

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

██████████, 2015  
SIGNATURE CONFIRMATION

CL ID # ██████████  
Request # 634485

NOTICE OF DECISION

PARTY

██████████  
C/O ██████████  
██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████, 2014, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a notice that he had transferred \$45,319.00 to become eligible for Medicaid, and the Department was imposing a penalty period of ineligibility for Medicaid payment of long term care services effective ██████████ 2013 through ██████████ 2014.

On ██████████, 2014, the Appellant requested an administrative hearing to contest the Department's penalty determination.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") scheduled an administrative hearing for ██████████ 2014.

On ██████████ 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 were present at the hearing:

██████████, Appellant's daughter and authorized representative  
██████████, for the Appellant, Waters Edge Health and Rehab  
Maureen Harry, Department's Representative  
Thomas Monahan, Hearing Officer

The hearing record remained open for the submission of additional evidence. On ██████████  
██████████, 2015, the hearing record closed.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Department was correct to impose a penalty period from [REDACTED], 2013 through [REDACTED] 2014, due to a \$45,319.00 transfer of assets.

### **FINDINGS OF FACT**

1. On [REDACTED] 2014, the Appellant applied for Medicaid Long Term Care ("LTC") services. (Exhibit 1: LTC application)
2. The Appellant is a resident of Water's Edge Health and Rehabilitation Center. (Ex. 1: LTC application)
3. The Appellant is [REDACTED] years old [D.O.B. [REDACTED]]. (Ex. 1: Application form)
4. The Appellant's 87 year old spouse lives in the community. (Hearing record, Ex. 1: Application form)
5. The Appellant's spouse has progressive memory loss due to dementia. She began to experience cognitive decline in approximately 2010. (Appellant's Ex. A: Pro Health Physicians letter, [REDACTED]/14)
6. The Appellant is seeking Long Term Medicaid coverage effective [REDACTED] 2013. (Hearing record)
7. On [REDACTED] 2012, the Appellant's spouse withdrew \$9,000.00 from her and the Appellant's joint account. (Authorized Representative's testimony, Ex. 2: Citizens Bank statements)
8. On [REDACTED], 2012, the Appellant's spouse withdrew \$9,000.00 from her and the Appellant's joint account. (Authorized Representative's testimony, Ex. 2: Citizens Bank statements)
9. On [REDACTED], 2012, the Appellant's spouse withdrew \$9,000.00 from her and the Appellant's joint account. (Authorized Representative's testimony, Ex. 2: Citizens Bank statements)
10. On [REDACTED] 2013, the Appellant's spouse withdrew \$9,000.00 from her and the Appellant's joint account. (Authorized Representative's testimony, Ex. 2: Citizens Bank statements)

11. On [REDACTED] 2013, the Appellant's spouse withdrew \$9,000.00 from her and the Appellant's joint account. (Authorized Representative's testimony, Ex. 2: Citizens Bank statements)
12. On [REDACTED] 2013, the Appellant's spouse withdrew \$9,000.00 from her and the Appellant's joint account. (Authorized Representative's testimony, Ex. 2: Citizens Bank statements)
13. A total of \$54,000.00 was withdrawn from the Appellant and his spouse's account at Citizens Bank from [REDACTED] 2012 through [REDACTED] 2013. (Facts 7-12)
14. On [REDACTED] 2014, the Department issued a Transfer of Assets Preliminary Decision Notice to the Appellant stating that the withdrawals from [REDACTED], 2014 through [REDACTED] 2013 in the amount of \$54,000.00 were transfers made in order to qualify for Medicaid. (Ex. 6: Preliminary Decision Notice, [REDACTED]/14)
15. On [REDACTED] 2014, the Department received a rebuttal to the \$54,000.00 penalty and reduced it by \$3,155.78, the amount of taxes paid in [REDACTED] of 2013. (Ex. 6: Property tax bills)
16. On [REDACTED] 2014, the Department issued a Transfer of Assets Final Decision Notice indicating that the transfers made from [REDACTED] 2012 to [REDACTED] 2013 in the amount of \$50,844.22 were made in order to qualify for Medicaid. (Ex. 7: Transfer of Assets Notice, [REDACTED]/14)
17. On [REDACTED] 2014, the Department granted Medicaid effective [REDACTED] 2014 with a penalty for LTC services from [REDACTED] 2014, through [REDACTED], 2014. (Ex. 7: Transfer of Assets Notice [REDACTED] 14, Ex. 9 Assistance status screens)
18. On [REDACTED] 2014, the Department recalculated the penalty after the Appellant's spouse submitted a letter for homecare and housekeeping expenses for the Appellant and herself and also a letter from the community spouse's doctor indicating she has cognitive decline. (Ex. 4: Doctor's and community spouse letters)
19. On [REDACTED], 2014, the Department issued a Transfer of Assets Final Decision Notice indicating that the transfers made in the amount of \$45,319.00 from [REDACTED] 2012 through [REDACTED] 2013 were made in order to qualify for Medicaid. The notice stated that the penalty for LTC services began [REDACTED] 2013 and ended [REDACTED] [REDACTED] 2014. (Ex. 8: Transfer of Assets Final Decision Notice)
20. On [REDACTED] 2014, the Department issued a correction to the [REDACTED], 2014 Transfer of Assets Final Decision Notice dated [REDACTED] 2014. The Department recalculated deductions from the transfer amount of \$50,844.00 as follows; \$9000.00 paid in cash for Home Care Services for nine weeks, and \$1000.00 in cash for a

cleaning person. The new transfer amount was \$40,844.22. (Ex. 12: Recalculation Notice, [REDACTED]/14)

