

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

██████████ 2014  
SIGNATURE CONFIRMATION

CLIENT ID #: ██████████  
HEARING ID #: 514752

**NOTICE OF RECONSIDERATION 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 ("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 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:

██████████, POA and son-in-law of the Applicant  
██████████, granddaughter of the Appellant  
██████████ Attorney for the Appellant  
Lea Chayes, Eligibility Services Specialist, Department's Representative  
Roberta Gould, Hearing Officer

On ██████████ 2013, the Hearing Officer issued a decision, which found that the Department correctly determined that 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.

On ██████████ 2013, the Appellant requested reconsideration of the hearing officer's decision.

On ██████████ 2013, the Director of OLCRAH granted reconsideration for the purpose of allowing the Appellant an opportunity to provide evidence regarding her mental competence to sign the Employment and Services Agreement.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department correctly determined an effective date of Medicaid based on a Transfer of Assets ("TOA") penalty and whether the Appellant was mentally competent to sign the Employment and Services Agreement.

### **FINDINGS OF FACT**

1. The Appellant is ██████ years old. (Hearing record)
2. On ██████████ 2009, the Appellant's physician, Dr. Darshan Shah, noted at the Appellant's physical exam that she was confused and had a diminished memory. (Exhibit D, pg 18: Attorney's submission for reconsideration received on ██████/2014)
3. On ██████████ 2009, a withdrawal of \$10,423.05 was made from the Appellant's bank account. From this, \$1,500.00 was transferred to the Appellant's granddaughter, ██████████ (the "granddaughter"); \$1,500.00 was transferred to the Appellant's POA; \$4,823.05 was transferred to the Appellant's daughter, ██████████ (the "daughter"); and \$2,600.00 was transferred to the Appellant's New England Bank account for her use. (Exhibit B, page 34: Windsor Federal Savings Transaction History and Exhibit 9: Attachment A, Appellant Transfers)
4. In ██████ 2010, the Appellant was found wandering outside her home by neighbors and friends and it was determined by her daughter and POA that she was unable to

live alone and required a more secure place to live. (POA's testimony)

5. On [REDACTED] 2010, the Appellant moved into Mark Twain Assisted Living, which was a locked congregate housing facility that provided supervision. (POA's testimony)
6. On [REDACTED], 2010, a withdrawal of \$1,500.00 was made from the Appellant's Webster Financial Corporation Stocks account and transferred to her daughter. (Exhibit 9: Attachment A, Appellants Transfers and Exhibit B, page 37: New England Bank Statement)
7. On [REDACTED] 2010, a withdrawal of \$2,618.88 was made from the Appellant's Allstate Stock account and transferred to the Appellant's granddaughter. (Exhibit 9: Attachment A, Appellant Transfers; Exhibit B, page 37: New England Bank Statement)
8. In 2010, Mark Twain Assisted Living facility asked the family to remove the Appellant from their housing because she was unable to properly care for herself. She was suffering from incontinence and had cleanliness issues. (POA's testimony)
9. In 2010, Dr. Shah, referred her to a neurologist because she had a medical history of forgetfulness and he believed that she was suffering from dementia. (POA's testimony and Exhibit 13: Letters from treating physicians)
10. Prior to referring the Appellant to Connecticut Neurology Consultants, Dr. Shah had been treating the Appellant for "considerable progressive dementia at least over the last few years" with Aricept. (Exhibit 13: Letter from Connecticut Neurology Consultants dated [REDACTED]2011)
11. In [REDACTED] of 2010, the Appellant's POA and daughter consulted [REDACTED] because the Appellant had expressed a desire to return to her home and had been unable to remain in Assisted Living due to her health issues. (POA's testimony)
12. On [REDACTED], 2010, the Appellant was examined by her physician, Dr. Shah. Dr. Shah noted that she did not know the date, was unable to tell time, could understand and follow commands, had mild dementia and poor short-term memory. (Exhibit D, pg. 16: Attorney's submission for reconsideration received on [REDACTED]/2014)
13. On [REDACTED]0, 2010, an Employment and Services Agreement was signed by the Appellant, her daughter, her POA, and her granddaughter regarding personal care services for the Appellant. (Exhibit 12: Employment and Services Agreement and POA's testimony)
14. The Appellant's Employment and Services Agreement provided for the monitoring

of her healthcare, personal hygiene, financial management, visitations, and decision-making, as well as compensation for services provided to be credited against her estate. (Exhibit 12)

