

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 #: 615804

NOTICE OF DECISION

PARTY

██████████  
██████████  
██████████

*Applicant:* ██████████

PROCEDURAL BACKGROUND

On ██████████ 2013, the Department of Social Services (the "Department") sent ██████████ (Applicant) a Transfer of Assets Final Decision Notice indicating that it would impose a penalty on her Long Term Care Medicaid (LTC) benefits effective ██████████ 2013 through ██████████ 2013 for transfers totaling \$44,483.64.

On ██████████ 2013, ██████████, the Applicant's son ("Appellant") requested an administrative hearing to contest the Department's decision to impose a penalty on the Applicant's LTC Medicaid benefits.

On ██████████ 2013, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the original administrative hearing for ██████████, 2013. The hearing was held.

On ██████████ 2014, a hearing decision was issued upholding the Department's actions to impose a transfer penalty on the Applicant's LTC Medicaid benefits.

The Appellant requested a reconsideration to dispute the hearing decision.

On [REDACTED] 2014, OLCRAH determined that the Applicant was entitled to a *de novo* hearing and the hearing was rescheduled for [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, OLCRAH held an administrative hearing.

The following individuals were present:

[REDACTED], Appellant  
[REDACTED], Applicant's daughter  
[REDACTED], Litchfield Hills, for the Appellant  
Angelo Maragos, Esq., Attorney for Litchfield Hills  
Amy Kreidel, Department's Representative  
Ryan Barganier, Department's Representative  
Karen Brown, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue is whether the Department correctly imposed a Transfer of Assets (TOA) penalty based on the Applicant's \$44,483.00 cash transfers.

### **FINDINGS OF FACT**

1. In [REDACTED] 2005, the applicant moved in with the Appellant and his spouse in their home. (Exhibit 5: Correspondence from Appellant to Department)
2. In J [REDACTED] 2006, the applicant moved into her own apartment in the community. (Exhibit 5)
3. The applicant had no health issues that prevented her from living alone. She had a medical history of breast cancer/mastectomy and high blood pressure. (Exhibit 7: ProHealth doctor's notes from [REDACTED] 2006)
4. On [REDACTED] 2008, the Appellant paid \$10,500.00 for a water proofing system to be placed in the Appellant's home and basement. (Exhibit 5b: invoice from CT Basement Systems)
5. On [REDACTED] 2009, the applicant transferred to the Appellant \$10,000.00 towards the cost of repairs for the basement. (Exhibit 9: Department's Remarks screen)
6. As of [REDACTED] 2009, the applicant retained \$67,324.00 in bank assets. (Testimony)
7. On [REDACTED] 2010, the Appellant paid \$13,150.00 for replacement windows and installation for the Appellant's home. (Exhibit 5c: Ed Amoroso invoice)

8. On [REDACTED], 2010, the applicant transferred to the Appellant \$13,008.64 to pay for the cost of the windows. (Exhibit 9)
9. As of [REDACTED] 2010, the applicant had no major health issues. She had a medical history of hypertension, edema, and osteoarthritis. (Exhibit 8a: Doctor's report from ProHealth [REDACTED]/10)
10. In [REDACTED] 2011, the Appellant owed the Internal Revenue Services \$17,990.00 and Connecticut Revenue Services \$7,070.00. (Exhibit 5e: Tax filing balances)
11. On [REDACTED] 2011, the applicant gave the Appellant \$10,000.00 to pay for back taxes that he owed. (Exhibit 9)
12. On [REDACTED], 2011, the Appellant paid \$11,475.00 for an air conditioning unit in the attic to be replaced. (Exhibit 5d: Landucci Heating and Cooling Invoice)
13. On [REDACTED] 2011, the applicant gave the Appellant \$6,000.00 towards the air conditioning unit. (Exhibit 9)
14. As of [REDACTED] 2011, the applicant retained \$35,400.00 in bank assets. (Testimony)
15. On [REDACTED] 2012, the applicant gave the Appellant \$5,475.00 towards the air conditioning unit. (Exhibit 9)
16. As of [REDACTED] 2012, the applicant was diagnosed with hypertension and mental status change with increased confusion. (Exhibit 8b: ProHealth doctor's notes [REDACTED] [REDACTED] 12)
17. As of [REDACTED] 2012, the applicant retained \$13,499.00 in assets. (Testimony)
18. On [REDACTED] 2013, the Department received the applicant's request for Long Term Care Medicaid. (Exhibit 1: Department Narrative screen)
19. As of [REDACTED] 2013, the applicant retained \$4,028.00 in assets. (Testimony)
20. On [REDACTED] 2013, Litchfield Woods Health Care Center admitted the applicant. (Exhibit 6: Admission notice)
21. The applicant retained enough assets at the time of each transfer to meet her foreseeable needs. (Record)
22. On [REDACTED] 2013, the Department sent the applicant and Appellant a W-1348, verifications form requesting power of attorney documents, medical insurance verifications, bank statements, vehicle registration and annuity information. The

