

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

██████████ 2015  
Signature Confirmation

Client ID # ██████████  
Request #699636

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2015, the Department of Social Services (the "Department") sent ██████████ (the "Appellant") a Notice of Action ("NOA") granting Long Term Care Medicaid benefits effective ██████████ 2015.

On ██████████, 2015, the Appellant requested an administrative hearing to contest the effective date of the Long Term Care Medicaid benefits as determined by the Department.

On ██████████ 2015, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████, 2015.

On ██████████, 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:

██████████, Appellant's daughter, Power of Attorney ("POA")  
Victor Robles, Department's Representative  
Miklos Mencseli, Hearing Officer

The Appellant was not present.

### STATEMENT OF THE ISSUE

The issue to be decided is whether or not the Department was correct in its determination of the effective date of the Applicant's Long Term Care Medicaid benefits.

### FINDINGS OF FACT

1. On [REDACTED] 2014, the Department received a re-application for Medicaid Long Term Care assistance for the Appellant. (Exhibit H: Summary, Department's W-1LTC application)
2. On [REDACTED] 2015, the Appellant became institutionalized (the date of institutionalization ["DOI"]) (Testimony)
3. The Appellant is a resident of Amberwoods of Farmington facility.
4. The Appellant's spouse is a resident in another facility. (Testimony)
5. The Department completed a Spousal Assessment of Assets. (Testimony)
6. The Appellant's POA (daughter) provided a letter with an explanation of payments made from the Appellant's Farmington Bank account. (Summary, Exhibit A: letter dated [REDACTED], 2015)
7. The Farmington Bank account is a joint account between the Appellant and his spouse with the daughter as POA. (Exhibit B & C: Farmington Bank statements for [REDACTED] and [REDACTED] 2012)
8. The Appellant made the following payments from the account in [REDACTED] 2012:
  - [REDACTED]-12, paid rent & expenses for 2013 to [REDACTED] - \$8,000.00
  - [REDACTED]-12, gift to [REDACTED] - \$5,800.00
  - [REDACTED]-12, paid college tuition for granddaughter - \$12,000.00
  - [REDACTED]-12, gift to granddaughter for home purchase - \$13,000.00
  - [REDACTED]-12, gift to grandson for High School graduation - \$5,000.00
 (Summary, Exhibit A)
9. As of [REDACTED] 2012, the Appellant had assets totaling \$43,310.74. After the payments made in [REDACTED] the Appellant's total assets equaled \$2,673.31. (Summary, Exhibit B & C)

10. On [REDACTED] 2013, two months after the reduction in assets the Appellant's spouse applied for the state funded Home Care program. (Summary)
11. On [REDACTED] 2013, the Appellant applied for the state funded Home Care program. (Summary)
12. The Department determined the \$8,000.00 paid for rent and expenses is not a gift, the Appellant received fair market value as the funds were used to pay bills. (Testimony)
13. On [REDACTED], 2015, the Department sent the Appellant a W-495A Transfer of Assets Preliminary Decision Notice. The Department determined that the Appellant transferred \$35,800.00 in [REDACTED] 2012. (Exhibit D: W-495A dated [REDACTED]-15)
14. The Appellant's POA contacted the Department and indicated the Appellant is in poor health and there were extenuating circumstances regarding the gifts made in [REDACTED] 2012. (Exhibit F: Department's case narrative printout, Testimony)
15. On [REDACTED] 2015, the Department sent the Appellant a W-495C Transfer of Assets Final Decision Notice. The notice confirmed the Department's action as stated on the W-495A notice. (Exhibit E: W-495C dated [REDACTED]-15)
16. The Department stated that a penalty period would begin on [REDACTED] 2015 and will end [REDACTED] 2015. *The Department calculated the 96 day penalty by dividing the transfer penalty amount of \$35,800.00 by \$11,851.00, the average monthly cost of nursing home care in Connecticut.* (Exhibit E: W-495B dated [REDACTED]-15 Testimony)
17. On [REDACTED], 2015, the Appellant became institutionalized (the date of institutionalization ["DOI"]) (Testimony)
18. The facility, Amberwoods of Farmington is seeking a pick-up date of [REDACTED] 2015 for Medicaid eligibility. (Testimony)

### **CONCLUSIONS OF LAW**

1. Sections 17b-260 to 17b-264 of the Connecticut General Statutes authorizes the Commissioner of Social Services to administer the Title XIX Medical Assistance program to provide medical assistance to eligible persons in Connecticut.
2. Section 17b-2 of the Connecticut General Statute authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.

