

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

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

CLIENT ID #: ██████████  
HEARING ID #: 680256

NOTICE OF DECISION

PARTY

████████████████████  
████████████████████  
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PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the “Department”) sent ██████████. (the “Appellant”) a Notice of Action (“NOA”) denying his application Long Term Care (“LTC”) Medicaid benefits for the period of ██████████ 2014 – ██████████ 2014, and granting Medicaid effective ██████████ 2014, with a penalty in place that results from an alleged improper asset transfer.

On ██████████ 2015, the Appellant requested an administrative hearing to contest the Department’s decision to deny such benefits and to impose a penalty.

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

On ██████████ 2015, the Appellant requested that his ██████████ 2015 hearing be rescheduled. This request was granted.

On ██████████ 2015, OLCRAH issued a notice rescheduling the Appellant’s hearing to ██████████ 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:

██████████, Appellant's Son  
Attorney ██████████, Appellant's Conservator's Representative  
██████████, Social Worker Middlesex Health Care, for the Appellant  
██████████, Administrator Middlesex Health Care, for the Appellant  
██████████, Director of Finance Middlesex Health Care, for the Appellant  
██████████, Director of Nursing Middlesex Health Care, for the Appellant  
Philip Preston, Department's Representative  
Pamela J. Gonzalez, Hearing Officer

The hearing record was held open to allow for the submission of additional information. The hearing record closed on ██████████ 2015.

On ██████████ 2015, the hearing record was reopened in attempt to further develop the record with respect to the Appellant's VA life insurance policy. Information was received from the Department. No additional information or evidence was received from the Appellant. The record closed on ██████████, 2015.

### **STATEMENT OF THE ISSUE**

The first issue is whether the Appellant transferred assets in the amount of \$156,907.51 during the look-back period for less than fair market value and is consequently subject to a penalty.

The second issue is whether the Appellant's assets exceed the program asset limit during the period of ██████████ 2014 – ██████████ 2014 rendering him over the asset limit and ineligible for Medicaid during those months.

### **FINDINGS OF FACT**

1. The Appellant, date of birth ██████████ 1930, was diagnosed in 2007 with a benign meningioma. (Medical Statement from Dr. Elaba dated ██████████, 2015 and Progress Notes – Appellant's exhibit C)
2. The Appellant suffered no symptoms resulting from the meningioma except for some blurriness of vision that was monitored by the VA Optometry Clinic. (Appellant's exhibit C)
3. In ██████████ 2009, the Appellant was living in the community home where he and his now deceased wife resided. The Appellant lived in this home for sixty-three years. (Appellant's son's testimony)
4. In 2009, there was no evidence that the Appellant's life was in jeopardy, the Appellant was not disabled, the Appellant was fully ambulatory. (Appellant's

son's testimony, Appellant's exhibit C)

5. In December 2009, the Appellant was in good health. He took care of himself meeting all activities of daily living. He mowed the lawn, trimmed the hedges, attended religious services, walked the dog, talked with neighbors, and shopped. (Appellant's son's testimony, Statement from neighbor dated [REDACTED] 2015 – Appellant's exhibit E)
6. In 2009, the Appellant went to the Veteran's Administration for all of his medical care. (Appellant's exhibit C, Hearing record)
7. On [REDACTED], 2009, the Appellant established the [REDACTED] Irrevocable Trust. (Eligibility Management System NARR screen print – Department's exhibit 1)
8. In [REDACTED] 2009, the Appellant funded the [REDACTED] Irrevocable Trust with real property known as [REDACTED] (Department's exhibit 1)
9. The Department determined the market value of [REDACTED] to be \$237,285.71. (Department's exhibit 1)
10. The Appellant retained life use of the property located at [REDACTED]. (Department's exhibit 1)
11. The Department determined that the assets held in trust are not countable for Medicaid eligibility purposes. (Department's exhibit 1)
12. The Department determined that the Appellant improperly transferred assets into the [REDACTED] Irrevocable Trust by funding the trust with his property located at [REDACTED] during the look-back period and that he is subject to the imposition of a penalty. (Department's exhibit 1)
13. In [REDACTED] 2009, exclusive of real property, the Appellant held assets in the amount of \$61,758.01. (Spreadsheet and bank records – Appellant's exhibit D)
14. At the time of the transfer, the Appellant received Social Security and pension income in the monthly amount of \$1,800.00. (Appellant's exhibit D)
15. In 2010, there were no significant changes in the Appellant's health or his living arrangement. (Appellant's son's testimony)
16. In [REDACTED] 2010, the Appellant held assets in the amount of \$58,777.59. (Appellant's exhibit D)

