STATE OF CONNECTICUT DEPARTMENT OF SOCIAL SERVICES OFFICE OF LEGAL COUNSEL, REGULATIONS AND ADMINISTRATIVE HEARINGS 25 SIGOURNEY STREET HARTFORD, CT 06106

2013
SIGNATURE CONFIRMATION

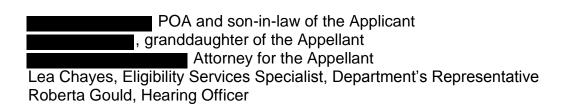
CLIENT ID #: HEARING ID #: 514752

NOTICE OF DECISION

PARTY

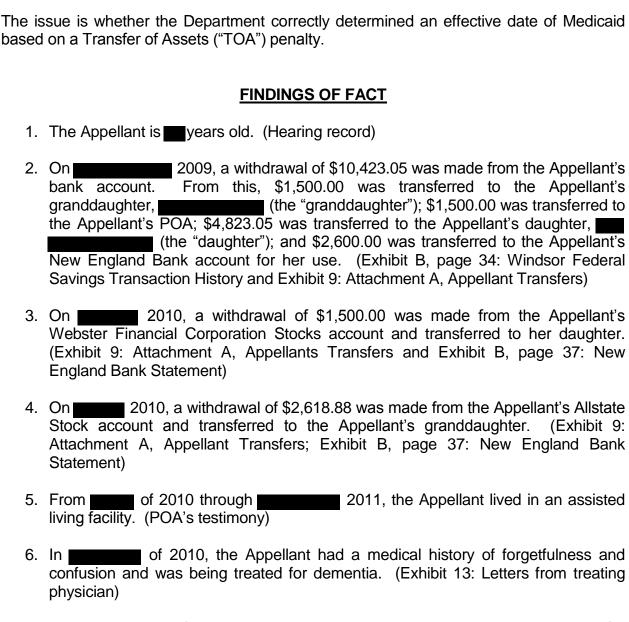
PROCEDURAL BACKGROUND

On 2013, the Department of Social Services (the "Department") sent (the "Appellant") a Notice of Action ("NOA") imposing a transfer of assets penalty for the period from 2012, through 2013.
2012, through 2013.
On 2013,, Power of Attorney ('POA") for the Appellant requested an administrative hearing to contest the Department's decision to impose a penalty on the Applicant's Long Term Care Medicaid benefits.
On 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for 2013.
On 2013, the Appellant's Attorney (the "Attorney") requested to reschedule the administrative hearing.
On , 2013, the OLCRAH issued a notice scheduling the administrative hearing 2013.
On 2013, 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:

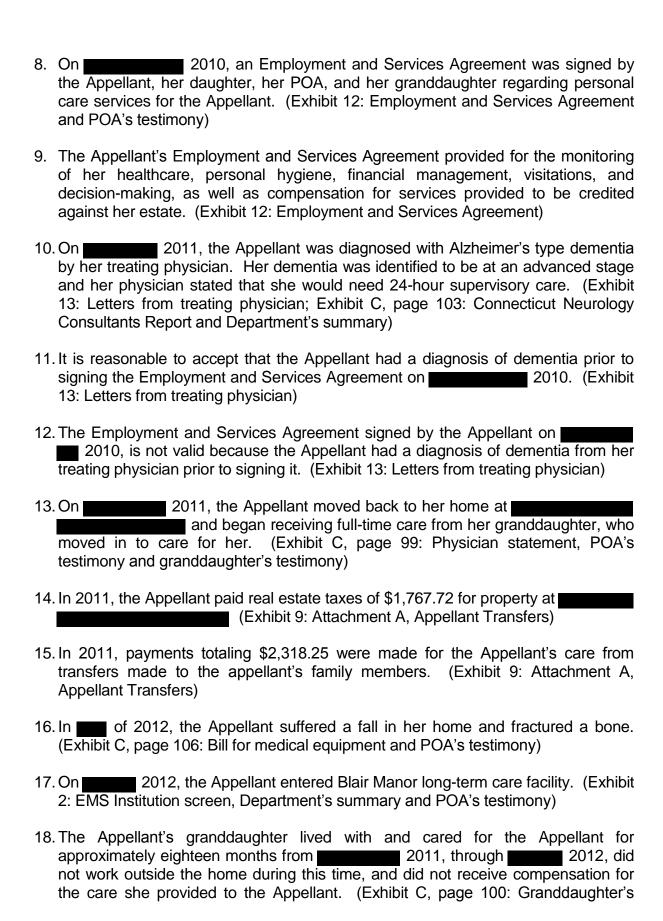


STATEMENT OF THE ISSUE

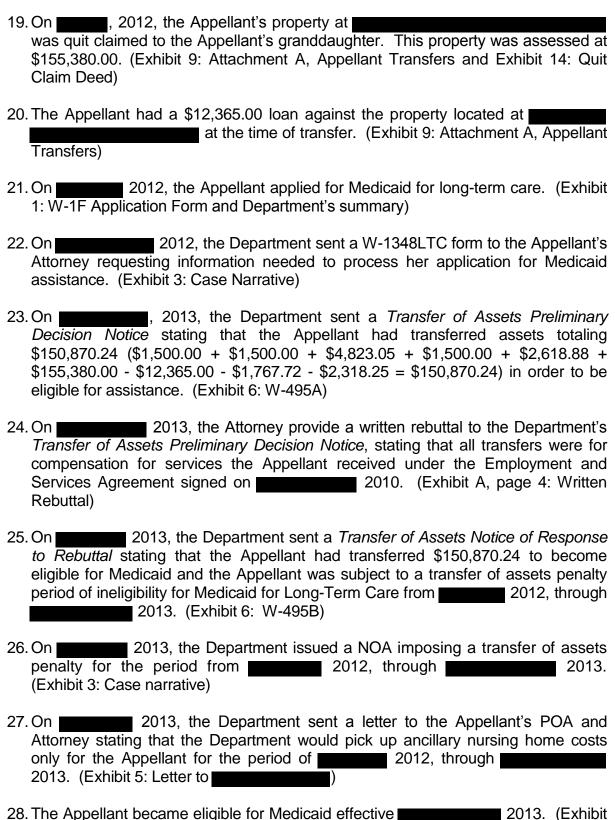
based on a Transfer of Assets ("TOA") penalty.