3. Section 17b-80(a) of the Connecticut General Statute states that the Department shall grant aid only if the applicant is eligible for that aid.
4. Uniform Policy Manual (“UPM”) § 3029.05 provides the transfer of assets basic provisions.

A. General Statement

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.

B. Individuals Affected

1. The policy contained in this chapter pertains to institutionalized individuals and to their spouses.
2. 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).
5. UPM § 3029.05 (C) (1)(2) provides that 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: the individual is institutionalized and the individual is either applying for or receiving Medicaid.
6. The Department correctly determined that the transfer in [REDACTED] 2012 occurred within the 60 month look back period.
7. UPM § 3029.05 D (1) (2) provides 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. 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.

8. The Department correctly determined that the \$35,800.00 gifted in [REDACTED] 2012 are within the look back period and subject for review.
9. Section 17b-261a(a) 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 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.
10. UPM § 3029.10(E) provides that 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.
11. UPM § 3029.10(F) provides for transferor intended to transfer at fair market value. An institutionalized individual or his or her spouse may transfer an asset without penalty if the individual demonstrates with clear and convincing evidence that he or she intended to dispose of the asset at fair market value.
12. UPM § 3029.10(G) provides for transfer made for other valuable consideration. An institutionalized individual or his or her spouse may transfer an asset without penalty if it is demonstrated with 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.
13. UPM §3025.15 provides for Transfer Not for the Purpose of Qualifying
  - A. Fair Market Value Received

If fair market value is received, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.
  - B. Assets Within Limits

If the total of the uncompensated fair market value of a transferred asset plus all other countable assets does not exceed program limits, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility. In the case of multiple transfers involving one asset, this includes the total uncompensated value of all transfers.
  - C. Transfer for Another Purpose

If there is convincing evidence that the transfer is exclusively for another purpose, the transfer of the asset is not considered to be for the purpose of establishing or maintaining eligibility.

14. UPM § 3029.30(B)(1) provides that each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset. 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 wage for such services; (b) for all other types of services, the actual cost.
15. The Department correctly determined the Appellant did receive fair market value for the \$8,000.00 used to pay for rent and expenses incurred in the community.
16. The Department is correct to determine the \$35,800.00 is a gift.
17. Based on the transfer of \$35,800.00, the Appellant is subject to a Transfer of Asset penalty.
18. Section 17b-261o(c) of the Connecticut General Statutes provides that the commissioner shall impose a penalty period pursuant to subsection (a) of section 17b-261 or subsection (a) of section 17b-261a if the transfer or assignment of assets was made by the Applicant's legal representative or joint owner of the asset.
19. UPM § 3029.05 provides that 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.
20. UPM § 3029.05 (E)(2) provides that the penalty period begins as of the later of the following dates: 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.
21. The Department correctly determined [REDACTED] 2015 as the date the Appellant would be otherwise eligible for Medicaid.
22. The Appellant is subject to a penalty period beginning [REDACTED] 2015, the date that the Appellant was otherwise eligible for Medicaid payment of long-term care services.



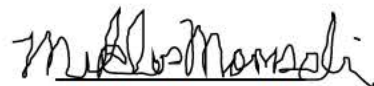
23. UPM § 3029.05 (F) provides in part that the length of the penalty period consists of the number of whole and/or partial months resulting from the computation described in 3029.05 F. 2. The length of the penalty period is determined by dividing the total uncompensated value of all assets transferred on or after the look-back date described in 3029.05 C by the average monthly cost to a private patient for LTCF services in Connecticut. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.
24. The length of the penalty period is determined by dividing the uncompensated value of the transferred asset by the average monthly cost of care to a private patient for long-term care services in Connecticut.

### **DISCUSSION**

The Appellant's POA (daughter) argued two points regarding the \$35,800.00 the Department determined as gifts. The first point is that the penalty was assessed with a [REDACTED] application and would have been completed with by the time of the [REDACTED] 2015 application. Unfortunately the application was not granted and penalty period did not begin. The Department was correct to consider the transfer with the [REDACTED] 2015 application as it is within the look back period. The POA stated that the money spent on leases, care, caregivers and expenses for her parents to keep them in the community was more than the total amount given as gifts. The POA provided medical documentation for the Appellant. He is [REDACTED] years old and suffers from several medical conditions. That keeping the Appellant in the community as long as possible saved the State money. The facts as presented in the letter dated [REDACTED] 2013 were not disputed by the POA. The funds listed were given as gifts. The funds were used for the purposes as stated. The Department is corrected to determine a penalty period based on the transfer of \$35,800.00.

### **DECISION**

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



Miklos Mencseli  
Hearing Officer

C: Musa Mohamud, 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.

### **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.