

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

██████████ 2014
Signature Confirmation

Client ID # ██████████
Request #623163

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2014, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") denying Long Term Care Medicaid benefits from ██████████ 2012 through ██████████ 2012.

On ██████████, 2014, the Appellant requested an administrative hearing to contest the denial of the Long Term Care Medicaid benefits as determined by the Department.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████ 2014.

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

██████████, Appellant's Representative
██████████, Policy Consultant for Klemonski & Rose
Liza Morais Department's Representative
Scott Zuckerman, Hearing Officer

The hearing record remained open for the submission of additional evidence. On [REDACTED] 2014, the hearing record closed.

STATEMENT OF THE ISSUE

The first issue to be decided is whether or not the Department was correct in its determination of the effective date of the Appellant's Long Term Care Medicaid benefits as [REDACTED] 2012.

The second issue to be decided is whether the Department correctly determined the Appellant transferred \$17,483.00 to become eligible for Medicaid

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

FINDINGS OF FACT

1. On [REDACTED] 2007, the Appellant wrote a letter to her sister and niece thanking them for their help. The Appellant expressed that she wanted to pay them for their time and assistance for unspecified services in the future. (Exhibit J: Letter to [REDACTED] and [REDACTED], [REDACTED]/07)
2. The [REDACTED] 2007 letter does not specify the type or amount of services to be performed or the rate of pay for said services. (Exhibit J)
3. From [REDACTED] 2007 to [REDACTED] 2009, the Appellant resided in her own home located at [REDACTED] (Appellant's exhibit A, [REDACTED]/12)
4. From [REDACTED] 2007 to [REDACTED] 2009, the Appellant's family provided the following services for her: laundry, grocery shopping, housework, meal preparation, lawn mowing, bookkeeping, doctors' appointments, errands, trips to the pharmacy, shopping, de-icing front steps and meeting with a realtor. (Exhibit K: Services rendered by [REDACTED] and [REDACTED])
5. From [REDACTED] 2007 to [REDACTED] 2009, the log of services contains hours performing a service but does not contain an hourly rate for each service. (Exhibit K)
6. From [REDACTED] 2009 to [REDACTED] [REDACTED] 2010 the Appellant resided in [REDACTED] [REDACTED] Assisted Living Facility. (Appellant's representative's Testimony, Appellant's Ex. A)
7. From [REDACTED] 2009 to [REDACTED] 2010, the Appellant's family provided services to the following services to the Appellant: setting up her room at the

assisted living facility, grocery shopping, housework, de-icing front steps, preparation for the sale of the home, shopping, bookkeeping, bill paying, doctors' appointments, errands / pharmacy, meal preparation, cleanup of home/sale of home, laundry, and tidying of her room. (Exhibit K)

8. From [REDACTED] 2010 to [REDACTED] 2010 the Appellant was admitted to St. Mary's Nursing Facility for rehab. (Appellant's Ex. A)
9. From [REDACTED] 2010 to [REDACTED] 2010 the Appellant resided at [REDACTED] Assisted Living Facility. (Appellant's Ex. A)
10. From [REDACTED] 2010 to [REDACTED] 2010, the Appellant's family provided the following services to the Appellant: Laundry, bill paying and bookkeeping. (Exhibit K)
11. From [REDACTED] 2010 to [REDACTED] 2010 the Appellant resided at [REDACTED] Assisted Living Facility. (Appellant's Ex. A)
12. From [REDACTED] 2010 to [REDACTED] 2010, the Appellant's family provided the following services for her: Laundry, bill paying and bookkeeping. (Exhibit K)
13. Effective [REDACTED] 2010 the Appellant was a resident of [REDACTED] Nursing [REDACTED] CT. (Appellant's Exhibit A, Testimony)
14. From [REDACTED] 2010 to [REDACTED] 2012, the Appellant's family provided the following services to her while she resided at the Nursing Facility: Bookkeeping, bill paying and laundry. (Exhibit K)
15. On [REDACTED] 2012, the Appellant's POA paid herself and [REDACTED] \$17,483.00 for services to the Appellant. (Appellant's Representative Testimony, Ex. S: Bank of America Statement)
16. On [REDACTED] 2012, the Department received an application for Long Term Care Medicaid assistance for the Appellant. (Hearing Summary, Exhibit Z: W-1F, Application, [REDACTED]/12)
17. The Appellant's sister is the Power of Attorney ("POA"). (Hearing Summary, Appellant's representatives testimony)
18. The Appellant's representative requested Medicaid Long Term Care beginning [REDACTED] 2012. (Hearing Record)
19. The Appellant is widowed. (Exhibit Z: W-1F Application)
20. The Appellant had three bank accounts during the application process; Bank of America checking account (# [REDACTED]), Bank of America money market

savings account (# [REDACTED]) and Bank of America checking account (# [REDACTED]). (Hearing Summary, Exhibit S: Bank of America statements for accts # [REDACTED] and [REDACTED], [REDACTED]/12 to [REDACTED]/12, Exhibit T: Bank of America checking statements for acct # [REDACTED] [REDACTED]/12 to [REDACTED]/12)

