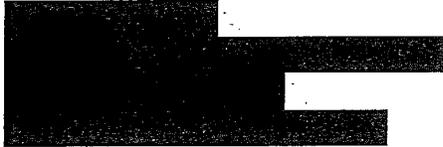




Rhode Island Executive Office of Health and Human Services
Appeals Office, 57 Howard Ave., LP Building, 2nd floor, Cranston, RI 02920
phone: 401.462.2132 fax: 401.462.0458

July 10, 2015

Docket#15-663
Hearing Date: May 13, 2015



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided partially in your favor. During the course of the proceeding, the following issue(s) and Agency regulation(s) were the matters before the hearing:

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS)
MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)
SECTION 0384: Resource Transfers**

The facts of your case, the pertinent Agency regulations, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the appellant in C/o your Attorney), and Agency representatives Gail Okai, Cynthia Lopes, Deborah Castellano, and Tom Conlon.

Present at the hearing were: your Attorney and Agency representative Gail Okai. Your niece participated in the hearing by telephone.

ISSUE: Does the appellant incur a penalty period of two months and fourteen days due to an uncompensated transfer of an asset, thereby rendering him ineligible for Medicaid payment of Long Term Care (LTC) services until October 15, 2014?

EOHHS Rules and Regulations:

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Executive Office of Health and Human Services Medicaid Code of Administrative Rules (MCAR).

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

DISCUSSION OF EVIDENCE:**The Agency representative testified:**

- The appellant's Medicaid application was received on August 29, 2014 by means of a DHS-1 form/application.
- On October 23, 2014, a DHS-2 form/application with supporting documentation was received.
- Medicaid was approved for August 2014.
- A 167 Letter of Denial was mailed to the appellant's Attorney on February 16, 2015 as applicant was found otherwise eligible if not for a reported transfer in the amount of \$22,343.22.
- The \$22,343.22 was cash given to the appellant's niece and nephew.
- The transfer generated a penalty period of 2 months and 13.74 days starting on August 1, 2014, so the appellant's Long Term Care/Nursing Home coverage starts on October 15, 2014.
- According to a Care Agreement, the appellant was to begin receiving care on September 1, 2014 but as of today's date has not because he is still in the Nursing Home.
- The contracting agreement dated August 2014 was not received by the Agency until April 2015.
- The Agency is looking at it like he gave the money away because the terms of the agreement have not been met. The estimate for the work that was supposed to be done is dated August 13, 2014 and the building permit was not done until December when he was supposed to be starting services in September.
- The Agency has been provided with no evidence that any work has been done yet.
- If the work had been done and the appellant had moved to that home then the Agency would have said there was no transfer because he would have benefitted from the funds that he gave away.

- If receipts for work done are submitted then the penalty period could be reduced.
- As of this morning, the Agency's Nursing Home transition team had approved 56 hours of home care but believes the appellant will need 24 hours of care monitored by two individuals so they still have some concerns as to whether this can be a safe discharge.

The appellant's Attorney presented:

- There is no dispute that \$22,343.22 was transferred to the appellant's niece and nephew.
- The appellant entered a Nursing Home in June 2014. He paid privately for June and July and is requesting LTC Medicaid to be effective August 1, 2014.
- The appellant had a massive stroke at the age of ■ which is relatively young from a long term care perspective.
- The only asset he had available to him was an IRA (individual retirement account), which in R.I. is not a considered a countable resource for Medicaid.
- The plan was for the appellant to reside with his niece and nephew in their home but their home needed to be modified because he is in a wheelchair.
- For the plan to work, he had to spend time in a nursing facility while the work was done on the house.
- The appellant took a large amount of money out of his IRA. He tried to figure out how much he would need because he knew once he was on Medicaid he would not be able to take any more out the account without it becoming unearned income.
- After taxes and penalties, the appellant ended up with around \$90,000.00 from the IRA withdrawal he made. Some of it he paid to the Nursing Home (NH) as a private pay patient for a few months. He also paid for his rehabilitation, paid other expenses, and purchased a handicap van for his use.
- The transferred \$22,343.22 is the balance remaining from the IRA withdrawal.
- He lived in an apartment in Massachusetts when he had the stroke. He was then in rehabilitation in Massachusetts but because he is from R.I. and his family

resides in R.I. he decided to come back to R.I. He plans on moving in with his niece and nephew and while in the NH, they entered into a Care Agreement.

