

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

August 11, 2008
CERTIFIED MAIL

CL ID # [REDACTED]

Request # [REDACTED]

NOTICE OF DECISION

PARTY

REASON FOR HEARING

On January 14, 2008, an administrative hearing was requested on behalf of the appellant, [REDACTED], because the Department imposed a penalty due to an alleged improper transfer of assets, and determined an effective date of July 2, 2008 for Title XIX long-term care coverage. A hearing was held on February 5, 2008 in accordance with Connecticut General Statutes 17b-60 to 17b-64, and 4-176e to 4-184. The hearing record was closed on February 5, 2008.

PRESENT AT THE HEARING

Attorney Brendan F. Daly, Appellant's Representative
Attorney Amy LaChance, Appellant's Representative
Amy Koropatkin, Eligibility Services Worker
Alan Noske, Hearing Officer

STATEMENT OF ISSUE

At issue in this case is whether the appellant transferred assets without receipt of fair market value or other valuable considerations, the amount of the transfer, and the penalty period imposed on the appellant's Title XIX long term care eligibility.

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:

1. Narrative – NARR printouts covering July 31, 2007 through January 9, 2008.
2. W-495A Transfer of Assets Preliminary Decision Notice, dated November 19, 2007.
3. W-495C Transfer of Assets Final Decision Notice, dated January 8, 2008.
4. Letter from the Czepiga Law Group to the Department dated September 25, 2007.
5. Ledgecrest Health Care Cash Receipt History showing private payments, covering August 1, 2007 through December 11, 2007.
6. List of the appellant's gifts, with verifications from Bank of America.
7. Return of gift documents from Countrywide Bank and Bank of America.
8. Uniform Policy Manual Section 3029.05.
9. Uniform Policy Manual Section 3029.10.
10. State Medicaid Manual Section 3258.10.
11. Appellant's Bank of America Combined Statements covering June 7, 2007 through December 5, 2007.
12. Admission Notice from Ledgecrest Health Care Center dated August 3, 2007.
13. Fax cover sheet from Czepiga Law Group to the Department dated July 26, 2007, regarding an attached application part 1.

Exhibits presented by the Appellant:

On February 5, 2008, the appellant's representative submitted a Legal Memorandum in Support of Title XIX Application of [REDACTED], including the following, noted as Appellant's Exhibits:

- A. List of appellant's gifts to her children.
- A-1. Appellant's Bank of America Combined Statement covering July 7, 2007 through August 8, 2007.
- A-2. Bank of America Funds Transfer Request and Authorization dated July 26, 2007.
- A-3. Appellant's son's, ([REDACTED]) Bank of America Advantage Statement covering July 21, 2007 through August 27, 2007.
- B. Ledgecrest Health Care Center billing statement dated July 31, 2007.
- C. Ledgecrest Health Care Center Notice of Medicare Provider Non-Coverage, effective July 18, 2007.
- D. Appellant's Form CT-706/709 for calendar year 2007.
- E. Connecticut Law Journal, April 10, 2007, Department of Social Services Notice of Intent to Amend Regulations.
- F. W-1348 Application Requirements List dated July 31, 2007, with attached checklist of items needed to complete the application.

FINDINGS OF FACT

1. An application for Title XIX long-term care benefits was submitted to the Department on behalf of the appellant on July 26, 2007 (Exhibits 13 and F).
2. The appellant is a resident of [REDACTED], having been admitted to the facility on April 26, 2007 (Exhibit 12).
3. On January 9, 2008, the Department granted Title XIX long-term care benefits, effective July 2, 2008, due to an improper asset transfer and a 6.02 month penalty period imposed (Exhibit 1).
4. The appellant's cost of care at the long-term care facility was paid by Medicare through July 18, 2007, and paid privately through December 2007 (Exhibits 1, 5 and C).
5. On July 25, 2007, the appellant transferred \$109,500.00 in the form of two gifts of \$54,750.00 each to her two sons [REDACTED] and [REDACTED] from her Bank of America checking account (Exhibits 6, A-1 and A-2).
6. On August 22, 2007, the appellant's son, [REDACTED], returned his half of the transferred assets (\$54,750.00) to the appellant's Bank of America checking account (Exhibits 7 and A-3).
7. On November 19, 2007, the Department sent a W-495A Transfer of Assets Preliminary Decision Notice alleging that the appellant transferred \$54,750.00 in assets (gift to Joel Martin) on July 25, 2007 in order to be eligible for assistance (Exhibit 2).
8. On January 8, 2008 the Department established a penalty period covering January 1, 2008 through July 1, 2008, based on the uncompensated value of the transfer on July 25, 2007 (\$54,750.00) divided by \$9,096.00 (the average cost of private LTCF care in CT as of July 2007). A W-495C Transfer of Assets Final Decision Notice, dated January 8, 2008 was sent to the appellant (Exhibit 3).
9. The appellant received no fair market value or other valuable considerations for the transfer of \$54,750.00 to her son [REDACTED] on July 25, 2007. The transfer was made for the purpose of qualifying for assistance.
10. The \$54,750.00 returned to the appellant on August 22, 2007 from her son, [REDACTED], was deposited into her Bank of America checking account, and used to pay for her cost of care at Ledgecrest Health Care Center from July 2007 through December 2007 (Exhibit 11).
11. The \$54,750.00 returned to the appellant on August 22, 2007 from her son, [REDACTED], is an available asset to the appellant as of July 2007, when it was initially transferred.

