

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105

██████████ 2016  
SIGNATURE CONFIRMATION

CLIENT ID #: ██████████  
HEARING ID #: 770928

NOTICE OF DECISION

PARTY

██████████  
██  
██  
██

PROCEDURAL BACKGROUND

On ██████████ 2016, the Department of Social Services (the "Department") sent ██████████. (the "Appellant") a Notice of Action ("NOA") imposing a transfer of assets penalty for the period of ██████████ 2015 – ██████████ 2016.

On ██████████ 2016, the Appellant requested an administrative hearing to contest the Department's decision to impose a transfer of penalty.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for ██████████ 2016.

On ██████████ 2016, OLCRAH issued a notice rescheduling the Appellant's hearing to ██████████ 2016.

The Appellant requested that the ██████████ 2016 hearing be rescheduled. This request was granted.

On ██████████ 2016, OLCRAH issued a notice rescheduling the Appellant's hearing to ██████████ 2016.

On ██████████ 2016, in accordance with sections 17b-60, 17b-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:

██████████, Appellant's Son/Power of Attorney  
██████████, Appellant's Daughter-in-Law  
Ilirjana Sabani, Department's Representative  
Pamela J. Gonzalez, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue is whether the Appellant transferred assets in the amount of \$63,469.44 during the look-back period for less than fair market value and is consequently subject to a penalty.

### **FINDINGS OF FACT**

1. The Appellant's date of birth is ██████████; she is ██████████ years of age. (Application – Department's exhibit 18)
2. On ██████████ 2014, at age ██████████, the Appellant signed a Personal Services Agreement together with her son ██████████, and her Daughter-in-Law ██████████. (Personal Services Agreement – Department's exhibit 1)
3. In ██████████ 2014, the Appellant was in relatively good health and her condition was stable. She presented with mild short-term memory loss and glaucoma. She was ambulatory, compliant with her medications and other aspects of health maintenance. She was able to perform all of her critical activities of daily living. She received supportive assistance from her son, ██████████, in the form of grocery shopping, driving, laundry, general supervision. (Affidavit dated ██████████ ██████████ 2015 signed by ██████████ ██████████ ██████████ – Department's exhibit 11)
4. The Personal Services Agreement states that the Appellant agrees to pay ██████████ and ██████████ upon execution of the agreement, \$63,469.44, which sum was the net present value of the parties' best estimate of services contemplated. (Department's exhibit 1)
5. The Personal Services Agreement states that ██████████ and ██████████ are able and willing to provide services to or for the benefit of the Appellant in return for compensation made by the Appellant regardless of how much or how little time is actually required. (Department's exhibit 1)
6. Included with the Personal Services Agreement was Schedule A Services to

- be Provided – Valuation of Services. The services listed included: monitor health care, secure health care, transportation to medical appointments and hair salon, psychosocial care and wellness, financial management, deal with others, domestic and personal services. (Department's exhibit 1)
7. In accordance with the Personal Services Agreement, the amount of compensation for services to be provided, regardless of how much or how little time is required, was calculated by multiplying the estimated amount of hours the services would take by an average local rate for home health aides and homemakers. The total value of mileage involved with providing the services was calculated by multiplying the estimated amount of mileage by the IRS rate of \$.565 per mile. (Department's exhibit 1)
  8. The Personal Services Agreement Schedule A states the total value of services to be provided over the Appellant's expected lifetime, assuming date of birth [REDACTED] current age [REDACTED] and average life expectancy of 4.5 years totals \$63,469.44. (Department's exhibit 1)
  9. The Appellant's Son was unable to explain the particulars of the Personal Service Agreement. He could not say where the average hourly rate for home health aides and homemakers came from, why it was set up to pay a lump sum based on estimates of service, or where the average life expectancy figure came from. The Agreement was drawn up by the Appellant's attorney. (Appellant's Son's testimony)
  10. Three days following the date that the Personal Services Agreement was signed, the Appellant was hospitalized due to a fall. (Son's testimony)
  11. The Appellant was discharged from the hospital to a long-term care facility on [REDACTED] 2014. (Son's testimony, Form W-10 – Department's exhibit 17, Department's representative's testimony)
  12. The Appellant's condition changed resulting in her short-term rehab stay becoming a long-term admission. (Affidavit dated [REDACTED] 2015 – Department's exhibit 11)
  13. On [REDACTED] 2014, the Appellant transferred \$63,469.44 to her son [REDACTED]. (Copy of [REDACTED] NY/NJ/CT checking account ending in [REDACTED] – Department's exhibit 3, Hearing record)
  14. The Appellant's Son could not explain why the \$63,469.44 transfer occurred in [REDACTED] 2014 and not upon execution of the Agreement in [REDACTED] 2014. (Appellant's Son's testimony)
  15. The hearing record does not contain a record of services performed in exchange for \$63,469.44. (Hearing record)

