

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

CLIENT ID #: ██████████  
HEARING ID #: 657189

NOTICE OF DECISION

PARTY

██████████  
██████████  
██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████ 2014, 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 ██████████ 2014, through ██████████ 2015.

On ██████████ 2014, the Appellant requested an administrative hearing to contest the Department's decision to impose a penalty on her Long Term Care Medicaid benefits.

On ██████████ 2014, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2015.

On ██████████ 2015, 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:

██████████, the Appellant  
██████████, daughter and authorized representative of the Appellant  
Kristen Harris, Attorney for ██████████ Care Center  
Susan Galasso, Business Office Manager, ██████████ Care Center  
Emma Figueroa, Business Office, ██████████ Care Center  
Victor Robles, Department's Representative  
Scott Zuckerman, Hearing Officer

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

### **STATEMENT OF THE ISSUES**

The first issue is whether the Department correctly determined that the Appellant is subject to a Transfer of Assets ("TOA") penalty.

The second issue is whether the Department correctly determined the Appellant's effective date of Medicaid eligibility based on the TOA penalty.

### **FINDINGS OF FACT**

1. On [REDACTED] 2010, the Appellant made a cash withdrawal of \$5000.00 from Bank of America savings account # [REDACTED] (Exhibit 23: Bank of America statement [REDACTED]-10 through [REDACTED]/11)
2. On [REDACTED] 2011, the Appellant made a cash withdrawal of \$5000.00 Bank of America savings account # [REDACTED] (Ex. 23: Bank of America statement [REDACTED]/11 through [REDACTED]12)
3. On [REDACTED] 2012, the Appellant made a cash withdrawal of \$5000.00 from Bank of America savings account # [REDACTED] (Ex. 23: Bank of America statement [REDACTED]/11 through [REDACTED]/12)
4. On [REDACTED] 2012, the Appellant made a cash withdrawal of \$9000.00 from Bank of America savings account # [REDACTED] (Ex. 23: Bank of America statement [REDACTED]/12 through [REDACTED]/12)
5. On [REDACTED] 2012, the Appellant made a cash withdrawal of \$8000.00 from Bank of America savings account # [REDACTED] (Ex. 23: Bank of America statement [REDACTED]/12 through [REDACTED]12)
6. On [REDACTED] 2012, the Appellant's spouse placed an order for a 2011 Dodge Ram with a purchase price of \$37,411.75. (Appellant's Exhibit A: [REDACTED] Invoice, [REDACTED]-12)
7. On [REDACTED] 2012, the Appellant or her spouse withdrew \$36,411.75 from Bank America account # [REDACTED]. (Exhibit 3: W1348- LTC Addendum)
8. The Department did not consider the \$36,411.75 debit as a transfer of asset. (Hearing Record)
9. On [REDACTED] 2012, the Appellant gave \$19,000 to her daughter, [REDACTED]. (Hearing Summary, Appellant testimony, Appellant's daughter's testimony, Ex. 23:

Bank of America statement [REDACTED]/12 through [REDACTED]/12)

