

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

December 4, 2009  
CERTIFIED MAIL

CL ID # [REDACTED]  
REQUEST [REDACTED]

NOTICE OF DECISION

PARTY

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

REASON FOR HEARING

On August 26, 2009, the Appellant, [REDACTED] requested an administrative hearing because of the effective date of **Title XIX Medical** assistance due to a transfer of assets. An administrative hearing was held on August 26, 2009 in accordance with Sections 17b-60, 17b-61 and 4-176e to 4-184, inclusive, of the Connecticut General Statutes. The record was held open until September 18, 2009 to allow the Appellant's representatives and the Department to submit additional information.

PRESENT AT THE HEARING

Daniel O. Tully, Appellant's Attorney  
Sandy Sanford, Paralegal  
[REDACTED] Appellant's Spouse  
Louis Ruddock, Department's Representative  
Miklos Mencseli, Hearing Officer

STATEMENT OF ISSUE

The issue to be decided is whether the Department of Social Services (DSS) was correct to grant the Appellant's Title XIX Medical Assistance effective December 26, 2008 due to a transfer of assets.

## THE HEARING RECORD

The hearing record consists of the testimony and the following exhibits:

### Exhibits presented by the Regional Office:

In addition to the Hearing Summary, the Department submitted the following:

- A. Copy of the Department's case narrative screens for the Appellant.
- B. Copy of the Department's Institution screen for the Appellant.
- C. Department's notice of decision dated July 9, 2009 sent to the Appellant.
- D. W-495A Transfer of Assets Preliminary Decision Notice, dated April 30, 2009
- E. W-495B Transfer of Assets Notice of Response to Rebuttal/Hardship Claim, dated July 9, 2009.
- F. W-495C Transfer of Assets Final Decision Notice, dated July 9, 2009.
- G. Attachment to W-495 series regarding transfer of funds.
- H. Calculation of penalty period of 4.8 months for the Appellant.
- I. Rebuttal from the Appellant's attorney's paralegal dated May 9, 2009 regarding the calculations for the penalty period.
- J. Affidavit dated February 6, 2009 signed by the Appellant's spouse.
- K. Kelly Blue Book value for transfer and value of 2004 Ford Explorer.
- L. Webster Bank statements for passbook savings account # [REDACTED]
- M. Webster Bank statements for statement savings account # [REDACTED]
- N. Webster Bank statements for statement savings account # [REDACTED]
- O. Webster Bank transactions verifying the partial return of gifts.
- P. E-mail messages from the convalescent home and the Department.
- Q. The DSS worker's note regarding \$5000.00 transfers dated July 10, 2008.

### Exhibits presented by the Appellant:

1. Appellant's attorney's brief dated August 26, 2009.
2. Appellant's bill from The Pines @ Bristol from July 22, 2008 through December 22, 2008.
3. Payment receipt for \$5000.00 dated July 22, 2008 to the Appellant's attorney.
4. Webster Bank check register for account # [REDACTED] for July 2008.
5. Additional notes from the Appellant's attorney.
6. Payments received by the Appellant's spouse for the 2004 Ford Explorer.
7. Calculation sheets for the Appellant's monthly applied income from January 2009 through July 2009.
8. Spousal assessment worksheet dated May 7, 2008.

## FINDING OF FACTS

1. The Appellant applied for L01 Title XIX medical assistance with an application date of September 3, 2008. (Summary, Department's Exhibit A)

