

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
25 SIGOURNEY STREET
HARTFORD, CT 06106-5033

██████████ 2013
Signature Confirmation

Client ID # ██████████
Request # 541659

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") sent ██████████ (the "Applicant") a notice that he had transferred \$100,528.88 to become eligible for Medicaid, and the Department was imposing a period of ineligibility for Medicaid payment of long term care services effective ██████████ ██████████ 2012 through ██████████ 2013.

On ██████████ 2013, the Applicant, through his daughter and Power of Attorney ("POA"), ██████████ ("Appellant") requested an administrative hearing to contest the Department's penalty determination.

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, 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:

██████████, Appellant and Power of Attorney for the Applicant
██████████, Attorney for the Appellant and Applicant

[REDACTED], Paralegal and Witness for the Appellant
 [REDACTED], Appellant's Life Partner and Witness for the Appellant
 [REDACTED], Caretaker and Witness for the Appellant
 [REDACTED], Friend and Witness for the Appellant
 [REDACTED], Friend and Witness for the Appellant
 [REDACTED], Friend and Witness for the Appellant
 Christine Moffitt, Department's Representative
 Swati Sehgal, Department Observer
 Tricia Morelli, Department Observer
 Marci Ostroski, Department Observer
 Lisa Nyren, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined: 1) the Appellant transferred \$100,528.88 to become eligible for Medicaid; and 2) the \$100,528.88 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 86 years old. (Hearing Record)
2. The Applicant is widowed. (Appellant's Testimony)
3. The Appellant is the Applicant's daughter. (Appellant's Testimony)
4. For the period 1996 through [REDACTED] 2011, the Applicant resided at [REDACTED] [REDACTED] (the "home") alone. (Appellant's Testimony)
5. The Appellant owns the home while the Applicant maintained life use. (Exhibit 12: Quit-Claim Deed [REDACTED]/12 and Appellant's Testimony)
6. Dr. Emily Ferguson, MD is the Applicant's primary care physician. (Exhibit 18: Rebuttal Letter [REDACTED]/13 and Exhibit E: Medical Record)
7. In [REDACTED] 2005, the Applicant had mild dementia as diagnosed by his primary care physician. (Exhibit E: Medical Record)
8. Beginning in 2005, the Appellant manages the Applicant's finances. (Appellant's Testimony)

9. Beginning [REDACTED] 2005, the Applicant takes Namenda for the treatment of dementia. (Exhibit E: Medical Record)
10. By [REDACTED] 2008, the Applicant's behavior changed and he became forgetful. Home projects were incomplete and he made errors in his checkbook. (Appellant's Testimony)
11. Beginning [REDACTED] 2008, the Applicant received companion services from Day Kimball Homemakers ("home health agency") for three days per week at one hour per day. (Appellant's Testimony)
12. By [REDACTED] 2011, the Applicant was diagnosed with the shingles and required constant care. (Appellant's Testimony and Exhibit E: Medical Record)
13. In [REDACTED] 2011, the Applicant resided in the Appellant's home in [REDACTED] for a period of three weeks due to the shingles and the remodeling of his bathroom at home. (Appellant's Testimony)
14. On [REDACTED], 2011, the Appellant returned home and continued to reside alone. (Appellant's Testimony)
15. Beginning [REDACTED] 2011, the Appellant received home care services from the home health agency for two hours per day weekdays and one hour per day weekends, including a personal care assistant twice a week for one hour each visit. The Appellant received home care services totaling 15 hours per week. (Appellant's Testimony and Exhibit B: Log Book)
16. Home care services provided by the home health agency included meal preparation, meal set up, medication administration, bathing, dressing, housekeeping, and companionship. (Exhibit B: Log Book)
17. By [REDACTED] 2011, the Applicant has advanced dementia as diagnosed by his primary care physician. (Exhibit E: Medical Record)
18. In [REDACTED] 2011, the Applicant's medical condition changed. The Applicant was not able to reach the bathroom in time and soiled himself on at least two occasions. (Appellant's Testimony and Exhibit B: Log Book)
19. In [REDACTED] 2011, the Appellant moved in to the Applicant's home to care for him. (Appellant's Testimony)
20. On [REDACTED] 2011, the Applicant entered into an Employment and Services Agreement with the Appellant in which the parties formalized the agreement for past and future personal care services beginning [REDACTED] 2011. (Exhibit 16: Care Agreement [REDACTED]/11)

