

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

February 6, 2009  
CERTIFIED MAIL

CL ID # [REDACTED]  
Request # [REDACTED]

NOTICE OF DECISION

PARTY

Ms [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

REASON FOR HEARING

On September 23, 2008, the Appellant, [REDACTED] by [REDACTED] Representative/Power of Attorney (P.O.A.) requested an administrative hearing because of the effective date of Title XIX Medical Assistance. A hearing was held on November 7, 2008 in accordance with Sections 17b-60, 17b-61, and 4-176e to 4-184 of the Connecticut General Statutes.

PRESENT AT THE HEARING

Sandy Sandford, Appellant's Representative  
Kelly Germain, Department's Representative  
James T. Hummel, Hearing Officer

STATEMENT OF ISSUE

The issue to be decided is whether or not the Department of Social Services was correct to impose a penalty period of August 1, 2008, through September 13, 2008, due to a \$13,660.00 transfer of assets.

FINDINGS OF FACT

- I. The Appellant was admitted to Laurel Hill Nursing Home on November 3, 2007. (Exhibit 12: W-10)

- [REDACTED]
2. The Appellant applied for Title XIX Long Term Medical Care on July 16, 2008. (Hearing Summary)
  3. The Department discovered, through a review of the Appellant's assets, that she had made gifts to thirteen family members totaling \$13,660.00. The gifts were made as follows:
    - 12/2/06 \$900.00
    - 12/2/06 \$910.00
    - 12/2/06 \$920.00
    - 12/2/06 \$400.00
    - 12/2/06 \$930.00
    - 12/2/06 \$940.00
    - 12/2/06 \$950.00
    - 12/2/06 \$960.00
    - 12/2/06 \$970.00
    - 12/2/06 \$950.00
    - 12/2/06 \$990.00
    - 4/5/07 \$990.00
    - 4/8/07 \$980.00
    - 4/8/07 \$940.00
    - 4/8/07 \$930.00(Hearing Summary)
  4. On July 24, 2008, the Department mailed the Appellant a Transfer of Assets-Preliminary Decision Notice, which gave her an opportunity to dispute the assertion that the transfers were made in order to become eligible for Title XIX –Long Term Care Assistance. (Exhibit 1: Transfer of Assets-Preliminary Decision Notice)
  5. All of the transfers were made to relatives. (Appellant's Representative's Testimony)
  6. The Appellant wished that the gifts would be used for educational purposes. (Exhibit 5)
  7. The Appellant's relatives assisted her in her daily needs such as grocery shopping, going to the post office, bringing her to doctor visits and other routine errands and tasks. (Exhibit 5: Letter from Sandford Consulting LLC dated July 23, 2008)
  8. At the time the gifts were made, there was no indication that the Appellant needed Title XIX- Long Term Care Assistance. (Exhibit 5)

9. Shortly before her admittance to the convalescent home the Appellant's health began to deteriorate. Her health problems included hypertension, a hernia, depression, and progressive dementia. (Appellant's Representative's Testimony)
10. The Appellant was admitted to Laurel Hill Healthcare on November 3, 2007, from her home. (Appellant's Representative's Testimony)
11. The Appellant privately paid approximately \$120,000.00 to Laurel Hill Healthcare for her care from November 2007 through June 2008. (Appellant's Representative's Testimony & Exhibit 5)
12. The Appellant reduced her assets below \$1,600.00 as of June 1, 2008. (Hearing Summary)
13. Title XIX-Long Term Care Assistance was not needed for the Appellant until August 1, 2008. (Hearing Summary)
14. On August 22, 2008, the Department informed the Appellant that she was ineligible for long-term care services for a period of 1.44 months (August 1, 2008 through September 13, 2008). (Hearing Summary & Exhibit 7: Transfer of Assets -Final Decision Notice)
15. The Appellant did not transfer the \$13,660.00 in order to qualify for Title XIX-Long Term Care Assistance. (Facts 3 through 11)

### **PERTINENT STATE STATUTES**

§ 17b-2, section (9) of the Connecticut General Statutes, designates the Department of Social Services as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

§ 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.

§ 17b-261 allows for the provision of medical assistance for eligible persons.

§ 17b-264 extends the provisions of chapter 302 to the medical assistance program except such provisions as are inconsistent with federal law and regulations governing title XIX of the Social Security Amendments of 1965.

## PERTINENT DEPARTMENTAL REGULATION

Uniform Policy Manual § 1560.10 states in part that 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; or
- B. the first day of the month of application when all non-procedural eligibility requirements are met during that month.

UPM § 3025.10 pertains to transfers for the purpose of qualifying and states:

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 § 3025.15 pertains to transfer of assets when the transfer is not for the purpose of qualifying and states in part:

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.

UPM § P3029.30 provides how to calculate and impose the penalty period due to a transfer of assets.

UPM § 3029.10 pertains to transfers not resulting in a penalty and states in part

E. 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 § 3039.35 pertains to the notification and rebuttal process in regards to transfer of assets and states in part:

A. Notification

1. Prior to denial or discontinuance of LTC Medicaid benefits, the Department notifies the individual and his or her spouse of its preliminary decision that a transfer of an asset is determined to have been improper.
2. The notification includes a clear explanation of both:
  - a. the reason for the decision; and
  - b. the right of the individual or his or her spouse to rebut the issue within ten days.