12. The appellant's counted assets from her checking account at Bank of America exceeded the \$1,600.00 asset limit from July 2007 through November 2007 (Exhibit 11).
13. The appellant's counted assets were reduced to below the \$1,600.00 asset limit in December 2007. By paying the facility privately in December, the appellant's start date of long-term care is January 1, 2008 (Exhibits 1 and 11).
14. Based on the uncompensated value of the asset transfer of \$54,750.00 on July 25, 2007, divided by \$9,096.00 (the average cost of private long term care in CT as of the July 2007 application month) a period of ineligibility is established for 6.02 months.
15. The 6.02 month period of ineligibility for long-term care benefits covers January 1, 2008, the first of the month in which the appellant would otherwise be eligible for Title XIX long-term care, through July 1, 2008.

PERTINENT STATE STATUTE

Section 17b-2 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 Section 3029 states, in part: "This chapter 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." The effective date of the policy is April 1, 2007.

Ibid., Section 3029.05 A. states: "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." Subsection B. states: "1. The policy contained in this chapter pertains to institutionalized individuals and 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)." Subsection C. states: "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." Subsection D. 1. states: "The Department considers transfers of assets made within the time limits described in 3029.05 C, on behalf of an institutionalized individual or her spouse by a guardian, conservator, person having power of attorney or other entity so authorized by law, to have been made by the individual or spouse." Subsection E. addresses the 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." Subsection F., addressing the length of the penalty period, states: "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. 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." [Hearing Officer note: the Procedures section of the Uniform Policy identifies \$9,096.00 as the average cost of care to a private patient in a LTCF for the period of July 1, 2007 to June 30, 2008.] Subsection G states: "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."

Ibid., Section 3029.10 H. addresses the return of a transferred asset. It states: "1. An institutionalized individual is not penalized based on the transfer of an asset if the entire asset has been returned. 2. If only part of the transferred asset is returned, the penalty period is adjusted. 3. 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 part of the asset that is returned. 4. The part of the asset that is returned to the individual is considered available to the individual during the time period from the date of its transfer to the date of its return, and remains available for as long as the individual has the legal right, authority or power to liquidate it."

Ibid., Section 4000.01 provides the definitions of an available asset, and counted assets. "An available asset is cash or any item of value which is actually available to the individual or which the individual has the legal right, authority or power to obtain, or to have applied for, his or her general or medical support." "A counted asset is an asset which is not excluded and either available or deemed available to the assistance unit."

Ibid., Section 4005.05 B. 1. states: "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." Paragraph B. 2. states: "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." Paragraph D. 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."

Ibid., Section 4005.10 A. 2. provides the asset limit of \$1,600.00 for a needs group of one in the AABD and MAABD programs.

The State Medicaid Manual Section 3258.10 addresses Exceptions to Application of Transfer of Asset Penalties. Paragraph C. states, in part: "In addition to the above, a penalty for transferring an asset for less than fair market value is not assessed if a satisfactory showing is made to the State that: All of the assets transferred for less than fair market value have been returned to the individual;" Paragraph C. 3. states: "All Assets Transferred for Less Than Fair Market Value Are Returned to the Individual.—When all assets transferred are returned to the individual, no penalty for transferring assets can be assessed. In this situation, you must ensure that any benefits due on behalf of the individual are, in fact, paid. When a penalty has been assessed and payment for services denied, a return of the assets requires a retroactive adjustment, including erasure of the penalty, back to the beginning of the penalty period.

However, such an adjustment does not necessarily mean that benefits must be paid on behalf of the individual. Return of the assets in question to the individual leaves the individual with assets which must be counted in determining eligibility in the retroactive period. Counting those assets as available may result in the individual being ineligible for Medicaid for some or all of the retroactive period, (because of excess income/resources) as well as for a period of time after the assets are returned.

It is important to note that, to avoid imposition of a penalty, all of the assets in question or their fair market equivalent must be returned. If, for example, the asset was sold by the individual who received it, the full market value of the asset must be returned to the transferor, either in cash or another form acceptable to the State.

When only part of an asset or its equivalent is returned, a penalty period can be modified but not eliminated. For example, if only half the value of the asset is returned, the penalty period can be reduced by one-half."

