

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 #: 556164

NOTICE OF DECISION

PARTY

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██████████
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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 ██████████ 2012 through ██████████ 2013.

On ██████████ 2013, ██████████ ██████████, attorney for the Appellant, requested an administrative hearing to contest the Department's decision to impose a penalty on the Applicant'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, based on the amount of applied income.

On ██████████ 2013, the Appellant's attorney requested that the Administrative Hearing be rescheduled.

On ██████████ 2014, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2014.

On ██████████ 2014, the Appellant's attorney requested that the Notice of Administrative Hearing be corrected to reflect that the issue for the hearing was incorrect.

On [REDACTED] 2014, the OLCRAH issued a notice scheduling the administrative hearing for [REDACTED], 2014, based on a transfer of asset penalty.

On [REDACTED] 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:

[REDACTED], POA and daughter of the Appellant

[REDACTED], granddaughter of the Appellant

[REDACTED] Attorney for the Appellant

Jan Kopchik, Eligibility Services Specialist, Department's Representative

Natasha Douglas, Eligibility Services Worker, Department's representative

Michelle Massicott, Eligibility Services Worker, Department's representative

Roberta Gould, Hearing Officer

The hearing record remained open for the submission of additional evidence. The hearing officer received the additional evidence and the hearing record closed on [REDACTED] 2014.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly determined an effective date of Medicaid based on a Transfer of Assets ("TOA") penalty.

FINDINGS OF FACT

1. The Appellant is [REDACTED] years old. (Hearing record)
2. The Appellant was diagnosed with dementia in 2010. (POA's testimony)
3. In [REDACTED] of 2011, the Appellant moved in with her daughter and son-in-law at [REDACTED]. She had the use of two rooms, a full bath and kitchen in the home. (POA's testimony and Hearing record)
4. The Appellant's POA paid for companion and transportation services for the Appellant from [REDACTED] of 2011, through [REDACTED] of 2011, 3-4 days per week for 9 hours per day. (POA's testimony)
5. The Appellant's POA and son-in-law had financial difficulties and were unable to pay their mortgage for their home property at [REDACTED]. (POA's testimony)
6. From [REDACTED] of 2011, through [REDACTED] of 2011, withdrawals totaling \$33,575.00 were made from the Appellant's PNC Bank account and transferred to her daughter and son-in-law. (Exhibit 6: Spreadsheet of PNC deposits and withdrawals and

Department's summary)

7. \$33,575.00 transferred from the Appellant to her daughter and son-in-law was used to pay the mortgage on home property at [REDACTED] in lieu of rent. (Exhibit 2: EMS case narrative and POA's testimony)
8. From [REDACTED] of 2011, through [REDACTED] of 2011, the Appellant resided in [REDACTED], Pennsylvania because she wanted to return to her home. (POA's testimony)
9. The Appellant resided in Brighton Gardens of Stamford Assisted Living Facility from [REDACTED] of 2011, through [REDACTED] of 2012. (Department's summary and POA's testimony)
10. From [REDACTED] of 2011, through [REDACTED] of 2012, withdrawals totaling \$85,541.10 were made from the Appellant's PNC Bank account and transferred to her daughter and son-in-law. (Exhibit 6 and Department's summary)
11. \$85,541.10 transferred from the Appellant to her daughter and son-in-law was used to pay the mortgage on home property at [REDACTED] in lieu of rent. (Exhibit 2 and POA's testimony)
12. On [REDACTED] 2012, the Appellant entered the Jewish Home for the Elderly. (Department's summary)
13. On [REDACTED] 2012, the Appellant applied for Medicaid for long-term care. (Exhibit 1: W-1F Application form and Department's summary)
14. On [REDACTED], 2013, the Department's resources division determined that the Appellant's share of the rent was \$2,250.00 per month, which equaled one sixth of the average cost of rent due for rental properties similar to the property at [REDACTED] [REDACTED] [REDACTED] [REDACTED] (\$13,500.00/6 = \$2,250.00). (Exhibit 2 and Department's summary)
15. It is credible to use the average cost of monthly rent due for rental properties similar to the property at [REDACTED], or \$13,500.00, as the basis to determine the Appellant's monthly share paid in lieu of rent.
16. The Department calculated that the Appellant paid six month's rent for the period of [REDACTED] of 2011, through [REDACTED] of 2011, equaling \$13,500.00 (\$2,250.00 per month x 6 months). (Department's summary and testimony)
17. The property at [REDACTED] has 5 bedrooms. (Exhibit 12: Attorney's memorandum and property assessment field card)
18. The amount that the Appellant paid for rent for the months of [REDACTED] of 2011, [REDACTED] of 2011, [REDACTED] of 2011, and [REDACTED] of 2011, was \$10,800.00 (\$13,500.00/5 =

\$2,700.00 per month x 4 months = \$10,800.00). (Exhibit 12 and POA's testimony)