- confusion and was being treated for dementia. (Exhibit 13: Letters from treating
- of 2011, the Appellant had been treated by her physician for 7. Prior to ■ dementia with Aricept and Cerafolin. (Exhibit 13: Letters from treating physician)



statement and Exhibit C, page 134: Letter from employer)



2: EMS Assistance Status and Institution screens and Department's summary)

CONCLUSIONS OF LAW

- 1. Section 17b-2 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 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.
- 3. UPM § 3029.05(A) provides that 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.
- 4. UPM § 3029.05(B) provides that the policy contained in the chapter on transfers of assets pertains to institutionalized individuals and to their spouses.
- 5. UPM § 3029.05(D)(1) provides that 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.
- 6. UPM § 3029.05(C) provides that the look-back date for transfers of assets is a 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.
- 7. The Department correctly looked back 60 months prior to the Appellant's application in order to determine whether any improper asset transfers occurred.
- 8. Section 17b-261a(a) 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 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.
- 9. UPM § 3029.10(E) provides that an otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC 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.
- 10. The Department correctly determined that the transfers made were given as gifts to the Appellant's daughter, POA and granddaughter because there is no clear and convincing evidence to support otherwise.
- 11.UPM § 3029.30 provides that compensation in exchange for a transferred asset is counted in determining whether fair market value was received.
- 12.UPM § 3029.30(A) provides for compensation which is counted. It states that 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; and 3. compensation may include the return of the transferred asset to the extent described at 3029.10.
- 13.UPM § 3000.01 provides that a **legally-enforceable agreement** is a binding and credible agreement, either oral or written, wherein two or more parties agree to an arrangement in consideration of the receipt of money, property, or services and in which all parties can be reasonably expected to fulfill their parts of the agreement.
- 14. The Department correctly determined that the transaction between the Appellant, her children and her granddaughter does not meet the definition of a legally enforceable agreement because the Appellant had been diagnosed with dementia prior to signing the Employment and Services Agreement.
- 15. The Department correctly determined that services rendered by the granddaughter were not received in accordance with a legally enforceable agreement.
- 16.UPM § 3029.10(A) provides that for the transfer of a home, an individual or his or her spouse may transfer his or her home without penalty to his or her:
 - a. spouse; or
 - b. child under age 21; or
 - c. child of any age if the child is considered to be blind or disabled under criteria of SSI eligibility; or
 - d. sibling, if the sibling:
 - (1) has an equity interest in the home; and
 - (2) was residing there for a period of at least one year before the date the individual is institutionalized; or
 - e. son or daughter, other than one described in 3029.10 A.1b and 3029.10 A.1c, who:
 - (1) was residing in the home for a period of at least two years immediately before the date the individual is institutionalized; and
 - (2) provided care to the individual which avoided the need of institutionalizing him or her during those two years.

- 17. The Department correctly determined that the Appellant's quit claim of her property at to her granddaughter is subject to a penalty for Medicaid assistance.
- 18. Section 17b-261o(c) of the Connecticut General Statutes provides that the commissioner shall impose a penalty period pursuant to subsection (a) of section 17b-261 or subsection (a) of section 17b-261a if the transfer or assignment of assets was made by the Applicant's legal representative or joint owner of the asset.
- 19. The Department correctly determined that the Appellant improperly transferred assets in the amount of \$150,870.24 during the Medicaid eligibility look-back period.
- 20. The Appellant is subject to penalty due to improperly transferring assets during the look-back period.
- 21.UPM § 3029.05 provides that 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.
- 22. The Appellant is subject to a penalty period beginning 2012, the date that the Appellant was otherwise eligible for Medicaid payment of long-term care services.
- 23.UPM § 3029.05(F) 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 long-term care services in Connecticut. 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.
- 24. The Department correctly determined that the penalty period for improperly transferring assets is 13.49 months, from 2012, through 2013.

DISCUSSION

After reviewing the evidence and testimony presented at this hearing, the Department's action to impose a Medicaid period of ineligibility for long-term care coverage is upheld. I find that the gifts to the daughter, POA and granddaughter totaling \$150,870.24 are subject to a Medicaid penalty as set out in regulations. I find that the Appellant's family members did not provide clear and convincing evidence that she transferred the assets

for any other purpose than to qualify for Medicaid. The Employment and Services Agreement signed by the Appellant is not a valid document due to the Appellant's documented mental impairment and services rendered by the Appellant's granddaughter were not received in accordance with a legally enforceable agreement.

DECISION

The Applicant's appeal is **DENIED**.

Roberta Gould Hearing Officer

Pc: John Hesterberg, Field Operations Manager, Manchester Regional Office

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 <u>specific</u> grounds for the request: for example, indicate <u>what</u> error of fact or law, <u>what</u> new evidence, or <u>what</u> other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Administrative Hearings and Appeals, 25 Sigourney Street, Hartford, CT 06106-5033.

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, 25 Sigourney Street, Hartford, CT 06106. 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.