

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3730

[REDACTED] 2015
Signature Confirmation

Client ID # [REDACTED]
Request # 695814

NOTICE OF DECISION

PARTY

[REDACTED]
For [REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On May 20, 2015, the Department of Social Services (the “Department”) sent [REDACTED] (the “Appellant”) a notice that she had transferred \$43,155.93 to become eligible for Medicaid, and the Department was imposing a penalty period of ineligibility for Medicaid payment of long term care services effective [REDACTED], 2015 through [REDACTED] 2015.

On [REDACTED] 2015, the Appellant, through her daughter and Power of Attorney [REDACTED] (“POA”), requested an administrative hearing to contest the Department’s penalty determination.

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

On [REDACTED] 2015, in accordance with sections 17b-60, 17-61 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:

[REDACTED] Power of Attorney for the Appellant
[REDACTED], Attorney for the Appellant
Jacquelyn Mastracchio, Department’s Representative
Lisa Nyren, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Department correctly determined: 1) the Appellant transferred \$43,155.93 to become eligible for Medicaid; and 2) the \$43,155.93 transfer subjected the Appellant to a penalty period of ineligibility for Medicaid payment of long-term care services.

FINDINGS OF FACT

1. On [REDACTED] 2014, the Appellant entered Fox Hill Nursing Home (the "facility"). (Hearing Summary)
2. The Appellant is married to [REDACTED], her spouse ("Spouse"). (Exhibit 1: W-1LTC Application)
3. The Appellant is age 88, born [REDACTED] [REDACTED]. (Exhibit 1: W-1LTC Application)
4. The Spouse is age [REDACTED] and diagnosed with dilated cardiomyopathy and hypertension that he managed with medication and a pacemaker. (Exhibit E: Physician Letter [REDACTED]/15 and POA's Testimony)
5. The Spouse resides alone in the home he owned with the Appellant. He remained independent and able to care for himself utilizing the town's senior transportation program to meet his needs outside of the home. (Exhibit 1: W-1LTC Application, Exhibit B: Town Senior Center [REDACTED]/15, and POA's Testimony)
6. On [REDACTED] 2014, [REDACTED] ("POA"), the Appellant's Daughter received Power of Attorney. (Exhibit 2: Power of Attorney)
7. On [REDACTED] 2014, the Spouse met with Schneider Builders, LLC. (the "Contractor") to discuss a proposal to remodel the home kitchen. (Exhibit F: Builder Letter [REDACTED]/15)
8. On [REDACTED], 2014, the Appellant quit claimed her interest in their home to her Spouse. (Hearing Summary)
9. On [REDACTED] 2014, the Spouse updated his Last Will and Testament. (Exhibit 6: Last Will and Testament)
10. On [REDACTED] 2014, the Contractor submitted a proposal for the home kitchen remodel to the POA, which the Spouse approved. (Exhibit F: Builder Letter [REDACTED]/15 and POA's Testimony)

11. On [REDACTED], 2014, the Spouse purchased a washer and dryer at Sears (the "Department Store") and scheduled a delivery date for [REDACTED] 2014. (Exhibit 9: Remodel Documents and POA's Testimony)
12. On [REDACTED] 2014, the Spouse met with the Contractor at [REDACTED] (the "Lumber Yard") to choose kitchen cabinets, drawers, and countertops for the kitchen remodel. (Exhibit F: Builder Letter [REDACTED]/15, Exhibit G: Supplier Letter, and POA's Testimony)
13. On [REDACTED] 2014, the Spouse fell at home hitting his head and admitted to the hospital. (POA's Testimony)
14. On [REDACTED], 2014, the POA on behalf of the Spouse signed a contract between the Spouse and the Contractor. The contract detailed the plan to remodel the Spouse's home kitchen. The contract listed the following payment schedule: Deposit: \$2,500.00, Demo completed: \$15,000.00, Cabinet installation: \$16,000.00, and upon completion: \$4,876.00. (Exhibit 10: Remodel Contract and Department Representative's Testimony)
15. On [REDACTED], 2014, the POA on behalf of the Spouse paid \$2,500.00 to the Contractor as deposit for kitchen remodel. (Department Representative's Testimony and Exhibit 9: Penalty Calculation)
16. On [REDACTED] 2014, the POA on behalf of the Spouse paid \$4,876.00 by bank check to the Contractor for kitchen remodel. (POA's Testimony, Department Representative's Testimony, Exhibit 9: Remodel Documents and Exhibit 10: Remodel Contract)
17. On [REDACTED] 2014, the POA on behalf of the Spouse paid \$15,000.00 by bank check to the Contractor for kitchen remodel. (POA's Testimony, Department Representative's Testimony, Exhibit 9: Remodel Documents, and Exhibit 10: Remodel Contract)
18. On [REDACTED] 2014, the POA on behalf of the Spouse paid \$16,000.00 by bank check to the Contractor for kitchen remodel. (POA's Testimony, Department Representative's Testimony, and Exhibit 9: Remodel Documents)
19. On [REDACTED] 2014, the Spouse paid \$500.83 by bank check to New Sheppard Supply Co. ("NSSC") for a kitchen faucet installed by the Contractor. (Exhibit 9: Remodel Documents)