21. The Appellant reduced his assets to within the Medicaid asset limit of \$1,600 effective [REDACTED] 2013. (Ex. 11: Resolution notice, [REDACTED]/14)
22. The Department granted Medicaid effective [REDACTED] 2013 with a penalty for long term care services through [REDACTED], 2014. (Ex. 8: Transfer of Assets Final Decision Notice, [REDACTED]/14, Ex. 12: Authorization of payment letter, [REDACTED] 15)

### **CONCLUSIONS OF LAW**

1. The Department is the state agency that administers the Medicaid program pursuant to Title XIX of the Social Security Act. The Department may make such regulations as are necessary to administer the medical assistance program. Conn. Gen. Stat. § 17b-2; Conn. Gen. Stat. § 17b-262
2. The Department is the sole agency to determine eligibility for assistance and services under the programs it operates and administers. Conn. Gen. Stat. § 17b-261b(a)
3. The Department shall grant aid only if the applicant is eligible for that aid. Conn. Gen. Stat. § 17b-80(a)
4. 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 was established, on or after February 8, 2006. Uniform Policy Manual ("UPM") § 3029.03.
5. 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. UPM § 3029.05(C)
6. 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 UPM 3029.05(C). This period is called the penalty period, or period of ineligibility. UPM § 3029.05(A).
7. 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 by the average monthly cost to a private patient for long-term care services in Connecticut. For applicants,

the average monthly cost for LTCF services is based on the figure as of the month of application. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. UPM § 3029.05(F).

8. 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).
9. Regulation 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. UPM § 3029.10(E)
10. 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. UPM § 3029.15(B)
11. The Appellant did not establish with clear and convincing evidence that she transferred \$40,844.22, for a purpose other than qualifying for assistance, such as undue influence, her foreseeable needs were met, transfer to or by legal owner, or that the transferred asset would not affect his eligibility if retained.
12. The Department was correct to impose a transfer of asset penalty against the Appellant effective [REDACTED] 2013, due to uncompensated transfer of assets of \$40,844.22.
13. The Department's imposition of a three month and ten day penalty period for ineligibility of Medicaid Long Term Care Medicaid Services is incorrect. The correct penalty period equals 3.52 months ( $\$40,844.22 / \text{average monthly cost of care of } \$11,581.00$ ).
14. Federal Law provides that in the case of a transfer of an asset made on or after February 8, 2006, the date specified in this subparagraph [the start date of the penalty period] is the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care described in subparagraph (C) based on an approved application for such care but for the application of the penalty period,

whichever is later, and which does not occur during any other period of ineligibility under this subsection. 42 U.S.C. § 1396p(c)(1)(D)(ii).

15. The penalty period begins as of 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. UPM § 3029.05(E)(2).
16. The Departments determination of [REDACTED] 2013, as the start date of the penalty period is correct.
17. The Department's determination of [REDACTED] 2014, as the end date of the period of ineligibility is incorrect. The correct end date of the period of ineligibility is [REDACTED] 2014, (3.52 months).

### **DISCUSSION**

After reviewing the evidence and testimony presented, the Department's action to impose a Medicaid period of long term care coverage is upheld; however, the end date of the penalty period is not correct. I found that the penalty period to be 3.52 months ([REDACTED]/13-[REDACTED]14.

The Appellant's daughter argued that the Appellant's spouse withdrew the money from the joint account but due to her dementia does not remember how she spent it. The Appellant's daughter also argued that some of the withdrawn money was stolen by a home health aide. A letter was provided for the Appellant's spouse stating that she has been in cognitive decline since approximately 2010. The doctor's letter does not specifically address the mental health of the Appellant's spouse at the time of the withdrawals nor was any evidence provided regarding money being stolen.

The Appellant did not provide clear and convincing evidence that the intent of the cash transfers were for purposes other than qualifying for Medicaid.

### **DECISION**

The Appellant's appeal is **DENIED** in respect to the imposition of a penalty and **GRANTED** in respect to the length of the penalty.

### **ORDER**

1. The Department is ordered to adjust the penalty period to 3.52 months.
2. Compliance with this order should be forwarded to the undersigned no later than fifteen days of the date of this decision.

*Thomas Monahan*

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Thomas Monahan  
Hearing Officer

Pc: Tyler Nardine, Operations Manager, Middletown Regional Office  
Maureen Harry, Hearing Liaison, New Haven

### **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 06105-3725

### **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 06105-3725. 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.