

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06106-5033

██████████ 2014
Certified Main

Client ID # ██████████
Request # 611805

NOTICE OF DECISION

PARTY

██████████
██████████
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PROCEDURAL BACKGROUND

On ██████████ 2014, the Department of Social Services (the "Department") sent ██████████ ("Appellant") on behalf of ██████████ (the "Applicant") a notice that the Applicant had transferred \$26,001.00 to become eligible for Medicaid, and the Department was imposing a period of ineligibility for Medicaid payment of long term care services effective ██████████ 2013 through ██████████, 2013.

On ██████████ 2014, the Applicant, through her daughter and Conservator, ██████████ ("Appellant") requested an administrative hearing to contest the Department's penalty determination.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2014.

On ██████████ 2014, the Appellant requested a continuance, which OLCRAH granted.

On ██████████, 2014, OLCRAH issued a notice scheduling the administrative hearing for ██████████ 2014.

On [REDACTED] 2104, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

[REDACTED], Appellant and Conservator
 [REDACTED], Appellant's Spouse and Witness
 [REDACTED], Attorney for the Appellant
 Michael Stebe, Department's Representative
 Lisa Nyren, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined: 1) the Appellant transferred \$26,001.00 to become eligible for Medicaid; and 2) the \$26,001.00 transfer subjected the Appellant to a penalty period of ineligibility for Medicaid payment of long-term care services.

FINDINGS OF FACT

1. The Applicant is deceased. The Applicant passed on [REDACTED] 2013. (Hearing Record)
2. The Appellant is the Applicant's daughter. (Appellant's Testimony)
3. Beginning 1996, upon the death of the Applicant's spouse, the Appellant assisted the Applicant with her finances. The Applicant had limited English proficiency. (Appellant's Testimony)
4. On [REDACTED] 2006, the Applicant granted the Appellant Power of Attorney status. (Appellant's Testimony)
5. On [REDACTED] 2010, the Applicant transferred \$4,000.00 to her daughter [REDACTED] ("daughter") by personal check. The memo portion of the check indicates for "college." (Exhibit 6: Personal Check # [REDACTED])
6. On [REDACTED] 2010, the Applicant transferred \$4,000.00 to her daughter by personal check. The memo portion of the check indicates "college tuition." (Exhibit 6: Personal Check # [REDACTED])

7. On [REDACTED] 2010, the Applicant transferred \$2,500.00 by wire transfer to a grandchild. (Exhibit 6: Wire Transfer Receipt and Appellant's Testimony)
8. On [REDACTED] 2010, the Applicant transferred \$2,500.00 by wire transfer to a grandchild. (Exhibit 6: Wire Transfer Receipt and Appellant's Testimony)
9. On [REDACTED] 2010, the Applicant transferred \$4,000.00 to her son in law by personal check. The memo portion of the check indicates "car deposit." (Exhibit 6: Personal Check # [REDACTED])
10. By [REDACTED] 2010, the Applicant had Alzheimer's disease as diagnosed by her physician. (Appellant's Testimony)
11. On [REDACTED] 2011, the Applicant entered into a Personal Services Agreement (the "PSA") with the Appellant in which the parties formalized the agreement for past and future personal care services beginning [REDACTED], 2010. The Agreement identifies personal care services as review, manage, and monitor the Applicant's business, financial, and personal affairs and to perform her activities of daily living. (Exhibit 10: Personal Services Agreement)
12. Under the terms of the Agreement, the Applicant agrees to compensate the Appellant at an hourly rate of \$30.00 for personal care services and compensate the Appellant for any out of pocket expenses associated with her care. The Agreement allows the Appellant to delegate such services to another with payment at market rate. (Exhibit 10: Personal Services Agreement)
13. On [REDACTED] 2011, the Appellant received Conservatorship of the Estate and Person for the Applicant. (Appellant's Testimony)
14. On [REDACTED] 2012, Amberwoods of Farmington, a skilled nursing facility, admitted the Applicant where she remained until her death on [REDACTED] 2013. (Hearing Record)
15. From [REDACTED] 2010 through [REDACTED] 2012, the Appellant and her spouse provided personal care services for the Applicant. The Appellant provided a home care log for the period [REDACTED] 2010 through [REDACTED] 2012 to the Department detailing services rendered daily and hours employed. (Exhibit 7: Personal Care Agreement Logs)
16. On [REDACTED] 2012, the Applicant transferred \$30,165.00 to the Appellant for services provided under the PSA totaling 1,005.50 service hours at a rate of pay of \$30.00 per hour. (1,005.50 hours x \$30.00/hour =

\$30,165.00) (Exhibit 2: Case Narrative and Exhibit 7 Personal Services Care Logs)