20. On [REDACTED] 2014, the POA on behalf of the Spouse paid \$646.51 by bank check to Beacon Light and Supply Company ("Beacon") for kitchen lighting fixtures installed by the Contractor. (POA's Testimony, Department Representative's Testimony, and Exhibit 9: Remodel Documents)

21. On [REDACTED] [REDACTED] 2014, [REDACTED] and [REDACTED] [REDACTED], the Spouse's children, charged the Spouse \$602.00 for services provided. Services included deep cleaning of home and removal of trash and other items from the premises. (Exhibit 9: Remodel Documents and POA Testimony)

22. On [REDACTED] 2014, [REDACTED], the Spouse's child, charged the Spouse \$301.00 for services provided. Services included deep cleaning of home and removal of trash and other items from the premises. (Exhibit 9: Remodel Documents and POA Testimony)

23. The Appellant's Spouse purchased new appliances for the kitchen remodel from the Department Store totaling \$5,230.59. Appliances included washing machine, dryer, microwave, refrigerator, garbage disposal, stove, and dishwasher. The builder installed the appliances purchased except the washer and dryer. The Department Store installed the washer and dryer. (Exhibit 9: Remodel Documents, Exhibit A: Letter [REDACTED]/15, Department Representative's Testimony, and POA's Testimony)

24. On [REDACTED], 2015, the Spouse died at the hospital. The death certificate lists the cause of death as respiratory failure, multilobar pneumonia, and coronary artery disease. (Hearing Summary and Exhibit 5: Certificate of Death)

25. On [REDACTED] 2015, the Department received an application for Medicaid for long-term care on behalf of the Appellant. (Exhibit 8: NOA [REDACTED]/15)

26. On [REDACTED], 2015, the Department notified the Appellant that initially it determined that the Appellant transferred \$43,155.93 between [REDACTED] [REDACTED], 2014 and [REDACTED] 2014 in order to qualify for assistance. (\$4,876.00 + \$15,000.00 + \$16,000.00 + \$500.83 + \$646.51 + \$602.00 + \$301.00 + \$5,230.59 = \$43,159.93) The Department recognized a \$4.00 addition error. (Exhibit 3: W-495A Transfer of Assets Preliminary Decision Notice and Exhibit 9: Penalty Calculation)

27. On [REDACTED] 2015, the POA filed a rebuttal response to the [REDACTED] 2015 notice on behalf of the Appellant. The Appellant argued that the transfers were payments made for services provided under the kitchen remodel contract signed on [REDACTED], 2015. (Exhibit C: Rebuttal Letter, Department Representative Testimony and POA Testimony)

28. On [REDACTED], 2015, the Department notified the Appellant that there was an improper transfer of assets for \$43,155.93 made in [REDACTED] 2014 for the purposes of qualifying for Medicaid and that the Department will impose a penalty beginning [REDACTED] 2015 through [REDACTED], 2015. (Exhibit 4: W-495C Transfer of Asset Final Decision Notice)

29. On [REDACTED], 2015, the Department granted the Appellant Medicaid effective [REDACTED] 2015 with a penalty period beginning [REDACTED], 2015 and ending on [REDACTED], 2015. (Hearing Summary, Exhibit 7: Notice of Approval [REDACTED]/15, and Exhibit 8: Notice of Action [REDACTED]/15)