19. On [REDACTED], 2013, the Department issued a W-495A Transfer of Assets Preliminary Decision Notice stating that the Appellant had transferred assets totaling \$105,616.10 ($\$33,575.00 + \$85,541.10 = \$119,116.10 - \$13,500.00 = \$105,616.10$) in order to be eligible for assistance. (Exhibit 7: W-495A and Department's summary)
20. On [REDACTED] 2013, the Department issued a W-495B Transfer of Assets Notice of Response to Rebuttal/Hardship Claim stating that the Appellant had transferred assets totaling \$105,616.10 to become eligible for Medicaid and was subject to a transfer of assets penalty period for Medicaid for Long-Term Care for 9 months and 13 days. (Exhibit 8: W-495B and Department's summary)
21. On [REDACTED] 2013, the Department issued a W-495C Final Decision Notice stating that the Appellant had transferred \$105,616.10 to become eligible for Medicaid and the Appellant was subject to a transfer of assets penalty period of ineligibility for Medicaid for Long-Term Care from [REDACTED] 2012, through [REDACTED] 2013. (Exhibit 9: W-495C and Department's summary)
22. On [REDACTED] 2013, the Department granted Medicaid for Long-Term Care assistance effective [REDACTED] 2012. A penalty of \$105,616.10 was applied for the period of [REDACTED] 2012, through [REDACTED] 2013, due to transfers of income from the Appellant to her daughter and son-in-law. (Exhibit 16: EMS Notice dated [REDACTED] 2013, and Department's summary)
23. The Appellant became eligible for Medicaid effective [REDACTED] [REDACTED] 2013. (Department's summary)

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, person having power of attorney or other person or entity so authorized by law, to have been made by the individual or spouse.
6. 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.
7. The Department correctly looked back 60 months prior to the Appellant's application in order to determine whether any improper asset transfers occurred.
8. Section 17b-261a(a) 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 a basis for the transfer or assignment.
9. 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.
10. The Department correctly determined that the transfers made were given as gifts to the Appellant's POA and son-in-law because there is no clear and convincing evidence to support otherwise.
11. UPM § 3029.20(A)(2) provides that the value of other consideration, computed as described in 3029.20 A.3, must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty.
12. The Department correctly determined that the value of other consideration for monies the Appellant paid in lieu of rent at [REDACTED] was less than the value of the total amount of transferred assets.
13. UPM § 3029.20(B) provides that other valuable consideration must be in the form of services or payment for services which meet all of the following conditions:
 1. the services rendered are of the type provided by a homemaker or a home health aide; and
 2. the services are essential to avoid institutionalization of the transferor for a

- period of at least two years; and
 3. the services are either:
 - a. provided by the transferee while sharing the home of the transferor; or
 - b. paid for by the transferee.
14. The Department correctly determined that companion and transportation services for the Appellant paid for by the Appellant's POA for the period of [REDACTED] of 2011, through [REDACTED] of 2011, did not meet the criteria for other valuable consideration because the services provided were not the type provided by a homemaker or a home health aide and were not for a period of at least two years.
15. The Department correctly determined that the Appellant did not receive services essential to avoid institutionalization for a period of at least two years.
16. Section 17b-261o(c) of the Connecticut General Statutes provides that 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.
17. The Appellant is subject to a penalty due to improperly transferring assets during the look-back period.
18. 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.
19. The Department correctly determined that the Appellant is subject to a penalty period beginning [REDACTED] 2012, the date that the Appellant was otherwise eligible for Medicaid payment of long-term care services.
20. UPM § 3029.05(F) provides that 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 long-term care services in Connecticut. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. A single penalty period is then calculated, and begins on the date applicable to the earliest transfer.
21. UPM § 3029.10(H)(2)&(3) provides that if only part of the transferred asset is returned, the penalty period is adjusted. The adjusted penalty period described in 3029.10 H. 2 is based on the uncompensated value of the original transfer minus the value of the asset that is returned.
22. The Department incorrectly determined that the Appellant improperly transferred

assets of \$105,616.10 ($\$119,116.10 - \$13,500.00 = \$105,616.10$) during the Medicaid eligibility look-back period. The correct amount of transferred assets, after subtracting the amount that the Appellant paid for rent is \$108,316.10 ($\$119,116.10 - \$10,800.00 = \$108,316.00$).

23. The Department incorrectly determined that the penalty period for improperly transferring assets is 9.44 months, from [REDACTED] 2012, through [REDACTED] 2013. The correct penalty period for improperly transferring assets is 9.68 months, from [REDACTED] 2012, through [REDACTED] 2013.

DISCUSSION

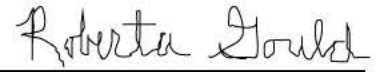
After reviewing the evidence and testimony presented at the hearing, the Department's action to impose a Medicaid period of ineligibility for long-term care coverage is upheld. I find that the gifts to the Appellant's POA and son-in-law totaling \$108,316.10 are subject to a Medicaid penalty as set out in regulations. The POA testified that she and her spouse were unable to pay the mortgage on their home and used the funds transferred from the Appellant to pay the mortgage on the property. I find that the POA did not provide clear and convincing evidence that she transferred the assets for any other purpose than to qualify for Medicaid.

The Attorney made the argument that the monies were transferred to the POA and son-in-law in return for valuable consideration. However, the criteria for other valuable consideration as set out in policy was not met in either the type of services provided the Appellant nor the length of time that she lived with the POA to possibly avoid institutionalization due to her dementia.

The Attorney also made the argument that the Department should calculate the Appellant's monthly rental amount based on 5 bedrooms in the home rather than 6, as well as use a monthly rental amount of \$4,190.00, based upon the average daily rental price for a room at the Harbor House Inn in Greenwich. It is correct that the Department should have used 5 bedrooms rather than 6 to compute the amount the Appellant paid in lieu of rent. However, the Appellant actually lived with the POA for 4 months rather than 6. Therefore, the amount subtracted from the total transfer amount decreased to \$10,800.00 from the \$13,500.00 used in the original calculation. With regard to the Attorney's position that \$4,190.00 should be used in this calculation, it is reasonable that the Department used one sixth of the average cost of rent due for rental properties similar to the property at [REDACTED] to determine the Appellant's monthly share paid in lieu of rent, rather than the daily rate for a nearby inn.

DECISION

The Applicant's appeal is **DENIED**



Roberta Gould
Hearing Officer

Pc: Poonam Sharma, Field 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, 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.