2. On April 30, 2009, the Department sent the Appellant a W-495A Transfer of Assets Preliminary Decision notice. The Department determined the Appellant transferred a total of \$45,478.87 on various dates from July 2006 through May 2008. (Summary, Department's Exhibit D, G, K, M, N, O)
3. The Department in its calculations included a Ford Explorer as a transfer to the Appellant's sister. The Department valued the vehicle to be \$3,400.00. (Record, Department's Exhibit K)
4. On May 9, 2009, the Department received a rebuttal from the Appellant's attorney regarding the W-495A. He did not agree with the Department's calculations regarding the transfers in determining a penalty period for the Appellant. (Record, Department's Exhibit I)
5. The Appellant's attorney did agree that a \$10,000.00 transfer did occur on October 2, 2006 from the Appellant to his daughter. (Record, Department's Exhibit I, Appellant's Exhibit 1)
6. The Appellant's attorney provided an affidavit from the Appellant's spouse signed on February 6, 2009. The Appellant's spouse states that the Appellant suffers from dementia. The withdrawals the Department is considering as transfers cannot be explained as the spouse does not know what the funds were used for. (Record, Department's Exhibit J)
7. The Ford Explorer was sold to the Appellant's sister and therefore was not transferred. The Appellant's Attorney provided two money orders and a payment record of payments received. (Record, Appellant's Exhibits 6)
8. On July 9, 2009, the Department sent the Appellant a W-495B Transfer of Assets Notice of Response to Rebuttal/Hardship Claim. The Department did not agree with the Appellant's rebuttal/claim for undue hardship. The Department calculated a 4.8 months penalty period that would begin when the Appellant becomes eligible for Medicaid. (Record, Department's Exhibit E)
9. Based on the uncompensated value of the asset transfers of \$45,478.87, divided by \$9,464.00 (the average cost of private long term care in CT as of the September application month) a period of ineligibility is established for 4.8 months. (Summary, Department's Exhibit H)
10. The convalescent home requested a pick-up date of August 1, 2008 for L01 Title XIX assistance. (Summary, Department's Exhibit A, P)
11. On July 9, 2009, the Department sent the Appellant a W-495C Transfer of Assets Final Decision Notice. The Appellant's penalty period begins August 1, 2008 and ends on December 26, 2008. The Appellant is ineligible for long term care benefits for this period. The Appellant is eligible for certain Medicaid

benefits beginning August 1, 2008. (Summary, Department's Exhibit F)

12. On July 9, 2009, the Department sent the Appellant a Notice of Approval for L01 Medicaid for Adult Long Term Care. (Record, Department's Exhibit C)
13. The Appellant's attorney provided a receipt dated July 22, 2008 for \$5,000.00 received for their services to verify one of the withdrawals on July 10, 2008. (Record, Appellant's Exhibit 3)
14. The Department determined that two separate transfers for \$5,000.00 occurred on July 10, 2008. The transfers came from Webster Bank accounts [REDACTED] and # [REDACTED]. (Record, Department's Exhibit M, N, Q)
15. The Appellant's attorney provided a copy of the Appellant's spouse's check registry for July 23, 2009. It indicates a total payment of \$6,700.00 was made on that date, \$5,000.00 to the Appellant's attorney and \$1,700.00 for taxes. (Record, Appellant's Exhibit 4)
16. The Department determined that the Appellant is asset eligible for assistance as of July 2008. It completed a spousal assessment and determined that the Appellant and his spouse's assets are below Community Spouse Protected Amount (CSPA) of \$20,880.00. (Record, Department Exhibit A, Appellant's Exhibit 8)
17. The Appellant's attorney provided a bill from the convalescent home dated August 24, 2009. The Appellant has charges beginning on July 22, 2008. (Record, Appellant's Exhibit 2)

### CONCLUSION OF LAW

1. The Department determined the Appellant asset eligible for L01 Title XIX assistance for July 2008. §UPM 4005.15 (A)(2)
2. Medicaid beginning dates are the first day of the first, second or third month immediately preceding the month of application when all non-procedural eligibility requirements are met and covered medical services are received during that month. §UPM 1560.10A
3. The Appellant provided a bill from the convalescent home that included charges for the month of July 2008.
4. The penalty date starts on the date which the individual is eligible for Medicaid under Connecticut's state plan and would be otherwise eligible for Medicaid payment but for the application of the penalty period. §UPM 3029.05E (2)