- requested information was due by ██████████ 2013. (Exhibit 3: W-1348 form)
23. The Department received verifications and sent out subsequent W-1348 forms on ██████████ 2013, ██████████ 2013, ██████████ 2013, ██████████, 2013, ██████████, 2013, and ██████████ 2013 requesting additional information as required. (Exhibits 3a-3f: W-348 forms)
  24. On ██████████ 2013, the Department sent the Appellant a preliminary transfer of assets decision notice stating that its initial decision is that the applicant transferred \$44,483.64 in order to be eligible for assistance. (Exhibit 10: W-495A form)
  25. The Appellant and applicant submitted a rebuttal letter to dispute that the transfers were improper. (Hearing Summary)
  26. On ██████████ 2013, the Department sent the Appellant a notice of response to rebuttal indicating that it did not agree with his claim. (Exhibit 11: W-495B)
  27. On ██████████ 2013, the Department sent the Appellant a letter indicating that it is granting the applicant's Medicaid effective ██████████ 2013 and a penalty period would be imposed from ██████████ 2013 through ██████████ 2013 because it believes that the applicant transferred assets to qualify for Medicaid. (Exhibit 12:W-495C)

### 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 the Department 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. Uniform Policy Manual ("UPM") Section 1500.01 provides the following definition:  
  
An **applicant** is the individual or individuals for whom assistance is requested.
4. UPM Section 4005.05 states that every program administered by the Department has a definite asset limit.
5. UPM Section 4005.10.A.2.a defines the asset limit as \$1,600 for a needs group of one.
6. The applicant reduced her assets to below the Medicaid asset limit in ██████████ 2013.

7. UPM Section 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 Section 3029.05 states 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 section C of this policy. This period is called the penalty period, or period of ineligibility.

B. Individuals Affected

1. The policy contained in this chapter pertains to institutionalized individuals and to their spouses.
2. 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).

C. Look-Back Date for Transfers

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.

E. Start of the Penalty Period

The penalty period begins as of the later of the following dates:

1. the first day of the month during which assets are transferred for less than fair market value, if this month is not part of any other period of ineligibility caused by a transfer of assets; or
2. 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.

F. Length of the Penalty Period

1. 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.
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.
  - a. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.
  - b. For recipients, the average monthly cost for LTCF services is based on the figure as of:
    - (1) the month of institutionalization; or
    - (2) the month of the transfer, if the transfer involves the home, or the proceeds from a home equity loan, reverse mortgage or similar instrument improperly transferred by the spouse while the institutionalized individual is receiving Medicaid, or if a transfer is made by an institutionalized individual while receiving Medicaid...
4. Once the Department imposes a penalty period, the penalty runs without interruption, regardless of any changes to the individual's institutional status.

G. Medicaid Eligibility During the Penalty Period

1. During the penalty period, the following Medicaid services are not covered:
  - a. LTCF services; and
  - b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; and
  - c. home and community-based services under a Medicaid waiver.
9. UPM Section 3029.15.B provides that the Department considers a transferor to have met his or her foreseeable needs if, at the time of the transfer, he or she retained other income and assets to cover basic living expenses and medical

costs as they could have reasonably been expected to exist based on the transferor's health and financial situation at the time of the transfer.

10. The applicant retained sufficient funds to meet her foreseeable needs.
11. State Statute provides that any transfer of 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. The 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. Section 17b-261a (a).
12. UPM Section 3029.10.E provides that an otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC services if the individual, or his or her spouse, provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.
13. UPM Section 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.
14. The applicant provided clear and convincing evidence that the cash transfers to her son were for reasons other than to qualify for assistance.
15. At the age of [REDACTED] the applicant was seen by a physician on a regular basis and did not have any health issues that required that she be placed in a nursing facility at the time of the transfers. The applicant retained sufficient funds to meet her foreseeable needs at the time of the transfers.
16. The Department incorrectly imposed a transfer of assets penalty against the applicant because there was clear and convincing evidence provided to support that her bank transfers to her son were for reasons other than qualifying for assistance.

### **DISCUSSION**

I find that the Department was incorrect to impose a penalty on the applicant's LTC Medicaid based on the cash transfers from her bank account to her son for home repairs. There was clear and convincing evidence that the intent of the cash transfers were to help her son in his financial circumstances. At the time of the transfers, the applicant lived in the community independently, managed her own expenses, and was in good health until she had mental status changes in [REDACTED] 2012. It did not appear that the applicant or Appellant anticipated that she would require nursing home care when the transfers occurred as the applicant remained in the community living alone until she was placed in the nursing home in [REDACTED]

2013. All of the transfers to her son coincided with home repairs that were done in the home. After each transfer, she retained sufficient funds to meet her needs in the community. The Department must remove the penalty period.

**DECISION**

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

**ORDER**

1. The Department must remove the penalty period from the applicant's LTC Medicaid benefit so that eligibility begins [REDACTED] 2013.
2. Compliance must be provided to the undersigned no later than [REDACTED] 2014.



Karen Brown  
Hearing Officer

Pc: Annette Lombardi, Operations Manager, Torrington DO #62



### **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.