

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

REQUEST #667299

CLIENT ID # ██████████

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████ ("Appellant") a Transfer of Assets Final Decision Notice indicating that it would impose a penalty on her Long Term Care Medicaid ("LTC") benefits, effective ██████████ 2014 through ██████████ 2015, for the transfer of assets valued at \$43,629.86 to qualify for Medicaid.

On ██████████ 2015, the Appellant's representative (██████████) requested an administrative hearing on behalf of the Appellant to contest the Department's imposition of a penalty period on the Appellant's LTC Medicaid benefits.

On ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice of Administrative Hearing scheduling a hearing for ██████████ 2015 @ 11:30 AM to address the Department's imposition of a penalty period on the Appellant's LTC Medicaid benefits.

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 to address the Department's imposition of a penalty period on the Appellant's LTC Medicaid benefits.

The following individuals were present at the hearing:

██████████, Appellant's Representative
██████████, Appellant's Co-Representative
██████████, Appellant's Co-Representative

██████████, Witness for the Appellant
Liza Morais, Department's Representative
Hernold C. Linton, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly imposed, a Transfer of Assets penalty, based on the Appellant's gifting of \$43,629.86 in assets to her children.

FINDINGS OF FACT

1. On ██████████ 2010, the Appellant wrote four checks for the sum of \$12,000.00 each to her children for the purposes of estate planning to avoid paying tax penalties. (Dept.'s Exhibit H: Letter, dated ██████████/14)
2. Since ██████████ of 2011, the Appellant suffers from manifestations of coronary artery disease including severe congestive heart failure, and requires on going care. (Dept.'s Exhibit I: ██████████/14 Letter from Dr. Daw)
3. In early 2011, the Appellant had lost the ability to adequately care for herself, and was not able to complete her activities of daily living. (Appellant's Exhibit #1: ██████████/14 Letter from ██████████)
4. On ██████████ 2011, ██████████ 2011, and ██████████ 2011, the Appellant wrote three checks for the sum of \$12,000.00 each to her children. (Hearing Summary; Dept.'s Exhibit B: List of Payments)
5. On ██████████ 2011, the Appellant agreed to pay her daughter \$840.00 per week for providing her with care and services to prevent her institutionalization. (Dept.'s Exhibit F)
6. On ██████████ 2013, the Appellant became a resident of Parkway Pavilion, which is a long term care facility ("LTCF"). (Hearing Summary)
7. On ██████████ 2014, the Department received the Appellant's application for the medical assistance under the Medicaid program. (Hearing Summary; Dept.'s Exhibit A: Long-term Care Application)
8. The Department determined that for the period of ██████████ 2010 through ██████████ 2014, the Appellant gifted a total of \$69,129.86 to her children. (Dept.'s Exhibit E: ██████████/14 W-1348LTC)
9. On ██████████ 2014, the Department sent the Appellant's Representative a W-495A, Transfer of Assets Preliminary Decision Notice indicating that it believed that the Appellant transferred assets valued at \$69,129.86, in order to qualify for Medicaid. (Hearing Summary; Dept.'s Exhibit G: ██████████/14 W-495A-Transfer of Assets-Preliminary Decision Notice; Dept.'s Exhibit E)
10. The Department received an Affidavit from the Appellant's Representative stating that a portion of the funds were transferred by the Appellant pursuant to an agreement with her

daughter to provide her with care and services. (Dept.'s Exhibit F: [REDACTED]/14 Affidavit)

11. The Appellant resided with her daughter for a period of more than two years and received care from her daughter that prevented her institutionalization. (Hearing Summary)
12. For the period of [REDACTED] 2014 through [REDACTED] 2014, while being a resident of a LTCF, the Appellant gifted a total of \$19,629.86 to her daughter. (Hearing Summary)
13. For the period of [REDACTED] 2014 through [REDACTED] 2014, the Appellant's daughter did not provide her with care and supervision that prevented institutionalization. (Dept.'s Exhibit G)
14. Parkway Pavilion provides for the scheduling of the Appellant's medical appointments and medical transportation. However, the family is allowed to take the Appellant to her appointments. (Dept.'s Exhibit L: [REDACTED]/14 Email)
15. For the period of [REDACTED] 2014 through [REDACTED] 2014, the Appellant's daughter received payments of \$19,629.86 from the Appellant for providing duplicate care and services that the facility was responsible to provide, and were the kind of services (laundry, transportation, and managing of financial affairs) that children generally provide for their parents free of charge and without receiving compensation. (Hearing Summary)
16. The Appellant's daughter did not provide the Department with verification of the time spent taking care of the Appellant's financial affairs, and the rate charged. (Hearing Summary)
17. The Appellant's daughter did not provide the Department with verification of the cost of managing the Appellant's financial affairs. (Hearing Summary)
18. The Appellant's daughter did not provide the Department with verification of the monthly expenses that she paid on behalf of the Appellant. (Hearing Summary; Dept.'s Exhibit K: Case Narrative)
19. The Department reduced its preliminary value of the assets transferred by the Appellant to her children from \$69,129.86 to \$43,629.86, based on her daughter providing her with care and services for more than two years that prevented her institutionalization. (See Facts # 1 to 18; Hearing Summary)
20. The Department excluded the checks made out in 2010 to the Appellant's children from its preliminary value of the assets transferred by the Appellant to her children. (Dept.'s Exhibit K)
21. On [REDACTED] 2015, the Department sent the Appellant's Representative a W-495C, Transfer of Assets Final Decision Notice stating that it had decided that the Appellant transferred \$43,629.86 to her children in order to qualify for Medicaid and that the Appellant was not eligible for Medicaid payment of LTC services until [REDACTED] 2015, due to the imposition of a transfer of asset penalty for Medicaid payment of LTC services from [REDACTED] 2014 through [REDACTED] 2015. (See Facts #1 to 15;

