

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS AND ADMINISTRATIVE HEARINGS  
25 SIGOURNEY STREET  
HARTFORD, CT 06106-5033

March 4, 2009  
CERTIFIED MAIL

Client ID # [REDACTED]  
Hearing Request # [REDACTED]

NOTICE OF DECISION

PARTY

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

REASON FOR HEARING

On October 10, 2008, Attorney Paul Czepiga requested an administrative hearing for the appellant, [REDACTED] because the Department delayed the effective date of his Medicaid long-term care benefits. A hearing was held on November 10, 2008, in accordance with Connecticut General Statutes § 17b-60, § 17b-61 and § 4-176e to § 4-184.

PRESENT AT THE HEARING

[REDACTED] POA for the Appellant  
[REDACTED], Appellant's Son  
Amy LaChance, Attorney for John Frederick Anderson  
Melissa Garvin, For the Department  
Nancy Konopacke, Hearing Officer

STATEMENT OF ISSUE

The issue in this case is whether the Department correctly determined the effect of the appellant's transfer of assets on his eligibility for long-term care (LTC) services under the Medicaid program.

FINDINGS OF FACT

1. The appellant re-applied for Medicaid LTC benefits on June 4, 2008. (summary).
2. The appellant was a 94 year old man who entered a long-term care facility on May 11, 2008. He died on September 13, 2008. (Institution Screen and testimony of appellant's daughter)
3. The appellant's representative is his daughter who had power of attorney for him, beginning in May, 1998. The appellant fully controlled his financial affairs until August, 2007. As of May, 2008, the appellant was incapable of handling his financial affairs as the result of dementia. (Power of Attorney Appointment notices and testimony of POA)
4. Between April 2, 2006 and June 17, 2007, the appellant and his wife gave one of their five children, [REDACTED], a total of \$11,800.00. This gift of their money was given in a series of nine checks. (summary, testimony of [REDACTED], copies of nine checks and testimony of appellant's POA)
5. After making a preliminary determination and providing notice and an opportunity to the appellant to rebut that determination, the Department determined that the gift of \$11,800.00 identified in FOF # 4, above, constituted an improper transfer of assets without receipt of fair market value. The Department calculated a penalty period of June 1, 2008 through July 9, 2008, based on the uncompensated total value of the nine transfers divided by the average cost of long term care in Connecticut as of January, 2008, \$9,096.00. (summary, Institution Screen and handwritten penalty calculation sheet)
6. On September 1, 2008, the Department granted the appellant's application for Medicaid long term care assistance, effective July 10, 2008. The Department established a period of ineligibility for long-term care assistance from June 1, 2008 through July 9, 2008 due to the improper transfer. (copy of Notice of Action)
7. By transferring this asset to their son, the appellant and his wife provided financial assistance to their son at a time when he had medical problems and they thought that he needed financial assistance. (testimony of POA, transferee, copies of transferee's medical bills and physician's statement, affidavits of transferee and appellant's wife, written statement of appellant's wife, dated June 15, 2008)
8. The appellant was 92 and 93 years old when this transfer of assets occurred. (testimony of appellant's POA)

9. The appellant was fully self-supporting at the time of this transfer. (testimony of appellant's POA)
10. The appellant's POA and his son claimed that their father was in good health, mentally and physically, with no serious medical problems at the time of this transfer. (testimony of appellant's POA)
11. The appellant's representative presented no medical reports regarding her father's health at the time of this transfer.
12. The appellant was not covered by private health benefits that paid for long-term care services at the time of this transfer. (record)
13. The appellant did not meet his foreseeable needs when he gave his son \$11,800.00 between April, 2006 and June, 2007. (FOF's # 10, 13, 14)
14. The appellant disposed of \$11,800.00 between April 2, 2006 and June 17, 2007, for less than fair market value.
15. The appellant's POA did not prove, with clear and convincing evidence, that this \$11,800.00 was transferred exclusively for a purpose other than qualifying for assistance.
16. The appellant did not qualify for Medicaid long-term care services until July 10, 2009.

### **RELEVANT STATE STATUTES**

Section 17b-2 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 authorizes the Commissioner of Income Maintenance 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.

### RELEVANT DEPARTMENTAL POLICY

The Connecticut Department of Social Services Uniform Policy Manual (UPM) provides the regulations for the administration of the Department's programs.