10. On [REDACTED] 2013, the Appellant's spouse was admitted to Kimberly Hall North Skilled Nursing facility. (Appellant's daughters testimony, Ex. 24: Ascend report)
11. The Appellant's spouse had a diagnosis of Dementia upon admission to Kimberly Hall. (Exhibit 24: Ascent Connecticut Application and Appellant's daughter testimony)
12. The Appellant's health began to deteriorate sometime following her spouse's admission to Kimberly Hall. (Appellant's daughter's testimony)
13. On [REDACTED] 2013, the Appellant made a cash withdrawal of \$4963.00 from the Bank of America savings account # [REDACTED] (Ex. 23: Bank of America statement [REDACTED]/13 through [REDACTED]/13)
14. On [REDACTED] 2013, the Appellant made a cash withdrawal of \$10,000 from the Bank of America savings account # [REDACTED] (Ex. 23: Bank of America statement [REDACTED]/13 through [REDACTED]/13)
15. On [REDACTED] 2013, the Appellant made a cash withdrawal of \$20,000.00 from the Bank of America savings account # [REDACTED] (Ex. 23: Bank of America statement [REDACTED]/13 through [REDACTED]/13)
16. On [REDACTED] 2013, the Appellant made a cash withdrawal of \$1000.00 from the Bank of America savings account # [REDACTED] (Ex. 23: Bank of America statement [REDACTED]/13 through [REDACTED]/13)
17. On [REDACTED] 2013, the Appellant made a cash withdrawal of \$2000.00 from the Bank of America checking account # [REDACTED]. ((Ex. 23: Bank of America statement [REDACTED]/13 through [REDACTED]/13)
18. On [REDACTED] 2013, the Appellant paid \$10,663.00 to remove and install a new tub. (Ex. 19: CHK Industries, Inc. invoice, [REDACTED]/13)
19. On [REDACTED] 2013, the Appellant made her second payment of \$5,332.00 for the new tub installation. (Hearing Summary, Ex. 20: CHK industries, inc. invoice [REDACTED]/13)
20. On [REDACTED] 2013, the Appellant made a cash withdrawal of \$6000.00 from the Bank of America checking account # [REDACTED] (Ex. 23: Bank of America statement [REDACTED]/13 through [REDACTED]/13)
21. Sometime in [REDACTED] 2013, the Appellant's spouse signed himself out of Kimberly Hall. (Appellant's daughter testimony)
22. On [REDACTED] 2013, the Appellant made a cash withdrawal of \$15,000.00 from the Bank of America savings account # [REDACTED] (Ex. 23: Bank of America statement [REDACTED]/13)

- through [REDACTED]/13)
23. On [REDACTED] 2013, the Appellant made a payment of \$370.23 for a home alarm system. (Hearing Summary, Ex. 18: The Alarm Company Invoice, [REDACTED]/13)
  24. On [REDACTED] 2013, the Appellant suffered a seizure secondary to diabetes and was admitted to [REDACTED] Hospital. (Exhibit B: [REDACTED] Hospital Transfer Summary [REDACTED]/13)
  25. The Appellant suffers from paranoia and delirium and is noncompliant with medications at home. (Exhibit B: [REDACTED] Hospital Transfer Summary, [REDACTED]/13)
  26. On [REDACTED] 2013, the Appellant was admitted to [REDACTED] Care Center, LLC ("the facility"). (Ex. 1: W-1LTC, Long-term Care/Waiver Application, Ex. 24: Ascend Connecticut LTC Level of Care determination form)
  27. On [REDACTED] 2014, the Appellant applied for Long Term Care Medicaid. (Ex. 1: W-1LTC, Hearing Summary)
  28. On [REDACTED] 2014, the Department sent the Appellant's representative a W-1348LTC Addendum form requesting bank statements from all accounts from December 2009 through present. (Hearing Summary, Exhibit 2: W-1348LTC addendum form)
  29. On [REDACTED] 2014, the Department sent the Appellant's representative a W-1348LTC Addendum form requesting information and verification on transactions discovered on the bank statements received. (Hearing Summary, Ex. 3: W-1348LTC addendum form, [REDACTED]/14)
  30. On [REDACTED] 2014, the Appellant's daughter sent an email to [REDACTED] Care Center with some of the requested verifications. The Appellant's daughter deposited the \$19,000 she received from the Appellant on [REDACTED] 2012, into her own checking account. (Appellant's daughter testimony, Ex. 6: Email to [REDACTED] [REDACTED]/14)
  31. Sometime in [REDACTED] 2014, the Appellant's spouse was admitted to [REDACTED] Care Center. (Appellant's daughter testimony)
  32. On [REDACTED] 2014, the Department sent the Appellant's representative a W-1348LTC addendum form requesting information and verification of all purchases made from the cash withdrawals discovered in review of bank accounts. (Hearing Summary, Ex. 9: W-1348 LTC addendum form [REDACTED]/14)
  33. From [REDACTED] 2014 through [REDACTED] 2014, the Department sent the Appellant's representative's W-1348's requesting information and verification of all purchase made from cash withdrawals. (Hearing Record, Ex. 10: W-1348LTC,