17. In 2011, there were no significant changes in the Appellant's health or his living arrangement. (Appellant's son's testimony)
18. In 2011, the Appellant held assets in the amount of \$55,918.20. (Appellant's exhibit D)
19. In 2012, there were no significant changes in the Appellant's health or his living arrangement. (Appellant's son's testimony)
20. In [REDACTED] 2012, the Appellant held assets in the approximate amount of \$51,921.91. (Appellant's exhibit D)
21. In 2013, the Appellant was displaced by a fire in his home and moved to a hotel. He subsequently moved to a second hotel and then he moved in temporarily with his son. (Appellant's son's testimony)
22. In 2013, the Appellant's son began to notice changes in the Appellant's mental health. He began to become forgetful, he paid less attention to his hygiene, he would go to the store for two hours when the store was ten minutes from home, he would drive around on a flat tire. (Appellant's son's testimony)
23. In [REDACTED] 2013, the Appellant was diagnosed with Alzheimer's Dementia. (Appellant's exhibit C)
24. In [REDACTED] 2013, the Appellant held assets in the amount of \$53,593.48. (Appellant's exhibit D)
25. The Appellant was institutionalized on [REDACTED], 2014. (Medical Director Middlesex Health Care Center statement dated [REDACTED], 2014 - Department's exhibit 3, a-5)
26. On [REDACTED] 2014, the Appellant applied for Medicaid LTC assistance. (Eligibility Management System Notice dated [REDACTED] [REDACTED] 2015 - Department's exhibit 4)
27. The Appellant seeks a Medicaid LTC start date of [REDACTED] 2014. (Hearing record)
28. In [REDACTED] [REDACTED], the Appellant's counted assets included Veteran's Administration life insurance policy [REDACTED]. The 20 Payment LIFE Basic amount totaled \$1,000.00. (Department of Veteran's Affairs Annual Insurance Policy Statement - Appellant's exhibit F)
29. In [REDACTED] 2014, the Appellant began the process to surrender his life insurance policy. ([REDACTED], 2014 letter of intent to surrender insurance

policy and pertinent documentation – Appellant’s exhibit F)

30. In [REDACTED] 2014, the Appellant received the cash surrender value from his life insurance policy and properly spent it down. (Letter to the Department dated [REDACTED], 2014 – Appellant’s exhibit F, Hearing record)
31. The Department determined that the Appellant is asset eligible in [REDACTED]. (Department’s exhibit 1)
32. On [REDACTED] 2014, the Department issued a Preliminary Decision Notice proposing imposition of a penalty due to the Appellant’s improper asset transfer in the amount of \$237,285.71. (Form W-495-A dated [REDACTED] 2014 – Department’s exhibit 3, a-1)
33. The Appellant disagreed that the asset transfer (real property transferred into trust) was improper and disagreed with the value assigned to the property for Medicaid eligibility purposes. (Email message of [REDACTED], 2014 – Department’s exhibit 3, a-3, Undue hardship claim dated [REDACTED] 2014 – Department’s exhibit 3, a-4)
34. On [REDACTED] 2014, Middlesex Health Care Center notified the Appellant that it intended to discontinue providing long-term care services to him due to his non-payment for said services resulting from a penalty imposed by DSS because of a certain asset transfer. (Letter dated [REDACTED] 2014 – Department’s exhibit 3, a-5)
35. The life or health of the Appellant would be endangered by the deprivation of medical care. (Dr. Elaba’s medical opinion of [REDACTED], 2014 – Department’s exhibit 3, a-11)
36. There is no other person or organization willing and able to provide long-term care services to the Appellant. (Appellant’s son’s testimony)
37. The Department rejected the Appellant’s claim of undue hardship stating the Appellant did not exhaust all legal methods to prevent eviction. (Department’s representative’s testimony)
38. On [REDACTED] 2014, the Department amended the value it assigned to the Appellant’s property that he transferred to a trust. The assigned value reduced to \$175,167.40. (Department’s exhibit 1)
39. On [REDACTED], 2014, the Department issued a form W-495B to the Appellant informing him that it did not agree with his rebuttal/claim of undue hardship and that a penalty would be imposed due to his transfer of assets in the amount of \$175,167.40. The penalty period would last for fifteen (15) months. During this period, the Department would not pay for long-term care

medical services. (Form W-495B – Department’s exhibit 3, b-2)

