

**STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105**

[REDACTED] 2014
Signature confirmation

Client: [REDACTED]
Request: 609651

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2014, the Department of Social Services (the "Department") issued [REDACTED] [REDACTED] (the "Appellant") a notice that she had transferred \$72,850.00 to become eligible for Medicaid, and the Department was imposing a penalty period of ineligibility for Medicaid payment of long-term care services to run from [REDACTED] 2013 through [REDACTED] 2014.

On [REDACTED], 2014, the Appellant filed a request for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") to contest the Department's determination of a penalty period of ineligibility for Medicaid payment of long-term care services.

On [REDACTED] 2014, the Department issued a notice to the Appellant, granting her Medicaid payment of long-term care services, effective [REDACTED] 2014.

On [REDACTED] 2014, the Southeastern Connecticut Regional Probate District Court of Probate appointed [REDACTED], the Appellant's son, to be her conservator of person and estate, effective [REDACTED] 2014.

On [REDACTED] 2014, the OLCRAH issued a notice scheduling an administrative hearing for [REDACTED] [REDACTED] 2014.

On [REDACTED] 2014, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The following individuals participated in the hearing:

[REDACTED], Appellant's conservator (son)

██████████, Appellant's witness (daughter-in-law)
Ellen Wissner, Department's representative
Eva Tar, Hearing Officer

The hearing record remained open for the submission of evidence by the Department. On ██████████ 2014, the hearing record closed.

STATEMENT OF ISSUE

The issue to be decided is whether the Department correctly determined that the Appellant is subject to a penalty period of ineligibility for Medicaid payment of long-term care services, based on \$72,850.00 in transfers during the look-back period.

FINDINGS OF FACT

1. The Appellant was born ██████████ ██████████ 1934. (Department's Exhibit 10: Ascend Connecticut computer records, printed ██████████/14)
2. The Appellant's second husband was ██████████ (dob ██████████/██████████ (the "husband"). (Appellant's conservator's testimony)
3. The Appellant and her husband were married approximately 25 years. (Appellant's conservator's testimony)
4. When the Appellant's husband was alive, the Appellant and her husband lived in an apartment in the community. (Appellant's conservator's testimony)(Appellant's witness's testimony)
5. The Appellant and her husband were very private people and kept to themselves. (Appellant's conservator's testimony)
6. The Appellant was a housewife; she cooked and cleaned. (Appellant's witness's testimony)
7. The Appellant's husband paid the couple's bills. (Appellant's witness's testimony)
8. ██████████ ██████████ ██████████ was the Appellant's husband's stepfather. (Appellant's conservator's testimony)
9. On ██████████ 2008, ██████████ died. (Appellant's Exhibit C: *Statement in Lieu of Account*, ██████████/09)
10. On ██████████ 2009, the fiduciary of ██████████ estate filed a regular inventory with the Groton Probate Court, listing the deceased assets as equaling \$499,876.62, between real estate, a vehicle, and miscellaneous bank accounts. (Appellant's Exhibit C)

11. On or around [REDACTED] 2009, the fiduciary of [REDACTED] estate filed a *Statement in Lieu of Account* with the Groton Probate Court that listed [REDACTED] heirs as the Appellant's husband and the Appellant's husband's sister. (Appellant's Exhibit C)(Appellant's conservator's testimony)
12. In [REDACTED] 2009, the Appellant's husband eventually received \$190,000.00 from his stepfather's estate. (Appellant's conservator's testimony)
13. The Appellant or her husband was the owner of Groton Municipal account ([REDACTED]). (Department's Exhibit 4: Worksheet, undated)
14. On [REDACTED] 2009, the following dispersals were made from the Groton Municipal account [REDACTED]: \$15,000.00 to [REDACTED]; \$15,000.00 to [REDACTED]; and \$5,000.00 to [REDACTED]. (Department's Exhibit 4)
15. [REDACTED] is the Appellant's husband's son from a prior marriage; he is the Appellant's stepson. (Appellant's conservator's testimony)
16. [REDACTED] is the Appellant's husband's daughter from a prior marriage; she is the Appellant's stepdaughter. (Appellant's conservator's testimony)
17. The Appellant's conservator is the Appellant's son from her first marriage; the Appellant's husband was his stepfather. (Appellant's conservator's testimony)
18. On [REDACTED] 2009, \$8,000.00 was withdrawn from Groton Municipal account ([REDACTED]). (Department's Exhibit 4)
19. On [REDACTED] 2009, \$10,000.00 was withdrawn from Groton Municipal account [REDACTED]) (Department's Exhibit 4)
20. On [REDACTED] 2009, \$5,000.00 was withdrawn from Groton Municipal account ([REDACTED]). (Department's Exhibit 4)
21. On [REDACTED], 2010, \$8,950.00 was withdrawn from Groton Municipal account ([REDACTED]). (Department's Exhibit 4)
22. On [REDACTED] 2010, \$5,900.00 was withdrawn from Groton Municipal account ([REDACTED]). (Department's Exhibit 4)
23. On [REDACTED] 2011, the Appellant's husband died from metastatic renal cell carcinoma. (Appellant's Exhibit B: *Certificate of Death*, copy stamped [REDACTED]/13)
24. The Appellant's husband's death was after a brief, sudden hospitalization. (Appellant's conservator's testimony)
25. The Appellant's husband did not leave the Appellant or his stepson an inheritance in his will. (Appellant's conservator's testimony)

