

[REDACTED]
APPELLANT

v.

* BEFORE SUSAN SINROD,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: MDH-[REDACTED]-10A-18-26886

* * * * *

DECISION

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STATEMENT OF THE CASE

On April 13, 2018, [REDACTED] Power of Attorney and daughter of [REDACTED] [REDACTED] (Appellant), filed an application for Long Term Care Medical Assistance (LTC-MA) on behalf of the Appellant. On July 19, 2018, the [REDACTED] (Local Department) informed the Appellant that it imposed a penalty of three months and twenty-nine days (from May 1, 2018 through August 29, 2018) during which the Appellant would be ineligible for LTC-MA benefits to cover the cost of her care at [REDACTED] [REDACTED] a nursing facility. The Local Department imposed the penalty period because of the sale of the Appellant's home in September 2014 for less than fair market value. On October 24, 2018, Ms. [REDACTED] filed an appeal on the Appellant's behalf.

I conducted a hearing on October 15, 2018, at the Office of Administrative Hearings-

[REDACTED] Street, [REDACTED] Maryland. Code of Maryland Regulations (COMAR)

10.01.04. [REDACTED] Family Investment Caseworker, represented the Local Department.

[REDACTED] the Appellant's daughter and Power of Attorney, represented the Appellant, who was not present.

The Administrative Procedure Act, the procedures for Fair Hearing Appeals under the Maryland State Medical Assistance Program, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 10.01.04 and 28.02.01.

ISSUE

Did the Local Department properly impose a penalty against the Appellant's LTC-MA benefits for three months and twenty-nine days, due to the disposal of her home for less than fair market value?

SUMMARY OF THE EVIDENCE

Exhibits

The Local Department submitted its Summary for Appeal Hearing packet, which was admitted into evidence as LD Ex. #1 with the following page numbered attachments:

- 1 Summary for Appeal Hearing, undated
- 2 Notice of Hearing, dated September 24, 2018
- 3 Request for Hearing, received by the Local Department on September 26, 2018
- 4-5 Excerpt from Maryland Medical Assistance Manual (MMAM) Section 800.7, revised July 2012
- 6-14 Excerpt from the MMAM, Section 800.17, revised July 2012
- 15-32 Long-Term Care/Waiver Medical Assistance Application, received by the Local Department on April 13, 2018
- 33 Long Term Care Activity Report, received by the Local Department on April 13, 2018
- 34-35 Request for Information to Verify Eligibility, dated April 20, 2018

- 36 Real Property Data Search for [REDACTED] Street, [REDACTED] Maryland
37 [REDACTED] County Real Estate Tax Assessment for 2014
38-41 Deed, dated September 10, 2014
42-45 Settlement Statement, dated September 10, 2014
46-49 Handwritten Ledger of expenses, undated
50 [REDACTED] County Real Estate Tax Invoice, for the period of July 1, 2014 through
June 30, 2015
51 State Department of Assessments and Taxation Assessment Notice, for the tax
year beginning July 1, 2013
52-53 Statement of [REDACTED] received by the Local Department on June 21, 2018
54-55 Transfer/Disposal of Assets Worksheet, undated
56-57 Notice of Non-Coverage of Nursing Facility Services Due To Disposal of Assets
for Less than Fair Market Value, dated July 19, 2018
58-59 Notice of Eligibility, dated July 19, 2018
60-61 Notice of Ineligibility Due To Excess Resources or Disposal of Resources, dated
July 19, 2018
62-73 Case Narrative, from April 16, 2018 through July 20, 2018

The Appellant submitted the following exhibits, which were admitted into evidence:

App. Ex. #1- Power of Attorney, dated July 9, 2013

App. Ex. #2- Maryland Advance Directive, dated August 15, 2011

Testimony

[REDACTED] Family Investment Caseworker, read the Local Department's Summary
and testified.

[REDACTED] the Appellant's daughter and Power of Attorney, testified on behalf of
the Appellant.

