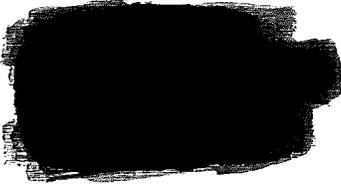


STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HUMAN SERVICES
APPEALS OFFICE
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Docket #15-777
Hearing Date: May 21, 2015

Date: June 22, 2015



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided. During the course of the proceeding, the following issue(s) and agency policy reference(s) were the matters before the hearing:

**THE DHS POLICY MANUAL: MEDICAL ASSISTANCE
SECTION:0384.15 RESOURCE TRANSFERS, SECTION:0384.25.05
CALCULATION OF PENALTY PERIOD, SECTION:0384.35
EXCEPTIONS TO PERIOD OF INEL.**

The facts of your case, the agency policy, 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: your son, agency representatives: Joyce Paterson, Cheryl Lafazia, Thomas Conlon, and the policy unit.

Present at the hearing were your son and agency representative Joyce Paterson

ISSUE: Is the appellant ineligible for Long Term Care/Medicaid (LTC/MA) coverage for a period of 6 months and 18 days due to a transfer of assets?

DHS POLICIES: Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy Manual.

DISCUSSION OF THE EVIDENCE:

The agency representative testified:

- The agency received an application for LTC/MA from the appellant on July 10, 2014. The agency notified the appellant by notice dated November 18, 2014 that the appellant was eligible for Medical Assistance effective July 1, 2014. The same notice also states that the agency determined that the approval for Medical Assistance does not include nursing home payment. The uncompensated transfer of resources causes a transfer penalty of 6 months and 18 days.
- The agency sent the appellant an agency LTC-167 notice dated November 18, 2014. The notice states that the appellant was found to be not eligible for Long Term Care Medical Assistance due to an uncompensated transfer in the amount of \$60,112.00 that was made on January 11, 2013.
- The agency determined that the \$60,112.00 is the difference between the appraised value of property, \$128,580.00, owned by the appellant minus the money, \$68,467.00, owed to the buyer of the property. The transfer penalty period would start effective July 1, 2014.
- The agency representative stated that the appellant's house was sold for less than fair market value. The house was sold on January 11, 2013. The property address was 1867 Warwick Ave. in Warwick R.I.
- The agency representative stated that the agency Long Term Care Administrator and the agency Office of Legal Counsel reviewed the transfer. The agency Office of Legal Counsel submitted a Memorandum dated September 10, 2014 that instructed the field to use \$60,112.00 as the transfer amount. The agency used that amount in determining the penalty period applied to the appellant's application.
- The agency representative stated that the applicant submitted sales information that indicated that the property sold for \$76,000.00. The agency determined the fair market value of the property to be \$128,580.00.
- The agency representative stated that the agency used the appraised value of the property from an appraisal that was submitted by the appellant.
- The appellant is not eligible for long-term care services, which means the per diem cost at the nursing facility is not covered. The agency determined that the appellant was otherwise eligible for Medical Assistance (MA) coverage effective July 1, 2014.

- The agency divided the total amount transferred by \$9,113.00, which is the current monthly cost of nursing home care in Rhode Island. The agency policy requires that the transfer penalty period be effective as of the first of the month of application.
- The applicant would become eligible for LTC payments to the nursing facility at the end of the penalty period.

The appellant's son testified:

- The appellant's son stated that the agency does not have accurate information as well as the correct conclusion. He stated that his argument is with the fair market value of the property that was used by the agency in calculating the transfer penalty.
- The appraisal value used by the agency did not consider the value of comparable properties sold at that time. He stated that his mother had attempted to sell the property prior to January 2013. She listed the property on 2 separate occasions and she was unable to sell the property.
- He stated that eventually it was determined that the property did not sell because the assessed value and market value was not accurate. He submitted copies of comparable sales from a realtor that show sales prices as low as \$60,000.00.
- He submitted the property listing from a realtor with the comment that the property needed a lot of work. He stated that there are 3 factors that determine the market value of the property. The first issue is that the exterior of the property needed major work and his mother was actually refused insurance. The interior needed extensive work due to lead paint issues.
- He stated that the location of the property is also a major factor in determining the value. A realtor has tried to sell the property for the past few years but the realtor has told him that the property needs between 15 to 20 thousand dollars worth of renovation in order to be sold.
- The location of the property is also a major factor in its value. The property is residential but it is located directly on Warwick Avenue. The property is best used as a commercial property such as an office. The current realtor is trying to list the property for commercial use. The property has not sold as is so a fair market value cannot be established.
- He stated that his mother broke her hip and needed full time care as part of her recovery. She continues to need 24/7 care. He stated that his mother is divorced from his father and he decided to provide his mother with financial help. He loaned his mother money with the understanding that eventually the property would be sold to him to reimburse him for the money loaned to his mother.
- The loan amount and the quit claim deed is all on record with the agency. The actual value of the property is what he is disputing. His mother had attempted to sell

the property before the Quit Claim deed was established. He has an appraisal of the property from 2012 that determined a fair market value of \$76,000.00.

He stated that he is trying to prevent the loss of the appellant's primary residence which she is entitled to own and maintain while she is in the nursing facility according to Medicaid rules.

Findings of fact:

1. The agency notified the appellant by notice dated November 18, 2014 that she was determined eligible for Medical Assistance beginning July 1, 2014.
2. The agency notified the appellant by a notice also dated November 18, 2014 that her application for LTC/Medicaid was denied due to an uncompensated transfer totaling \$60,112.00 made on January 11, 2013.
3. The agency determined that the appellant made an uncompensated transfer to her ex-husband in the amount of \$60,112.00. The agency determined that the appraisal value of property transferred by the appellant was \$128,580.00. The agency allowed a deduction of \$68,467.00 from the \$128,580.00 as money owed to the appellant's ex-husband. The difference is the \$60,112.00 determined as the uncompensated transfer.
4. The agency determined that the appellant was not eligible for LTC/Medicaid vendor payments to the nursing facility for 6 months and 18 days.
5. The appellant's representative submits that the transfer penalty amount attributed to the appellant is not correct. He submits that the property value used by the agency in determining the transferred amount is not the correct fair market value.
6. The representative also submits that the fair market value is \$76,000.00 based on a real estate appraisal done at the time the property was quit-claimed by the appellant.
7. This record of hearing was held open through June 22, 2015 to allow the appellant's representative to submit additional evidence.

SUMMARY:

The issue to be decided is whether the agency, in its imposition and calculation of the appellant's transfer penalty, correctly applied agency policy when it determined the appellant would be ineligible for LTC/MA benefits for 6 months and 18 days due to an uncompensated transfer of \$60,112.00.

There is no dispute between the agency and the appellant as to the month of the appellant's application and as to the month the appellant transferred property to her ex-husband. (January 2013). The agency made its determination of eligibility based on the application filed July 10, 2014.

The agency submitted copies of the Memorandum completed by the agency Office of Legal Counsel dated September 10, 2014. The Memorandum instructs the agency to impose a transfer penalty of \$60,112.00 based on the property appraised value of

\$128,580.00 minus the \$68,467.00 the appellant owed her ex-husband. The agency submitted copies of a real estate appraisal dated August 17, 2012 that was done on the property that was transferred to the appellant's ex-husband.

The agency submitted copies of a Quit-Claim Deed dated January 11, 2013 that granted the appellant's ex-husband the property located at 1867 Warwick Ave. for the sum of \$76,000.00.

The agency submitted a copy of an agreement dated September 19, 2012 between the appellant and her ex-husband indicating that the total amount of a loan from her ex-husband was \$68,467.89 which the appellant agreed to pay upon the sale of her property located at 1867 Warwick Ave.

The agency determined the transfer amount to be \$60,112.00 (\$128,580.00-\$68,467.00). The agency divided the total transferred amount by \$9113.00 to determine the penalty period of 6 months and 18 days, which is imposed as of July 1, 2014. (Per agency policy 0384.25.05).

The appellant's representative submits that the transfer made by the appellant was not correctly calculated by the agency. The representative submits that the fair market value of the property owned by the appellant was \$76,000.00 at the time it was Quit-Claimed to her ex-husband. The representative testified that value of the property was due to its poor condition, the location of the property, and the fact that the appellant was unable to sell the property after listing it for sale on separate times prior to the Quit-Claim agreement.