26. After her husband's death, the Appellant moved in with her son and daughter-in-law in [REDACTED] 2011. (Appellant's witness's testimony)
27. The Appellant's stepdaughter moved into the Appellant's former apartment when the Appellant left it. (Appellant's conservator's testimony)
28. The Appellant's daughter-in-law taught the Appellant how to open a checking account and write checks. (Appellant's witness's testimony)
29. On [REDACTED], 2013, the Appellant was hospitalized for a stroke at Lawrence and Memorial Hospital. (Appellant's conservator's testimony)
30. On [REDACTED], 2013, the Appellant was admitted to Apple Rehabilitation, a skilled nursing facility. (Department's Exhibit 10)
31. The Appellant's admitting diagnosis at Apple Rehabilitation was as follows: basal ganglia cerebro-vascular accident with right hemiparesis; aphasia, dysphasia, and aortic stenosis (moderate/severe). (Department's Exhibit 10)
32. The Appellant had a medical history of hypertension, hyperlipidemia, hypothyroidism, and breast cancer. (Department's Exhibit 10)
33. On [REDACTED] 2013, the Department received the Appellant's Medicaid application for payment of long-term care services. (Department's Exhibit 8: Assistance Status-STAT, [REDACTED]/14)(Department's Exhibit 12: Notice Content-NCON, [REDACTED]/14)
34. On [REDACTED] 2014, the Department issued a *Preliminary Decision Notice* to the Appellant stating that the agency had made the preliminary decision that the Appellant had transferred \$72,850.00 in 2009/2010 to become eligible for assistance. (Department's Exhibit 3: Transfer of Assets/*Preliminary Decision Notice*, [REDACTED]/14)
35. In an [REDACTED] 2014 correspondence to the Department, the Appellant's conservator stated that the Appellant is unable to explain the circumstances surrounding the 2009 and 2010 transfers, due to her medical condition having affected her speech. (Department's Exhibit 5: Correspondence, [REDACTED]/14)
36. On [REDACTED] 2014, the Department issued a *Notice of Response to Rebuttal/Hardship Claim* that stated that the Department did not agree with the Appellant's rebuttal and that the agency would be setting up a penalty period of ineligibility for Medicaid payment of her long-term care services to run from [REDACTED] 2013 through [REDACTED] 2013 [sic]. (Department's Exhibit 2: Transfer of Assets/*Notice of Response to Rebuttal/Hardship Claim*, [REDACTED]/14)
37. On [REDACTED] 2014, the Department issued a Final Decision Notice that stated that although the Appellant was eligible for certain Medicaid benefits beginning [REDACTED] 2013, there would be a penalty period to run from [REDACTED] 2013 through [REDACTED] 2014, where Medicaid would not pay for any of the Appellant's long-term care services. (Department's Exhibit 1: Transfer of Assets/*Final Decision Notice*, [REDACTED]/14)

38. Apple Rehabilitation has requested the Department to authorize Medicaid to cover the Appellant's long-term care services effective [REDACTED] 2013. (Department's representative's testimony)
39. On [REDACTED] 2014, the Department issued a notice to the Appellant, stating that it was granting her Medicaid coverage for long-term care services, effective [REDACTED] 2014. (Department's Exhibit 12)
40. Effective [REDACTED] 2014, the Department approved Medicaid payment for the Appellant's long-term care services. (Department's Exhibit 9: Institution-INST, [REDACTED]/14)
41. The couple's bank statements as submitted for periods prior to the 60-month look-back period demonstrated periodic withdrawals of large amounts by the Appellant's husband. (Department's representative's testimony)

