

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: ██████████  
Request: 687771

**NOTICE OF DECISION**

**PARTY**

██████████  
██  
██  
██

**PROCEDURAL BACKGROUND**

On ██████████ 2015, the Department of Social Services (the "Department") issued ██████████ ██████████ (the "Appellant") a notice that he had transferred \$64,769.62 to become eligible for Medicaid, and the Department was imposing a penalty period of ineligibility for Medicaid payment of long-term care services to run ██████████ 2015 through ██████████ 2015.

On ██████████ 2015, the Appellant filed a request for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") to contest the Department's determination of a penalty period of ineligibility for Medicaid payment of long-term care services.

On ██████████ 2015, the OLCRAH issued a notice scheduling an 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, the OLCRAH held an administrative hearing. The following individuals participated in the hearing:

██ Appellant's representative  
Jacqueline Mastracchio, Department's representative  
Eva Tar, Hearing Officer

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

### **STATEMENT OF ISSUE**

The issue to be decided is whether the Department correctly determined that the Appellant is subject to a penalty period of ineligibility for Medicaid payment of long-term care services, based on \$64,769.62 in transfers during the look-back period.

### **FINDINGS OF FACT**

1. The Appellant was married to [REDACTED] (the "wife"). (Appellant's Exhibit A: Email with attachments, [REDACTED]/15)
2. On [REDACTED] 2012, the Appellant assigned his power of attorney to [REDACTED] his son. (Department's Exhibit 6: Fax: [REDACTED]/15)(Appellant's representative's testimony)
3. On [REDACTED] 2012, the Appellant and his wife wrote a check for \$18,331.00 to Sacred Heart University to pay the tuition of [REDACTED] a grandchild. (Department's Exhibit 3: Copies of checks/register, varying dates)(Appellant's representative's testimony)
4. On [REDACTED] 2012, the Appellant or his wife wrote a check for \$13,000.00 to [REDACTED] a second grandchild, to help pay his student loans. (Department's Exhibit 3)(Appellant's representative's testimony)
5. As of [REDACTED] 2012, [REDACTED] owed \$15,451.00 in student loans. (Appellant's Exhibit A)
6. On [REDACTED] 2012, the Appellant or his wife wrote a check for \$13,000.00 to [REDACTED] a third grandchild, to help with her tuition bills. (Department's Exhibit 3)(Appellant's representative's testimony)
7. In the [REDACTED] 2012 semester, [REDACTED] tuition equaled \$13,875.00. (Appellant's Exhibit A)
8. On [REDACTED] 2012, the Appellant or his wife wrote a check for \$9,950.00 to the Appellant's representative, as a gift. (Department's Exhibit 3)(Appellant's representative's testimony)
9. On [REDACTED] 2012, the Appellant or his wife wrote a check for \$9,950.00 to the Appellant's representative's wife, as a gift. (Department's Exhibit 3)(Appellant's representative's testimony)
10. On [REDACTED] [REDACTED] 2014, the Appellant's wife died. (Appellant's representative's testimony)