- He has no ownership in the home where he intends to reside but it needs to be renovated to accommodate him.
- His niece and nephew had begun taking steps to outfit the house but there were some delays because initially they were going to convert the basement for him but then due to his needs they decided he needed to go upstairs.
- There is an estimate and an agreement with a contractor which the appellant's niece signed, showing the work to be done and the cost. There is also a copy of the building permit.
- A money market account solely in the POA's name was opened on June 30, 2014 with a deposit of \$89,675.00. It shows the allowable deduction of \$24,500.00 for the handicap van and as well as a \$13,000.00 payment to the NH.
- She sent a letter to the Agency dated December 5, 2014 in which she outlined what happened to the IRA funds. The \$22,343.22 is the balance of what was left after all of the allowable expenses.
- The \$22,343.22 was given to the appellant's niece to do the work on the house.
- There is still a balance because they have not done all of the work and are still figuring out how to get him home.
- Because of the difficulty in transitioning him home, his niece was hesitant to spend any more money. She is also now being told he cannot come home unless he purchases a wheelchair, which has a value of \$7,000.00. The wheelchair cannot be approved for payment by insurance until he is home but he cannot go home without the wheelchair. He also has been told he needs a Hoya lift before he can go home.
- Due to the grade of the property, they had to [REDACTED]
[REDACTED] This has already been done.

The [REDACTED] upstairs has also been done and [REDACTED] but they still have to put in a [REDACTED]

- Because there was only \$22,343.22 left from the IRA withdrawal, the appellant's niece will most likely have to use some of her own money to complete all the renovations.
- They have not provided any proof of what has been paid to the contractor so far.
- The plan always was for the appellant to go home and transition onto the waiver program but both the Agency and the NH said that he could not transition home until the LTC application was completed and approved.
- He has been active LTC Medicaid since October 15, 2014.
- He is still in the NH and they are still waiting for the NH transition team to approve his discharge home.
- He is getting penalized because he is not home yet but there have been roadblocks to getting him home.
- If the appellant has to pay the nursing more money due to the transfer penalty then the only way he will be able to get into the house is to take more funds out of his IRA, which would then make him ineligible for services.
- As of this date, none of the \$22,343.22 given to the niece has been returned to the appellant.

The appellant's niece testified:

- The \$22,343.22 was earmarked for the construction projects on the home, which will actually cost more than that.
- She believes there is still about \$13,000.00 left of the \$22,343.22.
- The NH transition team told her the appellant has been approved but not authorized to come home yet. Since they were told he was approved they used some of the money to get the bathroom tiled but they still need to do the plumbing for the shower part of the bathroom.
- They also still need to take down a wall.
- When they did the Care agreement they used the September date because they anticipated that they would have an answer in September about moving him home.

- Since neither he nor they could afford the NH care, they needed to get that part approved.
- The [REDACTED] was done before they got the permit because he needed that to be able to come home for visits in August and September.
- The Agency never asked her for verification of payments to the contractor and/or for work done.
- She purchased the [REDACTED] second-hand for \$2,000.00 and believes she has a receipt that will show when she purchased it.
- The [REDACTED] has been completed and the [REDACTED] is usable but the [REDACTED] is not completed so the [REDACTED] is not useable yet.
- One member of the NH transition team told her that they had approved 56 hours of care weekly, 8hr a day 7 days a week, and another member of the team expressed concern that the appellant would need two people for the Hoya lift which would require them to cut back on the nursing hours. She was later told that they would not need to have a second person because her or her husband would always be there.
- She is under the impression that when she gets back from vacation she is bringing the appellant home. She just needs to provide a wheelchair and a Hoya lift and the transitions team would schedule nursing staff.

