

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 #: 541218

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 ██████████ 2011 through ██████████ 2012.

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 requested that OLCRAH reschedule her hearing.

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:

██████████, POA and son of the Applicant  
 ██████████, Daughter-in-law of the Appellant  
 Liza Perez, Eligibility Services Worker, Department's Representative  
 Scott Zuckerman, Hearing Officer

### STATEMENT OF THE ISSUE

The issue is whether the Department correctly determined an effective date of Medicaid based on a Transfer of Assets ("TOA") penalty.

### FINDINGS OF FACT

1. In 2005, the Appellant's son was granted Durable Power of Attorney. (POA's Testimony)
2. From ██████████ 2006 through ██████████ 2010, the Appellant's POA paid himself for various services he provided to the Appellant, including paying bills, consulting with a financial planner to manage investments, consulting with an accountant regarding income tax returns, monitoring aspects of his health care, scheduling and providing transportation to doctor's visits, providing social support via visits and phone calls, purchasing clothing and personal items, assisting with the move from his home to assisted living. (Appellant's Testimony, Ex. F: Affidavit of ██████████ for Payment of Services, ██████/10)
3. On ██████████ 2007, the Appellant's POA paid himself \$100.00 for monthly services. (Ex. H Payments made prior to signing the ██████/10 the Lifetime Personal Service Support and Maintenance Contract)
4. On ██████████ 2007, the Appellant's POA paid himself \$800.00 for services. (Ex. H)
5. On ██████████ 2007, the Appellant's POA paid himself \$100.00 for monthly services. (Ex. H: Payments made prior to signing the ██████/10 the Lifetime Personal Service Support and Maintenance Contract)
6. On ██████████ 2007, the Appellant's POA paid himself \$800.00 for services. (Ex. H)
7. On ██████████ 2007, the Appellant's POA paid himself \$1000.00 to investigate assisted living options for the Appellant. (Hearing summary, Ex. H, Ex. F: Affidavit of ██████████ ██████████ for Payment of Services, ██████████ 2010)
8. On ██████████, 2007, the Appellant's POA paid himself \$500.00 for services. (Ex. H)
9. On ██████████ 2007, the Appellant's POA paid himself \$100.00 for services. (Ex. H)

10. On [REDACTED] 2007, the Appellant's POA paid himself \$100.00 for services for [REDACTED] 2007. (Ex. H)
11. On [REDACTED] 2007, the Appellant's POA paid himself \$10,000.00 for services related to selling the Appellant's home and making arrangements for the move. (Ex. H, Ex. F)
12. On [REDACTED] 2007, the Appellant's POA paid himself \$100.00 for monthly services. (Ex. H)
13. On [REDACTED] 2009, the Appellant entered Jefferson House (the "facility"). (Ex. S: Hartford Hospital Discharge notes and Jefferson House admission notes, [REDACTED]/09)
14. The Appellant entered Jefferson House with a diagnosis of Hypertension, Osteoporosis and Dementia. (Ex. S)
15. On [REDACTED] 2009, the Appellant's POA paid himself \$1600.00 for services to the Appellant from [REDACTED] 2008 to [REDACTED] 2009. (Ex. H)
16. On [REDACTED] 2009, the Appellant's POA paid himself \$200.00 for monthly services for the Appellant. . (Ex. H)
17. On [REDACTED] 2009, the Appellant's POA paid himself \$200.00 for [REDACTED] 2009 services for the Appellant. (Ex. H)
18. On [REDACTED] 2009, the Appellant's POA paid himself \$1500.00 for arranging a [REDACTED] birthday celebration for the Appellant and family reunion. (Ex. H, Ex. F)
19. On [REDACTED] 2009, the Appellant's POA paid himself \$200.00 for monthly services. (Ex. H)
20. On [REDACTED] 2009, the Appellant's POA paid himself \$200.00 for the [REDACTED] service fee. (Ex. H)
21. On [REDACTED] 2010, the Appellant's POA paid himself \$200.00 for the [REDACTED] service fee. (Ex. H)
22. On [REDACTED] 2010, the Appellant gifted \$450.00 for [REDACTED]' Birthday. (Ex. Q: W-495C Transfer Of Assets Final Decision Notice and attachments, [REDACTED]/13)
23. On [REDACTED] 2010, the Appellant gifted \$450.00 for [REDACTED]' Birthday. (Appellant's POA testimony, Ex. Q)
24. On [REDACTED] [REDACTED] 2010, the Appellant gifted \$450.00 for [REDACTED] [REDACTED]' Birthday. (Appellant's POA testimony, Ex. Q)
25. On [REDACTED], 2010, the Appellant gifted \$450.00 for [REDACTED]' Birthday. (Appellant's