11. On [REDACTED] 2014, the Appellant's representative became the executor of the Appellant's wife's estate. (Department's Exhibit 6)
12. On [REDACTED] 2014, the Probate Court received an *Initial Inventory* of the Appellant's wife's estate, listing the estate as consisting of [REDACTED], with a value of \$115,000.00 and an outstanding mortgage of \$109,047.87; and three Bank of America accounts ([REDACTED], [REDACTED] and [REDACTED]) (Department's Exhibit 6)
13. The three Bank of America accounts ([REDACTED], [REDACTED] and [REDACTED]) were held jointly by the Appellant's wife, the Appellant, and the Appellant's representative. (Department's Exhibit 6)
14. The Appellant failed to apply for a spousal share of his wife's estate within 150 days of the appointment of a fiduciary. (Department's Exhibit 6)
15. On [REDACTED] 2014, Parkway Pavilion of [REDACTED] Connecticut admitted the Appellant as a resident. (Appellant's representative's testimony)(Department's representative's testimony)
16. Parkway Pavilion is a skilled nursing facility. (Department's representative's testimony)
17. On [REDACTED] [REDACTED] 2015, the Department received the Appellant's *Long-term Care/Waiver Application*. (Department's Exhibit 1: W-1LTC, stamped as received [REDACTED]/15)
18. On [REDACTED] 2015, the Department determined that the Appellant's spousal share equaled \$538.62. (Department's Exhibit 6)
19. On [REDACTED] 2015, the Department issued a *Preliminary Decision Notice* to the Appellant stating that the agency had made the preliminary decision that the Appellant had transferred \$64,769.62 in 2012 to become eligible for assistance. (Department's Exhibit 2: *Preliminary Decision Notice*, [REDACTED]/15)
20. On [REDACTED] 2015, the Department issued a *Final Decision Notice* that stated that although the Appellant was eligible for certain Medicaid benefits beginning [REDACTED] 2015, there would be a penalty period to run from [REDACTED] 2015 through [REDACTED] 2015, where Medicaid would not pay for any of the Appellant's long-term care services. (Department's Exhibit 4: *Final Decision Notice*, [REDACTED]/15)
21. On [REDACTED] 2015, the Department issued a notice to the Appellant, stating that it was granting his Medicaid coverage for long-term care services, effective [REDACTED] 2015. (Department's Exhibit 5: *Notice of Approval for Long-Term Care Medicaid*, [REDACTED]/15)

22. On [REDACTED] 2015, the Probate Court received a *Substitute or Corrected Inventory* of the Appellant's wife's estate. (Appellant's Exhibit A)
23. The [REDACTED] 2015 *Substitute or Corrected Inventory* associated with the Appellant's wife's estate consisted of real estate located at [REDACTED] with a fair market value of \$85,000.00 and a mortgage of \$109,097.82; there were no other assets listed. (Appellant's Exhibit A)
24. The grand total value of the Appellant's wife's estate as of her date of death equaled \$0.00. (Appellant's Exhibit A)

### **CONCLUSIONS OF LAW**

1. The Department of Social Services is designated as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act. Conn. Gen. Stat. § 17b-2.
2. The beginning date of a continuous period of institutionalization is: a. for those in medical institutions or long term care facilities, the initial date of admission; b. for those applying for home and community based services (CBS) under a Medicaid waiver, the date that the Department determines the applicant to be in medical need of the services. Uniform Policy Manual ("UPM") § 1507.05 (A)(2).
3. For the purposes of the Medicaid program, the Appellant's beginning date of a continuous period of institutionalization was October 17, 2014.
4. This chapter describes the technical eligibility requirement in the Medicaid program pertaining to the transfer of an asset for less than fair market value. The policy material in this chapter pertains to transfers that occur on or after February 8, 2006. UPM § 3029.
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 3029.05 C. This period is called the penalty period, or period of ineligibility. UPM § 3029.05 (A).
6. The policy contained in this chapter pertains to institutionalized individuals and to their spouses. An individual is considered institutionalized if he or she is receiving: a. LTCF services; or b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; or c. home and community-based services under a Medicaid waiver (cross references: 2540.64 and 2540.92). UPM § 3029.05 (B).

7. The look-back date for transfers of assets is a date that is 60 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 Appellant's look-back period ran from 60 months prior to and up to [REDACTED] 2015, the date of his Medicaid application.
9. The Appellant's and his wife's transfers of assets that occurred in 2012 fall within the 60-month look-back period.
10. The Appellant's and his wife's transfers of assets that occurred in 2012 are subject to Department review with respect to determining eligibility for the Medicaid program.
11. Medical assistance shall be provided for any otherwise eligible person whose income, including any available support from legally liable relatives and the income of the person's spouse or dependent child, is not more than one hundred forty-three per cent, pending approval of a federal waiver applied for pursuant to subsection (e) of this section, of the benefit amount paid to a person with no income under the temporary family assistance program in the appropriate region of residence and if such person is an institutionalized individual as defined in Section 1917 of the Social Security Act, 42 USC 1396p(h)(3), and has not made an assignment or transfer or other disposition of property for less than fair market value for the purpose of establishing eligibility for benefits or assistance under this section. Any such disposition shall be treated in accordance with Section 1917(c) of the Social Security Act, 42 USC 1396p(c). Any disposition of property made on behalf of an applicant or recipient or the spouse of an applicant or recipient by a guardian, conservator, person authorized to make such disposition pursuant to a power of attorney or other person so authorized by law shall be attributed to such applicant, recipient or spouse. A disposition of property ordered by a court shall be evaluated in accordance with the standards applied to any other such disposition for the purpose of determining eligibility. Conn. Gen. Stat. § 17b-261 (a).
12. 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. UPM § 3029.05 (D)(1).
13. In the case of an asset that the individual holds in common with another person or persons in joint tenancy, tenancy in common or similar arrangement, the Department considers the asset (or affected portion of such asset) to have been transferred by the individual when the individual or any other person takes an action to reduce or eliminate the individual's ownership or control of the asset. UPM § 3029.05 (D)(2).
14. 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).

