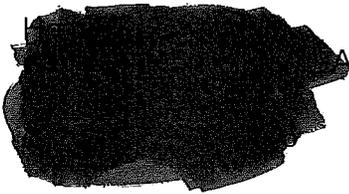


STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF HUMAN SERVICES  
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Docket #14-485  
Hearing Date: May 15, 2014

Date: July 22, 2014



**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: 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 POA, agency representatives: Cheryl Lafazia, Thomas Conlon, and the policy unit.

Present at the hearing were your POA, and agency representative Cheryl Lafazia.

**ISSUE:** Is the appellant ineligible for Long Term Care/Medicaid (LTC/MA) coverage for a period of 1 month and 18 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 June 12, 2013. The agency sent a notice of denial for RI Medical Assistance dated November 6, 2013. The notice states that the appellant is not eligible for Medical Assistance because her resources in the amount of \$14571.36 are more than the Medicaid standard resource limit of \$4000.00. The notice states that the appellant is \$10571.36 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 agency processed a new application for January 1, 2014 as the appellant's assets exceeded the Medicaid standard for December 2013.

The agency representative stated that on January 29, 2014 the case was approved by notice for Medicaid effective January 1, 2014 but LTC payment eligibility was not approved due to resource transfers. A transfer of resources penalty was imposed for 1 month and 18 days.

The agency representative stated that an agency LTC 167 form was sent to the appellant on January 28, 2014 with the penalty period information. The agency reviewed bank statements from the months of July 2013 through November 2013 and determined that uncompensated resource transfers occurred during those months totaling \$14000.00.

The agency representative stated that review of the expenses from the appellant included withdrawals at various dates that were indicated to be for moving expenses but the agency did not receive receipts or other documentation to verify the expenses. There were cash withdrawals from the appellant's account that were not noted what they were used toward.

She stated that the agency reviewed cancelled checks that were made out to the POA without any documentation of what the money was used for. The agency needs verification of what the checks were used for.

- 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 POA testified:**

- She stated that when she applied for Medical Assistance for the appellant back in June 2013 she was told at that time to re-apply before the appellant's resources ran out. She stated that the subsequent months from June 2013 to December 2013 the appellant's money was used to move the appellant out of her home.
- She stated that she had 2 aunts that lived together in a triple decker in Massachusetts with the appellant. She stated that she took over the appellant's care and planning after the other aunts left the home.
- She stated that money was purposely left in her aunt's account to be used for cleaning out her aunt's house as there was 30 years worth of stuff to be cleaned out.
- She stated that when she started to move the appellant out of her home she realized it was not a job she could do by herself. She had to pay for dumpsters; she paid for storage containers to be loaded and moved to her house which were there for about 3 months. She is waiting for a total bill from the storage company as well as a bill from the dumpster company.
- She stated that she is a poor record keeper but she will get the records. She stated that she hired and paid her son and his friends to help her move the appellant from her house. She stated that she also took unpaid time out of work to move the appellant from her house.
- She stated that the nursing home has contacted her about money owed by the appellant from last June through December.

**Findings of fact:**

1. The agency notified the appellant by notice dated November 6, 2013 that she was not eligible for Long Term Care Medical Assistance due to excess countable resources in the amount of \$14571.36 as of June 1, 2013. The appellant was \$10,571.36 in excess of the Medicaid resource limit.

2. The agency notified the appellant by notice dated January 28, 2014 that she was not eligible for LTC/MA because of uncompensated transfers totaling \$14,000.00 made from July 2013 through November 2013.
3. The agency determined that the appellant transferred \$14,000.00 to her POA 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 1 month and 18 days based on the value of the uncompensated transfer.
4. The agency notified the appellant by notice dated January 29, 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 used money from the appellant's account to pay for moving expenses, storage expenses, reimbursement for lost wages, and to pay individuals for labor to move the contents of the appellant's home.
6. This record of hearing was held open through June 16, 2014 to allow the POA to submit documentation of the expenses incurred by the appellant related to her moving from her home during June 2013 through December 2013.

### **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 1 month and 18 days due to an uncompensated transfer of \$14000.00.