Hearing Summary; Dept.'s Exhibit J: 01/9/15 W-495C-Transfer of Assets-Final Decision Notice)

22. The Appellant was [REDACTED] years of age (DOB [REDACTED]) at the time of the transfers. (Dept.'s Exhibit A: W-1LTC Application)
23. At the time of the transfers, the Appellant needed assistance with completing her activities of daily living ("ADL's") due to coronary artery disease including severe congestive heart failure. (See Facts # 1 to 22; Dept.'s Exhibit G)
24. A month and a half after transferring assets to her children, the Appellant started paying her daughter for providing her with twenty-four (24) hours of home care services to meet her needs in the community. (Hearing Summary)

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. Uniform Policy Manual ("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 was established, on or after February 8, 2006.
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 UPM 3029.05(C). This period is called the penalty period, or period of ineligibility. UPM § 3029.05(A)
6. 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. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. UPM § 3029.05(F)
7. 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)

8. 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)
9. The Department correctly determined that the Appellant became otherwise eligible for Medicaid coverage effective [REDACTED] 2014, the pick-up date for Medicaid payment of LTC services.
10. 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. UPM § 3029.10(F)
11. 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 in return for other valuable consideration. The value of the other valuable consideration must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty. UPM § 3029.10(G)
12. UPM § 3029.10 (C)(1) provides in part that an institutionalized individual, or his or her spouse, may transfer assets of any type without penalty to his or her child who is considered to be blind or disabled under the criteria for SSI eligibility.
13. The Appellant did not transfer assets to a child who is considered disabled based on the criteria of the Social Security Administration (SSI eligibility).
14. UPM § 3029.30 (A) provides that compensation in exchange for a transferred asset is counted in determining whether fair market value was received. Compensation which is counted: 1. When an asset is transferred, compensation is counted when it is received at the time of the transfer or any time thereafter; 2. Compensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement.; 3. Compensation may include the return of the transferred asset to the extent described at 3029.10.
15. The care and services that the Appellant received from her daughter while residing in her home prevented the Appellant's institutionalization for a period of more than two years.
16. The Department correctly determined that the Appellant received care and services from her daughter that prevented her institutionalization for a period of more than two years.
17. UPM Section 3029.20 (B) provides the criteria for other valuable consideration. It states that other valuable consideration must be in the form of services or payment for services, which meet all of the following conditions: 1. the services rendered are of the type

provided by a homemaker or a home health aide; and 2. the services are essential to avoid institutionalization of the transferor for a period of at least two years; and 3. the services are either: a. provided by the transferee while sharing the home of the transferor; or b. paid for by the transferee.

18. Since the Appellant resided with her daughter, the money transferred to her daughter for providing care and services meets the criteria for other valuable consideration.
19. 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)
20. Based on the Appellant's age, medical condition, and anticipated expenses at the time of the transfers, she did not retain sufficient funds to meet her foreseeable needs.
21. The Department correctly determined that the Appellant did not retain sufficient funds to meet her foreseeable needs as evident in her paying her daughter for providing her with homecare services, shortly thereafter.
22. The Appellant did not receive fair market value for the \$19,629.86 in payments that she made to her daughter for duplicate care and services that the facility was responsible to provide during the period of [REDACTED] 2014 through [REDACTED] 2014.
23. The Department correctly determined that the Appellant did not receive fair market value or other valuable consideration for the \$43,629.86 that she transferred to her children.
24. The Department correctly determined the uncompensated value of the assets transferred by the Appellant as \$43,629.86 to her children.
25. The Department correctly imposed a transfer of asset penalty against the Appellant's Medicaid eligibility due to the improper transfer of \$43,629.86 to her children.
26. 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 United States Code ("U.S.C.") § 1396p(c)(1)(D)(ii).
27. 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)

28. Because the Appellant became otherwise eligible for Medicaid payment of LTC services effective [REDACTED] 2014, the Department's determination of [REDACTED] 2014 as the start date of the period of ineligibility for Medicaid payment of LTC services for the Appellant is correct.
29. The length of the Appellant's penalty period is determined by dividing \$43,629.86 by \$11,851.00, the average cost of LTC, which equals 3.68 months.
30. The Department's imposition of a penalty period for Medicaid payment of LTC services for the Appellant is correct. UPM § 3029.05(F)
31. The Department's determination of [REDACTED] 2015 as the end date for the period of ineligibility for Medicaid payment of LTC services for the Appellant is correct. UPM § 3029.05(E)

DECISION

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



Hernold C. Linton
Hearing Officer

Pc: **John Hesterberg**, Social Service Operations Manager,
DSS, R.O. #11, Manchester

[REDACTED]
[REDACTED]

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.