17. On [REDACTED] 2013, the Department received an application for Medicaid for long-term care on behalf of the Applicant. (Hearing Summary)
18. The Department determined the Applicant transferred \$73,780.00 on various dates for the purpose of becoming eligible for Medicaid. (Exhibit 4: Transfer of Assets Packet)
19. On [REDACTED] 2014, the Department mailed a notice, *Form W495A Transfer of Assets Preliminary Decision*, to the Appellant. The Notice stated that the Department determined the Applicant had transferred \$73,780.00 on various dates for the purpose of becoming eligible for Medicaid and allowed the Appellant an opportunity to dispute the Department's determination. (Exhibit 4: Transfer of Asset Packet)
20. On [REDACTED] 2014, the Appellant filed a rebuttal response to the [REDACTED] 2014 notice. The Appellant argued that the transfers were payments made for services provided under the PSA, reimbursement of expenses, and gifts to family members. (Exhibit 6: Rebuttal Explanation)
21. The Department determined the PSA valid. The Department determined the Applicant did not receive fair market value for services provided under the PSA. The Department determined the fair market value of services as \$22.00 per hour. The Department determined the total number of service hours as 962, excluding duplicate entries and payment for service provided specifically for the Applicant's dog. (Exhibit 7: Personal Services Care Log, Exhibit 8: Spreadsheet and Department Representative's Testimony)
22. The Department determined the Appellant entitled to \$21,164.00 for services provided under the PSA. (Exhibit 8: Spreadsheet)
23. The Department determined the Applicant overpaid \$9,001.00 to the Appellant for services provided. (\$30,165.00 paid - \$21,164.00 entitled = \$9,001.00 transfer)
24. The Department determined the Applicant improperly transferred \$9,001.00 to the Appellant. (Hearing Record)
25. The Department determined the Applicant improperly transferred \$4,000.00 to her daughter on [REDACTED], 2010. (Hearing Record)
26. The Department determined the Applicant improperly transferred \$4,000.00 to her daughter on [REDACTED] 2010. (Hearing Record)

27. The Department determined the Applicant improperly transferred \$2,500.00 to her grandchild on [REDACTED] 2010. (Hearing Record)
28. The Department determined the Applicant improperly transferred \$2,500.00 to her grandchild on [REDACTED] 2010. (Hearing Record)
29. The Department determined the Applicant improperly transferred \$4,000.00 to her son in law on [REDACTED] 2010. (Hearing Record)
30. On [REDACTED] 2014, the Department reduced the transfer amount from \$73,780.00 to 26,001.00 and notified the Appellant that there was an improper transfer of assets for \$26,001.00 on various dates for the purposes of qualifying for Medicaid. A penalty period would be imposed from [REDACTED] 2013 through [REDACTED], 2013 during which time the Department would not pay for the Applicant's long-term care medical services. $\{ \$4,000.00 + \$4,000.00 + \$2,500.00 + \$2,500.00 + \$4,000.00 + \$9,001.00 = \$26,001.00 \}$ (Exhibit 4: Transfer of Assets Packet)
31. On [REDACTED] 2014, the Department mailed a notice, *Form W495B Transfer of Assets Notice of Response to Rebuttal Claim*, to the Appellant regarding the transfer of assets. The notice stated the Department did not agree with the rebuttal claim and a penalty of 2.3 months will be imposed in which the Department will not pay for long-term care medical services. (Exhibit 4: Transfer of Assets Packet)
32. On [REDACTED] 2014, the Department mailed a notice, *Form W495C Transfer of Assets Final Decision Notice* to the Appellant regarding the transfer of assets. The notice stated there was an improper transfer of assets for \$26,001.00 on various dates for the purpose of qualifying for Medicaid and that a penalty period will be imposed for a period of 2.3 months. (Exhibit 4: Transfer of Assets Packet)
33. On [REDACTED] 2014, the Department denied the Applicant's Medicaid for long-term care because the Applicant expired before the eligibility date. (Hearing Record)
34. The Appellant is seeking the removal of the penalty period imposed by the Department. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program pursuant to Title XIX of the Social Security Act.
2. The Commissioner of the Department of Social Services may make such regulations as are necessary to administer the medical assistance program. [Conn. Gen. Stat. § 17b-262]
3. State Statute provides that medical assistance shall be provided for any otherwise eligible person whose income, including any available support from legally liable relatives and the income of the person's spouse or dependent child, is not more than one hundred forty-three percent, pending approval of a federal waiver applied for pursuant to subsection (e) of this section, of the benefit amount paid to a person with no income under the temporary family assistance program in the appropriate region of residence and if such person is an institutionalized individual as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3) and has not made an assignment or transfer or other disposition of property for less than fair market value for the purpose of establishing eligibility for benefits or assistance under this section. Any such disposition shall be treated in accordance with Section 1917(c) of the Social Security act, 42 USC 1396(c). Any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, person authorized to make such disposition pursuant to a power of attorney or toher person so authorized by law shall be attributed to such applicant, recipient or spouse. A disposition of property ordered by a court shall be evaluated in accordance with the standards applied to any other such disposition for the purpose of determining eligibility. The Commissioner shall establish the standards for eligibility for medical assistance at one hundred forty-three per cent of the benefit amount paid to a family unit of equal size with no income under the temporary family assistance program in the appropriate region of residence. In determine eligibility, the commissioner shall not consider as income Aid and Attendance pension benefits granted to a veteran, as defined in section 27-103, or the surviving spouse of such veteran. Except as provided in section 17b-277, the medical assistance program shall provide coverage to persons under the age of nineteen with family income up to one hundred eighty-five percent of the federal poverty level without an asset loimit and to persons under the age of nineteen and their parents and needy caretaker relative, who qualify for coverage under Section 1931 of the Social security Act with family income up to one hundred eight-five percent of the federal poverty level without an asset limit. Such levels shall be based on the regional difference in such benefit amount, if applicable, unless such levels based on regional differences are not in conformance with federal law. Any