Chapter 3029 of the UPM describes the technical eligibility requirement in the Medicaid program pertaining to the transfer of an asset for less than fair market value. The policy material in this chapter pertains to transfers that occur on or after February 8, 2006.

UPM § 3029.05 states that there is a period established "during which institutionalized individuals and their spouses 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." The look-back date is a date that is 60 months before the first date on which the individual is institutionalized and the individual is either applying for or receiving Medicaid. The penalty period, or period of ineligibility, begins as of the month that the asset is transferred or the date that the Medicaid applicant would be otherwise eligible for Long Term Care Facility (LTCF) services under the Medicaid program, whichever date is later. Paragraph F of this section describes the calculation of the length of the penalty period. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer with a single penalty period beginning on the date applicable to the earliest transfer. During the penalty period, LTCF services are not covered by Medicaid.

UPM § 3029.10 E. states 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.

UPM § 3029.15 states that an institutionalized individual or the individual's spouse is considered to have transferred an asset exclusively for a purpose other than qualifying for assistance under circumstances which include, but are not limited to "undue influence", "foreseeable needs met", "transfer to or by legal owner", transferred asset would not affect eligibility if retained", and those circumstances involving "post eligibility transfers made by the institutionalized individual's spouse."

### CONCLUSIONS OF LAW

Based on the Findings of Fact, regulations, and Discussion set forth in this decision, it is concluded that the Department correctly imposed a penalty period from May 4, 2008 through July 9, 2009 on the appellant's eligibility for long-term care (LTC) services under the Medicaid program.

DISCUSSION

When an applicant's assets have been given away within the look-back period that applies to the application, a determiner of Medicaid eligibility is required by controlling Departmental policy to presume that the applicant gave away his or her property in order to qualify for Medicaid and to consider any information presented to show that the gift was given exclusively for another purpose. In this case, the Department determined, during the application process, that the appellant's representative had not overcome the presumption that this gift was made to qualify for Medicaid because she had not shown that it was exclusively for another purpose. The Department therefore denied the application for LTCF benefits for the appellant. At the hearing, the appellant's POA claimed that this transfer was made exclusively for a purpose other than qualifying for assistance because her father's intention was to help his son, not to qualify for assistance. She claimed that the appellant was meeting his foreseeable needs at the time of the transfer.

The appellant's representative presented evidence of her claim that her father's gift to his son was for the purpose of helping his son, not qualifying himself for assistance. The evidence presented was sufficient to show that one purpose of her father's gift to his son was to help him but it did not prove that helping his son was the only purpose of the gift. Proof of the existence of a desire to help a transferee, however needy or worthy that transferee may be, does not prove that the only reason for a gift is the desire to help the transferee. The evidence presented did not prove the claim of the appellant's POA that the appellant's foreseeable needs were met at the time of the transfer. The evidence presented, therefore, does not constitute clear and convincing evidence that this transfer was made exclusively for a purpose other than qualifying for assistance.

The appellant's POA and his son claimed that their father was in good health, mentally and physically, at the time of this transfer. Their testimony does not constitute clear and convincing evidence that the appellant's foreseeable needs were met at the time of the transfer. A 92 year old man, even one who is in good health, cannot reasonably dismiss the possibility that he will become in need of long-term medical care within five years. Medical reports were not presented to support the POA's claim that her father was so healthy in 2006 that it was reasonable for him to not foresee his need for long-term medical care. In the absence of such objective medical evidence, in light of the appellant's age at the time of the transfer and the fact that he did need long-term medical care within five years of the date of this transfer, it cannot be concluded here that the appellant's foreseeable needs were met at the time of the transfer.

The appellant's representative submitted evidence that proved that her parents' intention was to leave their remaining assets to their children in equal shares when they die. She argued that if the appellant had intended to divest himself of his assets in order to qualify for assistance he would have taken other steps, such as giving assets to all of his children or to his disabled child, to whom he could have left property without a penalty. This argument is not persuasive. The fact that a person doesn't transfer many of his assets does not entitle him to transfer some of his assets without the Medicaid LTC services penalty that would otherwise result from the transfer.

DECISION

The Department's imposition of this penalty is upheld.

Nancy Konopacke  
Hearing Officer

pc: Michele Farieri, Field Operations Manager  
Attorney Amy LaChance, Czepiga and Daly

### 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.