FINDINGS OF FACT:

- On June 30, 2014, \$89,675.00 of the appellant's money was deposited into his niece's bank account. \$67,331.78 of the \$89,675.00 was subsequently used by the appellant. The remaining \$22,343.22 was retained by the appellant's niece.
- On July 31, 2014 the appellant had entered into a Care Agreement with his niece and nephew, agreeing to pay them \$50,000.00 to make modifications to their home so that he could reside with them.
- On August 29, 2014, the appellant applied for Medicaid as an institutionalized individual.
- On February 16, 2015, the Agency sent the appellant's Attorney a notice stating that the appellant was eligible for Medicaid as of August 2014 but was ineligible for Long Term Care Medicaid until October 15, 2015 due to an uncompensated

transfer resulting in a penalty period of two (2) months and fourteen (14) days.

- The appellant's Attorney submitted a request for hearing, received by the Agency on March 17, 2015.
- An Administrative Hearing was convened on May 13, 2015.
- At the request of the appellant's Attorney, the record of hearing was held open, through the close of business on May 29, 2015, to allow for the submission of additional evidence.
- Additional evidence was received in the Appeals Office on May 29, 2015, made part of the record of hearing, and a copy provided to the Agency.
- On June 5, 2015, the appellant's Attorney agreed to allow the Agency two weeks, through the close of business on June 19, 2015, to review the additional evidence and inform the Appeals Officer if the additional evidence changed the Agency's decision.
- The Agency sent an email to the Appeals Officer on June 24, 2015 commenting on the additional evidence and informing the Appeals Officer that the Agency decision remained the same.
- On July 2, 2015, the Appeals Officer verbally notified the appellant's Attorney that the Agency email correspondence had been read before realizing that it had been submitted after the record closed and it would thereby be entered into the record.
- The appellant's Attorney was allowed the opportunity to respond to the Agency's email and/or submit additional evidence.
- The appellant's Attorney submitted additional evidence by fax on July 2, 2015.

CONCLUSION:

The issue to be decided is whether the appellant incurs a penalty period of two months and fourteen days due to an uncompensated transfer of an asset, thereby rendering him ineligible for Medicaid payment of Long Term Care (LTC) services until October 15, 2014.

The record establishes that on August 29, 2014, the appellant filed an application for Medicaid as an institutionalized individual. The appellant was determined Medicaid eligible effective August 1, 2014 and eligible for Long Term Care (LTC) Medicaid effective

October 15, 2014. The Agency argues that the appellant incurred a penalty period, starting on August 1, 2014, of two (2) months and fourteen (14) days because he transferred \$22,343.22 to his niece and nephew and received no compensation in return. The appellant's Attorney argues that the \$22,343.22 was given to the appellant's niece and nephew under the terms of a Care Agreement and the appellant therefore should not incur any penalty because he did receive fair market value in return.

A full review of the record finds that \$89,675.00 of the appellant's money was deposit into his niece's bank account on June 30, 2014. The parties agree that \$67,331.78 of the \$89,675.00 was used by the appellant for his needs and was thereby not considered a transfer. On July 31, 2014, the appellant entered into an agreement with his niece and nephew, which was put in writing and signed by all parties, and which the appellant's Attorney refers to as a Care Agreement. According to that agreement, the appellant was to leave the Nursing Facility on September 1, 2014 and move in with his niece and nephew, who agreed to provide him with room, board, and caregiving services for a monthly fee of \$1,200.00. Per the agreement, the appellant was also to pay his niece and nephew \$50,000.00 so that modifications to their home could be done for the appellant's benefit. The parties agree that the \$22,343.22 that remained from the \$89,675.00 was given to the appellant's niece and nephew as opposed to the \$50,000.00 stipulated in the Care Agreement.

A review of the Medicaid Code of Administrative Rules (MCAR) finds that an institutionalized individual incurs a penalty if there has been a transfer of an asset for less than fair market value made after February 8, 2006 and within sixty months prior to the individual becoming institutionalized and applying for Medicaid. The penalty is a period of restricted Medicaid eligibility during which payment for LTC services is denied for an otherwise eligible individual. The length of the penalty is equal to the total uncompensated value (UV) of the transfer divided by the average monthly cost of a private patient in a nursing facility at the time the individual applied for Medicaid. The MCAR further stipulates that when a transfer occurs after February 8, 2006, the penalty period begins on the date of the transfer or the date that the individual would have been otherwise eligible, whichever is later.