15. On [REDACTED] [REDACTED] 2011, a physician from Connecticut Neurology Consultants examined the Appellant and confirmed that she had advanced Alzheimer's type dementia and that in all likelihood even high doses of Aricept would not improve her medical condition. (Exhibit 13)
16. The Appellant's treating physician stated that she would need 24-hour supervisory care because of her advanced stage of dementia. (Exhibit 13: Letters from treating physician; Exhibit C, pg 103: Connecticut Neurology Consultants Report and Department's summary)
17. The Appellant had a diagnosis of dementia prior to signing the Employment and Services Agreement on [REDACTED] 2010, and her dementia was at an advanced stage. (POA's testimony; Exhibit 13: Letter from Connecticut Neurology Consultants dated [REDACTED]/2011; Exhibit D, pg 18: Attorney's submission for reconsideration received on [REDACTED] 2014)
18. On [REDACTED] 2011, the Appellant left the Mark Twain Assisted Living Facility and moved back to her home at [REDACTED] where she began receiving full-time care from her granddaughter. A fence was erected in the backyard of the property to keep the Appellant from wandering. (Exhibit C, page 99: Physician statement, POA's testimony and granddaughter's testimony)
19. In 2011, the Appellant paid real estate taxes of \$1,767.72 for property at [REDACTED] [REDACTED] (Exhibit 9: Attachment A, Appellant Transfers)
20. In 2011, payments totaling \$2,318.25 were made to Companions and Homemakers for the Appellant's companion care from transfers made to the appellant's family members. (Exhibit 9: Attachment A, Appellant Transfers and Exhibit C, pg 100: Granddaughter's letter dated [REDACTED]/2012)
21. In [REDACTED] of 2012, the Appellant suffered a fall in her home and fractured a bone. (Exhibit C, pg 106: Bill for medical equipment and POA's testimony)
22. On [REDACTED] 2012, the Appellant entered Blair Manor long-term care facility. (Exhibit 2: EMS Institution screen, Department's summary and POA's testimony)
23. The Appellant's granddaughter lived with and cared for the Appellant for approximately eighteen months from [REDACTED] 2011, through [REDACTED] 2012, did not work outside the home during this time, and did not receive compensation for the care she provided to the Appellant. (Exhibit C, pg 100: Granddaughter's statement and Exhibit C, page 134: Letter from employer)

24. Itemized caregiver activities were not provided for the Appellant's granddaughter. (Exhibit C, pages 98-135: Employment and Services Information)
25. On [REDACTED] 2012, the Appellant's property at [REDACTED] was quit claimed to the Appellant's granddaughter. This property was assessed at \$155,380.00. (Exhibit 9: Attachment A, Appellant Transfers and Exhibit 14: Quit Claim Deed)
26. The Appellant had a \$12,365.00 loan against the property located at [REDACTED] [REDACTED] at the time of transfer. (Exhibit 9: Attachment A, Appellant Transfers)
27. On [REDACTED] 2012, the Appellant applied for Medicaid for long-term care. (Exhibit 1: W-1F Application Form and Department's summary)
28. On [REDACTED] 2012, the Department sent a W-1348LTC form to the Appellant's Attorney requesting information needed to process her application for Medicaid assistance. (Exhibit 3: Case Narrative)
29. Itemized caregiver activities for the Appellant's POA and daughter for the period of [REDACTED] 2010, through [REDACTED] of 2012, are primarily for gas and mileage. (Exhibit 16: Care summary and Department's summary)
30. On [REDACTED], 2012, the Department requested information regarding the Appellant's mental condition from her attorney. (Exhibit 3: Case narrative)
31. On [REDACTED], 2013, the Department sent a *Transfer of Assets Preliminary Decision Notice* stating that the Appellant had transferred assets totaling \$150,870.24 ( $\$1,500.00 + \$1,500.00 + \$4,823.05 + \$1,500.00 + \$2,618.88 + \$155,380.00 - \$12,365.00 - \$1,767.72 - \$2,318.25 = \$150,870.24$ ) in order to be eligible for assistance. (Exhibit 6: W-495A)
32. On [REDACTED] 2013, the Attorney provided a written rebuttal to the Department's *Transfer of Assets Preliminary Decision Notice*, stating that all transfers were for compensation for services the Appellant received under the Employment and Services Agreement signed on [REDACTED], 2010. (Exhibit A, pg 4: Written Rebuttal)
33. On [REDACTED] 2013, the Department sent a *Transfer of Assets Notice of Response to Rebuttal* stating that the Appellant had transferred \$150,870.24 to become eligible for Medicaid and the Appellant was subject to a transfer of assets penalty period of ineligibility for Medicaid for Long-Term Care from [REDACTED], 2012, through [REDACTED], 2013. (Exhibit 6: W-495B)
34. On [REDACTED] 2013, the Department issued a NOA imposing a transfer of assets penalty for the period from [REDACTED] 2012, through [REDACTED], 2013.