█/14, Ex. 12: W-1348LTC, █/14, Ex. 13: W-1348LTC, █/14, Ex. 14: W-1348LTC, █/14, Ex. 15: W-1348LTC, █/14, and Ex. 16: W-1348LTC, █/14)

34. The █ 2014, the Appellant submitted a notarized statement regarding the Department's request for information on the various cash withdrawals from 2010 to 2013. The Appellant swore that she does not know where the paperwork is to prove the purchases. The Appellant swore that the money was used for the following expenses/purchases:

- Hospital Bed, \$16,000
  - Lazy Boy chair, no value given
  - Shed, \$1000
  - Tree removal \$20,000
  - Whirlpool tub, \$15,300
  - Hot water tank for whirlpool tub, no value given
  - Home repairs/appliance- enlarge doorway, put on lock on basement door, and an air conditioner, \$1,300
  - Front steps and railing \$2,000
  - Washing machine/ dryer and installation, no values given
  - Lawn maintenance, moving furniture (4 payments), no value given
  - Hospital bed (original was damaged) and dresser, \$7,000
- Total \$62,600  
(Exhibit 11: Affidavit, not dated)

35. There is no physical evidence (i.e. invoices, receipts, letters) to support the Appellant's claim that she used the cash withdrawals for home improvements, furniture, and appliances, listed in Finding of Fact # 34. (Hearing Record)

36. On █ 2014, the Department issued a Transfer of Assets Preliminary Decision Notice stating that the Appellant had transferred assets totaling \$160, 370.55 on various dates in order to be eligible for assistance. (Ex. 17: W-495A, Transfer of Assets, Preliminary Decision Notice, █/14)

37. On █ 2014, the Department received the █ 2013 invoice from the Alarm Company for \$370.00. (Hearing Summary, Ex. 22: Case narrative, █/14)

38. On █ 2014, the Department received two invoices from CKH industries for payment of the new tub installation. (Ex. 19: CKH Industries invoice, █/13 and Ex. 20: CKH industries invoice █/13)

39. On █ 2014, the Department reviewed the additional information received and deducted from the final TOA penalty payments for the alarm, tub installation and payments to the facility. (Hearing summary, Case narratives)

40. On █ 2014, the Department issued a Transfer of Assets, Final Decision

Notice stating that the Appellant had transferred assets totaling \$93,597.77. (Ex. 21: W-495C, Transfer of Assets, Final Decision Notice, █████/14)

41. The Appellant became eligible for Medicaid effective █████ 2014. (Ex. 21: W-495C, Hearing Summary)
42. On █████ 2014, the Department granted Medicaid Assistance for Long-Term Care effective █████ 2015. A transfer of asset penalty of \$93,597.77.00 was applied for the period of █████ 2014, through █████ 2015. (Ex. 21: W-495C, 12/2/14)

### **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. Uniform Policy Manual ("UPM") § 3025.10 provides that a transfer of an asset is considered to be for the purpose of establishing or maintaining eligibility if all of the following circumstances apply:
  - A. Fair market value is not received; and
  - B. There is no convincing evidence that the transfer is for another purpose; and
  - C. The transferor does not retain sufficient funds for foreseeable needs.
4. 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.
5. UPM § 3029.05(B) provides that the policy contained in the chapter on transfers of assets pertains to institutionalized individuals and to their spouses.
6. 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.