CONCLUSIONS OF LAW

Based on the Findings of Fact, Discussion, and regulations set forth herein, it is concluded that the appellant transferred \$109,500.00 on July 25, 2007 for no compensation or other valuable considerations, prior to her July 26, 2007 application for Title XIX long-term care benefits. On August 22, 2007, \$54,750.00 was returned to the appellant from her son, Robert. The remaining uncompensated value of the transfer, \$54,750.00, divided by \$9,096.00, creates a period of ineligibility of 6.02 months. The \$54,750.00 returned to the appellant in August 2007 is an available asset retroactive to July 2007, the month of the transfer. The appellant was ineligible for Title XIX long-term care due to excess assets, from July 2007 through December 2007, with her first date of eligibility for long-term care January 1, 2008. Therefore, the penalty period resulting from the transfer of assets begins on January 1, 2008 and ends July 1, 2008.

DISCUSSION

Based on the information and evidence presented at the hearing, the undersigned finds that the Department was correct in its action to deny the appellant's Title XIX long-term care benefits, and establish a penalty period, due to transfers of assets without receipt of fair market value or other valuable considerations. The period of ineligibility for LTCF benefits is 6.02 months, from January 1, 2008 through July 1, 2008, as determined by the Department.

In the matter of the transfer of assets and subsequent penalty period, the undersigned finds that appellant's transfers of assets (gifts of \$54,750.00 to each of her son's [REDACTED] on July 25, 2007, totaling \$109,500.00) were made for no considerations and for the purpose of qualifying for assistance. No clear and convincing evidence was presented at the hearing to establish that the transfer was made exclusively for a purpose other than qualifying for assistance.

The transfers occurred on July 25, 2007 in the form of two checks written from the appellant's Bank of America checking account. An application for Title XIX long-term care was submitted to the Department on behalf of the appellant the next day, on July 26, 2007. The transfers occurred within the 60-month look-back period from the appellant's application date. The appellant was admitted to Ledgecrest Health Care Center on April 26, 2007 and remains a resident of the facility. On August 22, 2007, the appellant's son, Robert, under the advice of the appellant's counsel, returned his half of \$54,750.00 to the appellant.

Per the Uniform Policy Manual (UPM) Section 3029.05 F. 3., multiple transfers are added together and the transfers are treated as a single transfer, and a single penalty period is then calculated. The total amount of assets transferred on July 25, 2007 is \$109,500.00. Per UPM Section 3029.10 H., if part of a transferred asset is returned, the penalty period is adjusted, based on the uncompensated value of the original transfer, minus the value of the asset that is returned. In this case, the uncompensated value of the original transfer is \$54,750.00 (\$109,500.00 minus \$54,750.00).

On January 8, 2008, the Department issued a W-495C Transfer of Assets Final Decision Notice, setting the transfer amount at \$54,750.00 and establishing a penalty period from January 1, 2008 through July 1, 2008. The Department's calculation of the penalty period of 6.02 months is correct, based on the uncompensated value of the transfers (\$54,750.00), divided by the average cost of private long-term care in CT as of the July 2007 application month, in this case \$9,096.00.

The UPM establishes the start date of a penalty period as the later of "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 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." The penalty period, in this case, begins on January 1, 2008, the date the appellant was eligible for Medicaid payment of long-term care services.

The appellant was ineligible for long-term care services until January 1, 2008 because her counted assets exceeded the \$1,600.00 asset limit. When the \$54,750.00 was returned to her in August, it is counted as an available asset to her from July 25, 2007, the date of the transfer. The UPM is consistent with the State Medicaid Manual on this issue. The appellant retained the authority to liquidate the asset through December 2007. She used the returned \$54,750.00 to pay for her cost of care at the facility through December 2007. Her assets were reduced under \$1,600.00 in December, and she became eligible for Medicaid payment of her long-term care services on January 1, 2008.

Under the UPM, the individual is not penalized if the entire asset is returned to the individual. In this case, only one-half of the total amount transferred was returned to the appellant. She is only being penalized for the amount transferred to her son [REDACTED], which was not returned to her.

The appellant argued that the State may not deem the assets of her son [REDACTED], once she had transferred it to him, as she then had no legal right, authority or power to liquidate the asset. The Department is not deeming the assets of [REDACTED] to his mother. The asset in question belonged to the appellant initially, and when it was returned to her from her son, it is considered hers, retroactive to the date of the transfer.

The appellant's transfer of \$54,750.00 to her son [REDACTED] on July 25, 2007 for no considerations on constitutes an improper transfer of assets. The period of ineligibility established by the Department, 6.02 months, from January 1, 2008 through July 1, 2008, is correct.

DECISION

The Department is upheld in its determination of an improper asset transfer of \$54,750.00, without receipt of fair market value or other valuable considerations, on July 25, 2007. The Department is also upheld in the establishment of a penalty period of 6.02 months, beginning January 1, 2008 and ending July 1, 2008.

Alan Noske
Hearing Officer

c: Michele Farieri, Social Service Operations Manager, R.O. # 52, New Britain

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. Even if a reconsideration has been requested, there are still only **45** days to file an appeal. 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.