21. Under the terms of the Agreement, the Applicant/Employer agrees to compensate the Appellant/Employee at a monthly rate of \$10,586.00 for her services which include medication management, meal preparation, homemaker services, and personal assistance. The Employer will also compensate the Employee out of pocket expenses associated with his care. (Ex 16: Care Agreement [REDACTED]/11)
22. The Employment and Services Agreement signed by the Applicant on [REDACTED], 2011 is not valid because the Applicant had a diagnosis of dementia from his primary care physician prior to signing it. (Exhibit E: Medical Record)
23. On [REDACTED] 2012, the Applicant was admitted to Mansfield Health Care and Rehab Center (the "nursing home"). (Hearing Record)
24. On [REDACTED] 2012, the Applicant transferred his life use of the home property to the Appellant. (Exhibit 12: Quit-Claim Deed [REDACTED]/12)
25. The Department determined the value of the life use as \$23,993.04. (Exhibit 13: Life Use Calculation)
26. On [REDACTED] 2012, the Applicant transferred ownership of Prudential Life Insurance Policy [REDACTED] in the amount of \$8,233.98 to the Appellant. (Exhibit 10: Prudential Policy Values [REDACTED]/12)
27. On [REDACTED] 2012, the Applicant transferred ownership of Prudential Life Insurance Policy [REDACTED] in the amount of \$8,972.27 to the Appellant. (Exhibit 10: Prudential Policy Values [REDACTED]/12)
28. On [REDACTED] 2012, the Applicant transferred ownership of Prudential Life Insurance Policy [REDACTED] in the amount of \$4,352.11 to the Appellant. (Exhibit 10: Prudential Policy Values [REDACTED]/12)
29. On [REDACTED] [REDACTED] 2012, the Applicant transferred \$19,899.64 from Putnam Bank to the Appellant. (Exhibit 8: Putnam Bank Cashier's Check [REDACTED]/12)
30. On [REDACTED] 2012, the Applicant transferred \$17,639.00 from The Citizens National Bank to the Appellant. (Exhibit 9: Citizen's National Bank Cashier's Check [REDACTED]/12)
31. On [REDACTED], 2012, the Department received an application for Medicaid for long-term care on behalf of the Applicant. (Hearing Summary)

32. On [REDACTED] 2012, the Applicant transferred ownership of 368 shares in Clarcor Stocks valued at \$17,435.84 to the Appellant. (Exhibit 11: Clarcor Direct Registration Advice [REDACTED]/12)
33. On [REDACTED] 2013, the Department notified the Appellant that initially it determined that the Applicant transferred \$100,525.88 during the period [REDACTED] 2012 through [REDACTED] 2012 in order to qualify for assistance. (\$23,993.04 life use + \$8,233.98 Prudential + \$8,972.27 Prudential + \$4,352.11 Prudential + \$19,899.64 Putnam Bank + \$17,639.00 Citizens National + \$17,435.84 Clarcor) . (Hearing Summary and Exhibit 6: W-495A Transfer of Assets Preliminary Decision Notice dated [REDACTED] 13, Exhibit 12: Quit Claim Property Deed, Exhibit 10: Prudential Policy Values, Exhibit 8: Putnam Bank Cashier's Check, Exhibit 9: Citizen's National Bank Cashier's Check, and Exhibit 11: Clarcor Direct Registration Advice)
34. On [REDACTED] 2013, the Appellant filed a rebuttal response to the [REDACTED] 2013 notice. The Appellant argued that the transfers were payments made for services provided under the Employment and Services Agreement dated [REDACTED]/11. (Exhibit 16: Care Agreement [REDACTED]/11 and Exhibit 18: Rebuttal Letter dated [REDACTED]/13)
35. On [REDACTED] 2013, the Department notified the Appellant that there was an improper transfer of assets for \$100,528.88 on various dates for the purposes of qualifying for Medicaid and that a penalty period will be imposed from [REDACTED] 2012 through [REDACTED] 2013. (Exhibit 7: W-495C Transfer of Asset Final Decision Notice [REDACTED]/13)
36. On [REDACTED] 2013, the Department granted the Appellant Medicaid for long term with an authorization date of [REDACTED] 2013. (Hearing Summary, Exhibit 4: Institution Screenprint and Exhibit 2: Assistance Status Screenprint)

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. The Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department. [Conn. Gen. Stat. § 17b-261b(a)]
4. 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. [Conn. Gen. Stat. § 17b-261(a)]
5. 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.
6. 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.
7. 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.
8. 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.
9. UPM § 3029.05(B) provides that the policy contained in the chapter on transfers of assets pertains to institutionalized individuals and to their spouses.
10. 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.