7. 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.
8. The Department correctly looked back 60 months prior to the Appellant's application in order to determine whether any improper asset transfers occurred.
9. 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.
10. 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.
11. The Department correctly determined that the transfers made to the Appellant's daughter for \$19,000 was a gift and this transfer is subject to a TOA penalty.
12. The Department correctly determined that the Appellant did not receive fair market value for the cash withdrawals totaling \$93,597.77 because there was no clear and convincing evidence to support the Appellant's claim that the cash withdrawals were used for home improvements (such as cancelled checks, receipts or invoices). These transfers are subject to a TOA penalty.
13. UPM § 3029.30 provides that compensation in exchange for a transferred asset is counted in determining whether fair market value was received.
14. UPM § 3029.30(B)(2) provides that each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset. Out-of-pocket payment by the transferee may include capital alterations necessary to allow the transferor continued use of the home to avoid institutionalization.
15. The Department correctly determined that the transfers totaling \$93,597.77 were not for compensation for capital alterations necessary to allow the Appellant and/or her spouse continued use of their home to avoid institutionalization because there is no evidence to support this claim.
16. 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-261(a) if the transfer or assignment of assets was made by the Applicant's legal representative or joint owner of the asset.

17. The Department correctly determined that the Appellant improperly transferred assets in the amount of \$93,597.77 during the Medicaid eligibility look-back period.
18. The Appellant is subject to TOA penalty in the amount of \$93,597.77 due to improperly transferring assets during the look-back period.
19. 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.
20. The Appellant is subject to a penalty period beginning [REDACTED] 2014, the date that the Appellant was otherwise eligible for Medicaid payment of long-term care services.
21. UPM § 3029.05(F) provides that 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 long-term care services in Connecticut. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. A single penalty period is then calculated, and begins on the date applicable to the earliest transfer.
22. The length of the penalty period is 7.89 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  $\$93,597.77 \div \$11,851.00$ .

### **DISCUSSION**

After reviewing the testimony and evidence presented at the hearing, the Department's action to impose a Medicaid period of ineligibility for long-term care coverage is upheld. I find that the [REDACTED] 2012 gift to the Appellant's daughter and undocumented cash withdrawals totaling \$93,597.77 are subject to a Medicaid penalty as set out in regulations.

The Appellant testified that prior to her admission to the facility in [REDACTED] of 2013 she was living with her spouse in the community. Her spouse was admitted to Kimberly Hall on [REDACTED]/13. The Appellant testified that she had work done in her house in order to make accommodations for her husband upon his return from the nursing facility. The



Appellant was able to provide invoices for the removal and installation of a Jacuzzi tub and an alarm system only. The Appellant and her daughter testified that she paid cash for all the other purchases and services but did not have any receipts or invoices to prove her claim. The Appellant had a letter notarized indicating the items she purchased and had work done at the home prior to the arrival of her spouse who came home in [REDACTED] 2013. The daughter testified that she witnessed some of the work done but could not find any receipts nor did they know the names of the people who were working in and around the home. She stated that her parents always paid cash for any purchases. The Department was able to remove the cost of the work done on the tubs and alarm from the penalty, as they were the only items for which the Appellant provided receipts or invoices.

The Department testified since the Appellant was not able to document the pattern of large withdrawals or how she used the cash, it would have to impose a penalty period for those amounts. The Appellant could not remember the details from the purchases. She stated a man named [REDACTED] helped her with things. She stated she thought [REDACTED] was a friend but was planted in her house and worked for Kimberly Hall. The Appellant's daughter testified that she saw people working at the house but did not know who they were. The Appellant's daughter never met "[REDACTED]". The Appellant's daughter testified that the Appellant believed Kimberly Hall was tapping her phones.

The Appellant's daughter provided additional evidence of a cash purchase that her father made for a pickup truck on [REDACTED]/12 for \$34,000. The Department did not consider this withdrawal as a transfer for qualifying for assistance.

### **DECISION**

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



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Scott Zuckerman  
Hearing Officer

Pc: Musa Mohamud, SSOM, Hartford Regional Office  
Elizabeth Thomas, SSOM, Hartford Regional Office  
Patricia Ostroski, SSPM, Hartford Regional Office  
Victor Robles, Department of Social Services

### **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, 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. 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.

