

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

██████████ 2019
Signature confirmation

Case: ██████████
Client: ██████████
Request: 128133

NOTICE OF DECISION

PARTY

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

On ██████████, 2018, the Department of Social Services (the "Department") issued ██████████ (the "Appellant") a *Transfer of Assets/Final Decision Notice* establishing a penalty period of ineligibility for Medicaid coverage of her long-term care services from ██████████ 2018 through ██████████ 2018.

On ██████████ 2018 and on ██████████ 2018, the Appellant's son and attorney-in-fact ██████████ mailed requests for an administrative hearing to the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH"). On the latter request, he asserted "the penalty levied was unjust, unfair [and] invalid because those funds were spent for legitimate purposes."

On ██████████ 2018, the OLCRAH issued a notice scheduling an administrative hearing for ██████████ 2018.

On ██████████ 2018, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The Appellant was unable to attend the ██████████ 2018 administrative hearing due to diminished cognition and institutionalization. The following individuals participated in the proceeding:

██████████, Appellant's attorney-in-fact (the "son")
██████████, ██████████ financial counselor, Appellant's witness
Nedra Pierce, Department's representative
Eva Tar, Hearing Officer

At the Appellant's son's request, the hearing officer extended the close of evidence through [REDACTED], 2018, for the submission of additional documents by the Appellant's son and the Appellant's witness. The Department was given the opportunity to provide written comment to the additional documents by [REDACTED], 2018.

The hearing record closed [REDACTED] 2018.

STATEMENT OF ISSUE

The issues to be decided are whether:

- 1) the Department correctly determined that the Appellant is subject to a penalty period of ineligibility for Medicaid payment of long-term care services for \$23,000.00 in transfers to her son within the look-back period; and
- 2) the Department correctly determined that a penalty period of ineligibility for Medicaid payment of long-term care services should run from [REDACTED] 2018 through [REDACTED] 2018.

FINDINGS OF FACT

1. On [REDACTED] 2003, the Appellant assigned her *Durable Power of Attorney* to her son [REDACTED] (the "son") with her daughter [REDACTED] (the "daughter") as successor attorney-in-fact. (Appellant's Exhibit 1)
2. The Appellant's [REDACTED] 2003 *Durable Power of Attorney* prohibited her agent from making such gifts or transfers to himself, to his creditors, to his estate, or the creditors of his estate in excess of the greater of \$5,000.00 or five percent of the aggregate value of the estate in any calendar year. (Appellant's Exhibit 1)
3. In [REDACTED] 2014, the Appellant was a resident of [REDACTED]. (Appellant's Exhibit 5: p. 23)
4. The Appellant was the owner of [REDACTED] [REDACTED] account ([REDACTED]) (the "[REDACTED] account"). (Department's Exhibit A)(Department's Exhibit B)
5. On [REDACTED] 2014, [REDACTED], M.D. diagnosed the Appellant with the following: (Axis I): Mood disorder, not otherwise specified; (Axis II): Deferred; (Axis III) GERD; (Axis IV): Loss of independence, cognitive decline; and (Axis V): 25. (Appellant's Exhibit 5: p. 24)
6. From [REDACTED] 2014 through [REDACTED] 2014, the Appellant underwent a psychiatric hospitalization at [REDACTED] in [REDACTED]. (Appellant's Exhibit 5: pp. 11, 17, 23)
7. On or around [REDACTED], 2014, the Appellant was admitted to [REDACTED], an assisted living community in [REDACTED]. (Appellant's Exhibit 5: pp. 17, 18, 27, 30)(Appellant's witness' testimony)

