

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 #: 702426

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") imposing a transfer of assets penalty for the period from ██████████ 2014, through ██████████ 2015.

On ██████████ 2015, ██████████, Power of Attorney ("POA") for the Appellant, requested an administrative hearing to contest the Department's decision to impose a penalty on the Applicant's Long Term Care Medicaid benefits.

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, 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
- ██████████ POA and daughter of the Appellant
- ██████████, Son of the Appellant
- Cecelia Coney, Bookkeeper, Apple Rehab
- Lisa Ryan, Administrator, Apple Rehab
- William Johnson, Eligibility Services Worker, Department's Representative

Roberta Gould, Hearing Officer

The hearing record remained open for the submission of additional evidence. The hearing record closed on [REDACTED] 2015.

### **STATEMENT OF THE ISSUE**

The issue is whether the Department correctly determined an effective date of Medicaid based on a Transfer of Assets ("TOA") penalty.

### **FINDINGS OF FACT**

1. The Appellant is 81 years old. (Hearing record)
2. In 2010, the Appellant broke her hip. On [REDACTED] 2010 she entered Harrington Court skilled nursing facility. ((Exhibit 15: Admission record and POA's testimony)
3. The Appellant's daughter and POA, [REDACTED] and the Appellant's son, [REDACTED], provided care for the Appellant in her home from [REDACTED] 2011, through [REDACTED] of 2014. (Exhibit 5: Caregiving records and POA's testimony)
4. From [REDACTED] 2011, through [REDACTED] 2011, Backus Home Health Care agency also provided care for the Appellant in her home. (Exhibit 5)
5. From [REDACTED] 2011, through [REDACTED] 2012, the Appellant paid [REDACTED] and [REDACTED] \$69,400.00 for caregiving services they provided for her. (Exhibit 8: Calculation of transfers)
6. On [REDACTED] 2011, a withdrawal of \$6,000.00 was made from the Appellant's Savings Institute account that was not accounted for. (Exhibit 2: Schedule of transfer of assets)
7. On [REDACTED] 2011, a withdrawal of \$10,000.00 was made from the Appellant's Savings Institute account to her son, [REDACTED]. (Exhibit 2)
8. On [REDACTED] 2011, a withdrawal of \$30,000.00 was made from the Appellant's Savings Institute money market account to her grandchildren, [REDACTED] and [REDACTED], and her daughter, [REDACTED]. (Exhibit 2)
9. On [REDACTED] 2012, a withdrawal of \$10,000.00 was made from the Appellant's Savings Institute money market account to [REDACTED] and [REDACTED]. (Exhibit 2)
10. On [REDACTED] 2012, a withdrawal of \$8,000.00 was made from the Appellant's Savings Institute money market account to [REDACTED] and [REDACTED]. (Exhibit 2)

11. On [REDACTED] 2012, a withdrawal of \$8,000.00 was made from the Appellant's Savings Institute money market account to [REDACTED] and [REDACTED] (Exhibit 2)
12. On [REDACTED] 2012, a withdrawal of \$12,000.00 was made from the Appellant's Savings Institute money market account to [REDACTED] and [REDACTED]. (Exhibit 2)
13. On [REDACTED] 2012, a withdrawal of \$5,400.00 was made from the Appellant's Savings Institute account that was not accounted for. (Exhibit 2)
14. On [REDACTED] 2013, a withdrawal of \$14,303.19 was made from the Appellant's Savings Institute money market account to [REDACTED] and [REDACTED] (Exhibit 2)
15. On [REDACTED] 2013, a withdrawal of \$49,000.00 was made from the Appellant's Savings Institute checking account to [REDACTED]. (Exhibit 2)
16. On [REDACTED] 2013, a withdrawal of \$49,000.00 was made from the Appellant's Savings Institute checking account to [REDACTED]. (Exhibit 2)
17. From [REDACTED] 2013, through [REDACTED] 2014, the Appellant paid [REDACTED] and [REDACTED] \$27,037.00 for caregiving services they provided for her. (Exhibit 8)
18. The Appellant's daughter or son did not reside with her from 2010 to the present. (Hearing record)
19. From [REDACTED] 2013, through [REDACTED] 2013, Masonicare Home Health agency provided care for the Appellant in her home. (Exhibit 5)
20. In 2013, the Appellant was diagnosed with dementia. (Exhibit 15)
21. The Appellant entered Aurora Health and Rehab Center on [REDACTED] 2014. (Hearing summary)
22. On [REDACTED] 2014, the Appellant applied for Long Term Care Medicaid assistance. (Exhibit 1: W-1 LTC application form and Hearing summary)
23. There is no evidence in the record to reflect that \$105,266.00 of the funds transferred from the Appellant to her daughter and son were used for the Appellant's care. (Hearing record)
24. On [REDACTED] 2015, the Department issued a W-495A Transfer of Assets Preliminary Decision Notice stating that the Appellant had transferred assets totaling \$105,266.00 (\$201,703.19 - \$96,437.00) in order to be eligible for assistance. (Exhibit 9: W-495A, Exhibit 8 and Department's summary)
25. On [REDACTED] 2015, the Appellant's POA issued a rebuttal of the Department's decision that the Appellant had transferred funds in order to be eligible for

assistance. (Exhibit 10: POA's rebuttal)

