

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 #668019

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 \$55,000.00 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 @1:00 PM 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

Liza Morais, Department's Representative
Hernold C. Linton, Hearing Officer

STATEMENTS OF THE ISSUES

1. The first issue to be decided is whether the Appellant is ineligible for Medicaid for the period of [REDACTED] 2014 through [REDACTED] 2014 due to excess assets.
2. The second issue to be decided is whether the Department correctly imposed, a Transfer of Assets penalty, based on the Appellant's gifting of \$55,000.00 in assets to her children.

FINDINGS OF FACT

1. In 2011, the Appellant had to stop driving due to degenerative neuropathy. (Dept.'s Exhibit G: [REDACTED]/14 Response to W-495A)
2. In 2012, there was concern that the Appellant had lung cancer. (Dept.'s Exhibit G)
3. For the period of [REDACTED] 2012 through [REDACTED] 2012, the Appellant transferred \$65,000.00 to her children for various reasons. (Dept.'s Exhibit H: [REDACTED]/14 W-495A-Transfer of Assets-Preliminary Decision Notice)
4. In [REDACTED] 2012, the Appellant attempted suicide due to severe pain caused by a bout with Shingles. (Dept.'s Exhibit G)
5. The Appellant was eighty-six (86) years of age (DOB [REDACTED]) at the time of the transfers. (Dept.'s Exhibit A: W-1LTC Application)
6. At the time of the transfers, the Appellant needed assistance with completing her activities of daily living ("ADL's") due to low-level thyroid and osteoarthritis. (Dept.'s Exhibit G)
7. The Appellant retained \$45,384.34 in assets to meet her needs, after transferring \$65,000.00 to her children. (Dept.'s Exhibit K: Case Narrative)
8. On [REDACTED] 2013, six months after transferring assets (\$65,000.00) to her children, the Appellant applied for State Funded Home Care services to meet her needs in the community. (Hearing Summary; Dept.'s Exhibit L: STAT Screen)
9. On [REDACTED] 2013, the Department granted the Appellant State Funded home care services for the elders to meet her needs in the community. (Hearing Summary; Dept.'s Exhibit L: STAT Screen)
10. The Appellant did not have a credible agreement with her son as the agreement provided for the care and services to be provided by her son no matter what, even if

funds were no longer available to pay him. (Dept.'s Exhibit B: Care Agreement)

11. Under the agreement, the Appellant's son would provide her with care and services indefinitely, and any assistance that she may need in the future. (Dept.'s Exhibit B)
12. The Appellant would not be able to enforce the agreement should the son fail to perform any of the services. (Dept.'s Exhibit B)
13. The agreement did not differentiate between the dollar value for the services normally provided by a homemaker or home health aide, and the dollar value for all other types of services. (Dept.'s Exhibit B)
14. The Appellant's son did not reside with her for period of two years and provided care that prevented her institutionalization. (Hearing Summary)
15. The Appellant's daughter that lives in Washington State received \$10,000.00 from the Appellant to help with her financial situation due to her having an illness that was later diagnosed as a variant of Multiple Sclerosis. (Dept.'s Exhibit G)
16. The Appellant's daughter has been experiencing debilitating symptoms stemming from her illness and has been unemployed. (Dept.'s Exhibit G)
17. The Appellant's daughter does not receive Social Security or benefits from the Department as a disabled individual. (Hearing Summary)
18. On ██████████ 2014, the Department received the Appellant's application for the Home Care Waiver for Adults ("W01") program. (Hearing Summary)
19. On ██████████ 2014, the Appellant was admitted to a long term care facility ("LTCF") as a resident. (Hearing Summary)
20. The Department switched the Appellant's application for waiver services (W01) to an application for LTC with the original date of ██████████ 2014. (Hearing Summary)
21. 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 \$65,000.00, in order to qualify for Medicaid. (See Facts #1 to 20; Hearing Summary; Dept.'s Exhibit H: ██████████/14 W-495A-Transfer of Assets-Preliminary Decision Notice)
22. On ██████████ 2014, the Department received a response from the Appellant's Representative to the W-495A stating that a portion of the funds were transferred pursuant to an agreement with her son to provide her with care and services, a portion of the funds were a wedding gift to another son, and that some of the funds went to a daughter who has been ill for many years. (Dept.'s Exhibit I: Response to W-495A)