The MCAR defines uncompensated value as the equity value minus the value of any compensation/consideration received by the applicant in exchange for the transferred asset. Compensation/consideration is defined as "All real and/or personal property (money, food, shelter, services, stocks, bonds, etc.) that is received by an applicant/recipient pursuant to a binding contract in exchange for an asset either prior to, at the time of, or after the transfer." The evidence record establishes that the appellant signed a contract with his niece and nephew indicating that he intends to move in with his niece and nephew and thereby receive compensation for money he gave them to do modifications to their home to accommodate that move. In order to determine if the appellant received fair market value or sufficient compensation/consideration for the

\$22,343.22 he transferred to his niece and nephew, verification of the modifications and their cost is needed.

A full review of the record finds that the cost of the home modifications, either those completed or those intended to be completed, has not been sufficiently verified. A contracting agreement and estimate dated [REDACTED] has been provided as well as an [REDACTED] billing statement from the construction company. A review of all three documents in conjunction with all other evidence and testimony presented at hearing finds several inconsistencies. According to the contracting agreement, the work was to be done [REDACTED]

[REDACTED] Further review of the contractor's bill finds [REDACTED]

[REDACTED] Clearly the two figures do not total the full estimated cost for [REDACTED]. Additionally, while the appellant's niece claims she purchased [REDACTED] no evidence has been provided as to the cost to her for those materials and/or verification that she made such payments. The appellant's niece also claims that she purchased the [REDACTED] second-hand for \$2,000.00. While photos have been submitted showing [REDACTED] was installed [REDACTED] no evidence has been submitted to verify the cost of [REDACTED]. As to [REDACTED] of the contractor's estimate, the contractor's bill and the niece's bank statements verify that a \$3,000.00 deposit was paid to begin work on [REDACTED]

[REDACTED] While the appellant testifies that the [REDACTED] renovation had been completed except for the [REDACTED] part, the check memo indicates that the [REDACTED] work was just beginning and no evidence was submitted to show that any prior payments were made for any [REDACTED] renovation. Also, while the appellant's Attorney and niece claim that the additional work included in [REDACTED] of the estimate still needs to be completed, according to the [REDACTED] construction bill, [REDACTED] is scheduled for [REDACTED] thereby indicating that the rest [REDACTED] was not going to be completed. In the absence of the completion of the rest of [REDACTED] the estimate for [REDACTED] cannot be considered accurate.

In summary, the evidence record establishes that a [REDACTED] have been added to the home for the benefit of the appellant and that the appellant is currently using such to [REDACTED]. The appellant has thereby received compensation for the cost of that modification. The record provides verification of a \$3,000.00 payment for [REDACTED]. The record also provides verification of an additional \$3,000.00 as payment towards work on [REDACTED]. Therefore, as these modifications are for the use and benefit of the appellant, this \$6,000.00 should not be considered an uncompensated transfer.

In conclusion, due to the discrepancies noted above, only \$6,000.00 of the \$22,343.22 the appellant gave to his niece and nephew to complete modifications to their home for his benefit has been verified as being used for his benefit. Therefore, the remaining \$16,343.22 must be considered an uncompensated transfer of an asset which incurs a penalty. Since the transfer occurred after February 8, 2006, the appellant's penalty period begins on August 1, 2014, or the date which he was in a NH and otherwise eligible if not for the transfer penalty. The length of the penalty period is calculated by dividing the amount of the transfer by the average monthly cost for private payment in a NH at the time of the appellant's Medicaid application, or \$9,113.00 per month and \$299.61 daily, rounding up. The appellant's uncompensated transfer of \$16,343.22 thereby results in a penalty period of one (1) month and twenty-five (25) days, rendering him ineligible for Medicaid payment of Long Term Care (LTC) services until September 26, 2014.