CONCLUSIONS OF LAW

1. Section 17b-2(6) of the Connecticut General Statutes provides that 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.
2. Statute provides that the Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department. [Conn. Gen. Stat. § 17b-261b(a)]
3. Statute provides in part that 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. The Commissioner of Social Services shall provide applicants for assistance

under this section, at the time of application, with a written statement advising them of (1) the effect of an assignment or transfer or other disposition of property on eligibility for benefits or assistance. [Conn. Gen. Stat. § 17b-261(a)]

4. Statute 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. [Conn. Gen. Stats. § 17b-261a(a)]
5. Statute provides that 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 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. Stats. § 17b-261a(b)]
6. Uniform Policy Manual ("UPM") § 3029 provides for 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.
7. UPM § 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 or annuity was established, on or after February 8, 2006.
8. 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.
9. UPM § 3029.05(A) provides that there is a period established, subject to the conditions described in this chapter, during which institutionalized individual 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) of this policy. This period is called the penalty period, or period of ineligibility.

10. UPM § 3029.05(B)(1) provides that the policy contained in this chapter pertains to institutionalized individuals and to their spouses.

UPM § 3029.25(B)(2) provides that 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)

11. UPM § 3029.05(C) provides that the look back period 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.

12. UPM § 3029.10(E) provides that an otherwise eligible institutionalized individual is not ineligible for Medicaid payment of long term care 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.

13. UPM § 3029.10 provides that the transfers described in 3029.10 do not render an individual ineligible for Medicaid payment of long-term care services.

UPM § 3029.10(A)(1)(a) provides that an individual or his or her spouse may transfer his or her home without penalty to his or her spouse.

UPM § 3029.10(A)(2)(a) provides that for purposes of this chapter, the word "home" refers to: the real property used as principal residence by an institutionalized individual immediately prior to his or her institutionalization.

14. UPM § 3029.10(F) provides that 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.

15. UPM § 3029.30 (A) provides for compensation in exchange for a transferred asset is counted in determining whether fair market value was received.

1. When an asset is transferred, compensation is counted when it is received at the time of the transfer or any other 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 a transferred asset to the extent described at 3029.10.

16. UPM § 3029.03(B) provides for each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset.

1. In determining the dollar value of services rendered directly by the transferee, the Department uses the following amounts:
 - a. For all services of the type normally rendered by a homemaker or home health aid, the current state minimum hourly rate for such services;
 - b. For all other types of services, the actual cost.
2. Out of pocket payments by the transferee may include capital alterations necessary to allow the transferor continued use of the home to avoid institutionalization.
3. Compensation in the form of real or personal property is compared using its fair market value.

17. The POA provided clear and convincing evidence that the transfers totaling \$42,256.93 for the kitchen remodel was compensation received pursuant to a legally enforceable agreement. (\$4,876.00 + \$15,000.00 + \$16,000.00 + \$500.83 + \$646.51 + \$5,230.59 = \$43,159.93)

18. The POA provided clear and convincing evidence that the transfer for \$301.00 was compensation received for cleaning services provided by the Spouse's daughter.

19. The POA provided clear and convincing evidence that the transfer for \$602.00 was compensation received for cleaning services provided by the Spouse's son.

20. The POA provided clear and convincing evidence that the Spouse intended to receive fair market value for the transfers totaling \$43,159.93.

21. The POA provided clear and convincing evidence to verify that the reason for the transfers totaling \$43,159.93 was not for qualifying for assistance.

22. The Department incorrectly imposed a transfer of assets penalty against the Appellant because the transfers were for compensation pursuant to a legally enforceable agreement and the Appellant intended to receive fair market value for the transfers.

DECISION

The Appellant's appeal is granted.

ORDER

The Department is directed to remove the penalty, grant Medicaid to cover long-term care cost for period previously denied under the transfer of asset penalty and issue appropriate notice.

Compliance is due no later than [REDACTED] 2015.

Lisa A. Nyren
Hearing Officer

PC: John Hesterberg, Social Services Office Manager
Jacquelyn Mastracchio, Eligibility Services Worker
Attorney [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.

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.