15. Any transfer or assignment of assets resulting in the establishment or imposition of a penalty period shall create a debt, as defined in section 36a-645, that shall be due and owing by the transferor or transferee to the Department of Social Services in an amount equal to the amount of the medical assistance provided to or on behalf of the transferor on or after the date of the transfer of assets, but said amount shall not exceed the fair market value of the assets at the time of transfer. The Commissioner of Social Services, the Commissioner of Administrative Services and the Attorney General shall have the power or authority to seek administrative, legal or equitable relief as provided by other statutes or by common law. Conn. Gen. Stat. § 17b-261a (b).
16. Transfers that do not result in a penalty include, but are not limited to, transfers of a home to certain individuals; transfers made to or for the benefit of spouses, subject to limitations; transfers to a disabled child; transfers to certain trusts established for the sole benefit of an individual under the age of 65 who is considered disabled under criteria for SSI eligibility; transfers made exclusively for reasons other than qualifying; transferor intended to transfer the asset for fair market value; and transfers made for other valuable consideration. UPM § 3029.10.
17. 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).
18. On the death of a spouse, the surviving spouse may elect, as provided in subsection (c) of this section, to take a statutory share of the real and personal property passing under the will of the deceased spouse. The "statutory share" means a life estate of one-third in value of all the property passing under the will, real and personal, legally or equitably owned by the deceased spouse at the time of his or her death, after the payment of all debts and charges against the estate. The right to such third shall not be defeated by any disposition of the property by will to other parties. Conn. Gen. Stat. § 45a-436 (a).
19. There is no spousal share amount associated with the Appellant's wife's estate, based on the ██████████ 2015 *Substitute or Corrected Inventory*.
20. The Department erred when it had determined that the Appellant's failure to apply for a statutory share of his late wife's estate was an improper transfer equaling \$538.62.


21. The Appellant established by clear and convincing evidence that the Appellant or his wife transferred a total of \$44,331.00 in 2012 between their three grandchildren for a purpose other than to qualify or potentially qualify for Medicaid.
22. The \$44,331.00 in total transfers in 2012 to the Appellant's and his wife's three grandchildren do not subject the Appellant to a transfer penalty of ineligibility for Medicaid payment of his long-term care services.
23. The \$19,900.00 in total transfers in 2012 to the Appellant's and his wife's son and daughter-in-law subject the Appellant to a transfer penalty of ineligibility for the Medicaid program.
24. The Department incorrectly determined that the Appellant is subject to a penalty period of ineligibility for Medicaid payment of long-term care services, based on \$64,769.62 in transfers during the look-back period.

### **DECISION**

The Appellant's appeal is REMANDED to the Department for further action.

### **ORDER**

1. The Department will recalculate the Appellant's penalty period of ineligibility for Medicaid coverage of his long-term care services, based on \$19,900.00 in transfers.
2. The Department will notify the Appellant's representative in writing of the amended effective date of eligibility for Medicaid payment of the Appellant's long-term care services, based on the reduced penalty period.
3. The Department will notify Parkway Pavilion of the amended effective date of eligibility for Medicaid payment of the Appellant's long-term care services.
4. Within 21 calendar days of the date of this decision, or [REDACTED] 2015, documentation of compliance with this order is due to the undersigned.

  
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Eva Tar  
Hearing Officer

Pc: [REDACTED]  
John Hesterberg, DSS-Manchester (11)

### **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.

### **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 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.