The representative submitted a real estate appraisal of the property to this record while the record was held open indicating an appraised value of \$76,000.00 as of August 17, 2012.

Summary:

The appellant's representative submitted additional information to this record while the record was held open. The representative submitted an appraisal of the appellant's property dated August 17, 2012. The appraisal emphasized a sales comparison approach in determining the value of the property. The appraisal lists 3 comparable properties within 1 mile of the appellant's property that sold within 1 year of the appellant's property for \$77,725.00, \$75,110.00, and \$85,260.00.

The appraisal states that the property is a 97 year old 6 room 3 bed 1 bath cape style dwelling with a 1 car garage in fair overall condition. The property interior is dated but in livable condition. The property has an external influence due to location on a busy road and proximity to commercial properties.

Agency policy 0384.15 regarding fair market value states:

3. FAIR MARKET VALUE (FMV)

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.''

In this matter the Uniform Residential Appraisal Report dated August 17, 2012 and completed by Stillson Appraisal of 1403 Warwick Ave., Warwick R.I. determined that the "Indicated Value by Sales Comparison Approach" was \$76,000.00 at that time.

The appraisal also indicates the value using the "Cost Approach" to be \$128,580. The appraisal states that, "The cost approach to value estimate was developed using data from local contractors, developers and suppliers. This approach represents the subject's construction costs as new, depreciated using estimated effective age." The "Cost Approach to Value" is not required by Fannie Mae.

The agency chose to use the cost approach value of \$128,580.00 in calculating the transfer amount and resulting penalty period. The agency did not submit to this record any explanation as to why the cost approach to value amount was used instead of the sales comparison approach to value.

Agency policy defines Fair Market Value as, "the amount for which the property can be expected to sell on the open market...". In this matter the sales approach is specifically supported by sales of comparable properties in the same neighborhood. The agency policy does not address a "cost approach" when determining the fair market value of real estate.

Conclusion:

After a careful review of the agency's policies as well as the evidence and testimony given, the Hearing Officer finds that the appellant's eligibility was denied by the agency based on the value of uncompensated transfers made by the appellant prior to her application for LTC/Medicaid. The result of this hearing is the determination that the agency decision to impose a penalty period due to the uncompensated transfer made by the appellant was correct. However the appellant's request to reduce the penalty period is granted. The exception being the reduction in the value of the appellant's property from \$128,580.00 to \$76,000.00 effective January 2013.

ACTION FOR THE AGENCY

The agency is to recalculate the penalty period using \$76,000.00 as the value of the appellant's property.

APPEAL RIGHTS (see last page)



Michael Gorman
Hearing Officer

APPENDIX

RESOURCE TRANSFER DEFINITIONS

0384.15

REV: 07/2006

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

1. ASSETS

All income and resources of the individual or the individual's spouse that would be countable in the determination of Medical Assistance 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

RESOURCE TRANSFER DEFINITIONS

0384.15

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.

2. COMPENSATION/CONSIDERATION

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

RESOURCE TRANSFER DEFINITIONS

0384.15

to, at the time of, or after the transfer.

3. FAIR MARKET VALUE (FMV)

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.

4. INSTITUTIONALIZED INDIVIDUAL

10. PROHIBITED TRANSFER

Transfer of an asset for less than fair market value by an individual (or spouse if made prior to establishment of individual's MA/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 MA.

RESOURCE TRANSFER DEFINITIONS

0384.15

11. TRANSFER

The conveyance of right, title, or interest in either real or personal property from one person to another by sale, gift, or other process.

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

Calculation of Partial Month Penalty

0384.25.05

1

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."

Calculation of Partial Month Penalty

0384.25.05

2 OF

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

When calculating penalty periods, for transfer 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

Calculation of Partial Month Penalty

0384.25.05

expires.

EXCEPTIONS TO PERIOD OF INELIG
REV: 01/2009

0384.35

A penalty period is not imposed when:

- o The asset was transferred for fair market value;

- o The individual can prove his/her intention was to receive fair market value or other valuable compensation/consideration;

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.