16. On [REDACTED] 2015, the Appellant applied for long-term care Medicaid assistance. (Notice dated [REDACTED] 2016 – Department’s exhibit 12)
17. On [REDACTED] 2016, the Department issued a Form W-495 Preliminary Decision regarding the transfer of assets in the amount of \$63,469.44. The notice stated that the Department’s initial decision was that this transfer was made for purposes of qualifying for assistance and allows the Appellant an opportunity to respond if she disagrees with this determination. (Form W-495A – Department’s exhibit 6)
18. On [REDACTED] 2016, the Department received the Appellant’s response to its Form W-495A. The Appellant asserts in her response that compensation under the terms of the contract should not be considered a transfer of assets. She stated that “Neither the estimate of time the services take, nor the delay of payment, nor the mooted of the need for services, affects the enforceability of the contract”. Additionally, the Appellant’s Son continued to provide services to the Appellant after her institutionalization and therefore the transfer amount should be reduced to zero. She states that she received fair market value in return for \$63,469.44 in the form of her son’s contractual agreement to render the listed services for as long as she needed. (Letter from Office of [REDACTED] dated [REDACTED] 2016 – Department’s exhibit 7)
19. The Department determined that the Appellant was asset eligible effective [REDACTED] 2015. (Eligibility Management System NARR screen print – Department’s exhibit 13)
20. On [REDACTED] 2016, the Department issued Forms W-495B, and W-495C in which it advised the Appellant that it did not agree with her rebuttal to the proposed penalty and that although eligible for certain Medicaid benefits, a penalty period starting [REDACTED] 2015 and ending on [REDACTED] 2016 would be imposed. During the penalty period, Medicaid will not pay for any long-term care services. (Forms W-495B and W-495C – Department’s exhibit 8)
21. The Department granted long-term care Medicaid effective [REDACTED] 2016. (Department’s exhibit 13, Hearing record)

### **CONCLUSIONS OF LAW**

1. Section 17b-260 of the Connecticut General Statutes provides for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

Section 17b-260 of the Connecticut General Statutes authorizes the

Commissioner of the Department of Social Services to take advantage of the medical assistance programs provided in Title XIX, entitled "Grants to States for Medical Assistance Programs", contained in the Social Security Amendments of 1965.

Subsection (a) of section 17b-261a of the Connecticut General Statutes 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 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."

The Department uses the policy contained in Chapter 3029 of the Uniform Policy Manual to evaluate asset transfers if the transfer occurred on or after February 8, 2006. UPM § 3029.03.

There is a period established, subject to the conditions described in chapter, 3029 during which institutionalized individuals 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 UPM 3029.05(C). This period is called the penalty period, or period of ineligibility. UPM § 3029.05(A).

The look-back date for transfers of assets is the date that is sixty 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. UPM § 3029.05(C).

**The Department correctly determined that the Appellant transferred assets valued at \$63,469.44 during the look-back period.**

2. Compensation in exchange for a transferred asset is counted in determining whether fair market value was received. UPM § 3029.30.

When an asset is transferred, compensation is counted when it is received at the time of the transfer or any time thereafter. UPM § 3029.30(A)(1)

Compensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement. UPM § 3029.30(A)(2)

Each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset. UPM § 3029.30(B)

**The Appellant entered into a Personal Services Agreement in [REDACTED] 2014 with her son and daughter-in-law which was based on estimates of services contemplated with estimated time based on time spent on similar services rendered by her son and daughter-in-law in the past. The hearing record does not contain a record of services rendered therefore, the Appellant has not established that fair market value was received for the asset transferred.**

3. UPM Section 3029.10.E provides that an otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC services if the individual provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.

**The Appellant did not provide clear and convincing evidence that the transfer of \$63,469.44 was exclusively for purposes other than to qualify for assistance because she was age [REDACTED] at the time of the transfer, she was in declining health, and she was a health care center resident facing significant monthly cost of care expenses.**

3. 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 the or she intended to dispose of the asset at fair market value.

**The Appellant, did not provide clear and convincing evidence that she intended to dispose of \$63,469.44 at fair market value because the Personal Services Agreement is based on estimated amounts of services to be provided because the information in the record lacks a clear explanation of why the agreement was set up the way it was.**

**The Personal Services Agreement is not clear or convincing evidence of the Appellant's intent to dispose of assets at fair market value.**

4. UPM § 3029.15B. provides that the Department considers a transferor to have met his or her foreseeable needs if, at the time of the transfer he or she retained other income and assets to cover basic living expenses and medical costs as they could have reasonable been expected to exist based on the transferor's health and financial situation at the time of the transfer.

**The Appellant made the \$63,469.44 transfer when in a facility due to her declining health. Her foreseeable needs included the monthly cost of her care. She did not meet her foreseeable needs as they could have reasonably been expected to exist.**

5. UPM § 3029.05 (E)(2) provides that the penalty period begins as of the later of the following dates: the date on which the individual is eligible for

Medicaid under Connecticut's State Plan and would otherwise be eligible for Medicaid payment of the LTC services described in 3029.05 B based on an approved application for such care but for the application of the penalty period, and which is not part of any other period of ineligibility caused by a transfer of assets.

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.

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.

UPM § 3029.05 F.2.a. states, for applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.

**The average monthly cost of LTCF services in Connecticut as of [REDACTED] 2015, the month of the Appellant's application was \$11,851.00.**

**The Appellant is subject to a penalty period of 5.35 months after dividing the uncompensated value of the transferred asset by the average monthly cost of LTCF services (\$63,469.44 divided by \$11,851.00).**

**DECISION**

The Appellant's appeal is **Denied**.

*Pamela J. Gonzalez*  
Pamela J. Gonzalez  
Hearing Officer

Copy: Peter Bucknall, SSOM, DSS Regional Office #60, Waterbury  
Karen Main, SSOM, DSS Regional Office #60, Waterbury  
[REDACTED], [REDACTED]  
Ilijana Sabani, ESW, DSS Regional Office #60, Waterbury

### **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 06105-3725.

### **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.

