conservator's testimony, Exhibit 20)
9. On [REDACTED] 2009, the Conservator removed his name from the property to protect the property from his creditors. (Conservator's testimony)
10. During 2009, the Appellant's health began to deteriorate. (Conservator's testimony)
11. Since 2009, the Conservator provided the Appellant with assistance of her activities of daily living (ADL's) (Exhibit 16: Statements from [REDACTED])
12. The Appellant resided in the property with the Conservator until she was hospitalized on [REDACTED] 2012. (Exhibit: 17: Conservator Appointment, [REDACTED]/13)
13. The Conservator provided the Appellant with care, which avoided her institutionalization for at least two years (Exhibit 19: Conservator's Deed, [REDACTED]/13)
14. On [REDACTED] 2012, the Appellant was discharged from St. Vincent's Medical Center, Bridgeport and admitted to, Ludlow Center for Health and Rehabilitation, Fairfield, Connecticut, a skilled nursing facility ("SNF.") (Exhibit 2: Admission Notice to Ludlow Center for Health and Rehabilitation, [REDACTED]/13)
15. On [REDACTED] 2013, [REDACTED] and [REDACTED] were named as Co-Conservator's of person and estate of [REDACTED]. (Exhibit 17)
16. The Conservator paid all the expenses associated with the property, including but not limited to, mortgage, taxes, insurance, utilities, upkeep and capital improvements. (Conservator's testimony, Exhibit 17)
17. The property is known to the town of [REDACTED] as a single family dwelling located at [REDACTED]. (Exhibit 20: Property Records)
18. On [REDACTED], 2013, the property was transferred to [REDACTED], the Conservator. (Exhibit 19)
19. On [REDACTED] 2013, the Appellant applied for Medicaid Long-term care coverage ("L01".) (Conservator's testimony, Hearing Record)
20. The Conservator's testimony regarding his reasoning for transferring the

property to the name of the Appellant only in 2001 and 2009 was credible. (Conservator's testimony)

21. On [REDACTED] 2013, the Department issued a notice that they were granting Medicaid for long term care and imposing a penalty beginning [REDACTED] 2013 and ending on [REDACTED] 2016 because the Appellant had transferred real property to her Conservator in order to become eligible for Medicaid. (Exhibit 14: Notice of Action, [REDACTED]/13)
22. On [REDACTED] 2013, the Appellant passed away at the nursing facility. (Exhibit 3: Discharge/Transfer Notice, [REDACTED]/13)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.
2. Section 17b-260 of the Connecticut General Statutes authorizes the Commissioner of Social Services to take advantage of the medical assistance programs provided in Title XIX, entitled "Grants to States for Medical Assistance Programs", contained in the Social Security Amendments of 1965.
3. UPM § 3029.05(A) 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.
4. UPM § 3029.05(B) provides that the policy contained in the chapter on transfers of assets pertains to institutionalized individuals and to their spouses.
5. UPM § 3029.05(D)(1) provides that 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's, person having power of attorney or other person or entity so authorized by law, to have been made by the individual or spouse.
6. 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-261a(a).

7. UPM § 3029.05(C) provides that 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.
8. UPM § 3029.10(A)(1)(e) provides in part that an individual or his or her spouse may transfer his or her home without penalty to his or her son or daughter, and who: was residing in the home for a period of at least two years immediately before the date of the individual is institutionalized; and provided care to the individual which avoided the need of institutionalized him or her during those two years.
9. UPM § 3029.10(A)(2) provides that the word "home" refers to: a.) the real property used a principal residence by an institutionalized individual immediately prior to his or her institutionalization; or b.) the real property used a principal residence by the spouse of the institutionalized individual; or c.) the real property used as principal residence by an individual receiving home and community-based services under a Medicaid waiver.
10. The Department incorrectly determined that the Conservator did not live with the Appellant for a period of at least two years.
11. The Department correctly determined that the Conservator provided care for the Appellant that avoided her institutionalization for at least two years.
12. UPM Section 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. The Conservator provided clear and convincing evidence that the property was transferred for purposes other than to qualify for Medicaid.
14. The Department incorrectly determined that the Appellant transferred the property to qualify for assistance.
15. The Department incorrectly imposed a transfer of assets penalty for the period from [REDACTED] 2013 through [REDACTED] 2016 when granting Medicaid for Long term care for the Appellant.

DISCUSSION

The Conservator provided compelling and credible testimony that the transfer of the property was not for purposes to qualify for Medicaid. The home was purchased by both the Appellant and the Conservator to live in together. Although the Conservator has transferred the property out of his name several times it was not for the purpose of qualifying the Appellant for the Medicaid program.

The Department noted the building has several entrances that make it a multi-family dwelling. It was originally a three family home that has been renovated over the years to accommodate single family living. The fact that neither the Appellant nor the Conservator has changed where the entrances are to the building does not necessarily make it a multi-family dwelling. The town of [REDACTED] recognizes the property as a single family dwelling and taxes the property as such.

The Conservator over the years has made all the payments for the care of the property even when the property was in the name of the Appellant only. The Department incorrectly penalized the Appellant for the transfer when clearly the property did belong to both the Conservator and the Appellant. He did provide care for the Appellant after her health began to decline in 2009 and she was able to remain in her home until her stroke in [REDACTED] 2012.

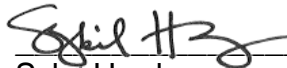
DECISION

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

ORDER

The Department is ordered to remove the penalty imposed from [REDACTED] 2013 through [REDACTED] 2016 and grant Medicaid for Long Term Care effective [REDACTED] 2013 as long as the Appellant meets all other eligibility criteria.

Compliance with this order shall be sent to undersigned no later than [REDACTED], 2014 and shall consist of documentation that the penalty was removed.



Sybil Hardy
Hearing Officer

Pc: Lisa Wells, Operations Manager, DSS R.O. # 30, Bridgeport

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, 25 Sigourney Street, Hartford, CT 06106-5033.

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, 25 Sigourney Street, Hartford, CT 06106. 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.