B. Rebuttal

1. An institutionalized individual, or his or her spouse, who is notified of the Department's determination that an asset transfer was improper, has ten days from the date of the notice to rebut this determination prior to the implementation of the negative action. The Department may grant an extension if the individual so requests and the request is reasonable.
2. Rebuttal must include:
  - a. a statement from the individual or his or her spouse as to the reason for the transfer; and
  - b. objective evidence, which is:
    - (1) evidence which rational people agree is real or valid; and
    - (2) documentary or non-documentary.

UPM § 4005.05 pertains to the general principles regarding asset limits and states in part :

A. Limits Specific to each Program

For every program administered by the Department, there is a definite asset limit.

B. Assets Counted Toward the Asset Limit

1. The Department counts the assistance unit's equity in an asset toward the asset limit if the asset is not excluded by state or federal law and is either:

- a. available to the unit; or
- b. deemed available to the unit.

2. Under all programs except Food Stamps, the Department considers an asset available when actually available to the individual or when the individual has the legal right, authority or power to obtain the asset, or to have it applied for, his or her general or medical support.

D. Asset Limit an Eligibility Factor

1. The Department compares the assistance unit's equity in counted assets with the program asset limit when determining whether the unit is eligible for benefits.

2. An assistance unit is not eligible for benefits under a particular program if the unit's equity in counted assets exceeds the asset limit for the particular program, unless the assistance unit is categorically eligible for the program and the asset limit requirement does not apply (cross reference: 2500 Categorical Eligibility Requirements).

UPM § 4005.10 provides that the asset limit for the AABD and MAABD program is \$1,600.00 for a needs group of one.

UPM § 4005.15 (A) (2) provides that at the time of application MA and AABD residents of Long Term Care Facilities are ineligible until the first day of the month in which it reduces its equity in counted assets to within the asset limit.

UPM § 4030.05 pertains to the treatment of assets and bank accounts and states in part:

B. Checking Account

That part of a checking account to be considered as a counted asset during a given month is calculated by subtracting the actual amount of income the assistance unit deposits into the account that month from the highest balance in the account for that month.

C. Income Versus Assets

Money which is received as income during a month and deposited into an

account during the month is not considered an asset for that month, unless the source of the money is:

1. an income tax refund; or
2. cash received upon the transfer or sale of property; or
3. a security deposit returned by the landlord.

### **RELEVANT FEDERAL REGULATIONS**

Title 42, Code of Federal Regulations (CFR), Chapter IV, Health Care Financing Administration, HHS contains the regulations concerning the Title XIX Medical Assistance Program. Relevant sections include:

435.900, 902, 903, 904, 905, 907 These sections concern the administration of the Medicaid Program and the application processing requirements.

435.911, 912, 914 These sections concern the determination of Medicaid eligibility, the time limits which apply, the notice of eligibility decision, case documentation and the effective date.

Concerning the effective date of Medicaid, Subsection 914 advises that Medicaid may be awarded the third month prior to the month of application if, among other conditions, the appellant would have been eligible for Medicaid. The state plan must specify the date on which eligibility will be made effective. An individual may be awarded Medicaid on the first day of the month if an individual was eligible at any time during that month.

### **DISCUSSION**

Based on the evidence and testimony presented at the hearing, I find that the Appellant did not transfer the \$13,660.00 in December 2006, and April 2007 in order to qualify for Title XIX Long Term Care.

The amount of money (\$13,660.00) the Department considered to be transfers were actually gifts to thirteen (13) different family members. At the time the gifts were made in 12/06 and 4/07, the Appellant was healthy and there was no indication that she would need nursing home care. The family members to whom the gifts were made assisted the Appellant with her everyday needs such as grocery shopping, doctor's appointments, and

going to the post office. The gifts were her way of thanking the family members for their thoughtfulness and the generosity with their time.

After the gifts were made, the Appellant continued to live in the community until November 3, 2007, when she was admitted to Laurel Hill Healthcare. The Appellant's representative testified that the Appellant privately paid approximately \$120,000.00 to the nursing home for her care between November 2007 through June 2008, which exhausted her assets. The Appellant did not need assistance from the State until August 1, 2008, which is twenty (20) months after the bulk of the gifts were made to the family members. This length of time lends credence to the fact that the Appellant did not give the gifts in order to become eligible for Long Term Care assistance. Her admittance to the nursing home was unforeseen when the gifts were made.

Looking at the whole picture, the clear and convincing evidence demonstrates that it was not the Appellant's intent to qualify for Title XIX Long Term Care assistance. Because the intent to qualify was not present when the gifts were made, the Appellant should not have a penalty applied towards her eligibility.

### **CONCLUSION OF LAW**

Based on the findings of fact, regulations, and discussion set forth herein, it is concluded that the Department incorrectly imposed a transfer penalty of 1.44 months towards the Appellant's Long Term Care coverage because the Appellant demonstrated with clear and convincing evidence that the \$13,660.00 transfer was not made in order to qualify for assistance.

### **DECISION**

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

### **ORDER**

1. The Department will remove the transfer of assets penalty, and grant Medicaid Long Term Care coverage for the period of August 1, 2008 through September 13, 2008.
2. The Department will provide to the undersigned compliance with this order no later than February 17, 2008.



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**James T. Hummel**  
**Hearing Officer**

cc: Bonnie Wilkes, Operations Manager, DO #62, Torrington  
Sandy Sanford, PO Box 901, Thomaston, CT 06787

### 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 Legal Counsel, Regulations, and Administrative Hearings, 25 Sigourney Street, Hartford, CT 06106.

### 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.