21. On [REDACTED], 2012, the Appellant receives net monthly VA aid and attendance benefits of \$1094.00 deposited into the Bank of America checking account # [REDACTED]. (Appellant's representative testimony, Ex. T: Bank of America statements acct # [REDACTED])
22. On [REDACTED] 2012, the Appellant receives monthly Social Security Retirement benefits of \$1525.00 deposited into the Bank of America checking account # [REDACTED]. (Appellant's representative testimony, Ex. S: Bank of America statements acct # [REDACTED])
23. On [REDACTED] 2012, the Appellant receives a monthly [REDACTED] retiree pension of \$681.66 deposited into the Bank of America checking account # [REDACTED]. (Appellant's representative testimony, Ex. S: Bank of America statements acct # [REDACTED])
24. On [REDACTED] 2012, the Appellant receives a monthly pension from [REDACTED] of \$529.50 deposited into the Bank of America, money market savings acct # [REDACTED]. (Ex. S: Bank of America statements acct # [REDACTED])
25. On [REDACTED] 2012, the Appellant's monthly [REDACTED] pension of \$529.50 is deposited into the Bank of America, money market savings acct [REDACTED]. (Ex. S: Bank of America statements acct # [REDACTED])
26. On [REDACTED], 2012, the Appellant's monthly [REDACTED] pension of \$681.66 is deposited into the Bank of America checking account # [REDACTED] (Appellant's representative testimony, Ex. S: Bank of America statements acct # [REDACTED])
27. On [REDACTED] 2012, the Appellant's monthly VA Aid and Attendance benefit is deposited into the Bank of America checking acct # [REDACTED] Appellant's representative testimony, Ex. T: Bank of America statements acct # [REDACTED])
28. On [REDACTED] 2012, the Appellant's monthly [REDACTED] pension of \$529.50 is deposited into the Bank of America checking acct # [REDACTED] (Ex. S: Bank of America statements acct # [REDACTED])
29. On [REDACTED] 2012, the Appellant's monthly Social Security benefit is deposited into her Bank of America checking acct # [REDACTED] (Appellant's representative testimony, Ex. S: Bank of America statements acct # [REDACTED])

30. On [REDACTED] 2012, the Appellant's monthly State of CT pension of \$681.66 is deposited into the Bank of America checking acct # [REDACTED] (Ex. S: Bank of America statements acct # [REDACTED])
31. On [REDACTED] 2012, [REDACTED] 2012, [REDACTED] 2012, [REDACTED] 2012, [REDACTED] 2013 and [REDACTED], 2013, the Department sent the Appellant's representative a W-1348 Application Requirements List form requesting certain information be provided by the Appellant to determine eligibility. (Exhibit A: W-1348 dated [REDACTED]/12, Ex.B: W-1348 dated [REDACTED]/12, Ex. D: W-1348 dated [REDACTED]/12 Ex. E: W-1348 dated [REDACTED]/12 and Ex. G: W-1348 dated [REDACTED]/13, Ex. L W-1348LTC, [REDACTED]/13)
32. On [REDACTED] 2012, the Appellant past away. (Hearing Record)
33. The Asset limit for Long Term Care Medicaid is \$1600.00. (Appellant's representatives testimony, Department's testimony)
34. The Department calculated the Appellant's assets for the months of [REDACTED] 2012 through [REDACTED] 2012 as follows:

| Month | Bank of America Acct # [REDACTED] | Bank of America Acct # [REDACTED] | Bank of America Acct # [REDACTED] |
|-----------------|--------------------------------------|--------------------------------------|--------------------------------------|
| [REDACTED] 2012 | \$2934.71 | \$639.00 | \$131.45 |
| [REDACTED] 2012 | \$966.37 | \$533.00 | \$660.96 |
| [REDACTED] 2012 | \$1336.87 | \$533.00 | \$190.47 |
| [REDACTED] 2012 | \$311.71 | \$721.00 | \$419.98 |

(Ex. N: Monthly Asset worksheet, Ex. S: Bank of America Bank Statements [REDACTED]/12 – [REDACTED]/12 for Accts # [REDACTED] & [REDACTED], Ex. T: Bank of America bank statements [REDACTED]/12 – [REDACTED]-12 for acct # [REDACTED])