8. The Appellant had a 24-hour companion at the [REDACTED]. (Appellant's Exhibit 5: p. 13)
9. In 2014, the Appellant's son was residing in [REDACTED] and employed by a private university. (Appellant's Exhibit 5: p.17)(Appellant's son's testimony)
10. On [REDACTED] 2014, [REDACTED], M.D., diagnosed the Appellant with Mild Neurocognitive Disorder due to Alzheimer's and Generalized Anxiety Disorder. (Appellant's Exhibit 5: pp. 17, 18)
11. On [REDACTED] 2014, the Appellant was admitted to an emergency room due to dementia with behavioral disturbance and acute paranoid delirium; she yelled, hit, grabbed and punched staff. (Appellant's Exhibit 5: p. 11)
12. On [REDACTED] 2014, the Appellant displayed psychotic or borderline psychotic process; thought disorder; disorganized behavior; paranoid manner and other signs of paranoid process; diffuse memory loss for recent and remote events; periods of confusion with disorientation; and cognitive functioning in the intellectual disabled range. (Appellant's Exhibit 5: pp. 12, 13)
13. On [REDACTED] 2015, the Appellant was admitted to [REDACTED], a skilled nursing facility, in [REDACTED] as a private pay patient. (Appellant's witness' testimony)
14. On [REDACTED] 2015, the Appellant's daughter died in [REDACTED]. (Appellant's Exhibit 6: p. 2)
15. On [REDACTED], 2015, [REDACTED] billed the Appellant's son \$4,665.00 for cremation and funeral services for his sister; the Appellant's name was not on the bill. (Appellant's Exhibit 5: p. 34)
16. On [REDACTED] 2015, check [REDACTED] for \$8,000.00 issued from the [REDACTED] account cleared, signed by the Appellant's son on [REDACTED] 2015 and payable to the son. The memo section on the check notes: "*expenses re: [REDACTED]*" (Department's Exhibit B)
17. On [REDACTED] 2015, check [REDACTED] for \$5,000.00 issued from the [REDACTED] account cleared, signed by the Appellant's son on [REDACTED] 2015 and payable to the son. The memo section on the check notes: [REDACTED] *[illegible] expense.*" (Department's Exhibit B)
18. The total of checks [REDACTED] and [REDACTED] equaled \$13,000.00; that total exceeded the \$4,665.00 listed on the [REDACTED] 2015 [REDACTED] invoice.
19. The hearing record contained no reliable third party documents as to: 1) whether the [REDACTED] bill for \$4,665.00 was paid in full, at a reduced amount, or remained unpaid; 2) when such payment was made; and 3) the specific source of the payment, e.g. if the deceased's estate paid the bill or if the bill was paid by another individual, a company, or a government organization.

20. On [REDACTED], 2015, the Appellant's son accepted the [REDACTED] Probate Division of the [REDACTED] appointment to be the administrator of his sister's estate. (Appellant's Exhibit 6: p. 3)
21. On [REDACTED] 2016, check [REDACTED] for \$10,000.00 issued from the [REDACTED] account cleared, signed by the Appellant's son on [REDACTED] 2016 and payable to the son. The memo section on the check was blank. (Department's Exhibit B)
22. On [REDACTED] 2018, the Department received the Appellant's Medicaid application for long-term care coverage. (Stipulated)
23. In [REDACTED] 2018, the Appellant's assets were within the Medicaid program's asset limits. (Department's Exhibit E)
24. On [REDACTED] 2018, the Department issued a **Verification We Need** form to the Appellant, requesting copies of bills, receipts or cancelled checks to show for what check [REDACTED], check [REDACTED], and check [REDACTED] were used. (Department's Exhibit A)
25. On [REDACTED] 2018, the Department issued a **Transfer of Assets/Preliminary Decision Notice** to the Appellant, proposing a penalty period for the improper transfer of \$23,000.00 in assets, identifying the relevant dates of transfer as [REDACTED] 2015, [REDACTED] 2015, and [REDACTED] 2016. (Department's Exhibit G)
26. In [REDACTED] 2018, the Appellant's son submitted an [REDACTED] 2015 invoice for \$8,000.00, purporting to bill the Appellant for 345 hours at \$20.00 per hour for the approximately eight-month period from [REDACTED] 2013 to [REDACTED] 2014 and \$1,131.00 in travel expenses. The invoice listed a \$31.00 "discount." (Department's Exhibit C)(Department's Exhibit D)
27. On or around [REDACTED] 2018, the Appellant's son submitted a [REDACTED] 2015 invoice for \$5,000.00, purporting to bill the Appellant for 225 hours at \$20.00 per hour for the approximately six-month period from [REDACTED] 2014 to [REDACTED] 2014 and \$579.00 in travel expenses. The invoice listed a \$79.00 "discount." (Department's Exhibit C)(Department's Exhibit D)
28. On or around [REDACTED] 2018, the Appellant's son submitted a [REDACTED] 2016 invoice for \$10,000.00, purporting to bill the Appellant for 265 hours at \$20.00 per hour for the approximately nine-month period from [REDACTED] 2014 to [REDACTED] 2015, and travel and lodging expenses of the son and his sister.¹ The invoice listed a \$246.00 "discount." (Department's Exhibit C)(Department's Exhibit D)
29. The Appellant's son did not file federal and state income tax returns for years. (Appellant's son's testimony)