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

### **Agency Summary:**

The agency determined that the appellant failed to verify that withdrawals from her bank account made from July 2013 through November 2013 totaling \$14,000.00 were to compensate her POA for expenses incurred during that period. The agency representative 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 January 28, 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 \$14000.00 was considered to be an uncompensated transfer resulting in a period of ineligibility for LTC/MA of 1 month and 18 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 \$14000.00 in total transfers made by the appellant was to pay for moving expenses that the POA incurred on behalf of the appellant. The appellant moved and her triple decker home needed to be cleaned out.

The appellant's representative submits that the appellant had incurred and paid for more than \$14000.00 in moving expenses as well as the cost to reimburse the POA for 2 weeks of unpaid employment while she assisted the appellant in her move. The representative also testified that she will submit documentation of the associated expenses incurred from the appellant's move.

The appellant's representative submitted a letter to the hearing record with an explanation of the costs incurred by the appellant during the period reviewed by the agency. The letter states that during a 2 week period in the summer of 2013 the POA paid 5 people cash for cleaning out her 3 aunt's triple decker house in North Attleboro, MA. The letter states that the POA knew that it was going to cost a significant amount of money to get the house emptied of 3 elderly women's things after years of living there. The letter indicates that the POA paid the 5 individuals a total of \$6000.00 for moving assistance, and paid herself \$3360.00 for her unpaid time out of work. The letter documents that the appellant incurred costs of \$1881.81 for dumpster rental, property storage and relocation. The POA enclosed receipts for container storage and dumpster rental.

### **Summary:**

The agency has documented uncompensated transfer of resources of \$14000.00 made by the appellant during 2013 that require the agency to impose a period of ineligibility for LTC nursing facility payment totaling 1 month and 18 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 has testified and submitted documentation that she contends represent proof that the appellant received fair market for

the transferred assets. The POA submits that a total of \$9360.00 in expenses was incurred by the appellant related to disposing, cleaning and moving her household belongings.

In this matter the agency determined that uncompensated transfers occurred during July 2013 through November 2013. The agency submits that the appellant's representative failed to provide any documentation about the \$14,000.00 withdrawn from the appellant's account during the period under review.

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 has provided sufficient documentation to reduce the penalty amount. The testimony of the POA and subsequent letter and documentation indicates that she paid 5 individuals to move the belongings of her 3 aunts from a triple decker home. The POA submits that these individuals were paid a total of \$6000.00 for the work.

Of the \$6000.00 one-third i.e. \$2000.00 is allowed as a fair market value expense for the appellant's move only. The \$3360.00 paid to the POA for 2 weeks lost wages while she moved the appellant's household is an allowed expense as well as the documented cost to vendors of \$1881.00.

The POA has submitted reasonable documentation and credible testimony to allow the uncompensated transfer of \$14000.00 to be reduced by \$7241.00. The appellant's request for relief is granted.

### **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 at that time.

However based on the subsequent evidence submitted by the appellant's POA the uncompensated transfer amount is reduced by \$7241. The request of the appellant's representative to reduce the penalty period is granted.

### **ACTION FOR THE AGENCY:**

The result of this appeal is that the agency is to recalculate the penalty period of ineligibility for LTC payments due to uncompensated transfers in the amount of \$6759.00.

**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 allowable medical, legal, or guardianship/conservatorship expenses.

Eligibility may be established as of the date the allowable expense equals or exceeds the excess resource. (However the date of eligibility achieved via resource reduction can never be earlier than the first day of the month of application). To reduce resources under this provision, the applicant must verify the asset reduction within 30 calendar days of the date of the notification.

RESOURCE REDUCTION

0338.30

An applicant whose countable resources exceed the basic resource limitation may establish eligibility on the basis of resources if:

- o S/he incurs (or has incurred) outstanding allowable medical bills or other allowable expenses that equal or exceed his/her excess resources; and,
- o S/he reduces the excess resources to the appropriate resource limit by actually paying the allowable expenses or fees, and submitting verification thereof within thirty days of the date of the rejection or closing notice. Both the expenditure of the resource and submission of verification of the expenditure must occur within the thirty day time period.

REDUCTION

0338.30

Medical Assistance is not responsible for payment of that portion of the medical bills equal to the amount of the excess