CONCLUSIONS OF LAW

1. The Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act. Conn. Gen. Stat. § 17b-2.
2. The beginning date of a continuous period of institutionalization is: a. for those in medical institutions or long term care facilities, the initial date of admission; b. for those applying for home and community based services (CBS) under a Medicaid waiver, the date that the Department determines the applicant to be in medical need of the services. Uniform Policy Manual ("UPM") § 1507.05 (A)(2).
3. For the purposes of the Medicaid program, the Appellant's beginning date of a continuous period of institutionalization was [REDACTED] 2013.
4. This chapter describes 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. UPM § 3029.
5. 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. UPM § 3029.05 (A).
6. The policy contained in this chapter pertains to institutionalized individuals and to their spouses. An individual is considered institutionalized if he or she is receiving: a. LTCF services; or b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; or c. home and community-based services under a Medicaid waiver (cross references: 2540.64 and 2540.92). UPM § 3029.05 (B).

7. The look-back date 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. UPM § 3029.05 (C).
8. The Appellant's look-back period ran from 60 months prior to and up to [REDACTED] 2013, the date of her Medicaid application.
9. The Appellant's and her husband's transfers occurring in [REDACTED] 2009 of \$43,000.00 do not fall within the 60-month look-back period.
10. The Appellant's and her husband's transfers of \$43,000.00 in [REDACTED] 2009 do not subject her to a penalty period of ineligibility for Medicaid payment of long-term care services.
11. Medical assistance shall be provided for any otherwise eligible person whose income, including any available support from legally liable relatives and the income of the person's spouse or dependent child, is not more than one hundred forty-three per cent, pending approval of a federal waiver applied for pursuant to subsection (e) of this section, of the benefit amount paid to a person with no income under the temporary family assistance program in the appropriate region of residence and if such person is an institutionalized individual as defined in Section 1917(c) of the Social Security Act, 42 USC 1396p(c), and has not made an assignment or transfer or other disposition of property for less than fair market value for the purpose of establishing eligibility for benefits or assistance under this section. Any such disposition shall be treated in accordance with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). 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. A disposition of property ordered by a court shall be evaluated in accordance with the standards applied to any other such disposition for the purpose of determining eligibility. The commissioner shall establish the standards for eligibility for medical assistance at one hundred forty-three per cent of the benefit amount paid to a family unit of equal size with no income under the temporary family assistance program in the appropriate region of residence. In determining eligibility, the commissioner shall not consider as income Aid and Attendance pension benefits granted to a veteran, as defined in section 27-103, or the surviving spouse of such veteran. Except as provided in section 17b-277, the medical assistance program shall provide coverage to persons under the age of nineteen with family income up to one hundred eighty-five per cent of the federal poverty level without an asset limit and to persons under the age of nineteen and their parents and needy caretaker relatives, who qualify for coverage under Section 1931 of the Social Security Act, with family income up to one hundred eighty-five per cent of the federal poverty level without an asset limit. Such levels shall be based on the regional differences in such benefit amount, if applicable, unless such levels based on regional differences are not in conformance with federal law. Any income in excess of the applicable amounts shall be applied as may be required by said federal law, and assistance shall be granted for the balance of the cost of authorized medical assistance. The Commissioner of Social Services shall provide applicants for assistance under this section, at the time of application, with a written statement advising them of (1) the effect of an assignment or transfer or other disposition of property on eligibility for benefits or assistance, (2) the effect that having income that exceeds the limits prescribed in this subsection will have

with respect to program eligibility, and (3) the availability of, and eligibility for, services provided by the Nurturing Families Network established pursuant to section 17b-751b. Persons who are determined ineligible for assistance pursuant to this section shall be provided a written statement notifying such persons of their ineligibility and advising such persons of the availability of HUSKY Plan, Part B health insurance benefits. Conn. Gen. Stat. § 17b-261 (a).