After a careful review of Medicaid Code of Administrative Rules, as well all the testimony and evidence submitted, this Appeals Officer finds that the appellant is not eligible for LTC Medicaid as of August 1, 2014 as maintained by the appellant, but is also not ineligible for LTC Medicaid until October 15, 2014 as maintained by the Agency. This Appeals Officer finds that the appellant is eligible for LTC Medicaid or Medicaid payment of Long Term Care (LTC) services effective September 26, 2015. The appellant's request for relief is thereby partially granted.

ACTION FOR THE AGENCY:

The Agency is to rescind the February 16, 2015 notice of denial for Long Term Care Medicaid and issue a new notice that accurately reflects the penalty period and LTC Medicaid start date per this Administrative Hearing Decision.

Pursuant to EOHHS Code of Administrative Rules, Section 0110.60.05, action required by this decision, if any, completed by the Agency representative must be confirmed in writing to this Appeals Officer.

A handwritten signature in black ink, appearing to read 'Debra L. DeStefano', written in a cursive style.

Debra L. DeStefano
Appeals Officer

APPENDIX

MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)(

(Pertinent excerpts)

0384 Resource Transfers

0384.05 Legal Basis

REV: April 2014

The Omnibus Budget Reconciliation Act (OBRA) of 1993 provides a penalty for institutionalized individuals who on or after 8/11/93, transfer or have transferred assets for less than fair market value.

Asset transfers, prior to February 8, 2006, are examined for potential penalty when the transfer took place within thirty six (36) months prior to or anytime after the date the individual was both institutionalized and applied for Medicaid. All asset transfers made on or after February 8, 2006 shall be subject to a look back period of sixty (60) months.

Under OBRA provisions, trusts and/or portions of trusts established on or after 8/11/93 are in some cases treated as a transfer of assets and subject to a penalty. Asset transfers involving a trust are examined for potential penalty when the transfer took place within sixty (60) months prior to or anytime after the date the individual was both institutionalized and applied for Medicaid. In the event that application of the transfer rules and the trust rules result in an individual being subject to a transfer penalty twice for actions involving the same resource, the trust rules supersede the transfer rules in determining eligibility. (See Medicaid Code of Administrative Rules (MCAR) Section 0382 for detailed information about Trusts.)

The Deficit Reduction Act of 2005 (DRA) provides a penalty for institutionalized individuals who on or after February 8, 2006, transfer or have transferred assets for less than fair market value.

All asset transfers made on or after February 8, 2006 are examined for potential penalty when the transfer took place within sixty (60) months prior to or anytime after the date the individual was both institutionalized and applied for Medical Assistance.

The penalty is a period of restricted Medicaid eligibility during which payment for Long Term Care Services is denied. Long Term Care Services include nursing facility services, Intermediate Care Facility Services for the Mentally Retarded (ICF-MR), administratively necessary days in a hospital, and home and community based waiver services.

The computation of the penalty period for transfers of assets made prior to February 8, 2006 and how the penalty is imposed for such transfers are determined as provided in Section 0384.20.

The computation of the penalty period for transfers of assets made on or after February 8, 2006 and how the penalty is imposed for such transfers are determined as provided in Section 0384.25.

The uncompensated transfer of resources which have been disregarded under the Qualified Long Term Care Insurance Partnership Program are treated as the uncompensated transfer of any other

0384.10 Individuals Ineligible for Nursing Facility Payment

REV: April 2014

Unless exempt, transfers of assets (income and resources) made for less than fair market value by an institutionalized individual (or the community spouse - if made prior to the establishment of the applicant's Medicaid /LTC eligibility) are subject to a penalty if the transfer was made:

- For transfers of assets made prior to February 8, 2006 within thirty six (36) months immediately prior to or any time after the date the individual was both institutionalized AND applied for Medicaid; or
- For transfers of assets made on or after February 8, 2006, within sixty (60) months immediately prior to or anytime after the date the individual was both institutionalized AND applied for Medicaid; or
- If the transfer involves a trust, within a sixty (60) month look back period immediately prior to or anytime after the date the individual was both institutionalized AND applied for Medicaid.
- Since transfers involving a trust have for many years already been subject to a look back period of 60 months, their treatment is unaffected by Paragraph B. above. The look-back period in Paragraph B, above, is effective for all other transfers made on or after February 8, 2006. As a result of this phase in, the look back periods, and those transfers which must be reported by applicants, are as follows:

For applications which are filed from February 8, 2011 and thereafter, the look back period is sixty (60) months immediately prior to or anytime after the date the individual was both institutionalized AND applied for Medicaid.

