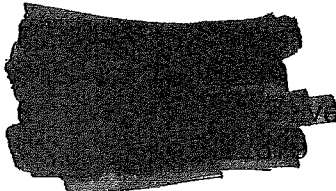


STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF HUMAN SERVICES  
APPEALS OFFICE  
600 New London Avenue  
Cranston, Rhode Island 02920  
(401) 462-2132/Fax# (401) 462-0458  
TDD# (401) 462-3363

Docket #13-2020  
Hearing Date: May 15, 2014

Date: July 18, 2014



#### ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided against you. 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: 0338.30 RESOURCE REDUCTION, 0354.05 RESOURCE  
LIMITS, 0384.10 IND. INELIGIBLE FOR NF PAYMENT, 0384.15  
RESOURCE TRANSFERS, SECTION: 0384.25 PENALTY PERIOD, SECTION  
0384.25.05 CALC. OF PENALTY PERIOD, SECTION: 0384.35 EXCEPTIONS  
TO PERIOD OF INELIGIBILITY.**

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 daughter, agency representatives: Joyce Patterson, Cheryl Lafazia, Thomas Conlon, and the policy unit.

Present at the hearing were your daughter (and Power of Attorney POA), and agency representatives Joyce Patterson and Cheryl Lafazia.

**ISSUE:** Is the appellant ineligible for Long Term Care/Medicaid (LTC/MA) coverage for a period of 5 month and 10 days due to an uncompensated 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 November 7, 2013. The agency sent a notice of denial for RI Medical Assistance dated December 3, 2013. The notice states that the appellant is not eligible for Medical Assistance because her resources in the amount of \$9835.14 are more than the Medicaid standard resource limit of \$4000.00. The notice states that the appellant is \$5835.14 in excess of the standard.
- The notice states that the appellant may be able to establish eligibility on the basis of Resource Reduction if there are allowable medical bills or other allowable expenses that equal or exceed the amount of the excess resources and the excess resources are reduced to the appropriate resource limit by actually paying the allowable expenses and verification thereof is submitted to the agency within 30 days.
- The agency representative stated that several days after the December 3, 2013 notice was sent the appellant's daughter came to the agency office to verify the appellant's bank balances for January 2014 so that the case could be reconsidered for January 2014 eligibility. She stated that the agency accepted a new application for January 1, 2014 as the appellant's assets exceeded the Medicaid standard for December 2013.
- She stated that on April 22, 2014 the case was approved for Medicaid January 1, 2014 eligibility but LTC eligibility was not approved due to resource transfers. A transfer of resources penalty was imposed for 5 months and 10 days.
- The agency representative stated that an agency LTC 167 form was sent to the appellant on April 21, 2014 with the penalty period information. The agency reviewed bank statements from January 2009 through January 2014 and determined that uncompensated resource transfers occurred during January 2009 through March 2009 in the amount of \$45,940.25.
- The agency determined that the appellant was otherwise eligible for Medical Assistance (MA) coverage effective January 1, 2014.
- The agency divided the total amount transferred by \$8643.00, 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 and the month the applicant is otherwise eligible for Medicaid.

**The appellant's daughter (POA) testified:**

The appellant's daughter (POA) stated that as she indicated in her complaint that the appellant did not need Medical Assistance until January 1, 2014. Because she filed the application prior to that date the appellant's bank statement showed that she was over the resource limit in November 2013. She stated that the agency representative told her that she must file for a hearing within 30 days of the December 3, 2013 notice. She stated that the December 3, 2013 notice is the only notice that she received from the agency about excess resources.

She stated that when the transfers were made during January 2009 through April 2009 it was her understanding that Medicaid policy only required a transfer look back period of 3 years. She subsequently was informed by the agency representative that the look back period changed to 5 years but she was not told exactly when that policy changed.

She stated that the transferred resource was used by the appellant's granddaughter to purchase a home. She stated that she can document that her mother has spent in excess of \$900,000.00 to pay for her medical care since she became the POA in December 2004.

She stated that she re-applied for LTC/MA during January 2014 as her mother's assets were well below the \$4000.00 limit at that time.

**Findings of fact:**

1. The agency notified the appellant by notice dated December 3, 2013 that she was not eligible for Long Term Care Medical Assistance due to excess countable resources in the amount of \$9835.14 as of November 1, 2013. The appellant was \$5835.14 in excess of the Medicaid resource limit.
2. The agency notified the appellant by notice dated April 21, 2014 that she was not eligible for LTC/MA because of uncompensated transfers totaling \$45,940.25 made from January 2009 through March 2009.
2. The agency determined that the appellant transferred \$45,940.25 to her granddaughter resulting in a penalty period being imposed due to the uncompensated nature of the transfers.
3. The agency determined the appellant was not eligible for LTC/Medicaid vendor payments for 5 months and 10 days based on the value of the uncompensated transfer.
4. The agency notified the appellant by notice dated April 22, 2014 that she was eligible for Medicaid coverage effective January 1, 2014. The notice states that the

approval was for Medicaid only and did not include approval for nursing home payment due to the uncompensated transfer of resources.