11. The Department correctly determined [REDACTED] 2012 and [REDACTED] 2012 falls within the 60 month look back period.
12. 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 to 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)]
13. 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.
14. 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.
15. 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.
16. The Department correctly determined that the Employment and Services Agreement signed by the Applicant and the Appellant on [REDACTED] 2012 was not valid because the Applicant had dementia as diagnosed by her primary care physician. Services rendered by the Appellant were not received in accordance with a legally enforceable agreement.
17. UPM § 3029.20(A) provides for transfers made in return for other valuable consideration.
 1. Other valuable consideration may be received either prior to or subsequent to the transfer.
 2. The value of the other valuable consideration, computed as described in 3029.20(A)(3), must be equal to or greater than the

value of the transferred asset in order for the asset to be transferred without penalty.

3. The value of the other valuable consideration, as described in 3029.20(B), is equal to the average monthly cost to a private patient for long-term care services in Connecticut, multiplied by the number of months the transferee avoided the need for the transferor to be institutionalized.
18. UPM § 3029.20(B) § provides that other valuable consideration must be in the form of services or payment for services which meet all of the following conditions:
1. The services rendered are of the type provided by a homemaker or a home health aide; and
 2. The services are essential to avoid institutionalization of the transferor for a period of at least two years; and
 3. The services are either:
 - a. Provided by the transferee while sharing the home of the transferor; or
 - b. Paid for by the transferee.
19. The Department correctly determined the Appellant does not meet the criteria outlined under other valuable consideration because she has not resided with the Applicant for a period of two or more years.
20. UPM § 3029.05(D)(1) provides that the Department considers transfers of assets made within the time limits described in section 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.
21. UPM § 3029.05(D)(2) provides for in the case of an asset that the individual holds in common with another person or person(s) in joint tenancy in common on similar arrangement, the Department considers the asset (or affected portion of such asset) to have been transferred by the individual when the individual or any other person takes an action to reduce or eliminate ownership or control of the asset.
22. The Appellant failed to provide clear and convincing evidence that the transfers totaling \$100,525.88 (\$23,993.04, \$8,233.98, \$8,972.27, \$4,352.11, \$19,899.64, \$17,639.00, \$17,435.84) was compensation received pursuant to a legally enforceable agreement. The Employment and Services agreement is not legally enforceable.
23. The Appellant failed to provide clear and convincing evidence that the Applicant intended to receive fair market value for the transfers totaling \$100,525.88.

24. The Appellant failed to provide clear and convincing evidence that the reason for the transfer of \$100,525.88 was not for qualifying for assistance.
25. The Department correctly determined the Appellant transferred assets totaling \$100,525.88.
26. The Department correctly imposed a transfer of assets penalty against the Applicant due to the transfer of assets for the period [REDACTED] 2012 through [REDACTED] 2012. The Applicant is subject to a transfer of asset penalty.
27. 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).
28. 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.
29. UPM § P-3029.30 provides for the average cost of care as \$11,183.00 on or after July 1, 2012.
30. The Department correctly determined the penalty period as 8.98 months.

DISCUSSION

The Appellant testified she entered into the Employment Services Agreement with her father in 2011 to care for him so that he may remain in his own home rather than move to a nursing facility. Due to his deteriorating medical condition, it became necessary for her to move into his home and provide round the clock care. She provided home care services to her father in addition to the services provided by the privately paid home health aides and companions. The Appellant testified that it was her father's wishes she be paid for these services while he remained at home, rather than paying a nursing home. However, her father was diagnosed with dementia as early as [REDACTED] 2005 and medical records indicate this condition deteriorated as the years passed. Although testimony given at the administrative hearing indicates on [REDACTED] 2011 when the Employment Services Agreement was signed that her father had a "good day" and understood the document he was signing; medical evidence documents the Appellant's father diagnosis of dementia and the decline of his mental status over the years rendering the Employment Services Agreement not legally enforceable.

It is also noted the Transfer of Assets Final Decision Notice lists the transfer totaling \$100,528.88 rather than \$100,525.88. However no impact is made upon the determination of a penalty period due to this typographical error.

DECISION

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

Lisa A Nyren

Lisa A. Nyren
Hearing Officer

PC: [REDACTED]
[REDACTED]

John Hesterberg, Field Operations Manager RO #11

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, 25 Sigourney Street, Hartford, CT 06106.

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 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.