40. On [REDACTED] 2015, the Appellant submitted an appraisal of the real property located at [REDACTED]. The defined value of the property as of [REDACTED] 2009 according to the certified appraisal was \$200,000.00. (Appraisal – Department’s exhibit 3, b-5)
41. The Department accepted the appraisal figure of \$200,000.00 presented by the Appellant and amended its proposal for penalty. (Email message from the Department’s Resource unit dated [REDACTED] 2015 – Department’s exhibit 3, c-2)
42. After considering the encumbrance against the property and the value of life use, the Department determined that the uncompensated value of the transfer totaled \$156,907.51. (Department’s exhibit 3, c-2)
43. On [REDACTED], 2015, the Department issued a form W-495C Final Decision regarding his transfer of assets. The notice stated the Department’s position that the Appellant transferred \$156,907.51 on [REDACTED]/09 to become Medicaid eligible. Further, the notice stated that although eligible for certain Medicaid benefits beginning [REDACTED] 2014, the Department would not pay for any long-term care services during the period of [REDACTED] 2014 – [REDACTED] 2015. (Form W-495C – Department’s exhibit 3, c-3)
44. On [REDACTED] 2015, the Department granted the Appellant’s application effective [REDACTED] 2015 with a LTC services penalty in place beginning [REDACTED] 2014 and ending [REDACTED], 2015. (Department’s exhibit 3, c-2)

### **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 the Department 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.
4. Subsection (a) of section 17b-261a 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 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."

5. The Department uses the policy contained in Chapter 3029 of the Uniform Policy Manual to evaluate asset transfers if the transfer occurred on or after February 8, 2006. UPM § 3029.03.
6. There is a period established, subject to the conditions described in chapter, 3029 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 look-back date for transfers of assets is the 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).
8. The look-back date for the Appellant is [REDACTED], 2009.
9. The Appellant transferred his home and property valued at \$156,907.51 to an Irrevocable Trust Fund on [REDACTED], 2009, during the look-back period.
10. The Appellant did not receive fair market value when he transferred his home and property valued at \$156,907.51 into the trust.
11. UPM Section 3029.10.E provides that an otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC services if the individual provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.
12. The Appellant provided clear and convincing evidence that he was in good health for his age and he was of sound mind when he transferred his home and property into a trust.
13. The Appellant met his needs for close to five years following the December 2009 asset transfer before applying for medical assistance in [REDACTED] 2014.
14. The Appellant did not transfer his home and property for purposes of qualifying for medical assistance.
15. The Appellant's asset transfer was not improper.
16. UPM Section 4000.01 defines face value of a life insurance policy as the

basic amount of insurance purchased on the insured's life, as listed on the policy.

17. The Department of Veteran's Affairs Annual Insurance Policy Statement provides that the Appellant's Life Insurance 20 Payment Life BASIC plan totals \$1,000.00.
18. The face value of the Appellant's VA life insurance totals \$1,000.00.
19. UPM Section 4030.30 (C)(1) provides that if the total of all life insurance policies owned by the individual does not exceed \$1,500.00, the cash surrender value of such policies is excluded. In computing the face value of life insurance, the Department does not count insurance such as term insurance which has no cash surrender value.
20. The cash surrender value of the Appellant's life insurance policy is exempt from asset eligibility consideration.
21. The Department incorrectly considered the cash surrender value of the Appellant's life insurance policy to be a counted asset for Medicaid eligibility purposes.
22. The Appellant is otherwise eligible for Medicaid payment of LTC services effective [REDACTED] 2014, the date of request for coverage.

### **DISCUSSION**

Based upon the testimony and the evidence presented and in light of pertinent regulations, I find that the Appellant did not improperly transfer his home and property into a trust. I further find that he was otherwise asset eligible in [REDACTED] 2014.

Regulations state that if an individual provides clear and convincing evidence that the transfer was made for a purpose other than to qualify for medical assistance, then the transfer is not considered to be improper and a penalty is not imposed.

In this case, the Appellant has provided clear and convincing evidence that he was in good health at the time of the transfer, he retained sufficient income and assets to meet his foreseeable needs, and that he was not contemplating the need for long-term care at the time of the transfer.

I do not find this transfer of assets to be improper and do not uphold the Department's penalty imposition.

With respect to asset eligibility, the face value of the Appellant's only life insurance policy is less than \$1,500.00 therefore; the policy is excluded from asset eligibility consideration. When this policy is excluded from asset eligibility consideration, the Appellant is asset eligible effective [REDACTED] 2014.

The Appellant additionally raised the argument that the imposition of a penalty creates for him an undue hardship. I did not have need to speak to this argument herein because I found that the Appellant transferred assets for reasons other than to qualify for assistance and that the Department was not correct to impose a penalty.

**DECISION**

The Appellant's is **Upheld**.

**ORDER**

The Department shall remove the penalty that it imposed.

The Department shall consider the Appellant to be otherwise eligible for Medicaid LTC payments effective the date of his request for coverage, [REDACTED] 2014.

The Department shall reopen the Appellant's Medicaid application and process in accordance with the findings of this decision.

Compliance shall be shown by submission of verification that the [REDACTED], 2014 application has been reopened that the penalty has been removed and is due by [REDACTED] 2015.

*Pamela J. Gonzalez*

Pamela J. Gonzalez  
Hearing Officer

Copy: Lisa Wells, Operations Manager, DSS Regional Office #20, New Haven  
[REDACTED]  
[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.