income in excess of the applicable amounts shall be applied as may be required by said federal law, and assistance shall be granted for the balance of the cost of authorized medical assistance. The Commissioner of Social Services shall provide applicants for assistance under this section, at the time application, with a written statement advising them of (1) the effect of an assignment or transfer or other disposition of property on eligibility for benefits or assistance. (2) the effect that having income that exceeds the limits prescribed in this subsection will have with respect to program eligibility, and (3) the availability of, and eligibility for services provided by the Nurturing Families Network established pursuant to section 17b-751b. Personal who are determined ineligible for assistance pursuant to this section shall be provided a written statement notifying such persons of their ineligibility and advising such persons of the availability of HUSKY Plan, Part B health insurance benefits. [Conn. Gen. Stat. § 17b-261(a)]

4. Uniform Policy Manual ("UPM") § 3029.05(D)(1) provides that the Department considers transfers of assets within the time limits described in 3029.05(C) on behalf of an institutionalized individual or his or her spouse, by a guardian, conservator, person having power of attorney or other person or entity so authorized by law, to have been made by the individual or spouse.
5. UPM § 3029 provides for the technical eligibility requirement in the Medicaid program pertaining to the transfer of an asset for less than fair market value. The policy material in this chapter pertains to transfers that occur on or after February 8, 2006.
6. UPM § 3029.03 provides that the Department uses the policy contained in this chapter to evaluate asset transfers, including the establishment of certain trusts and annuities, if the transfer occurred or the trust or annuity was established, on or after February 8, 2006.
7. UPM § 3029.05(A) provides that there is a period established, subject to the conditions described in this chapter, during which institutionalized individual are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back date specified in 3029.05(C) of this policy. This period is called the penalty period, or period of ineligibility.
8. UPM § 3029.05(B) provides that the policy contained in the chapter on transfers of assets pertains to institutionalized individuals and to their spouses.
9. UPM § 3029.05(C) provides that the look back period for transfers of assets is a date that is 60 months before the first date on which both the following conditions exist:

1. The individual is institutionalized; and
 2. The individual is either applying for or receiving Medicaid.
10. The Department correctly determined [REDACTED] 2010, [REDACTED] 2010 and [REDACTED] 2012 fall within the 60 month look back period.
11. Statute provides that any transfer or assignment of assets resulting in the imposition of a penalty period shall be presumed to be made with the intent, on the part of the transferor or the transferee, to enable the transferor to obtain or maintain eligibility for medical assistance. This presumption may be rebutted only by clear and convincing evidence that the transferor's eligibility or potential eligibility for medical assistance was not a basis for the transfer or assignment. [Conn. Gen. Stat. § 17b-261a(a)]
12. UPM § 3029.10(E) provides that an otherwise eligible institutionalized individual is not ineligible for Medicaid payment of long term care services if the individual, or his or her spouse, provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.
13. UPM § 3029.10(F) provides that an institutionalized individual, or his or her spouse, may transfer an asset without penalty if the individual provides clear and convincing evidence that he or she intended to dispose of the asset at fair market value.
14. UPM § 3029.30 provides that compensation in exchange for a transferred asset is counted in determining whether fair market value was received.
- A. Compensation which is counted:
 1. When an asset is transferred, compensation is counted when it is received at the time of the transfer or any time thereafter.
 2. Compensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement.
 3. Compensation may include the return of the transferred asset to the extent described at 3029.10.
15. UPM § 3029.30(B) provides that each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset.
1. In determining the dollar value of services rendered directly by the transferee, the Department uses the following amounts:
 - a. For all services of the type normally rendered by a homemaker or home health aid, the current state minimum hourly wage for such services;
 - b. For all other types of services, the actual cost.