35. For the period [REDACTED] 2012 through [REDACTED] 2012, the combination of the Appellant's Bank of America accounts exceeded \$1,600.00. (Ex. N: Monthly Asset worksheet, Ex. S: Bank of America Bank Statements [REDACTED]/12 – [REDACTED]/12 for Accts # [REDACTED] & [REDACTED] Ex. T: Bank of America bank statements [REDACTED]/12 – [REDACTED]/12 for acct # [REDACTED])
36. On [REDACTED] 2013, the Department requested verification of the \$17,483.00 withdrawal from the Bank of America acct # [REDACTED] (Ex. L W-1348LTC)
37. On [REDACTED] 2013, the Department's Principal Attorney reviewed the letter dated [REDACTED] 2007, determining it was not a legally enforceable caregiver agreement, stating, "there are no terms by which it can be determined whether the daughters performed services necessary to receive compensation and

there is no mention of the amount to be paid for services performed".(Ex. M: Email from Attorney, [REDACTED]/13)

38. On [REDACTED] 2014, 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 \$17,483.00 on [REDACTED] 2012. (Ex. O: W-495A, Transfer of Assets Preliminary Decision Notice, [REDACTED]/14)
39. On [REDACTED] 2014, the Appellant's representative sent a response to the W-495A, indicating disagreement with the penalty and the Department's monthly asset worksheet. Included with the rebuttal was a monthly asset worksheet completed by the Appellant's representative. (Ex. P: Email and Rebuttal, [REDACTED]/14)
40. On [REDACTED] 2014, the Department sent the Appellant's representative a W-495-C, Transfer of Assets Final Decision Notice. The notice stated that you transferred \$17,483.00 on [REDACTED], 2012 and a penalty will be set up beginning [REDACTED] 2012 through [REDACTED] 2012. (Ex. Q: W-495C, Transfer of Assets Final Decision Notice, [REDACTED]/14)
41. On [REDACTED] 2014, the Department denied the Appellant's Long Term Care Medicaid benefits, for reason, the value of your assets is more than the amount we allow you to have. (Ex. Y: Notice Content, [REDACTED]/14)

CONCLUSIONS OF LAW

1. Sections 17b-260 to 17b-264 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Title XIX Medical Assistance Program to provide medical assistance to eligible persons in Connecticut.
2. Conn. Gen. Stat., Section 17b-2 authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
3. Conn. Gen. Stat., Section 17b-80(a) states that the Department shall grant aid only if the applicant is eligible for that aid.
4. Uniform Policy Manual ("UPM") § 1015.05 (C) provides the Department must tell the assistance unit what the unit has to do to establish eligibility when the Department does not have sufficient information to make an eligibility determination.
5. The Department notified the Appellant and her representatives that they qualify for medical help only when assets are under the \$1,600.00 limit.

6. Uniform Policy Manual ("UPM") § 400.01 defines asset limit as the maximum amount of equity in counted assets which an assistance unit may have and still be eligible for a particular program administered by the Department. An available asset is cash or any item of value which is actually available to the individual or which the individual has the legal right, authority or power to obtain, or to have applied for, his or her general or medical support. A counted asset is an asset which is not excluded and either available or deemed available to the assistance unit.

7. UPM § 4030 provides that the Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.

8. UPM § 4030.05(A) provides that bank accounts include the following. This list is not all inclusive.
 1. Savings account;
 2. Checking account;
 3. Credit union account;
 4. Certificate of deposit;
 6. Patient account at long-term care facility;
 7. Children's school account;
 8. Trustee account;
 9. Custodial account.

8. UPM § 4030.05(B) provides for that part of a checking account to be considered as a counted asset during a given month is calculated by subtracting the actual amount of income the assistance unit deposits into the account that month from the highest balance in the account for that month.

10. UPM § 4030.05 (C) provides that money which is received as income during a month and deposited into an account during the month is not considered an asset for that month, unless the source of the money is:
 1. an income tax refund; or
 2. cash received upon the transfer or sale of property; or
 3. a security deposit returned by the landlord.

9. The Department correctly included the Appellant's checking and savings account values as counted assets.

10. Uniform Policy Manual ("UPM") §4005.10 (A)(2)(a) provides that the Medicaid asset limit for one person is \$1,600.00.