12. 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. UPM § 3029.05 (D)(1).
13. In the case of an asset that the individual holds in common with another person or persons in joint tenancy, tenancy in common or 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 the individual's ownership or control of the asset. UPM § 3029.05 (D)(2).
14. 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).
15. Any transfer or assignment of assets resulting in the establishment or imposition of a penalty period shall create a debt, as defined in section 36a-645, that shall be due and owing by the transferor or transferee to the Department of Social Services in an amount equal to the amount of the medical assistance provided to or on behalf of the transferor on or after the date of the transfer of assets, but said amount shall not exceed the fair market value of the assets at the time of transfer. The Commissioner of Social Services, the Commissioner of Administrative Services and the Attorney General shall have the power or authority to seek administrative, legal or equitable relief as provided by other statutes or by common law. Conn. Gen. Stat. § 17b-261a (b).
16. Transfers that do not result in a penalty include, but are not limited to, transfers of a home to certain individuals; transfers made to or for the benefit of spouses, subject to limitations; transfers to a disabled child; transfers to certain trusts established for the sole benefit of an individual under the age of 65 who is considered disabled under criteria for SSI eligibility; transfers made exclusively for reasons other than qualifying; transferor intended to transfer the asset for fair market value; and transfers made for other valuable consideration. UPM § 3029.10.
17. 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. UPM § 3029.10 (E).

18. UPM § P-3029.03 provides guidelines to Department staff with respect to evaluating transfers during the look-back period. Subsection (2) of this section directs agency staff to examine savings accounts history during the look-back period; question any withdrawals which appear to involve transfers that might affect eligibility; use prudent judgment in determining whether a withdrawal requires verification, especially if the withdrawal occurred more than 36 months prior to the date of application; accept reasonable explanations, especially if the individual was in good health and not institutionalized at the time of the withdrawal; and as a general rule, be more accepting the lower the withdrawal amount and the earlier withdrawal date.
19. Subsection (3) of UPM § P-3029.03 directs Department staff, when investigating checking accounts during the look-back period months, to: establish the normal payment of expenses by looking at the checking account history for at least the six months prior to institutionalization and each month subsequent to institutionalization; request further information about any withdrawals which are not part of the normal pattern or appear questionable, regardless of when they occurred during the look-back period; use prudent judgment in determining whether a withdrawal requires verification; as a general rule, be more accepting the lower the withdrawal amount and the earlier the withdrawal date; and accept reasonable explanations, especially if the individual was in good health and not institutionalized at the time of the withdrawal.
20. The Appellant established by clear and convincing evidence that the Appellant's now-deceased husband transferred a total of \$72,850.00 between 2009 and 2010 for a purpose other than to qualify or potentially qualify for Medicaid.
21. The \$72,850.00 in transfers between 2009 and 2010 do not subject the Appellant to a transfer penalty of ineligibility for the Medicaid program.

DISCUSSION

There hearing officer is overturning the Department's ██████████ 2014 imposition of a penalty period with respect to the Appellant's Medicaid long-term care case.

The Department significantly erred in its initial calculation of a penalty period. The Department had determined that the Appellant had transferred \$72,850.00 within the 60-month look-back period immediately prior to the Appellant's ██████████ 2013 Medicaid application. The Department erred by including \$43,000.00 in transfers from early- to mid-██████████ 2009 in its calculation; the ██████████ 2009 transfers fell in excess of 60 months prior to the date of the Appellant's Medicaid application. The Appellant's transfers that were subject to review by the Department (and which fell within the 60-month look-back period) therefore equaled \$29,850.00, and not \$72,850.00.

The hearing officer found the testimony of the Appellant's conservator and his wife credible. The testimony was plausible, reasonable, exhibited first-hand knowledge, and was supported by the documentary evidence submitted for the hearing record.

The Appellant's husband, the person who took care of the couple's finances—and the individual who had made the ██████████ 2009 and ██████████ 2010 transfers—has been deceased since 2011. The Appellant's medical history prior to her ██████████ 2013 institutionalization subsequent

to a stroke was not one that would lead an ordinary person to believe that the Appellant's institutionalization was imminent.

Based on the couple's specific circumstances at the time of the transfers and the remoteness of the [REDACTED] 2009 and [REDACTED] 2010 transfers with respect to the Appellant's [REDACTED] 2013 Medicaid application, the hearing officer finds that the couple's transfers within the 60-month look-back period were made for a purpose other than to qualify for Medicaid.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Department will remove the \$72,850.00 transfer penalty period of ineligibility from the Appellant's case, updating its computer records accordingly.
2. The Department will notify the Appellant's conservator in writing of the removal of this penalty and the new effective date of eligibility for Medicaid payment of the Appellant's long-term care services.
3. The Department will notify Apple Rehabilitation of the amended effective date of eligibility for Medicaid payment of the Appellant's long-term care services.
4. Within 21 calendar days of the date of this decision, or [REDACTED] 2014, documentation of compliance with this order is due to the undersigned.



Eva Tar
Hearing Officer

Pc: [REDACTED]
Cheryl D. Parsons, Operations Manager, DSS-Norwich (40)

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.