¹ This invoice does not reference payment toward the [REDACTED] bill. Included in the attachments were [REDACTED] receipts that referenced the son's email through his university employer. (Department's Exhibit C)

30. The Appellant's son's testimony that he attended his sister's funeral in another state solely to represent his mother was not credible; as his sister's sibling, the Appellant's son had a personal interest to attend his sister's funeral.
31. Paying the Appellant's son for his time, travel expenses, and lodging associated with his sister's funeral, his sister's travel and lodging, and family vacations are not acceptable transfers for fair market value by the Appellant to her son for the purposes of the Medicaid program. (Department's representative's testimony)
32. On [REDACTED] 2018, the Department issued a **Transfer of Assets/Final Decision Notice**, determining that the Appellant was eligible for Medicaid effective [REDACTED] 2018 but for the imposition of a penalty period of ineligibility for long-term care coverage to run from [REDACTED] 2018 through [REDACTED] 2018. (Department's Exhibit G)
33. The transfers from the [REDACTED] account of check [REDACTED] for \$8,000.00 [REDACTED] check [REDACTED] for \$5,000.00 [REDACTED], and check [REDACTED] for \$10,000.00 [REDACTED] were transfers from the Appellant to the son were for the son's benefit, discretion, and use; the Appellant did not receive fair market value for those transfers.
34. Section 17b-61 (a) of the Connecticut General Statutes requires a final decision be issued within 90 days of the filing of a request for an administrative hearing. The Appellant's son filed an administrative hearing request on [REDACTED] 2018; this final decision initially was due to be issued by [REDACTED], 2018.

However, at the Appellant's son's request, the close of the hearing record was delayed for the admission of additional evidence through [REDACTED] 2018 and for comment by the Department through [REDACTED] 2018. As the substantial delay to the close of the hearing record arose from the Appellant's son's request for an extension to the close of evidence, this final decision was not due until [REDACTED] 2019. This decision is timely.

CONCLUSIONS OF LAW

1. "The Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act." Conn. Gen. Stat. § 17b-2.
2. The Fair Hearing official determines the issue of the hearing. Uniform Policy Manual ("UPM") § 1570.25 (C)(2)(c).
3. "An individual is considered institutionalized if he or she is receiving: a. LTCF [long-term care facility] services; or b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; or c. home and community-based services under a Medicaid waiver (cross references: 2540.64 and 2540.92)." UPM § 3029.05 (B)(2).

The Appellant is an institutionalized individual.

4. "There is a period established, subject to the conditions described in this chapter, 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 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 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.” UPM § 3029.05 (C).

The Appellant’s look-back period related to her [REDACTED] 2018 Medicaid long-term care application runs from [REDACTED] 2013 through [REDACTED] 2018.

The \$23,000.00 (total) in transfers from the [REDACTED] account that had been identified by the Department as potentially improper occurred within the Appellant’s Medicaid look-back period.

The Department had the authority to evaluate the \$23,000.00 in transfers from the [REDACTED] account for the purpose of assessing whether the Appellant received fair market value for those transfers.

5. Section 17b-261 (a) of the Connecticut General Statutes as amended by the 2018 Supplement to the Connecticut General Statutes provides in part 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 per cent, 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 1396p(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 other person so authorized by law shall be attributed to such applicant, recipient or spouse.”

“The Department considers transfers of assets made 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.” UPM § 3029.05 (D)(1).

The Department correctly attributed the \$23,000.00 in transfers from the [REDACTED] account to the Appellant, as: 1) the transfers had been made from the Appellant’s account; 2) the transfers reduced the Appellant’s ownership or control of the funds in the account; and 3) the son held the Appellant’s durable power of attorney in the relevant period.

6. “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*² 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).

“An otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC [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.” UPM § 3029.10 (E).

The Appellant did not provide clear and convincing evidence that the \$23,000.00 in transfers from the [REDACTED] account during the look-back period had been made for wages and expenses at fair market value pursuant to a bona fide employer-employee relationship between the Appellant and her son.

The Appellant did not provide clear and convincing evidence that the \$23,000.00 in transfers from the [REDACTED] account during the look-back period had been made exclusively for a purpose other than qualifying for assistance.

The Department correctly determined that the Appellant is subject to a penalty period of ineligibility for Medicaid payment of long-term care services for \$23,000.00 in transfers to her son within the look-back period.

7. “During the penalty period, the following Medicaid services are not covered: a. LTCF [long-term care facility] services; and b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; and c. home and community-based services under a Medicaid waiver.” UPM § 3029.05 (G)(1).