2. Out-of-pocket payment by the transferee may include capital alterations necessary to allow the transferor continued use of the home to avoid institutionalization.
 3. Compensation in the form of real or personal property is compared using its fair market value.
16. The Department determined that the Personal Services Agreement (“PSA”) signed by the Appellant on [REDACTED] 2011 as a valid legally enforceable agreement.
 17. The Appellant failed to provide clear and convincing evidence that the Applicant intended to receive fair market value for the transfer totaling \$30,165.00 under the PSA.
 18. The Appellant failed to provide clear and convincing evidence that the reason for the transfer of \$30,165.00 was not for qualifying for assistance.
 19. The Department determined a reasonable rate of pay for services provided under the PSA as \$22.00 allowing a transfer totaling \$21,164.00 under the PSA.
 20. The Department correctly determined a net transfer of assets of \$9,001.00. [30,165.00 - 21,164.00 = 9,001.00]
 21. The Appellant failed to provide clear and convincing evidence that the reason for the transfer of \$4,000.00 on [REDACTED], 2010 was not for qualifying for assistance.
 22. The Appellant failed to provide clear and convincing evidence that the reason for the transfer of \$4,000.00 on [REDACTED] 2010 was not for qualifying for assistance.
 23. The Appellant failed to provide clear and convincing evidence that the reason for the transfer of \$2,500.00 on [REDACTED] 2010 was not for qualifying for assistance.
 24. The Appellant failed to provide clear and convincing evidence that the reason for the transfer of \$2,500.00 on [REDACTED] 2010 was not for qualifying for assistance.
 25. The Appellant failed to provide clear and convincing evidence that the reason for the transfer of \$4,000.00 on [REDACTED], 2010 was not for qualifying for assistance.

26. The Department correctly determined the Appellant transferred assets totaling \$26,001.00. ($\$9,001.00 + \$4,000.00 + \$4,000.00 + \$2,500.00 + \$2,500.00 + \$4,000.00 = \$26,001.00$)
27. The Department correctly imposed a transfer of assets penalty against the Applicant due to the transfer of assets. The Applicant is subject to a transfer of asset penalty.
28. UPM § 3029.05(F)(1) provides that the length of the penalty period consists of the number of whole and/or partial months resulting from the computation described in § 3029.05(F)(2).
29. UPM § 3029.05(F)(2) provides that the length of the penalty period is determined by dividing the total uncompensated value of all assets transferred on or after the look-back date described in § 3029.05(C) by the average monthly cost to a private patient for LTCF services in Connecticut.
- a. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.
30. UPM § P-3029.30 provides for the average cost of care as \$11,183.00 on or after July 1, 2012.
31. The Department correctly determined the penalty period as 2.32 months. $\$26,001.00 \text{ transfer} / \$11,183.00 = 2.325$

DISCUSSION

The Appellant provided detailed time logs to the Department for the period [REDACTED] 2010 through [REDACTED] 2013 outlining the services provided to the Applicant by the Appellant and her spouse. The Applicant paid a separate individual outside the PSA for cleaning and companion services. Such services provided by the Appellant and her spouse as outlined in the logs include food preparation, medication administration, grocery shopping, and transportation to and from personal appointments, bill payment and daily dog care totaling 1006 hours. Upon review of the logs, the Department determined the Appellant and her spouse provided services under the PSA totaling 962 hours, excluding time specific to the care of the dog and duplicate entries. Using private pay long-term care rates provided by the State of Connecticut Office of Policy and Management, the Department calculated the compensation for services provided by the Appellant as \$21,164.00. Although the Appellant submitted an addendum to the logs to for services excluded from the log which include laundry, dressing, bathing, and conversations with her sister and mother regularly, these services

were not included in the logs and therefore not compensated for. The Applicant was subject to a transfer of asset penalty period.


DECISION

The Appellant's appeal with respect to the transfer of assets is **DENIED**.

The Appellant appeal with respect to the period of ineligibility is **DENIED**.

Lisa A. Nyren

Lisa A. Nyren
Hearing Officer


Phil Ober, Field Operations Manager
Tyler Nardine, Field Operations Manager

RIGHT TO REQUEST RECONSIDERATION

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue Hartford, CT 06105.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45 day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or the Commissioner's designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.