FINDINGS OF FACT

After considering the evidence presented, I find the following facts by a preponderance of the evidence:

1. The Appellant applied for LTC-MA on April 13, 2018.
2. The Appellant's home was located at [REDACTED] Street, [REDACTED] Maryland (Property).
3. In February 2014, the Appellant went to live with her daughter, Ms. [REDACTED] after she fractured her wrist. It was her intent to return to live at the Property.
4. In March 2014, the Appellant fell and broke some ribs. She was also still suffering from her broken wrist and had some other health problems. She went to rehabilitate at [REDACTED] for one month.
5. In April 2014, the Appellant's family made the decision that the Appellant would live with Ms. [REDACTED] permanently.
6. At that time, the Appellant needed a hearing aid that cost \$3,600.00 and glasses. The Property and her furniture were in disrepair. She needed a new bed. The heating and air conditioning on the second floor of the Property was not working. The Property needed painting, new floors, cabinets, countertops, windows, plumbing, and electrical work. The porch needed to be fixed. She had been behind in paying her bills because she was developing dementia and had become forgetful.
7. Neither the Appellant nor Ms. [REDACTED] had the finances to repair the Property.
8. Once the Appellant moved in permanently with Ms. [REDACTED] Ms. [REDACTED] had to install a pellet stove in her home to keep the Appellant warm. It cost \$6,000.00 and Ms. [REDACTED] charged it on her credit card.

9. Also during that time, after the Appellant moved in with Ms. [REDACTED] the Appellant's homeowner's insurance threatened to cancel her policy because the Appellant's home was unoccupied.

10. The Appellant's family ultimately convinced the Appellant to sell the Property. A friend (Mr. [REDACTED]) was interested in buying the home "as-is" and fixing it up.

11. The Appellant sold the Property to Mr. [REDACTED] on September 10, 2014 for \$35,000.00.

12. At the time of the sale of the Property, the Appellant's family intended for the Appellant to live with Ms. [REDACTED] until she passed away. However, on [REDACTED] 2018, the Appellant had a stroke. On [REDACTED] 2018, the Appellant entered [REDACTED] [REDACTED] (Nursing Home), where she is currently a resident.

DISCUSSION

The Appellant applied for LTC-MA to cover her cost of care at the Nursing Home. Pursuant to the MMAM,¹ the Appellant is considered to be "institutionalized" because she resides at a long-term care facility. The MMAM states:

- A person 21 years or older is considered institutionalized when he/she:
- Resides in a licensed and certified Long-Term Care facility (LTCF);
 - Has resided in an LTCF for a continuous period of 30 consecutive days or, if less than 30 consecutive days, is likely to remain there for 30 consecutive days; and
 - Has a medical need for Long-Term Care (LTC) as certified by the Utilization Control Agent on the [Department's form] 257.

MMAM § 1000.1(a), revised April 2014.

¹ The MMAM is a settled, pre-existing policy officially promulgated by the Maryland Department of Health (Department) and, consequently, I am bound by it "to the same extent as the agency is or would have been bound if it were hearing the case." Md. Code Ann., State Gov't § 10-214(b) (2014). The MMAM is available online at <<http://mmcp.dhmh.maryland.gov/SitePages/Medical%20Assistance%20Eligibility%20Updates.aspx>>.

An institutionalized person must meet certain requirements, including financial and non-financial criteria, to establish eligibility for LTC-MA. COMAR 10.09.10.06; COMAR 10.09.24.08; *see also* MMAM § 1000.1, revised April 2014.

Eligibility for LTC-MA is determined in part on the basis of the countable resources of the members of the assistance unit. COMAR 10.09.24.10B(1). “Resources” means “accumulated personal wealth over which a person has the authority or power to liquidate his interest, including cash savings, savings accounts, certificates of deposit, money market certificates, checking accounts, stocks, bonds, cash value of life insurance, burial plots, prepaid burial plans, real property, personal property, mortgages, and mutual funds.” COMAR 10.09.24.02B(53).

Generally, if an applicant for LTC-MA has disposed of resources or assets for less than fair market value within the sixty months preceding his or her application for benefits (the look-back period), the Local Department is required to impose a penalty period during which the applicant is ineligible to receive LTC-MA. COMAR 10.09.24.08-1B(1) and (2)(a)(ii); MMAM § 800.17(f), revised July 2012.