5. The appellant's representative submits that she was not aware of the 5 year look back transfer period required by Medicaid policy. It was her understanding that the look back period was 3 years at the time the transfer was made to the appellant's granddaughter.
6. This record of hearing was held open through June 16, 2014 to allow both parties to submit additional evidence.

### **Conclusion:**

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 5 months and 10 days due to an uncompensated transfer of \$45,940.25.

There is no dispute between the agency and the appellant as to the month of the appellant's application and as to the months the appellant transferred monies from her account. The agency made its determination of eligibility based on the application filed January 2014.

### **Agency Summary:**

The agency determined that the appellant transferred \$45,940.25 to her granddaughter during the months of January 2009 through March 2009. The transfers were made to assist the granddaughter in the purchase of a home. The agency representatives submitted copies of the appellant's bank statements from the period during which the uncompensated transfers occurred. The agency representatives testified that an agency LTC-167 form dated April 21, 2014 was sent to the appellant's representative to notify her of the uncompensated transfer amount and the length of the penalty for LTC payments to the nursing facility.

The agency determined that the \$45,940.25 was considered to be an uncompensated transfer resulting in a period of ineligibility for LTC/MA of 5 month and 10 days. The agency divided the total transferred amount by \$8643.00 to determine the penalty period, which is imposed as of January 1, 2014. (Per agency policy 0384.25.05).

### **Appellant's Summary:**

The appellant's representative submits that the \$45,940.25 transfer made by the appellant was to provide her daughter with money to assist her in the purchase of a home. The representative submits that the appellant has paid medical bills totaling more than \$900,000.00 since 2004. The appellant's representative testified that she was not aware that Medicaid policy requires a 5 year look back period for transfer of resources.

### **Summary:**

The appellant's representative submits that the appellant has incurred and paid for more than \$900,000.00 in medical expenses since 2004 when she became her POA. The representative also testified that she was not aware of the Medicaid policy change regarding resource transfers that changed the transfer look back period from 36 months to 60 months.

The agency has documented uncompensated transfer of resources of \$45,940.25 made by the appellant during 2009 that require the agency to impose a period of ineligibility for LTC nursing facility payment totaling 5 months and 10 days.

Review of agency policy (0384.35) pertinent to this decision and specific to exceptions to the period of ineligibility for transfers determines that a penalty period may be reduced or excluded as follows in part, "A penalty period is not imposed when":

- The asset was transferred for fair market value;
- 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 Medical Assistance
- The transferred resource was the individual's home and title to the home was transferred to: a child of the individual who is under the age of 21, or is blind, or permanently and totally disabled
- A son or daughter of the individual who: was residing in the home for at least 2 years prior to the parent's institutionalization; and,
- Can demonstrate that s/he provided care, which prevented the parent from entering an institution for the 2-year period.

In this matter the appellant's representative did not testify to and/or submit evidence that meet the above transfer exception policy. The transfer exception policy does not apply to the transfer made by the appellant.

Review of agency policy (0384.100 regarding Individuals Ineligible for Nursing Facility Payment) determines the following:

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 MA/LTC eligibility) are subject to a penalty if the transfer was made:

- A. For transfers of assets made prior to February 8, 2006 within thirty six (36) months immediately prior to or anytime after the date the individual was both institutionalized AND applied for MA; OR,
- B. 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 MA.

In this matter there is no dispute that the uncompensated transfer occurred during January 2009 through March 2009. Therefore the 60 month policy cited above in "B" applies to the uncompensated transfer made in this matter.

Review of agency policy (0384.25 & 0384.25.05) determines that the agency correctly calculated the penalty period using the formula required by Medicaid policy. The agency divided the uncompensated value of the transfer by the average monthly cost for private payment in a nursing facility.

Based on the evidence and testimony provided and review of pertinent policy it is determined that the appellant is ineligible for LTC payments to the nursing facility for 5 months and 10 days due to an uncompensated transfer in the amount of \$45,940.25.

**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 the uncompensated transfer made by the appellant prior to her application for LTC/Medicaid. The result is that the agency decision to impose a penalty period due to the uncompensated transfer made by the appellant was correct.

The request of the appellant's representative to reduce the penalty period is denied.

**APPEAL RIGHTS (see last page)**



Michael Gorman  
Hearing Officer

**APPENDIX**

RESOURCE REDUCTION  
REV: 07/1994

0338.30

If an applicant or recipient is found to be ineligible due to excess countable resources, s/he is notified that eligibility does not exist via an Eligibility Notice. Included with the Notice is an attachment describing the possibility of resource reduction (form MA-6). The applicant/recipient may establish eligibility if the excess resource amount is expended on