11. The Department incorrectly determined that the values of the Appellant's assets exceeded the \$1,600.00 Medicaid asset limit from [REDACTED] 2012 to [REDACTED] 2012. The Appellant's assets were below the \$1600 limit in [REDACTED] 2012. The correct [REDACTED] 2012 balance for Bank of America Acct # [REDACTED] is \$728.05 (\$2934.71 [REDACTED] 2012 ending balance - \$1525.00

social security - \$681.66 [REDACTED] pension = \$728.05). The correct [REDACTED] 2012 balance for Bank of America Acct # [REDACTED] is \$284.71 (\$966.37 [REDACTED], 2012 ending balance - \$681.66 [REDACTED] pension). The correct [REDACTED] 2012 balance for Bank of America acct # [REDACTED] is \$655.21 (\$1336.87 [REDACTED], 2012 balance - \$681.66 [REDACTED] pension)

| Month | Bank of America Acct # [REDACTED] | Bank of America Acct # [REDACTED] | Bank of America Acct # [REDACTED] |
|-----------------|--------------------------------------|--------------------------------------|--------------------------------------|
| [REDACTED] 2012 | \$728.05 | \$639.00 | \$131.45 |
| [REDACTED] 2012 | \$284.71 | \$533.00 | \$660.96 |
| [REDACTED] 2012 | \$655.21 | \$533.00 | \$190.47 |
| [REDACTED] 2012 | \$311.71 | \$721.00 | \$419.98 |

12. UPM § 4005.15(A)(2) provides that for Medicaid and AABD residents of Long Term Care Facilities, at the time of application, the assistance unit is ineligible until the first day of the month in which it reduces its equity in counted assets to within the asset limit.
13. The Appellant's assets were reduced to within the Medicaid asset limit in [REDACTED] 2012.
14. 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.
15. UPM § 3029.05(B) provides that the policy contained in the chapter on transfers of assets pertains to institutionalized individuals and to their spouses.
16. 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.
17. 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.
18. The Department correctly looked back 60 months prior to the Appellant's application in order to determine whether any improper asset transfers occurred.
 19. 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.
 20. 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.
 21. UPM Section 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.
 22. The Department correctly determined that the care giver agreement is not a legally enforcement agreement as it was a letter expressing a wish that her family members be compensated for assisting her with activities in the future. The letter to her does not provide any terms or values assigned to a task, just that she would like to compensate them for their time and assistance with "these" activities.
 23. The Department was correct when it determined that the \$17,483.00 payment for services was a transfer of assets made in order to be eligible for Medicaid.
 24. The Appellant transferred \$17,483.00 for the purpose of qualifying for Medicaid Long Term care assistance.
 25. The Appellant is subject to a penalty period beginning [REDACTED] 1, 2012, the date that the Appellant was otherwise eligible for Medicaid payment of long-term care services.
 26. 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.

27. 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.
28. The length of the penalty period is 1.56 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 $\$17,483.00 \div 11,183.00 = 1.56$ months.

DISCUSSION

The Department was correct in its determination to impose a transfer of asset penalty in the transfer of \$17,483.00 for payment of services to the Appellant's family without a legally enforceable agreement. I find the evidence clear and convincing that the transfers were made for the purpose of qualifying for Medicaid. The Appellant's representative testified that the [REDACTED] 2007 letter was written as a care contract. The letter does not describe any specific services that the Appellant's family members would perform. The letter simply states that the Appellant would like to compensate them for the future services with "these" daily activities. There is no definition of these activities. The services and the rates of compensation for services are not indicated on the letter. A log was provided for the time spent on certain activities performed by the Appellant's relatives from [REDACTED] 2007 through [REDACTED] 2012. Again, there is no legally enforceable agreement as the letter does not specify the terms and compensation rate for each service.

The Department found the Appellant otherwise eligible for Medicaid on [REDACTED]/12 due to the value of the three bank account balances being over the \$1600.00 limit for the three prior months. The Department used the end of month values from the checking acct # [REDACTED] for the months of [REDACTED] 2012 through [REDACTED] 2012. In each month the Appellant had some type of income deposited into that account at the very end of the month. Departmental policy allows for the removal of income in checking accounts when determining the value of the asset. By

removing the end of month income deposits the Appellant is below the Medicaid \$1600.00 asset and is otherwise eligible for Medicaid on [REDACTED] 12.

DECISION

The Appellant's appeal is **GRANTED in part and DENIED in part.**

ORDER

1. The Department shall reopen the Appellant's [REDACTED] 2012 application and correct the Bank of America checking acct # [REDACTED] end of month values by removing income deposited at months end from the end of the month balance for [REDACTED] 2012 through [REDACTED] 2012.
2. The Department will impose a penalty period effective [REDACTED] 2012, the date the Appellant was otherwise eligible for Medicaid payment of long term care services.
3. Compliance with this order shall be submitted to the undersigned no later than [REDACTED] 2014.



Scott Zuckerman
Hearing Officer

Pc: Musa Mohamud, SSOM, Hartford Regional Office
Elizabeth Thomas, SSPM, Hartford Regional Office
Liza Morias, Fair Hearing Liaison, Hartford 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 Legal Counsel, Regulations, and Administrative Hearings, 55 Farmington Avenue, Hartford, CT 06105.

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, 55 Farmington Avenue, Hartford, CT 06105. 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.