If the individual has multiple periods of institutionalization and/or applications, the look back period starts with the first date on which the individual was both institutionalized and applied for Medicaid.

The penalty is a period of ineligibility for payment of long term care services for an otherwise eligible individual.

For transfers of assets prior to February 8, 2006 see Section 0384.20 for the rules as to how the penalty period is calculated and how it is imposed.

For transfers of assets on or after February 8, 2006 see Section 0384.25 for the rules as to how the penalty period is calculated and how it is imposed.

0384.15 Resource Transfer Definitions

REV: April 2014

For purposes of evaluating transfers of assets, the following definitions apply:

- **Assets** means:
 - All income and resources of the individual or the individual's spouse that would be countable in the determination of Medicaid eligibility for an SSI-related individual; and
 - The home (and associated land) of an institutionalized individual.

This includes any income and resources to which the individual or his/her spouse is entitled but does not receive because of action taken by:

- The individual or his/her spouse;
 - A person, including a court or administrative body, with legal authority to act in place of the individual or his/her spouse; or
 - Any person, including any court or administrative body, acting at the direction or upon the request of the individual or his/her spouse.
- **Compensation/Consideration** means:

All real and/or personal property (money, food, shelter, services, stocks, bonds, etc.) that is received by an applicant/recipient pursuant to a binding contract in exchange for an asset either prior to, at the time of, or after the transfer.

- **Fair Market Value (FMV)** means:

The amount for which the property (real and personal) can be expected to sell on the open market in the geographic area involved and under existing economic conditions at the time of transfer.

- **Institutionalized Individual** means:

An inpatient of a nursing facility, an inpatient of a medical institution for whom payment is based on a level of care provided in a nursing facility, an inpatient of an intermediate care facility for the mentally retarded (ICF-MR), and/or a home and community based waiver recipient.

- **Sole Benefit** means:

A transfer is considered to be for the sole benefit of a spouse, blind or disabled child, or a blind or disabled individual, when the transfer is established using a written agreement that legally binds the parties and clearly expresses that the transfer is for the spouse, blind or disabled child, or blind or disabled individual only, and that no one else can benefit from the assets transferred. Without this agreement, a transfer cannot be determined to be for the sole benefit of the individual.

- **Long Term Care Services** means:

Services provided to individuals in nursing facilities, ICF-MRs, as an inpatient in a medical institution for whom payment is based on a level of care provided in a nursing facility, and under home and community based waivers and administratively necessary days.

- **Look Back Date** means:

The look back date is a date that is the appropriate number of months, as provided for in Section 0380.05, before an institutionalized individual has applied for Medicaid.

9. **Penalty Period** means:

The period of time during which payment for long term care services is denied. The number of months in a penalty period (P) is equal to the total uncompensated value (UV) of prohibited transfers made by the institutionalized individual (or spouse, if made prior to establishment of individual's Medicaid /LTC eligibility) during the thirty-six (36) or sixty (60) month period immediately prior to the date of institutionalization (or if later the date of Medicaid application) divided by the average monthly cost of a private patient in a nursing facility at the time of application. For transfers made on or after February 8, 2006, the penalty period begins from the date of transfer or the date that the individual would have otherwise been eligible, whichever is later.

$$P = UV /$$

10. **Prohibited Transfer** means:

Transfer of an asset for less than fair market value by an individual (or spouse, if made prior to establishment of individual's Medicaid /LTC eligibility) which was made within thirty-six (36) months or sixty (60) months prior to or anytime after the date the individual was both institutionalized and applied for Medicaid.

11. **Transfer** means:

The conveyance of right, title, or interest in either real or personal property from one person to another by sale, gift, or other process; or the gift or assignment of income from one person to another. Disposal of a lump sum payment before it can be counted as a resource can be an example of a transfer of income.