26. On [REDACTED] 2015, the Department issued a W-495B Transfer of Assets Notice of Response to Rebuttal/Hardship Claim and W-495C Final Decision Notice stating that the Appellant had transferred \$105,266.00 from [REDACTED] of 2011, through [REDACTED] of 2013, to become eligible for Medicaid and the Appellant was subject to a transfer of assets penalty period of ineligibility for Medicaid for Long-Term Care from [REDACTED] 2014, through [REDACTED] 2015. (Exhibit 11: W-495B and Exhibit 12: W495C)
27. The Appellant became eligible for Medicaid effective [REDACTED] 2015. (Exhibit 13: Notice of approval for long term care Medicaid)
28. On [REDACTED] 2015, the Department granted Medicaid Assistance for Long-Term Care effective [REDACTED] 2015. A penalty of \$105,266.00 was applied for the period of [REDACTED] 2014, through [REDACTED] 2015, due to transfers of income from the Appellant to her daughter, son and grandchildren. (Exhibit 13)

### **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 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.
3. UPM § 3029.05(A) 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.
4. UPM § 3029.05(B) provides that the policy contained in the chapter on transfers of assets pertains to institutionalized individuals and to their spouses.
5. 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.
6. UPM § 3029.05(C) provides that the look-back date for transfers of assets is a 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.
7. The Department correctly looked back 60 months prior to the Appellant's application in order to determine whether any improper asset transfers occurred.
  8. 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.
  9. 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.
  10. The Department correctly determined that the transfers made were given as gifts to the Appellant's daughter, son and grandchildren because there is no clear and convincing evidence to support otherwise.
  11. UPM § 3029.30 provides that compensation in exchange for a transferred asset is counted in determining whether fair market value was received.
  12. UPM § 3029.30(A) provides for compensation which is counted. It states that 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; and 3. compensation may include the return of the transferred asset to the extent described at 3029.10.
  13. The Department correctly determined that the services rendered by the Appellant's daughter and son were not received in accordance with a legally enforceable agreement.
  14. There is evidence to support the claim that compensation was given to the Appellant in the form of caregiver services provided to her in her home for the period of [REDACTED] 2011, through [REDACTED] 2012, and from [REDACTED] 2013, through [REDACTED] 2014, for a total cost of \$96,437.00.
  15. 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.

16. The Appellant is subject to penalty due to improperly transferring assets during the look-back period.
17. 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.
18. The Department correctly determined that the Appellant is subject to a penalty period beginning [REDACTED] 2014, the date that the Appellant was otherwise eligible for Medicaid payment of long-term care services.
19. UPM § 3029.05(F) provides that 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 long-term care services in Connecticut. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. A single penalty period is then calculated, and begins on the date applicable to the earliest transfer.
20. UPM § 3029.10(H)(2)&(3) provides that if only part of the transferred asset is returned, the penalty period is adjusted. The adjusted penalty period described in 3029.10 H. 2 is based on the uncompensated value of the original transfer minus the value of the asset that is returned.
21. The Department correctly determined that the Appellant improperly transferred assets of \$105,266.00 (\$201,703.00 - \$96,437.00 for caregiving services) during the Medicaid eligibility look-back period.
22. The Department correctly determined that the penalty period for improperly transferring assets is 8.8 months, from [REDACTED] 2014, through [REDACTED] 2015.

### **DISCUSSION**

After reviewing the evidence and testimony presented, the Department's action to impose a Medicaid period of ineligibility for long-term care coverage is upheld. I find that the gifts to the Appellant's daughter, son and grandchildren totaling \$105,266.00 are subject to a Medicaid penalty as set out in regulations. I find that the POA did not provide clear and convincing evidence that she transferred the assets for any other purpose than to qualify for Medicaid.

**DECISION**

The Applicant's appeal is **DENIED**

*Roberta Gould*

Roberta Gould  
Hearing Officer

Pc: Cheryl Parsons, Social Services Operations Manager, DSS, Norwich  
William Johnson, Eligibility Services Worker, DSS, Norwich

### **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.