“Disposal” means a transfer or divestiture of an ownership interest in the assets of an applicant. MMAM, § 800.17(a), revised July 2012. “Uncompensated value” means the difference between the fair market value of an asset and the amount of compensation received by the applicant for the asset. MMAM, § 800.17(a), revised July 2012. A disposal of assets includes the sale of a home or other real property. MMAM, § 800.17(b), revised July 2012.

COMAR 10.09.24.08-1B(1) sets forth that “...a penalty period shall be established during which an individual is determined ineligible for nursing facility services... if the individual...disposes of an asset for less than fair market value” during the look-back period. “The number of months in the penalty period are equal to the total, cumulative, uncompensated

value of all assets transferred, divided by the average monthly cost, to a private patient at the time of application for [MA], of nursing facility services in the State.” COMAR 10.09.24.08-1B(5). For a transfer on or after February 6, 2006, the penalty period begins with the later of:

(i) The first day of the month in which the individual is eligible for Medicaid and would be receiving Medicaid nursing facility services but for the application of this penalty; or

(ii) The month during or after which assets have been transferred for less than fair market value.

COMAR 10.09.24.08-1B(3).

The MMAM specifically sets forth there is a rebuttable presumption that transfers made during the look-back period for less than fair market value were made to qualify for MA benefits:

800.23 Presumption of Reason for Disposal

It is presumed that any disposal for less than FMV² was made to establish or continue Medicaid eligibility or to avoid Medicaid’s liens or recoveries provisions, unless the A/R³ successfully rebuts this presumption. The A/R or representative has the right to rebuttal by furnishing convincing documentary evidence to the eligibility CM⁴ that the disposal was exclusively for a purpose other than establishing or continuing Medicaid eligibility or avoiding Medicaid’s liens or recoveries provisions. The burden of proof rests with the A/R. If the A/R or representative wishes to rebut the presumption, the eligibility CM must evaluate the evidence presented and determine the intent of the disposal. The evidence must include the following information:

- The A/R’s age and his/her health status at the time of the disposal;
- The A/R’s relationship, if any, to the entity receiving the asset;
- The A/R’s purpose for disposing of the asset;
- The A/R’s reasons for accepting less than FMV; and
- The A/R’s means or plans for meeting his/her medical needs and necessities of life (food, clothing, shelter) after disposing of the asset.

MMAM § 800.23, revised July 2012; *see also* COMAR 10.09.08-1B(9)(f).

² Fair Market Value.

³ Applicant/Recipient.

⁴ Case Manager.

MMAM section 800.23 was modified by Manual Release (MR) 159, issued April 30, 2013, effective March 1, 2013, which added further examples of expenditures that may have been made for non-MA eligibility purposes. The list of examples is “intended to be illustrative and does not limit the types of transactions that may be done for a purpose other than to establish Medicaid eligibility.” MR 159, p. 2, issued April 30, 2013.

██████████ Family Investment Caseworker, testified and presented the Local Department’s exhibits. She said that she spoke to Ms. ██████████ who told her that they had to sell the Property “as-is” rather than making the necessary repairs to sell the Property at fair market value. Ms. ██████████ argued that the Appellant’s family should have made a bona fide effort to sell the Property at fair market value. The Local Department’s evidence established that as of July 1, 2018, the tax assessed value of the Property was \$83,200. LD Ex. #1, p. 36. In 2014, the ██████████ County tax assessed value was \$71,300.00. LD Ex. #1, p. 37. The Appellant sold the Property via private sale for \$35,000.00 on September 10, 2014. LD Ex. #1, p. 38.