(Exhibit 3: Case narrative)

35. On [REDACTED] 2013, the Department sent a letter to the Appellant's POA and Attorney stating that the Department would pick up ancillary nursing home costs only for the Appellant for the period of [REDACTED] 2012, through [REDACTED] 2013. (Exhibit 5: Letter to [REDACTED])
36. The Appellant became eligible for Medicaid effective [REDACTED]. 2013. (Exhibit 2: EMS Assistance Status and Institution screens and Department's summary)
37. On [REDACTED], 2014, the Appellant's POA and granddaughter signed affidavits that the Appellant was alert and oriented when she signed the Employment and Services Agreement on [REDACTED], 2010. (Exhibit D, pages 3-6: Attorney's submission for reconsideration received on [REDACTED] 2014)
38. It is not credible that the Appellant was fully cognizant at the time the affidavits were signed. (POA's testimony; Exhibit 13: Letter from Connecticut Neurology Consultants dated [REDACTED] 2011; Exhibit D, pg 18: Attorney's submission for reconsideration received on [REDACTED]/2014)

### **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.
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. 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 Employment and Services Agreement signed by the Appellant on [REDACTED], 2010, does not meet the definition of a legally-enforceable agreement because the Appellant had a diagnosis of advanced Alzheimer's type dementia from her treating physician and her treating neurologist prior to signing it. The Agreement is not valid because the Appellant cannot be reasonably expected to comprehend the transaction between the Appellant, her

children and her granddaughter due to her diagnosis of advanced Alzheimer's type dementia.

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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 2012, through [REDACTED] 2013.

### **DISCUSSION**

In his request for reconsideration, the Appellant's attorney indicated that the Appellant desired to return to her home from the assisted living facility and that she required 24/7 care and supervision to do so. It was also stated that the Appellant's granddaughter had provided caregiver services for her that allowed her to remain in her home for 18 months prior to entering a long-term care facility and that her dementia did not render her incompetent when she signed the Employment and Services Agreement. After reviewing the evidence and testimony presented at this hearing, I find that the medical evidence from the Appellant's physician and neurologist presented at this hearing make evident that she did have advanced stage Alzheimer's type dementia prior to signing the Employment and Services Agreement on [REDACTED], 2010. Dr. Shah, the Appellant's treating physician, referred her to a neurologist because she had a medical history of forgetfulness and he believed that she was suffering from dementia. A neurologist found, only 4 days after the agreement was signed by the Appellant, that she already had advanced Alzheimer's type dementia and that in all likelihood even high doses of Aricept would not improve her medical condition at that point. Also, the POA testified that the Appellant was found wandering by neighbors and friends prior to entering an assisted living facility in [REDACTED] of 2010, and that she was forced to leave the facility because she could not properly care for herself. The affidavits signed by the Appellant's POA and granddaughter on [REDACTED], 2014, do not alter the fact that the Appellant could not be reasonably expected to fulfill her part of the agreement because of her medical condition. I find that the Employment and Services Agreement signed by the Appellant is not a valid document due to the Appellant's documented mental impairment and, therefore, services rendered by the Appellant's granddaughter and compensation received were not received in accordance with a binding and credible agreement as established in Department policy. 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.

**DECISION**

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

  
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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 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.