5. The Appellant's penalty period start date should be July 2008 and not August 2008 as determined by the Department.
6. The Appellant paid his attorney a fee of \$5,000.00 for services on July 23, 2008 and provided a receipt.
7. Compensation in exchange for a transferred asset is counted in determining whether fair market value was received. The Appellant paid a fee of \$5,000.00 to retain the services of his attorney and fair market value was received. §UPM 3025.20A
8. The Appellant is receiving payments from his sister for the Ford Explorer. The Appellant will receive more than the Kelley Blue Book value of \$3,400.00.
9. When an asset is transferred, compensation is counted when it is received at the time of the transfer or any time thereafter. §UPM 3029.30 (A) (1)
10. An institutionalized individual or his or her spouse may transfer an asset without penalty if they demonstrate that they intended to dispose of the asset at fair market value. §UPM 3029.10F
11. The Department is correct to enforce a penalty period for the remaining transfers as the Appellant did not verify that fair market value was received for the transfers. §UPM 3025.15
12. 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 that the individual is institutionalized and is either applying or receiving Medicaid. §UPM3029.05(C) (1) (2)
13. The transfers from July 2006 through May 2008 fall within the 60 month look-back period from the Appellant's application date of September 3, 2008.
14. The Department is to reduce the Appellant's transfer amount to \$37,078.87 and begin his penalty date on July 1, 2008.

### **PERTINENT STATE STATUTES**

Sections 17b-260 to 17b-264 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Title XIX Medical Assistance Program to provide medical assistance to eligible persons in Connecticut.

### **PERTINENT DEPARTMENTAL REGULATIONS**

The Department's policy is contained in the Uniform Policy Manual (UPM). Pertinent Sections include:

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#### 1560.10 Medicaid Beginning Dates of Assistance

The beginning date of assistance for Medicaid may be one of the following:

- A. the first day of the first, second or third month immediately preceding the month in which the Department receives a signed application when all non-procedural eligibility requirements are met and covered medical services are received at any time during that particular month.

#### 3029.05 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).

##### C. 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.

##### D. Transfers Attributable to Individual or Spouse

1. 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.
2. 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.

E. Start of the Penalty Period

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, if this month is not part of any other period of ineligibility caused by a transfer of assets; 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.

F. Length of the Penalty Period

1. 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.
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.
  - a. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.
  - b. For recipients, the average monthly cost for LTCF services is based on the figure as of:
    - (1) the month of institutionalization; or
    - (2) the month of the transfer, if the transfer involves the home, or the proceeds from a home equity loan, reverse mortgage or similar instrument improperly transferred by the spouse while the institutionalized individual is receiving Medicaid, or if a transfer is made

by an institutionalized individual while receiving Medicaid (Cross Reference: 3029.15).

3. 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.
4. Once the Department imposes a penalty period, the penalty runs without interruption, regardless of any changes to the individual's institutional status.

G. Medicaid Eligibility During the Penalty Period

1. During the penalty period, the following Medicaid services are not covered:
  - a. LTCF services; and
  - b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; and
  - c. home and community-based services under a Medicaid waiver.
2. Payment is made for all other Medicaid services during a penalty period if the individual is otherwise eligible for Medicaid.

3025.20 Compensation in exchange for a transferred asset is counted in determining whether fair market value was received. There are certain restrictions in counting compensation which was received before the date of transfer.

A. Compensation Which is Counted

When an asset is transferred, compensation is counted when one of the following applies:

1. Compensation was received at the time of transfer or any time thereafter; or
2. Compensation was received prior to the time of the transfer, but only if one of the following applies:
  - a. Compensation was received in accordance with a legally enforceable agreement; or
  - b. Compensation was in the form of services or payment for services which meet all of the following conditions:
    - (1) the services rendered were of the type provided by a homemaker or a home health aid; and



- (2) the services were essential to avoid institutionalization of the transferor; and
- (3) the services were either:
  - (a) provided by the transferee while sharing the home of the transferor; or
  - (b) paid for by the transferee.

3029.10 The transfers described in this subject do not render an individual ineligible for Medicaid or subject to a penalty period.

F. 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 demonstrates with clear and convincing evidence that he or she intended to dispose of the asset at fair market value.

G. Transfer Made for Other Valuable Consideration

An institutionalized individual or his or her spouse may transfer an asset without penalty if it is demonstrated with clear and convincing evidence that he or she intended to dispose of the asset in return for other valuable consideration. The value of the other valuable consideration must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty.

