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

Client ID: [redacted]
Hearing ID: [redacted]

May 5, 2009
CERTIFIED MAIL

NOTICE OF DECISION

PARTY

[redacted]

Applicant: [redacted] ***currently institutionalized***

REASON FOR HEARING

On January 26, 2009, the Appellant, [redacted], daughter of [redacted], the applicant, requested an administrative hearing because she is not satisfied with the transfer of assets penalty period that the Department of Social Services ("the Department") placed on her mother's Long Term Care Facility (LTCF) Medicaid benefits.

A hearing was conducted on March 31, 2009, in accordance with Connecticut General Statutes §17b-60, §17b-61, and §4-176e to §4-184.

PRESENT AT HEARING

[redacted], appellant and daughter of the applicant
[redacted]pplicant's son
Suzanne Fascione, Department's representative
Karen Brown, Hearing Officer

STATEMENT OF ISSUE

The issue to address is whether the Department was correct to establish a transfer of assets penalty on the LTCF Medicaid benefits.

THE HEARING RECORD

The hearing record consists of the testimony and the exhibits presented as evidence.

FINDINGS OF FACT

1. On November 14, 2008, the Department received an application for Long Term Care Medicaid for [redacted] (Department's Testimony).

2. The applicant is currently a resident at Vernon Manor (Appellant's Testimony).

3. There were two withdrawals from the appellant's Merrill Lynch account: December 19, 2006 for $3,000.00 (3 checks issued at $1,000.00 each) and September 27, 2007 (3 checks issued at $5,000.00 each) for $15,000.00. The withdrawals totaled $18,000.00 (Hearing Exhibit 6).

4. On November 18, 2008, the Department sent the applicant a preliminary decision notice indicating that it believes that her $18,000.00 transfers that occurred on December 19, 2006 and September 27, 2007 were made in order for her to be eligible for assistance. The applicant was offered the opportunity to contact the Department if she was in disagreement and if the penalty would cause undue hardship (Hearing Exhibit 3).

5. The applicant's physician Dr. Angelee Carta wrote a letter indicating that placing the applicant in an extended care facility long-term was not part of the original plan (Hearing Exhibit 4).

6. The applicant did not receive valuable consideration for her transfers to her loved ones; the transfers were gifts (Appellant's Testimony, Hearing Record).

7. The applicant did not gift any monies to a disabled child or spouse (Hearing Record).

8. There is no evidence to suggest that the applicant was incompetent at the time of the transfers (Hearing Record).

9. The asset limit for Medicaid for one person is $1,600.00 (UPM 4005.10)

10. On January 20, 2009, the Department sent the applicant a final transfer of assets decision and determined that the transfers totaling $18,000.00 on December 19, 2006 and September 27, 2007 were improper and the penalty period established was January 10, 2009 through March 7, 2009 (Hearing Exhibit 5).

11. The Department was correct to determine that the transfers were improper and for the purpose of qualifying for assistance and establishing a penalty period; the applicant did not receive valuable consideration for her transfers (Hearing Record).

REVELANT STATE STATUTES

The Connecticut General Statutes (CGS), §17b-2 designates the Commissioner of the Department of Social Services to implement and operate the Medicaid program pursuant to Title XIX of the Social Security Act.

CGS, §17b-260 authorizes the Commissioner of the Department 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.

PERTINENT DEPARTMENTAL REGULATION

Uniform Policy Manual (UPM) 1500.01 provides the following definitions:

> An **applicant** means the individual or individuals for whom assistance is requested.
>
> A **continuous period of institutionalization** is a period of 30 or more consecutive days of residence in a medical institution or long term care facility, or receipt of home and community based services (CBS) under a Medicaid waiver.

UPM 3029.03 provides the transfer of assets policy for transfers that occurred on or after February 8, 2006.

UPM 3029.05 states 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.

Ibid. Subsection B states that this policy pertains to institutionalized individuals. An individual is considered institutionalized if he/she is receiving LTCF services, services provided by a medical institution which are equivalent to those provided in a long-term care facility, or home and community-based services under a Medicaid waiver.

Ibid. Subsection C states that 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.

Ibid. Subsection E addresses 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.

Ibid. Subsection F defines the penalty period. It states, in part:

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...

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.

Ibid. Subsection G addresses Medicaid ineligibility 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.

UPM 3029.20 provides policy for transfers made in return for other valuable consideration. It states:

Other valuable consideration may be received either prior to or subsequent to the transfer.

2. The value of the other valuable 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.

3. The value of the other valuable consideration, as described in 3029.20 B, is equal to the average monthly cost to a private patient for long-term care services in Connecticut, multiplied by the number of months the transferee avoided the need for the transferor to be institutionalized.

(Cross Reference: P-3029.30)

B. Criteria for Other Valuable Consideration

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.

UPM 3029.35 defines the Department's notification and rebuttal policy regarding transfers of assets. It states:

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.

C. Rebuttal Process

1. If the individual does not rebut the Department's preliminary decision to impose a penalty period, the Department sends the individual a final decision notice regarding the penalty period at the time of the disposition of the Medicaid application. This notice contains all the elements of the

preliminary notice, and a description of the individual's appeal rights.

2. If the individual rebuts the Department's preliminary decision to impose a penalty period, the Department has ten days from the receipt of the rebuttal to send an interim notice to the individual stating that it is either upholding or reversing its preliminary decision.

UPM 4005.05.A states that every program administered by the Department has a definite asset limit.

UPM 4005.05.B speaks to how assets are applied to the asset limit. It states, in part:

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.

Ibid. Subsection D addresses asset limits as an eligibility factor. This regulation states:

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.A.2.a defines the asset limit as $1,600 for a needs group of one.

UPM 4005.15.A.2 addresses applicants and the reduction of excess assets. This regulation states, in part:

> 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.

Ibid. Subsection C addresses fair market value of assets. It states, in part:

> When reducing excess assets, the assistance unit must receive fair market value for the expended assets unless it can demonstrate to the Department's satisfaction that the assets were not transferred for the purpose of qualifying for assistance (cross reference: Section 3025, Transfer of Assets).

DISCUSSION

In reviewing the evidence and testimony presented, I find that the Department was correct to impose the penalty for the applicant's Long Term Care Medicaid based on the fact that there were improper transfers made prior to her application. The applicant transferred money to her children as gifts. However, she did not receive valuable consideration for the transfers, so it is determined that the transfers were made for the purposes of reducing her assets for Medicaid eligibility.

The appellant testified that her mother had a history of giving money to her children and grandchildren regularly for special events and holidays (Ex. A). She further argued that her mother planned on returning home following her ecf stay and her rent was paid until October 2008. She presented evidence from the Visiting Angels Agency that was hired to care for her mother (Ex. A). The applicant has shown that she has been generous to her loved ones and provided financial rewards; however, she did not receive valuable consideration for these gifts, so the transfers are considered improper and the Department was correct to impose a penalty period.

CONCLUSION OF LAW

Based on the controlling state statutes, discussion, and regulations as they pertain to the *Findings of Fact* set forth herein, I conclude that the Department was correct to apply a penalty period for improper transfers of assets.

DECISION

The Department was **CORRECT**.

Karen Brown
Hearing Officer

Cc: **Linda Roache**, Field Operations Manager, DSS Manchester

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 her 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.