Ms. ██████████ explained the circumstances surrounding the sale of the Appellant’s home. The Appellant first came to live with Ms. ██████████ after she broke her wrist in February 2014. The intent at that time was for her to return to the Property; however, she fell again and broke some ribs in March 2014. She went for a short period of rehabilitation to the ██████████ for one month, and then the Appellant’s family decided that the Appellant would live with Ms. ██████████ permanently. Her family wanted her to sell the Property because the Appellant was no longer going to live there; however, it took them some time to convince her to do so. According to Ms. ██████████ the Property was in extreme disrepair, and the Appellant needed glasses and a hearing aid. The Appellant had only a few thousand dollars in the bank at the time and did not have enough money to complete the voluminous repairs necessary to bring the Property to market value. Ms. ██████████ purchased the glasses and hearing aid that the Appellant needed, and

upon the sale of the house, the Appellant reimbursed Ms. [REDACTED] for those items. Ms. [REDACTED] also purchased a pellet stove that cost \$6,000.00 to keep the Appellant warm in Ms. [REDACTED]'s home. According to Ms. [REDACTED] once they convinced the Appellant to sell the Property, they did not have to list it, because Mr. [REDACTED] wanted to purchase the Property "as-is" and fix it up himself. Ms. [REDACTED] said they were happy to get the money that Mr. [REDACTED] offered, considering the state of disrepair of the Property. Ms. [REDACTED] explained that it was the intent that the Appellant live with Ms. [REDACTED] for the rest of her life; there was never any thought of the Appellant having to be in a long term care facility. However, on [REDACTED] 2018, she had a stroke, and ended up in the Nursing Home. According to Ms. [REDACTED] the Appellant is not currently aware that she even resides in the Nursing Home.

I found Ms. [REDACTED] to be extremely credible. Her testimony established that as of April 2014, the Appellant had some falls that rendered her unable to live by herself, so she began permanent residence with Ms. [REDACTED]. The Appellant no longer needed her home, and it was in a state of significant disrepair. The Appellant did not have enough money to make the voluminous repairs necessary to bring the Property closer to fair market value. There was no intent for the Appellant to ever reside in a nursing home or other facility. However, four years after she sold her home, the Appellant had a stroke, and it became necessary for her move to the Nursing Home. The evidence is abundantly clear that the Appellant sold her home at less than fair market value because it was in a horrible state of disrepair and the Appellant could not afford to make the necessary repairs. She no longer needed the Property because her family had made the decision that she would live with Ms. [REDACTED] for the rest of her life. The Appellant's family did not envision the Appellant ever living in a nursing facility at the time they sold the Property. I conclude that the Appellant established that she disposed of the Property for less than fair market value exclusively for reasons other than to establish eligibility for LTC-MA. Therefore, the

Appellant has rebutted the presumption that the Property was sold to establish eligibility for LTC-MA, and the imposition of the three month, twenty-nine day penalty was improper and must be reversed.

CONCLUSION OF LAW

I conclude that the Local Department's determination to impose a penalty of three month, twenty-nine days upon the Appellant's LTC-MA benefits for the disposal of assets for less than fair market value is reversed. The Appellant has established that she sold the Property for less than fair market value exclusively for purposes other than to establish eligibility for LTC-MA. COMAR 10.09.24.08-1(B)(9)(f); MMAM § 800.23, revised July 2012; MR-159, effective April 30, 2013.

ORDER

I hereby **ORDER** that the [REDACTED] decision to impose a three month, twenty-nine day penalty upon the Appellant's LTC-MA benefits for the disposal of resources for less than fair market value is **REVERSED**.

November 19, 2018
Date Decision Mailed

Signature Appears on Original

[REDACTED]
Susan A. Sinrod
Administrative Law Judge

SAS/cj
#176855

REVIEW RIGHTS

A party aggrieved by this final remand decision may file a written petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county where any party resides or has a principal place of business. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2018). The original petition must be filed in the circuit court within thirty (30) days of the date of this decision, with a copy to David Lapp, Office of the Attorney General, Suite 302, 300 W. Preston St., Baltimore, MD 21201. Md. Rules 7-201 through 7-210. The petition for judicial review should identify the Maryland Department of Health, which administers the Medicaid program, as the agency that made the decision for which judicial review is sought. The address of the Maryland Department of Health should be included on the petition: 201 W. Preston St., Room 511C, Baltimore, MD 21201. A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. No fees may be charged to Medical Assistance Program recipients, applicants, or authorized representatives for transcription costs or for preparation or delivery of the record to the circuit court. The Office of Administrative Hearings is not a party to the judicial review process.

Copies Mailed To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]