POA testimony, Ex. Q)

26. On [REDACTED] 2010, the Appellant gifted \$450.00 for [REDACTED]' Birthday. (Appellant's POA testimony, Ex. Q)
27. On [REDACTED] 2010, the Appellant gifted \$450.00 for [REDACTED]' Birthday. (Appellant's POA testimony, Ex. Q)
28. On [REDACTED] 2010, the Appellant's POA paid himself \$400.00 for the [REDACTED] service fee. (Appellant's POA testimony, Ex. H)
29. On [REDACTED] 2010, the Appellant's POA paid himself \$400.00 preparing for and attending an estate planning meeting. (Appellant's POA testimony, Ex. H)
30. On [REDACTED] 2010, the Appellant's POA paid himself \$450.00 for the [REDACTED] service fee. (Appellant's POA testimony, Ex. H) (which services, [REDACTED])
31. On [REDACTED] 2010, the Appellant's POA paid himself \$450.00 for the [REDACTED] service fee. (Ex. H)
32. On [REDACTED] 2010, the Appellant's POA paid himself \$450.00 for the [REDACTED] service fee. (Ex. H)
33. On [REDACTED] 2010, the Appellant's POA paid himself \$450.00 for the [REDACTED] service fee. (Ex. H)
34. On [REDACTED] 2010, the Appellant's POA paid himself \$450.00 for the [REDACTED] service fee. (Ex. H)
35. On [REDACTED] 2010, the Appellant entered into a Lifetime Personal Service Support and Maintenance Contract (the "contract") with her son. The contract refers to the Appellant as the "client" and her son, the POA, as the "provider." (Ex. K: Lifetime Personal Service Support and Maintenance Contract, [REDACTED]/10)
36. The contract states that the agreement is for services only. The provider is not obligated to be financially responsible for the client or pay for any costs of the client's care or support. (Ex. K)
37. The contract states that the provider will monitor the client's health status, her emotional and physical condition and well-being, secure health care, and monitor the living arrangement status in the nursing home. It further states, the provider will shop for clothing and personal effects, visit the client, take the client on outings / family gatherings, and provide financial management. The provider will receive \$50.00 per hour for services performed. (Ex. K)
38. Prior to [REDACTED] 2010, there is no evidence that a caregiver agreement /

contract existed. (Hearing Record)

39. On [REDACTED] 2010, the Appellant signed an "Affidavit of [REDACTED] for Payment of Services" ("Affidavit") that occurred prior to the contract. The Affidavit names her son, POA, and his spouse to help her manage her financial affairs. The Affidavit lists services beginning from [REDACTED] 1997 through [REDACTED] 2010. (Ex. F: Affidavit of [REDACTED] for Payment of Services, [REDACTED]/10)
40. On [REDACTED] 2010, the Appellant's POA paid himself \$450.00 for 9.0 hours of services as listed in the contract. (Ex. K, Ex. Q)
41. On [REDACTED] 2010, the Appellant's POA paid himself \$450.00 for 9.0 of services as listed in the contract. (Ex. K, Ex. Q)
42. On [REDACTED] 2010, the Appellant's POA paid himself \$450.00 for 9.0 hours of services as listed in the contact.(Ex. K, Ex. Q)
43. On [REDACTED], 2010, the Appellant's POA paid himself \$450.00 for 9.0 hours of services as listed in the contract. (Ex. K, Ex. Q)
44. On [REDACTED], 2010, the Appellant gifted \$450.00 to [REDACTED]. (Appellant Testimony, Ex. Q)
45. On [REDACTED], 2010, the Appellant gifted \$450.00 to [REDACTED]. (Appellant's POA testimony, Ex. Q)
46. On [REDACTED], 2010, the Appellant gifted \$450.00 to [REDACTED]. (Appellant's POA testimony, Ex. Q)
47. On [REDACTED] 2010, the Appellant gifted \$450.00 to [REDACTED]. (Appellant's POA testimony, Ex. Q)
48. On [REDACTED] 2010, the Appellant gifted \$450.00 to [REDACTED]. (Appellant's POA testimony, Ex. Q)
49. On [REDACTED] 2010, the Appellant gifted \$450.00 to [REDACTED]. (Appellant's POA testimony, Ex. Q)
50. On [REDACTED] 2011, the Appellant's POA paid himself \$450.00 for 9 hours of services as listed in the contract. (Ex. Q)
51. On [REDACTED] 2011, the Appellant's POA paid himself \$450.00 for 9 hours of services as listed in the contract. (Ex. K, Ex. Q)
52. On [REDACTED] 2011, the Appellant's POA paid himself \$450.00 for 9 hours of services as listed in the contract (Ex. K, Ex. Q)