23. For the period of [REDACTED] 2014 through [REDACTED] 2014, the Appellant's countable assets exceeded \$1,600.00. (Hearing Summary; Stipulated Agreement)
24. Effective [REDACTED] 2014, the Appellant became otherwise eligible for Medicaid payment of LTC services, based on the date of her application and her countable assets. (See Facts # 1 to 23; Hearing Summary)
25. For the period [REDACTED] 2014 through [REDACTED] 2015, the Department sent the Appellant's representative a series of Form W-1348LTC ("Verification We Need") requesting additional information needed to determine the Appellant's eligibility for medical assistance. (Hearing Summary; Dept.'s Exhibit A: Form W-1348)
26. The Department also sent the Appellant's representative Form W-1348 LTC Addendum providing hints to speed up the application process. (Hearing Summary; Dept.'s Exhibit A)
27. The Department informed the Appellant's representative that there would be no eligibility for the Appellant in any month in which her total countable assets exceeded \$1,600.00. (Hearing Summary; Dept.'s Exhibit A)
28. On [REDACTED] 2015, the Department received all of the requested information needed to determine the Appellant's eligibility for medical assistance under Medicaid program. (Hearing Summary; Dept.'s Exhibit # 2)
29. On [REDACTED] 2015, the Department denied the Appellant's request for medical assistance under the Medicaid program for the period of [REDACTED] 2014 through [REDACTED] 2014, because the value of her countable assets exceeded the allowable asset limit for the program. (Hearing Summary; Dept.'s Exhibit M: [REDACTED]/15 Notice of Action)
30. The Appellant's other son returned the \$10,000.00 that he received as a wedding gift from the Appellant. (Hearing Summary)
31. The Department reduced its preliminary value of the assets transferred by the Appellant to her children from \$65,000.00 to \$55,000.00, based on the \$10,000.00 that her son had returned. (See Facts # 1 to 29; Hearing Summary)
32. 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 \$55,000.00 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 31; Hearing Summary; Dept.'s Exhibit J: [REDACTED]/15 W-495C-Transfer of Assets-Final

Decision Notice)

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 4005.05(A) provides that for every program administered by the Department, there is a definite asset limit.
5. UPM § 4005.05(B)(1) provides that the Department counts the assistance unit's equity in an asset toward the asset limit if the asset is not excluded by state or federal law and is either:
 - a. available to the unit; or
 - b. deemed available to the unit.
6. UPM § 4005.05(B)(2) provides that under all programs except Food Stamps, the Department considers an asset available when actually available to the individual or when the individual has the legal right, authority or power to obtain the asset, or to have it applied for, his or her general or medical support.
7. UPM § 4005.05(D)(1) provides that the Department compares the assistance unit's equity in counted assets with the program asset limit when determining whether the unit is eligible for benefits.
8. UPM § 4005.05(D)(2) provides that an assistance unit is not eligible for benefits under a particular program if the unit's equity in counted assets exceeds the asset limit for the particular program, unless the assistance unit is categorically eligible for the program and the asset limit does not apply (cross reference: 2500 Categorically Eligibility Requirements).
9. UPM § 4005.10 provides that the Medicaid asset limit for a needs group of one is \$1,600.00 per month.

10. UPM § 4005.15(A)(2) provides that 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.
11. For the period of [REDACTED] 2014 through [REDACTED] 2014, the Appellant's equity in countable assets exceeded the Medicaid asset limit of \$1,600.00 per month.
12. For the period of [REDACTED] 2014 through [REDACTED] 2014, the Appellant was ineligible for Medicaid benefits due to excess assets.
13. The Department correctly denied the Appellant's request for Medicaid coverage for the period of [REDACTED] 2014 through [REDACTED] 2014, due to excess assets.
14. The Department correctly determined that the Appellant became otherwise eligible for Medicaid coverage effective [REDACTED] 2014, the month in which she reduced her equity in countable assets to within the program's asset limit.
15. 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. UPM § 3029.03
16. 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)
17. 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)
18. 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)
19. 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)

20. 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)
21. 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)
22. 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.
23. The Appellant did not transfer assets to a child who is considered disabled based on the criteria of the Social Security Administration (SSI eligibility).
24. 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.
25. The claimed compensations that the Appellant received from her son were not in accordance with a legally enforceable agreement as it would be impossible to enforce the terms should the son fail to perform the services. In addition, the terms regarding payment and services are vague.
26. The Department correctly determined that the Appellant did not have a legally enforceable agreement with her son.
27. 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.
28. Since the Appellant did not reside with her son, the money transferred to her son for services does not meet the criteria for other valuable consideration.
29. 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)

30. 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.
31. The Department correctly determined that the Appellant did not retain sufficient funds to meet her foreseeable needs as evident in her applying for assistance six months later, after transferring more than half of her assets to her children.
32. The Appellant did not receive fair market value for the \$55,000 she transferred to her children.
33. The Department correctly determined that the Appellant did not receive fair market value or other valuable consideration for the \$55,000.00 that she transferred to her children.
34. The Department correctly determined the uncompensated value of the assets transferred by the Appellant as \$55,000.00 to her children.
35. The Department correctly imposed a transfer of asset penalty against the Appellant's Medicaid eligibility due to the improper transfer of \$55,000.00 to her children.
36. 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, 42United States Code ("U.S.C.") § 1396p(c)(1)(D)(ii).
37. 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)
38. 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.

39. The length of the Appellant's penalty period is determined by dividing \$55,000.00 by \$11,581.00, the average cost of LTC, which equals (4.75) 4 months and 23 days.
40. The Department's imposition of a 4-months and twenty-three days penalty period of ineligibility for Medicaid payment of LTC services for the Appellant is correct. UPM § 3029.05(F)
41. 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

Hernold C. Linton
Hearing Officer

Pc: **Musa Mohamud**, Social Service Operations Manager,
DSS, R.O. #10, Hartford

Elizabeth Thomas, Social Service Operations Manager,
DSS, R.O. #10, Hartford

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.