3025.15 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.

3029.30 Compensation in exchange for a transferred asset is counted in determining whether fair market value was received.

A. Compensation Which is Counted

1. When an asset is transferred, compensation is counted when it is received at the time of the transfer or any time thereafter.
2. Compensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement.
3. Compensation may include the return of the transferred asset to the extent described at 3029.10.

B. Value of Compensation

Each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset.

1. In determining the dollar value of services rendered directly by the transferee, the Department uses the following amounts:
  - a. for all services of the type normally rendered by a homemaker or home health aid, the current state minimum hourly wage for such services;
  - b. for all other types of services, the actual cost.
2. Out-of-pocket payment by the transferee may include capital alterations necessary to allow the transferor continued use of the home to avoid institutionalization.
3. Compensation in the form of real or personal property is compared using its fair market value.

4005 Asset Limits. There is a definite asset limit for every program administered by the Department.

4005.05 General Principles. Asset Limits. This section notes that the Department counts available equity in countable assets against the program asset limit. An assistance unit is not eligible for benefits under a particular program if its equity in counted assets exceeds the asset limit. It also notes that assets that are excluded by state or federal law or not available to the unit are not counted toward the asset limit.

4005.10 Asset Limits for all Programs. Subsection A.2. lists the asset limit as \$1600.00 for a needs group of one for the AABD and MAABD - Categorically and Medically Needy Programs.

4005.15 Reduction of Excess Assets

A. Applicants

2. MA, AABD Residents of Long Term Care Facilities

At the time of application, the assistance unit is ineligible until the first day of the month in which it reduces its equity in counted assets to within the asset limit.

### **DISCUSSION**

Based upon the hearing record and the pertinent law and policy, it is determined that the Department was correct to apply a penalty period for the Appellant based on various transfers that occurred from July 2006 through May 2008. The Department is incorrect in its start date of the penalty period and in the total amount of the transfer penalty. The Department determined that the Appellant was asset eligible effective for July 2008. The Appellant provided a bill from the convalescent home with July charges. The penalty period begins in the month that eligibility is established even if the convalescent home is requesting a pick-up date of August 1, 2008.

The Appellant provided sufficient evidence with money order receipts and a payment ledger that the Ford Explorer was sold and not transferred to the Appellant's sister. The Appellant will receive more than the Fair market value of \$3,400.00 for the vehicle as determined by the Department. Compensation for a transferred asset is counted when it is received at the time of the transfer or any time thereafter. The Appellant provided a receipt for \$5,000.00 paid to his attorney. The Appellant received fair market value as the payment is for services received from his attorney. The payment receipt from the attorney's office is more than sufficient verification to explain one of the \$5,000.00 withdrawals that occurred on July 10, 2008.

The Appellant's attorney argued that other than the \$10,000.00 transfer to the Appellant's daughter, the other withdrawals should not be counted as transfers. The attorney provided an affidavit from the Appellant's spouse. The Appellant suffers from dementia. In her affidavit the Appellant's spouse states she cannot establish where the funds went and for what purpose. The withdrawals were made without her consent. The Appellant's spouse also continues to state that the withdrawals were not done with the intent to qualify for Medicaid. However, the transfers did occur and they are within the 60 month look back period. The Appellant's representatives cannot provide the Department with any documentation to verify how the funds were spent. The Department is correct to count the undocumented withdrawals as transfers and assess a penalty period for the Appellant.

**DECISION**

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

**ORDER**

1. The Department shall calculate a penalty period based on the transfer of assets of \$37,078.87.
2. The Department shall begin the Appellant's penalty period effective for July 1, 2008.
2. The Department shall send the Appellant's representatives a revised W-495C transfer of assets final decision notice.
3. Compliance shall be shown by submission of the W-495C by the Department as compliance with this decision and is due by December 18, 2009.

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**Miklos Mencseli**  
**Hearing Officer**

cc: Michele Farieri, Operations Manager, DSS R.O. # 52 New Britain  
Elizabeth Day  
enc.: Appeal Rights Notice

### 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 his 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.