53. On [REDACTED] 2011, the Appellant's POA paid himself \$450.00 for 9 hours of services as listed in the contract. (Ex. K, Ex. Q)
54. On [REDACTED] 2011, the Appellant's POA paid himself \$450.00 for 9 hours of services as listed in the contract. (Ex. K, Ex. Q)
55. On [REDACTED] 2011, the Appellant's POA paid himself \$450.00 for 9 hours of services as listed in the contract. (Ex. K, Ex. Q)
56. On [REDACTED] 2011, the Appellant's POA paid himself \$450.00 for 9 hours of services as listed in the contract. (Ex. K, Ex. Q)
57. On [REDACTED] 2011, the Appellant's POA paid himself \$450.00 for 9 hours of services as listed in the contract. (Ex. K, Ex. Q)
58. On [REDACTED] 2011, the Appellant's POA paid himself \$450.00 for 9 hours of services as listed in the contract. (Ex. Q)
59. On [REDACTED] 2011, the Appellant's POA paid himself \$450.00 for 9 hours of services as listed in the contract. (Ex. Q)
60. On [REDACTED] 2011, the Department received an application for Long Term Care Medicaid for the Appellant. (Hearing Summary, Ex. U: Case narrative, [REDACTED]/11)
61. On [REDACTED], 2011, the Department sent a W-1348LTC, We Need Verification from You form to the Appellant's POA requesting verification / explanation for withdrawals on RBC account # [REDACTED], RBC account # [REDACTED] and TD Bank North account # [REDACTED]. The transactions range from [REDACTED] 2007 through [REDACTED] 2011. (Ex. E: W-1348LTC, [REDACTED]/11)
62. On [REDACTED] 2012, the Department sent a W-1348LTC form to the Appellant's POA requesting receipts to verify expenses and reimbursements indicated on the Affidavit. In addition, it requested verification and explanation of withdrawals from the bank accounts. (Ex. M: W-1348LTC, [REDACTED]/12)
63. On [REDACTED] 2013, the Department sent a W-1348LTC to the Appellant's POA requesting daily logs of services provided with specific time spent performing services for the contract and receipts showing amounts listed on the expenses and reimbursements list for the payments on the Affidavit. (Ex. N: W-1348LTC, [REDACTED]/13)
64. On [REDACTED] 2013, the Department sent a W-495A, Transfer of Assets Preliminary Decision Notice, indicating an initial decision to impose a penalty for an improper transfer of \$38,582.83. (Ex. P: W-495A, Transfer of Assets Preliminary Decision Notice, [REDACTED]/13)

65. On [REDACTED] 2013, the Appellant's POA sent a response to the W-495A, indicating disagreement with the penalty. Included with the rebuttal were receipts to be considered as verification that some of the checks were for reimbursements. (Ex. V: Case narratives, [REDACTED] 13, [REDACTED]/13 and [REDACTED]/13)
66. On [REDACTED] 2013, the Department sent a W-495-C, Transfer of Assets Preliminary Decision Notice. The notice stated that the Appellant transferred \$35,103.36 on various dates and a penalty will be set up beginning [REDACTED] 2011 through [REDACTED], 2012. (Ex. Q: W-495C, Transfer of Assets Final Decision Notice, [REDACTED]/13)
67. The Department determined that the Appellant was otherwise eligible for Medicaid effective [REDACTED] 2011 based on the application date of [REDACTED] 2011. (Record)
68. On [REDACTED] 2013, the Department granted the Appellant's Long Term Care Medicaid Benefits effective [REDACTED] 2011, with a TOA penalty period from [REDACTED] 2011 through [REDACTED] 2012. (Ex. V: Notice Content, [REDACTED] 13 and Ex. Q: W-495C, [REDACTED]/13)
69. On [REDACTED] 2013, the Department received additional information from the Appellant's representative as verification that some checks were for reimbursements. The checks included TD Banknorth check # [REDACTED], [REDACTED] 10 for \$400.00, RBC [REDACTED] check # [REDACTED], [REDACTED]/10 for \$575.00; RBC [REDACTED] check # [REDACTED], [REDACTED]/11 for \$392.60; RBC [REDACTED] check # [REDACTED], [REDACTED]/11 for \$463.38; RBC [REDACTED] check # [REDACTED], [REDACTED]/11 for \$572.38.
70. On [REDACTED] 2013, the Department reviewed the information and recalculated the penalty period from [REDACTED] 2011 through [REDACTED] 2012. (Ex. T: Response to W-495C, Ex. V Case narrative, [REDACTED]/13)