“Payment is made for all other Medicaid services during a penalty period if the individual is otherwise eligible for Medicaid.” UPM § 3029.05 (G)(2).

“The penalty period begins as of the later of the following dates: 1. the first day of the month during which assets are transferred for less than fair market value, if this month is not part of any other period of ineligibility caused by a transfer of assets; or 2. 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 [long-term care] 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 (E).

The first date of the month in which the Appellant was otherwise eligible for Medicaid payment of the LTC services based on an approved application for such care but for the application of the penalty period is [REDACTED] 2018.

² *Emphasis added.*

8. "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 LTCF³ services in Connecticut. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application." UPM § 3029.05 (F)(2)(a).

"Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. A single penalty period is then calculated, and begins on the date applicable to the earliest transfer." UPM § 3029.05 (F)(3).

"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)(1).

"Once the Department imposes a penalty period, the penalty runs without interruption, regardless of any changes to the individual's institutional status." UPM § 3029.05 (F)(4).

The Appellant's penalty period of ineligibility of Medicaid payment for long-term care services equals 1.82 months. [\$23,000.00 divided by \$12,604.00]

The Department incorrectly determined that a penalty period of ineligibility for Medicaid payment of long-term care services would run from [REDACTED] 2018 through [REDACTED] 2018; the Appellant's penalty period of ineligibility for Medicaid payment for long-term care services runs from [REDACTED] 2018 through [REDACTED] 2018.

DISCUSSION

Statutes addressing transfers of assets with respect to the administration of the Medicaid program are unambiguous. 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.⁴

The Appellant's son cashed three checks from the Appellant's [REDACTED] account for \$8,000.00 (dated [REDACTED]), \$5,000.00 (dated [REDACTED]) and \$10,000.00 (dated [REDACTED]). The 2015 and 2016 transfers occurred when the Appellant was residing in a skilled nursing facility in Connecticut and had progressive cognitive and behavioral decline.

The Appellant's son argued that he was owed these monies for errands he performed for the Appellant from 2013 through 2015. The hearing record contains no independent, reliable evidence that would affirmatively support the son's representation that he and the Appellant had a legitimate employer-employee relationship in the relevant period; i.e. a contract signed by the parties, W-2s or 1099s, or federal and state income tax returns

³ The average monthly cost of care for LTCF services in Connecticut equaled \$12,604.00 (effective [REDACTED] 2018). Policy Transmittal No.: UP-18-01.

⁴ *Emphasis added.* Conn. Gen. Stat. § 17b-261a (a).

showing that the son had reported the \$13,000.00 received in 2015 and the \$10,000.00 received in 2016 as income for tax purposes. Instead, the hearing record reflects that the son, after questioned by the Department about the \$23,000.00 in transfers, submitted three retroactive invoices for hourly services he allegedly provided to the Appellant over irregular time periods that with reimbursements and "discounts," added up to the three transfers. The hearing officer assigned the invoices, travel receipts, and heavily redacted credit card statements no probative weight.

The Appellant's son argued that he was due reimbursement from the Appellant for the son's and his sister's travel and lodging at a time when the Appellant was residing in an assisted living community or in a skilled nursing facility. The Appellant was not obligated to pay for another family member's vacations or for the Appellant's son's rental car and lodging expenses to attend his sister's funeral. The son's testimony was vague, evasive, self-serving, and overall, not credible.

The Appellant did not meet her burden to establish by clear and convincing evidence that she received fair market value for the \$23,000.00 in transfers to her son. However, Department committed a minor miscalculation in determining the penalty period of ineligibility; the penalty period should run from [REDACTED] 2018 through [REDACTED] 2018.

DECISION

- 1) With respect to the first issue, the Appellant's appeal is DENIED.
- 2) With respect to the second issue, the issue is REMANDED to the Department for further action.

ORDER

1. The Department will adjust the Appellant's penalty period of ineligibility for Medicaid payment for long-term care services to run from [REDACTED] 2018 through [REDACTED] 2018.
2. Within 21 calendar days of the date of this decision, or [REDACTED] 2019, documentation of compliance with this Order is due to the undersigned.

Eva Tar - electronic signature
Eva Tar
Hearing Officer

Pc: [REDACTED]
Nedra Pierce, DSS-New Haven
Janet Giunti, DSS-New Haven
Rachel Anderson, DSS-New Haven
Cheryl Stuart, DSS-New Haven
Lisa Wells, DSS-New Haven

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 Legal Counsel, Regulations, and Administrative Hearings, 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 his 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.