

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 #: 535566

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.

On ██████████, 2013, ██████████, Power of Attorney for the Appellant, (the "POA") 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, 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:

██████████, Power of Attorney for the Appellant, ██████████  
Diane Wood, Eligibility Services Worker, Department's representative  
Mark Yeomans, Eligibility Services Specialist, Department's representative  
Maureen Foley-Roy, Hearing Officer

The hearing record remained open for the submission of additional evidence. On [REDACTED] 2013, the record closed.

### **STATEMENT OF THE ISSUE**

The issue is whether the Department's decision to impose a Transfer of Assets ("TOA") penalty beginning [REDACTED] 2012 and ending on [REDACTED] 2012 for a transfer of \$15,875 was correct.

### **FINDINGS OF FACT**

1. On [REDACTED] 2000, the Appellant and her son, the POA, purchased a condominium with joint tenancy at a retirement community complex of 42 units. (Exhibit 4: Town of [REDACTED] Property records)
2. The property provided many services for the Appellant, including housekeeping, drivers and 24 hour assistance for a fee of \$1026 per month.(POA's testimony)
3. In addition, the Appellant was paying property taxes and homeowner's insurance. (POA's testimony)
4. On [REDACTED] 2011, the Appellant was admitted to a skilled nursing facility after breaking her hip. (POA's & Department's representative testimony)
5. The POA was using the Appellant's resources to pay her bill of \$15,000 per month to the facility. (POA's testimony)
6. The POA was also using the Appellant's funds to continue to pay the \$1026 monthly fee at the Appellant's condo. (POA's testimony)
7. In the [REDACTED] 2011, there were 8 units for sale at the complex. (POA's testimony)
8. The POA believed that there was no market for the property and that in the long run it would prove to be more costly to hold on to the property. (POA's testimony)
9. For the reasons stated in FOF#8, the POA decided it was more cost effective to quit claim the condominium to the owners than to attempt to sell it. (POA's testimony)
10. The POA's testimony regarding his reasoning for quit-claiming the condominium was credible.
11. The POA quit-claimed the condominium for reasons other than to qualify for

Medicaid. (Facts # 8-10)

12. On [REDACTED] 2011, the Appellant quit claimed the condominium to the owners of the complex. (Exhibit 3: Bill for preparation of Quitclaim deed)
13. On [REDACTED] 2012, the Appellant applied for Title 19-Medicaid for long term care for assistance to pay her cost of care at McLean. (Department's summary)
14. On [REDACTED] 2013, the Department sent the Appellant a W495A (Preliminary Decision Notice) informing the Appellant that the Department believed she had not received fair market value for her property when she quitclaimed it and was treating the amount of the fair market value as a transfer made to qualify for Medicaid assistance. (Exhibit 5: Transfer of Assets Preliminary Decision Notice)
15. As of [REDACTED] 2013, the unit that the Appellant had formerly owned had not yet sold. (Appellant's Exhibit A: Statement from Director of Retirement Community)
16. On [REDACTED] [REDACTED] of 2013, the Department issued a notice advising that they were granting Medicaid for long term care and imposing a penalty beginning [REDACTED] [REDACTED] of 2012 and ending on [REDACTED] [REDACTED] of 2012 because the Appellant had transferred \$15,875 in order to become eligible for Medicaid. (Exhibit 7: Final Decision Notice)
17. On [REDACTED] 2013, the Appellant passed away at the age of [REDACTED] years old. (POA's testimony)

### **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.
2. 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. 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. UPM § 3029.05(C).
7. 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 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. UPM § 3029.05(F).
8. 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).
9. UPM Section 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. UPM Section 3029.15 B provides that an institutionalized individual or the individual's spouse is considered to have transferred an asset exclusively for a purpose other than qualifying for assistance under circumstances which include, but are not limited to, the following: the Department considers a transferor to have met his or her foreseeable needs if, at the time of the transfer, he or she retained enough income and other assets to cover basic living expenses and medical costs as they could reasonably be expected to exist based on the transferor's health and financial situation at the time of the transfer.

11. The POA provided clear and convincing evidence that the property was quit-claimed for purposes other than to qualify for Medicaid.
12. The Department incorrectly imposed a transfer of assets penalty for the period from [REDACTED] 2012 through [REDACTED] 2012 when granting Medicaid for Long term care for the Appellant.

### **DISCUSSION**

The POA provided compelling and credible testimony as to the reasons for quit-claiming the property. He maintained that this was a unique property. Based on the circumstances prevailing at the time, he did not believe that there was a market for it. He firmly believed that holding on to the condominium would ultimately prove to be more costly in the long run. The fact that the property had not sold by [REDACTED] of 2013 gives credence to his argument. The Appellant was already paying \$15,000 per month for her care. It did not seem financially prudent to continue to pay the fees, property taxes and insurance for a home that the Appellant would not be returning to and would most likely not be able to sell. In fact, bailing out on the property sooner rather than later may have enabled the Appellant to privately pay for the long term care for a longer period of time. However, there is no point in speculating as to what might have had happened if the Appellant had not quit-claimed the property. The undersigned finds that the Appellant quitclaimed the property exclusively for reasons unrelated to Medicaid eligibility and therefore the Department should not have imposed a transfer of assets penalty when granting long term care assistance.

### **DECISION**

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

### **ORDER**

The Department is ordered to remove the penalty imposed from [REDACTED] of 2012 through [REDACTED] of 2012 and grant Medicaid for Long Term Care effective [REDACTED] of 2012.

Compliance with this order should be sent to undersigned no later than [REDACTED] [REDACTED] 2013 and shall consist of documentation that the penalty was removed.

*Maureen Foley-Roy*  
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Maureen Foley-Roy  
Hearing Officer

### **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, 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.