Transfers made by an individual include transfers made by:

- The individual;
- His/her spouse;
- Any person, including a court or administrative body, with legal authority to act on behalf of the individual or his/her spouse; or
- Any person, including a court or administrative body, acting at the direction or upon the request of the individual or his/her spouse.

12. **Uncompensated Value (UV)** means:

The equity value (fair market value less any outstanding loans, mortgages or other encumbrances) minus the value of any compensation /consideration received by the applicant/recipient in exchange for the asset.

0384.20 Penalty Period for Payment of Long Term Care Services

REV: April 2014

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Currently, the average monthly cost for private payment in a nursing facility is \$9,113 per month.

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0384.25 Partial Month Penalty

REV: April 2014

The rules in this MCAR Section, 0384.25, apply to transfers of assets which occur on or after February 8, 2006.

The penalty for an otherwise eligible institutionalized individual who transfers assets for less than fair market value is a period of ineligibility for payment of long term care services. The following provisions apply in determining the penalty period for a prohibited transfer:

- The following provisions apply in determining the penalty period for a prohibited transfer: Start Date of the penalty period:

The penalty period begins the later of:

- a. The date on which an individual is eligible for Medicaid and would otherwise be receiving institutional level of care, described in MCAR Section 0384.10, based on an approved application for such care but for the application of the penalty period; or
- b. The first day of the month during or after which the assets have been transferred for less than fair market value, and which does not occur during any other period of ineligibility based on a transfer of assets.

The provisions of (a) require that an application for Medicaid be filed.

0384.25.05 Calculation of Partial Month Penalty

REV: 03/2007

This Section, 0384.25.05, is applicable to calculations of penalty periods as of July 1, 2006.

When more than one prohibited transfer occurs during the look back period, the uncompensated values of all prohibited transfers made during the look back period are totaled.

To calculate the penalty period (P) for a prohibited transfer(s), divide the amount of the uncompensated value(s) (UV) of the transfer(s) by the average monthly cost (C) for private payment in a nursing facility. $P = UV/C$

In making these calculations, there is no "rounding down."

In making these calculations, partial month penalties are applied, if appropriate.

When calculating penalty periods, for transfers covered by this section, both the average monthly and daily rate of private nursing facility care will be utilized. The rate is set forth in section 0384.20.

There is no maximum length to the penalty period. However, no penalty is imposed for assets transferred prior to the look back date.

In order to assess a transfer penalty period, the uncompensated transfer amount is divided by the monthly rate, and the remainder is divided by the daily rate. Individuals are responsible for paying the cost of care until their penalty period expires. Medicaid begins paying for long term care expenses on the day the penalty period expires.

0384.35 Exceptions to Period of Ineligibility

REV: April 2014

A penalty period is not imposed when:

- The asset was transferred for fair market value;
- The transferred resource was the individual's home and title to the home was transferred to:
 - the individual's spouse;
 - a child of the individual who is under the age of 21, or is blind, or permanently and totally disabled (as evidenced by receipt of SSI or RSDI benefits, or as defined in MCAR Section 0352.15);
 - a sibling of the individual who has an equity interest in the home and who resided in the home for at least one year immediately prior to the institutionalization of the individual;
 - a son or daughter of the individual who:
 - was residing in the home for at least two years prior to the parent's institutionalization; and
 - can demonstrate that s/he provided care to the parent which prevented the parent from entering an institution for the two year period.
- The asset (other than a home, see above) was transferred to:
 - the spouse, or to another for the sole benefit of the spouse, or from the spouse to another for the sole benefit of the spouse;
 - the individual's child who is blind or permanently and totally disabled, or to another for the sole benefit of such child; or to a trust established for the sole benefit of such child;
 - a trust established for the sole benefit of an individual who is under the age of 65 and permanently and totally disabled (as defined in MCAR Section 0352.15);

- The individual can prove his/her intention was to receive fair market value or other valuable compensation/ consideration;
- The individual can prove the transfer was exclusively for some purpose other than to qualify for Medicaid;
- Denial of payment for long term care services would work an undue hardship;
- The asset is returned to the individual

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.