### **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. 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 payments on ██████████ 2010 through ██████████ 2010 and ██████████ 2010 totaling \$5850.00 were given as gifts to the Appellant's POA and other family members 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)(2) provides that compensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement.
13. The Department correctly determined that the Affidavit for payment of services, signed the same day as the contract, is not a legally enforceable agreement.



14. The Department correctly determined that the contract, dated [REDACTED] 2010, is a legally enforceable agreement.
15. UPM § 3029.30(B)(1) provides that each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset. In determining the dollar value of services rendered directly by the transferee, the Department uses the following amounts; (a) for all services of the type normally rendered by a homemaker or home health aid, the current state minimum hourly wage for such services; (b) for all other types of services, the actual cost.
16. The Department correctly determined that the transfers made between [REDACTED] 2007 through [REDACTED] 2010 and [REDACTED] 2010 through [REDACTED] 2010 were made without a legally enforceable agreement because the contract was not in effect until [REDACTED] 2010.
17. The Department correctly determined that the payments made from [REDACTED] 2010 through [REDACTED] 2011 for services listed in the contract are transfers for the purpose of qualifying for assistance. There are no specific hours or values assigned to each task listed each month for services. The Appellant did not provide clear and convincing evidence to support this claim.
18. The Department correctly determined that transfers totaling \$32,450 (\$5850.00 for gifts + \$26,600 to the POA) were transfer of assets made in order to be eligible for Medicaid.
19. The Appellant transferred \$32,450 during the look back period for the purpose of qualifying for Medicaid Long Term Care assistance.
20. Based on the transfer of \$32,450, the Appellant is subject to a Transfer of Asset penalty.
21. 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.
22. 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.
23. UPM § 3029.05 (E)(2) provides that the penalty period begins as of the later of the following dates: 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 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.

24. The Department correctly determined [REDACTED] 2011 as the date the Appellant would be otherwise eligible for Medicaid.
25. The Appellant is subject to a penalty period beginning [REDACTED] 2011, the date that the Appellant was otherwise eligible for Medicaid payment of long-term care services.
26. UPM § 3029.05 (F) provides in part 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. 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. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.
27. The length of the penalty period is 3.06 months, which is determined by dividing the uncompensated value of the transferred asset by the average monthly cost of care to a private patient for long-term care services in Connecticut, or  $\$32,450.00 \div 10,586.00 = 3.06$  months.

### **DISCUSSION**

After reviewing the evidence and testimony presented, the Department's action to impose a Medicaid period of ineligibility for long-term care coverage is upheld. I find that the gifts to family members, the POA and the payments for monthly services to the POA and his spouse totaling \$32,450.00 are subject to a Medicaid penalty as set out in regulations. I find that the POA did not provide clear and convincing evidence that he transferred the assets for any other purpose than to qualify for Medicaid.

The POA testified that \$5850.00 transferred was in fact for gifts to various family members. The POA did not provide clear and convincing evidence of the time he spent on each task on any specific day of the month after signing the contract. The POA provided an invoice for services as part of his rebuttal to the final decision notice. The invoice listed claimed services performed before and after the contract. After the contract the POA indicated 9 hours each month at \$50.00 per hour. There was no other documentation of the specific tasks performed on a given day or of the hours spent. The POA stated that the Affidavit that was signed on the same day as the contract was intended to memorialize an oral agreement they had with the Appellant prior to that date. There is no evidence that the contract was intended to memorialize an oral agreement between the Appellant and the POA. The POA's statement is not clear and convincing evidence that there was an oral agreement prior to the signed contract.

Without documentation of the specific hours spent on each service listed on the contract, I find no clear and convincing evidence that the transfers were made for any other purpose than to qualify the Appellant for Medicaid.

**DECISION**

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



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Scott Zuckerman  
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.